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The shadow pandemic of Violence Against Women within
the European Union: from a fragmented legal framework
to a comprehensive approach

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La vera rivoluzione contro la
violenza è la cultura

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1. Carlotta Vagnoli, *Maledetta sfortuna. Vedere, riconoscere e rifiutare la violenza di genere*, 1st ed. (Fabbri, 2021), 157

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Introduction

Gender equality is a fundamental value of the European Union (EU). According to the European Institute for Gender Equality (EIGE), “*Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female*”. On 5 March 2020 - at the beginning of the Covid-19 pandemic - the European Commission proposed a Gender Equality Strategy (2020-2025) aimed at improving gender equality in the EU. However, it is important to underline that measures of gender equality do not necessarily reflect all aspects of inequality.² A few years ago, no one could have expected neither an impending pandemic, or the massive impact that such pandemic would have had on gender (in)equality. In particular, the main gender inequality that has been highlighted and exacerbated by the Covid-19 health crisis is violence directed towards women *because* they are women. UN Women has recently published a report on the issue and defined it as a “*shadow pandemic*”.³

Every year, on 25th November, the United Nations encourages the world to give violence against women the attention that it deserves, by inviting governments, international organizations and NGOs to organize activities designed to raise public awareness of the issue. That date was designated as the International Day for the Elimination of Violence Against Women by the General Assembly on 7 February 2000:⁴ on 25th November 1960, the Mirabal sisters, who were three political activists from the Dominican Republic, were brutally murdered by order of the country’s ruler, Rafael Trujillo. “*If they kill me, I’ll take my arms out of the grave and be stronger.*”, said Minerva Mirabal to those who warned her to stay silent in order to not be killed by the President Trujillo. One year later, the

2. Maria Wemrell et al., “The Nordic Paradox. Professionals’ Discussions about Gender Equality and Intimate Partner Violence against Women in Sweden,” *Women & Criminal Justice*, 2021, 11

3. UN Women and Women Count, “Measuring the shadow pandemic: Violence against women during COVID-19,” *UN Women Data Hub*, 2021,

4. UN, “International Day for the Elimination of Violence against Women 25 November. Background,” <https://www.un.org/en/observances/ending-violence-against-women-day/background>

Trujillo's regime fell and it was clear that the death of the sisters was one of the main reasons why.⁵

Sixty years later, Violence Against Women (VAW) is still one of the most widespread but at the same time least reported human right abuses. This thesis is a magnifier that allows for a closer look at this phenomenon in the context of the European Union. More specifically, the aim of this thesis is to shed light on the scale and seriousness of VAW within the EU Member States in order to raise awareness and concern on the need for a comprehensive legal framework to tackle this issue at a EU level. The premise is that there is a lack of data on VAW mostly due to a lack of *awareness*, that affects the level of disclosure of such violence, and other factors that will be deepened across this thesis; the hope is that the European Union of the future will be aware about the numbers of victims being a lot higher than what the data show, and will be able to consciously commit to making VAW an old memory of a patriarchal past.

The first Chapter of this thesis retraces the legal history of gender equality in the European Union, as well as the main achievements that have been reached so far. The first section of this Chapter refers to Defrenne II, which is a landmark decision of the European Court of Justice (CJEU) establishing a woman's right to equal treatment in the workplace. The second section relates to the development of the EU Gender equality Law *acquis* after Defrenne II and until the XXI century. Finally, the third section concerns the European Gender Equality Index (EGEI), which is a technological tool helping the EU to keep track of the progress in matters of gender equality among EU countries.

The second Chapter aims at providing an overview of the phenomenon of Violence against Women (VAW) in the European Union. In particular, the first section provides some data on violence against women among EU countries, in order to have a general idea of the scale and seriousness of the problem. The second section refers to the impact of the Covid-19 pandemic on violence against women

5. Andrei Tapalaga, "The Mirabal Sisters: A Global Symbol of Violence Against Women," *Medium*, 2020, <https://historyofyesterday.com/the-mirabal-sisters-a-global-symbol-of-violence-against-women-54176a0f75e5>

- more specifically, on domestic violence and online violence - in the EU, and how the EU Countries reacted. Lastly, the third section refers to the criminalisation of violence against women in Europe and, more in detail, within the EU legal framework.

