

Anti-Violence Package - put an end to violence against women in the EU!

Facts Austria & EU

In 2019, a study by the EU Agency for Fundamental Rights (FRA)¹ showed that **13% of women** in **Austria** experienced physical or sexual violence in the five years prior to the survey.

- **Young women** between the ages of 16 and 29 are particularly affected.
- **57% of women** in Austria experienced some form of **harassment** - insults, threats or (cyber)bullying - 5 years prior to the survey. These levels **are among the highest in the EU**: on average, 9% of women in the EU indicate that they experienced physical violence and 41% indicate that they were harassed. Another FRA study from 2014 shows that 43% of all women in the EU have been subject to some form of **psychological violence** by either their current or previous partner ².

But only a **part** of the crimes are **reported** to the police:

- 16% of people in Austria (30% on EU average) who experienced physical violence and 5% of those affected by harassment in Austria (11% on EU average) reported these assaults. If the perpetrator is a **family member**, **reports** are filed **less frequently**.
- In 2021 alone, **31 femicides** were committed in Austria, the majority of them by (ex)partners of the women killed. The number of unreported cases is probably even higher.

The **inaction of most member states costs money**: The European Institute for Gender Equality (EIGE) shows that gender-based violence costs the EU, and thus all of us, 366 billion euros per year³. The largest part of the costs arise from physical and psychological impacts on those affected (56%), followed by criminal justice services (21%) and lost economic output (14%). Other costs can include civil justice services (for divorces and child custody proceedings for example), housing aid and child protection.

¹ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-crime-safety-victims-rights_en.pdf

² https://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_de.pdf

³ <https://eige.europa.eu/news/gender-based-violence-costs-eu-eu366-billion-year>

What is the European Union doing about it?

1. Istanbul Convention

The Istanbul Convention is a convention of the Council of Europe and stands for the long name "Convention on preventing and combating violence against women and domestic violence". It is the **first legally binding instrument to comprehensively combat all forms of violence against women** in Europe and has been in force since 2014. The Istanbul Convention explicitly describes violence against women as a violation of human rights as a result of structural discrimination and thus laid the foundation for further measures and the initial recognition of the issue as such.

The **concept of violence** is defined very **broadly** in the Convention: In addition to physical and sexualized violence, it also includes psychological violence, stalking and sexual harassment. Forced marriages, forced abortions, forced sterilizations and genital mutilation are also penalized in the text of the Convention.

The convention envisages raising public awareness of all forms of violence in order to prevent acts of violence, to make offers of help for those affected, and to better prosecute perpetrators.

Of the 46 Council of Europe members, 35 are also contracting states of the Istanbul Convention. An **independent panel of experts, GREVIO** for short, monitors the implementation of the obligations resulting from the agreement.

Austria ratified the Istanbul Convention in 2013, but according to the last GREVIO report⁴, is still a long way from achieving some goals (lack of support for victims of sexual violence, rape, forced marriage and female genital mutilation (FGM); difficult access to offers of help for women with disabilities and also asylum seekers, lack of long-term prevention, lack of (psychological) support for children who have witnessed violence; lack of prosecution in cases of domestic violence).

After great pressure from the European Parliament, in **June 2023** the European Union **ratified** the parts of the **Istanbul Convention** that relate to EU competence. These are, in particular, **judicial cooperation in criminal matters**.

⁴ <https://rm.coe.int/executive-summary-grevio-report-on-austria/1680750981>

2. What does the Commission's proposal for a directive on combating violence against women and domestic violence from the European Commission say?

Criminal Offenses

The Commission proposes criminalizing **rape** based on lack of consent, **female genital mutilation and cyber violence** across the EU. Cyberviolence includes cyberstalking, non-consensual sharing of intimate images, cyberbullying and incitement to hatred or violence online.

The **definition of rape** as any sexual act **without the consent of the women** is particularly welcome, which corresponds to the “yes means yes” approach. It is about active consent instead of active rejection (“no means no”) to the sexual act. This also results in an improvement for those affected when it comes to providing evidence, because the perpetrators now have to prove that they had consent and no longer do those affected have to prove that they denied their consent to the sexual act. This is a massive improvement and would strengthen criminal law in most member states.