The third - and final - Chapter aims at portraying the main recent initiatives that the EU institutions have adopted with the goal of arming themselves against the issue of violence against women. In particular, one of the most important legal instruments that have been recently proposed by the European Commission is a new Directive specifically meant at combating Violence Against Women and Domestic Violence. The proposal aims to address the fragmentation of the current legal framework, and to fill existing gaps in protection of victims of VAW at Member State and EU level. The final picture reflects an holistic sum of the EU initiatives that has the potential to form a comprehensive legal framework and effectively eradicate the shadow pandemic of VAW within the European Union.

A disclaimer with regards to the categories used in this thesis: it must be pointed out that the words "women" and "men" are a product of modern history.⁶ As Houria Bouteldja puts it so thoughtfully:

*"In no way do they (the categories women and men) bear on the subjectivity or biological determinism of individuals. Rather, they speak to their condition and status."*⁷

This thesis focuses on women specifically because its aim is to emphasise they are disproportionately affected by the forms of violence described in the following chapters. However, this does not imply that violence doesn't occur towards men, or any other human being that does not identify within the binary terms of men and women.

6. Houria Bouteldja, "Whites, Jews and us: Toward a Politics of Revolutionary Love," 2016,

7. Ibid.

Chapter I

1 The past and the present of EU Gender Equality Law

On 8th May 1945, the Second World War ended in Europe with a toll of about 55 million deaths. With the aim of creating a new peaceful future for Europe, European politicians began the process of building what we know today as the European Union. The first milestone of this ambitious project was the European Coal and Steel Community (ECSC), that was founded in 1951 and based on the so called "*Schuman plan*", which was the first European plan for new political cooperation in Europe. The European Coal and Steel Community's treaty, commonly known as the Treaty of Paris, was in fact meant to create a political cooperation between six countries (Germany, France, Italy, the Netherlands, Belgium and Luxembourg) in order for them to run their coal and steel industries under a common management. In this way, no single country could make the weapons of war to turn against others, as in the past.⁸ Building on the success of the Treaty of Paris, the six founding countries decided to expand their cooperation to other economic sectors. They formalised this agreement by signing the Treaties of Rome in 1957, which created the European Economic Community (EEC), and the European Atomic Energy Community (Euratom). The main objective of the new European Economic Community was, according to Article 2 of the EEC, to guide the six founding countries towards a progressive economic integration.

Among the provisions of the Treaty of Rome, there was also Article 119 EEC, which, despite being introduced for economic reasons, represented the first milestone of the development of an European Economic Community's (now EU) legislation on gender equality. Indeed, Article 119 EEC is the first legal provision in the history of the EEC (now EU) that states the principle of non-discrimination between men and women in matters of pay. Since 1957, EU Gender Equality law

8. EU, "History of the European Union 1945-59," https://european-union.europa.eu/principles-countries-history/history-eu/1945-59_en

has been developing into a comprehensive and complex legal framework, that goes far beyond the difference in pay between men and women ("*gender pay gap*") from which it arises.

1.1 Defrenne II: a landmark decision for EU Gender Equality Law

The 1970s was the decade of the rise of women's rights and the birth of a "*global feminism*"⁹: it was in 1975 that the UN General Assembly organized the first World Conference on Women in Mexico City and it was in 1979 that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted. Meanwhile, in Europe, on the 8 April 1976 the European Court of Justice (CJEU) decided the Defrenne II case, which is a landmark decision of the Court concerning a case of direct discrimination in the workplace.¹⁰

Case 43/75 Defrenne v. SABENA represented the legal consequence of a "second-wave" of feminism in Belgium in the 60-70s¹¹. On 16 February 1966, more than three thousand female workers decided to strike against the FN factory, an arms manufacturing company, in order to demand for the application of Article 119 EEC, which laid down the principle of equal pay since 1957. The strike was followed by another strike in the service sector, in which air hostesses' campaign about their conditions and contact Marie Thérèse Cuvelliez in order to form a separate Workers Union. Although her name did not appear in the judgement, the Defrenne II's *dossier the procédure* shows that she was the lawyer who convinced Defrenne to use her experience to file a case against her employer. Gabrielle Defrenne was a Belgian air hostess working for Sabena, a Belgian national airline, and she was paid less than her male colleagues. Thus, her persisting lawyer took her all the way to the CJEU to argue the discriminatory nature of this unexplained

9. UN, "Global Issues. Gender Equality," <https://www.un.org/en/global-issues/gender-equality>

10. Art 2(1)(a) Directive 2006/54/EC: "Direct discrimination", where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation"

11. Sheila Rousseau, "IWD: Belgium was an early battleground for equal pay," 2016, <https://www.linkedin.com/pulse/iwd-belgium-early-battleground-equal-pay-sheila-rousseau>

pay gap. Why, if it was the exact same work, it was not paid for as a work of equal value?

The hard legal battle fought in front of the CJEU ended with the conclusion that Article 119 EEC had horizontal direct effect and, thus, that *"the principle of equal pay for work of equal value may be relied upon before national courts and these courts have a duty to ensure the protection of the rights which this provision vests in individuals"*.¹² Thanks to Defrenne II, the principle of equal pay was finally enforceable before national courts if a female worker was directly discriminated in the workplace when working for a private employer.

The legal basis of Defrenne II was Article 119 EEC (now, Article 157 TFEU). According to its first paragraph, "Member States are bound to ensure and maintain the application of the principle that men and women should receive equal pay for equal work". At first, in 1957, Article 119 EEC was introduced for economic reasons: France already paid women and men equally and feared that countries not bound by the ILO (International Labour Organization) Convention on equal pay of men and women could gain a competitive advantage by having cheaper female labour.¹³ In Defrenne II, the ECJ ruled that Article 119 of the Treaty on the Functioning of the European Union (hereinafter: TFEU) pursued both an economic and social aim, because it *"forms part of the social objectives of the Community, which is not merely an economic union"*.¹⁴ Moreover, in Defrenne II, the principle of equal pay for equal work is recognized as part of the foundations of the Community¹⁵ and, in Defrenne III, as one of the general principles of Community law.¹⁶ Furthermore, the Court ruled that this principle is *"mandatory in nature"*¹⁷, and is directly applicable if the national court is *"in a position to establish all the facts which enable it to decide whether a woman is receiving lower*

12. Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena, No. 43/75, ECR 455, para 40 (1976)

13. Teun Jaspers, F.J.L. Pennings, and S.S.M. Peters, *Chapter 1. European Labour Law -An Introduction*, 1st ed. (Intersentia, 2019), 2

14. *Defrenne v Sabena*, ECR at para 10.

15. *Ibid.*, para 12

16. Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena, No. 149/77, ECR 1365, para 26. (1978)

17. *Defrenne v Sabena*, ECR at para 39.

pay than a male worker performing the same task".¹⁸. Considering the reasons mentioned above, it can be argued that, despite being introduced for economic purposes, from Article 119 EEC descends now a fundamental right. The case law following Defrenne II strengthened this finding, as the Court, inter alia, in Sievers u. Schrage states that: "*the right not to be discriminated against on grounds of sex is one of the fundamental human rights whose observance the Court has a duty to ensure*"¹⁹.

1.2 The development of EU Gender Equality Law

Since the Defrenne trilogy, EU Gender Equality Law has gradually developed into a complex legal framework.²⁰ With the entry into force of the Treaty of Amsterdam in 1999, the renewed European Community (EC) remarked the promotion of equality between men and women as one of the essential tasks of the Community (Article 2 EC), and recognized its competence to take appropriate action in the direction of the elimination of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 13(1)EC). Also, Article 119 EEC was renumbered as Article 141 EC and amended in the sense of adding the concept of "work of equal value".