The directive underlines the ban on **FGM** which is already in force in all EU countries but is still practiced in some communities. In Austria, carrying out FGM abroad is punishable - parents, doctors, helpers make themselves punishable - even if it is allowed in the country where it is carried out. A sensitive approach to culture is essential, so that communities recognize from their own initiative that what is legitimized by culture can also violate human rights.

The proposal is also the first to criminalize cyber violence across the EU. Women in particular are affected by hate and violence on the Internet. The proposal supplements the Act on Digital Services (DSA) and provides for prompt legal action to obtain a rapid removal of relevant **online content** and **makes providers responsible** for this task.

Minimum penalties are **presented** to the member states for the various criminal offences. If offenses are repeated or committed against or in the presence of children (under the age of 18), **aggravating circumstances** must be assumed.

Secure reporting and risk assessment mechanisms

New ways to make it easier to report acts of violence, including online, will be established. Health workers across the EU are **released from their duty of confidentiality** if violence is suspected. In the case of suspected cases involving children, health workers must report this **directly to the responsible and trained authorities**. The directive obliges authorities to carry out **individual risk assessments** after the first contact and to take immediate measures such as blocking or protection orders to protect those affected. Member states should set up easily accessible centers and contact points where underage victims can also find age-appropriate protection.

Compensation for those affected

Under the proposed directive, victims have the right to **seek full compensation** from offenders for harm they have suffered (costs related to health care, support services, loss of income, and physical and psychological harm). This is to be settled within the framework of a **single criminal proceeding**, instead of **without** a further civil proceeding for compensation, as was previously the case.

Why are uniform rules needed to combat violence in the EU?

Member States should exchange best practices and consult each other in criminal matters, including through Eurojust and the European Judicial Network. In order to track progress and monitor the situation in all Member States, the Commission is also proposing an obligation for Member States to collect **data on violence against women and domestic violence, which will feed into an EU-wide survey** every five years.

Position of the European Council on the Directive

The council has adopted its general approach on the 9 July 2023.

- Under the **pretext** that the **legal basis** Art 83 (1) TFEU "human trafficking and sexual exploitation of women and children" is not suitable, the Council removed the criminal offense of "rape" from the directive. Thus, the Council's General Approach is limited to cyber violence and female genital mutilation. The present council document is therefore much less ambitious than the Commission's proposal.
- **Four states** in the Council (Belgium, Greece, Italy and Luxembourg) tabled a "specific declaration", **criticizing lack of political will** in the Council to criminalize rape across the EU. Austria, unfortunately, has not signed the document.
- The Council narrowed the definition of "cyberstalking" (Article 8). When someone is *threatening* to cyberstalk, it is no longer included in the criminal offense according to the Council.
- The Council removed the definition of "sexual harassment at work" (Article 4g) completely from the proposal. The parliament, on the other hand, wants it as an own criminal offense,
- The details regarding the **compensation by perpetrators** to victims (Article 26) were considerably reduced to a reference to the national customs.

Position of the European Parliament

The Commission proposal was accepted very positively in Parliament, but was expanded to include the following criminal offences:

- **non-penetrative sexual offenses**
- **intersex genital mutilation**
- **Compulsory sterilization**
- **Forced marriage and**
- **sexual assaults in the working world** (wording according to ILO 190)

In addition to physical, sexual and psychological violence, **economic violence** is also included as violence in the EP mandate: Parents who refuse to pay alimonies for their children force children and the parent with whom the child lives into extremely precarious economic conditions situations.

Moreover, core numbers of the Istanbul Convention were added in the Parliament's position: *Women's shelter* should be available in every region with a population over 10.000, and *Rape Crisis* or *Sexual Violence Referral Centres* in regions over 200.000 people.

The approval for EP mandate was very high across party lines.

Next Steps

Currently the trilogue negotiations are taking place.

It is unfortunate that the Council is starting negotiations with such an unambitious mandate, but we hope that it will take big steps towards a parliamentary mandate.

Additional information

Directive proposal of the EU Commission: <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A52022PC0105>

Preliminary report European Parliament:
https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CJ01/PR/2023/06-28/1268817EN.pdf