Another important stage in the development of EU Gender Equality law was the adoption of the Charter of the Fundamental Rights of the European Union (CFR). With the coming into force of the Treaty of Lisbon in 2009, the EU Charter became a legally binding catalogue of EU fundamental rights, including women's rights, addressed to the EU institutions, bodies, offices and agencies, and to the Member States when they are implementing EU Law (Article 51(1) of the Charter). Within this catalogue, Article 21 of the EU Charter is one of the main provisions of EU Gender Equality Law since it prohibits discrimination based on any ground, including sex. The importance of this provision is emphasised by

18. Ibid., para 23.

19. *Deutsche Post AG v Elisabeth Sievers and Brunhilde Schrage*, No. 270-97, 271/97, ECR I-929, para 56-57. (2000)

20. Susanne Burri, ed., *EU gender equality law - update 2018* [in English] (Publication Office of the European Union, 2018), 8-11

the circumstance that it can also be invoked in dispute between private actors, as the ECJ rules in Egenberger, Bauer et al and Max Plank judgements.²¹ After all, Defrenne’s lawyer already argued at the time, ”*distinguishing between the public and the private sectors would create further discrimination in an already discriminatory situation*”.²²

The Lisbon Treaty emphasised even further the importance of the principles of non-discrimination and equality as fundamental principles of EU law. Nowadays, gender equality is a fundamental value of the European Union (Article 2 TEU) and one of its objectives (Article 3(3) TEU). According to Article 8 of the TFEU, the EU is dedicated at eliminating inequalities and promoting equality between men and women (Article 8 TFEU). This article contains in fact the EU’s obligation to the so called ”*gender mainstreaming*”, that is an important tool requiring of legislators and policy makers that a gender perspective is taken in the process of law and policy-making, from preparation to implementation. Moreover, the EU is concerned about combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 10 TFEU). The new Article 19 TFEU replaces the former Article 13(1) EC and provides a legal basis for the EU to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Lastly, Article 157 TFEU, that replaces the former Article 141 EC (ex. Article 119 EEC) without any substantial change, is considered an important legal basis to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

Both the Treaty of the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) are important for the further development of EU gender equality law, because they serve as a basis for the adoption of future legislation and other EU gender equality measures. While in the late 1950s

21. Sybe De Vries, “The Bauer et al. and Max Planck judgments and EU citizens’ fundamental rights: An outlook for harmony,” *European Equality Law Review* 2019, no. 1 (2019): 16–29

22. Sarah Nicole TAS, “Defrenne v SABENA: a landmark case with untapped potential,” *European Papers* 6 (2021): 881–890

there was only Article 119 EEC on equal pay, since then there has been a proliferation of normative instruments designed to ensure not only equal pay but also equal rights and opportunities in the fields of employment, vocational training and social protection. For instance, in the 1970s, the EU adopted Directive 75/177/EEC on equal pay for men and women, Directive 76/207/EEC on equal treatment in employment, vocational training and working conditions, and Directive 79/7/EEC on equal treatment in matters of social security. In the 1990s, workers who were pregnant, who recently gave birth or who were breastfeeding, received special protection under Directive 92/85/EEC, which also addressed maternity leave and discrimination in the workplace. In 2006, the EU adopted the Directive 2006/54/EC (commonly known as "Recast Directive"), which was the first legal instrument of EU Gender Equality Law meant with the purpose to "*simplify, modernise and improve the Community law in the area of equal treatment between men and women*"²³. More specifically, the Recast Directive was aimed at summarizing the content of the old directives in a single more practical document. Finally, the latest remarkable addition to this list is Directive (EU) 2019/1158 (also known as the "Work-Life Balance Directive"), that lays down minimum requirements with respect to paternity leave, parental leave, carers leave and flexible working arrangements, to apply across all EU Member States.

1.3 The European Gender Equality Index (EGEI)

Since 1957, the battle for gender equality has gone far beyond the gender pay gap complained by Defrenne in front of the CJEU. Time shed lights on the circumstance that discrimination on grounds of sex in the workplace is only one of the several existing gender inequalities women struggle with everyday.

The XXI century provides, for the very first time in history, for a space to dive deeper into these gender inequalities and to actively make a change in the direction of real equality. Nowadays, the EU has developed new instruments at

23. Explanatory Memorandum, Proposal for a Directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast version) of 21/04/2004, COM(2004) 279 final

its disposal to tackle gender inequalities and make gender equality a reality.

In 2006, the European Council founded the European Institute for Gender Equality (EIGE), which is a European Union (EU) body with the objectives, according to Article 2 of Regulation No.1922/2006, to contribute to and strengthen the promotion of gender equality, to fight against discrimination based on sex, and to raise EU citizens' awareness of gender equality by providing technical assistance to the Community institutions and the authorities of the Member States.

In 2013 EIGE developed the "European Gender Equality Index" (EGEI), which is an innovative tool created to measure the progress of gender equality in the EU in consideration of six main domains (work, money, knowledge, time, power and health). It follows a brief description of the six main domains:

- The domain of work measures the extent to which women and men can benefit from equal access to employment and good working conditions.
- The domain of money measures gender inequalities in access to financial resources and women's and men's economic situation.
- The domain of knowledge measures gender inequalities in educational attainment, participation in education and training over the life course and gender segregation.
- The domain of time measures gender inequalities in allocation of time spent doing care and domestic work and social activities.
- The domain of power measures gender equality in decision-making positions across the political, economic and social spheres.
- The domain of health measures gender equality in three health-related aspects: health status, health behaviour and access to health services.

In addition to the the previous core domains, the EU Gender Equality Index also provides for an analysis of data collected among EU Member States in two additional domains, namely violence against women and intersecting inequalities.

It is interesting to note that the domain of violence is "additional" to the six core domains of the Index and much more difficult to measure.

In fact, in 2013, year of the creation of the Index, the score for violence was not calculated into the index score due to a lack of data on the issue of violence against women among EU Countries. The first data on the VAW appear in 2017, when the domain of violence is built upon the findings of an EU-wide survey on violence against women conducted by the European Union Agency for Fundamental Rights (FRA) in 2012.²⁴ The domain of violence is measured in terms of prevalence, severity and disclosure: prevalence is the measure of how many women have experienced both physical and/or sexual violence since the age of 15 and femicide; severity is the measure of how many health consequences does VAW have on the victims; finally, disclosure is the measure of the reports of violence experienced in the past 12 months.

Despite the lack of data, EIGE reminds that violence against women is the cause and result of structural inequalities experienced by women in many aspects of life — work, health, money, power, knowledge and time use — and remains the most brutal manifestation of gender inequality.

1.3.1 The Nordic Countries: a model of "feminist Countries"

The Nordic Countries - Sweden, Norway, Denmark, Iceland and Finland - are globally famous for being leaders in matters of gender equality. Three of them - Sweden, Denmark and Finland - raise the gender equality scores in the European Union. The data from the EU Gender Equality Index confirm that statement, as in the latest data Sweden scores 83.9, Denmark 77.8 and Finland 75.3 - all of them being way over the EU's average of 68 out of 100²⁵. Sweden, in particular, maintains its leading position as the number one gender equal country in the EU Gender Equality Index since 2013. The current Swedish government has declared itself a "feminist government", that is devoted to a feminist foreign policy

24. FRA, *Violence against women: An EU-wide survey: Main results* (Publications Office of the European Union, 2014)

25. EIGE, "Gender Equality Index. Comparing scores for the 2021 edition," <https://eige.europa.eu/gender-equality-index/2021/compare-countries>

and emphasises that gender equality is vital to Swedish society. In 1947, Karin Kock became the first woman in the Swedish government, and today, 12 of the 23 government ministers, including the prime minister, are women.²⁶ Progress have definitely been made in the EU after Defrenne II, and nowadays Sweden is committed to making sure that women and men are treated equally in the workplace (e.g. gender discrimination in the workplace has been illegal since 1980).

In 2018, the Organization for Economic Co-operation and Development (OECD) published a report on gender equality in the Nordic Countries, specifically related to the labour market.²⁷ This report provided evidence that increases in womens' economic participation in the Nordic Countries have greatly benefited the growth of their economies. Accordingly, it can be assessed that promoting gender equality can bring several economic and societal benefits. As a matter of fact, societies that are more gender equal tend to be happier, healthier, more equal and inclusive, and more prosperous economies. For instance, promoting women's employment can help boost labour supply, and hiring a well-educated female talent pool can help obtaining productivity gains.

In this context, the Nordic Countries are reported as some of the most gender equal markets in the OECD. According to the OECD, almost three in four working-age women in Nordic countries are part of the paid labour force, and policy-makers explicitly support gender equality at work, at home and in public. Indeed, gender equality lies at the heart of a wider Nordic welfare state. The model adopted in those Countries is in fact aimed at facilitating employment for all adults, as the State is expected to help them with services and support such as childcare and paid leave for both men and women, in line with a "dual earner-dual carer" family model.

It is evident that the Nordic Countries are closer to eliminating gender labour market gaps than most other countries. However, some large gender gaps persist and need to be tackled. For instance, many women still find difficulties at pro-

26. Sweden.se, "Equal power and influence for women and men – that's what Sweden is aiming for.," <https://sweden.se/life/equality/gender-equality>

27. OECD, *Is the Last Mile the Longest?: Economic Gains from Gender Equality in Nordic Countries* (Organisation for Economic Co-operation / Development, 2018)

gressing to management positions, others are underrepresented in paid work just because they are foreign-born. Another example regards the parental leave policy: Sweden has the most generous parental leave policy in the world, with parents entitled to share around 16 months paid leave following the birth or adoption of a child. Although in the Nordic region fathers and mothers are encouraged to share care responsibilities, in Sweden - where fathers are more likely to take parental leave than any other country in OECD - they still use less than 30% of all paid leave days and mothers continue to be the main users of sharable leave.

Finally, it is interesting to note that the Nordic Countries, despite being the international champions of gender equality, score extremely high on violence against women both in national surveys and in the EU-wide survey on violence against women conducted by the European Union Agency for Fundamental Rights (FRA) in 2012. Indeed, on the one hand, Sweden is at the same time the most gender equal country in the EU, according to the Gender Equality Index 2021, and the country that reports the highest lifetime prevalence levels of physical and sexual Intimate Partner Violence Against Women (IPVAW) in the EU (28%), according to the FRA survey.²⁸. This paradox will be deepened in the following Chapter.

1.4 Conclusion

The development of the EU Gender Equality Law has been a step-by-step process. In 1976, female employees obtained the possibility to enforce the principle of equal pay before national courts if directly discriminated when working for a private employer. The European Gender Equality Index score for 2021 - with data being mostly from 2019, before the Covid-19 pandemic - is 68 out of 100, with an increase of 4.9 points since the first data reported in 2013. Lastly, the Nordic countries are closer than most other countries to achieving gender equality, at least in the labour market, but the "*last mile may well prove to be the longest one.*"²⁹ Anneli Häyren, a researcher at the Centre for Gender Research at Uppsala University

28. FRA, *Violence against women: An EU-wide survey: Main results*

29. OECD, *Is the Last Mile the Longest?: Economic Gains from Gender Equality in Nordic Countries*

in Sweden, reminds that in the Nordic Countries “we do have the *idea of being* gender equal. . . but we have a long way to go before we *are* gender equal”.³⁰

Despite the steps forward, the entire European Union has a long way to reach full gender equality. It is interesting to note that the EU’s and EU Countries’ main legislative acts concerning women’s rights and gender equality, as demonstrated above, are mainly focused on economic and social rights. However, as reminded in the introduction to this thesis, measures of gender equality do not necessarily reflect all aspects of inequality.³¹ One of the main inequalities that women still struggle with all over the world is violence against women. The next Chapter tries to shed light on the scale and seriousness of this specific issue among the EU Countries and the factors that make it so difficult to measure accurately.

30. BBC, “The ‘paradox’ of working in the world’s most equal countries,” <https://www.bbc.com/worklife/article/20190831-the-paradox-of-working-in-the-worlds-most-equal-countries>

31. Wemrell et al., “The Nordic Paradox. Professionals’ Discussions about Gender Equality and Intimate Partner Violence against Women in Sweden,” 11

Chapter II

2 Violence Against Women: the scale of the problem

In 2006, the “Me too.” Movement was founded by survivor and activist Tarana Burke, inspired by a young girl who was sexually abused and who decided to share her story, facing the internal shame and the consequences. Tarana Burke’s wish was to reassure women who had endured sexual violence by letting them know that other women had suffered the same experience they had.³² Then, in 2017, the actress Alyssa Milano coined the Metoo hashtag on Twitter and encouraged survivors to use it on social media in order to create awareness on the issue of sexual assault and build a sense of community among survivors. The Metoo hashtag went viral and people started sharing their stories across many different social media platforms all over the world, including Europe. Today, the phrase MeToo is still a sign of solidarity for victims of sexual harassment and assault. The Metoo movement is just one of the several reminders that one of the main obstacles for gender equality is violence against women.

In the context of the EU, where equality between men and women and non-discrimination are core values, violence against women is a widespread issue that endangers these values and undermines women’s rights to equality in all areas of life. The existence of violence against women highlights the structural discrimination against women that results from historically unequal power relations between women and men. It is rooted in socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and girls.³³ Because of those structural inequalities, violence against women risks to be normalised and reproduced.

32. MeToo., “HISTORY inception. Where we started. The evolution of our movement.,” <https://metoomvmt.org/get-to-know-us/history-inception/>

33. WHO, “Gender and health,” https://www.who.int/health-topics/gender#tab=tab_1

2.1 Definition and forms of VAW

In order to better understand the concepts referred to in the present chapter, this section provides for definitions of violence against women and its various forms. Those definitions are enshrined in two of the main legal instruments relevant in the European context in matters of VAW: Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (hereinafter, "the Victims' Rights Directive") and the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter, "Istanbul Convention").

First of all, violence against women (VAW) is defined by the Istanbul Convention as "a violation of human rights and a form of discrimination against women" meaning "all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life," (Article 3(a)). It is important to highlight that violence against women is considered a form of gender-based violence, that, according to the Victims' Rights Directive's preamble, is "violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately". In the same vein, the Istanbul Convention defines gender-based violence against women as "violence that is directed against a woman because she is a woman or that affects women disproportionately" (Article 3(d))³⁴.

Violence against women manifests itself in different forms: from offline violence to acts of violence carried out in online spaces. These different forms are not mutually exclusive and multiple incidences of violence can be happening at once and reinforcing each other. Inequalities experienced by a person related to their race, (dis)ability, age, social class, religion, sexuality can also drive acts of violence. This means that while women face violence and discrimination based on gender,

34. Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011, available at: <https://www.refworld.org/docid/4ddb74f72.html>.

some women experience multiple and interlocking forms of violence.³⁵

It follows a description of the main forms in which violence against women can manifest, according to a special report by Sara De Vido and Lorena Sosa for the European network of legal experts in gender equality and non-discrimination (EELN) on criminalisation of gender-based violence against women in European States, including online violence.³⁶

- Domestic violence, that includes intimate-partner violence (IPV) between current or former spouses or partners, is the most widespread form of offline violence. Domestic violence is defined in Article 3(b) of the Istanbul Convention as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim." This kind of violence is also referred to as violence in close relationships, recognized by the Victims' Rights Directive as "a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust".³⁷ The European Institute for Gender Equality (EIGE) provides the definitions of the four forms of domestic violence recognized in the Istanbul Convention³⁸: physical violence is described as "any act which causes physical harm as a result of unlawful physical force" and can take the form of, among others, serious and minor assault, deprivation of liberty and manslaughter, while sexual violence is described as "any sexual act performed on an individual without their consent" and can take the form of rape or sexual assault; psychological violence is, according to some authors³⁹, the most prevalent form

35. EIGE, "What is gender-based violence?," <https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>

36. Sara De Vido and Lorena Sosa, "Criminalisation of gender-based violence against women in European States, including ICT-facilitated violence," *European network of legal experts in gender equality and non-discrimination*, 2021,

37. Victims' Rights Directive, preamble, Para. 18.

38. EIGE, "Terminology and indicators for data collection: Rape, femicide and intimate partner violence," *European Institute for Gender Equality*, 2017,

39. Nathalie Meurens et al., "Tackling Violence Against Women and Domestic Violence in

of violence and it is defined as "any act which causes psychological harm to an individual" that can take the form of, for example, coercion, defamation, verbal insult or harassment; lastly, economic violence, is reflective of the controlling behaviour often present in domestic violence and is described as "any act or behaviour which causes economic harm to the partner", such as restricting access to financial resources. The exacerbation of domestic violence is femicide.

- Femicide is essentially the crime of intentionally killing women because of their gender. Despite not being explicitly defined in the Istanbul Convention, femicide has been recognised as a form of gender discrimination for the first time by the European Court of Human Rights (ECHR) in *Opuz v. Turkey*.⁴⁰
- Sexual violence and rape are forms of violence that have been criminalised in a large number of EU Member States using very different definitions, different scopes of protection (women, men) and various behaviours (all types of penetrations, marital rape), different sanctions and different aggravating and mitigating circumstances. However, the Istanbul Convention provides for a standardized definition of sexual violence in Article 36(1) and considers sexual violence as "engaging in a non-consensual act of sexual nature with another person or causing another person to engage in non-consensual acts of a sexual nature with a third person". The Convention adds in Article 36(2) that "consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances". Consent is thus the core element in determining sexual abuse and rape, as also assessed by the European Court of Human Rights for the first time in *M.C v. Bulgaria*.⁴¹ In the EU context, there is no binding definition of sexual violence or rape yet.
- Sexual Harassment and harassment related to sex are forms of violence

Europe: The Added Value of the Istanbul Convention and Remaining Challenges," 2020,

40. *Opuz v. Turkey*, App no. 3401/02, par 200. (June 9, 2009)

41. *M.C. v. BULGARIA*, App no. 39272/98, par 181. (Dec. 4, 2003)

against women that were formed in relation to employment and occupation. In the US back in the 1970s, the feminist lawyer Catherine MacKinnon referred to sexual harassment as an "unwanted imposition of sexual requirements in the context of a relationship of unequal power", in particular at work. That meaning has been transposed into EU law as well: Directive 2006/54/EC (Recast) defines harassment as a situation "where unwanted conduct related to the sex of a person occurs with the purpose, or effect, of violating the dignity of that person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment" (Article 2); whereas sexual harassment happens "where any form of unwanted verbal, non-verbal, or physical, conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment." (Article 2) This latest definition reproduces Article 40 of the Istanbul Convention.

- Female genital mutilation (FGM) has been recognized by the European Parliament as a reality in the EU.⁴² The Istanbul Convention defines it as the "intentional excising, infibulating or any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris; coercing or procuring a woman to undergo any of these acts; and inciting, coercing or procuring of a girl to undergo any of these acts" (Article 38).
- Forced marriage is the "intentional conduct of forcing an adult or a child to enter into a marriage" (Article 37(1) Istanbul Convention). The Convention also prohibits the intentional conduct of luring or forcing an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage (Article 37(2)). This phenomenon can be considered as a form of violence against women and girls because it affects their autonomy and self-determination.

In Europe, it is spread especially in migrant communities or within minority

42. European Parliament resolution of 26 November 2009 on the elimination of violence against women No. 2010/C 285 E/07, OJ, C 285E, at preamble recital k. (2009)

groups.

- Stalking is a form of violence against women that is defined as "the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety" (Article 34 Istanbul Convention). The element of fear in the crime of stalking is, according to some authors, what distinguishes stalking from harassment. In recent years, stalking has reached significant levels, mainly because of the widespread use of information and communication technologies (ICT).
- Non-consensual dissemination of intimate/private/sexual images is a form of gender-based ICT-facilitated violence against women and consists of the online non-consensual dissemination of intimate or private images and images of a sexual nature, obtained with or without consent of the person pictured in the image. This crime is usually committed by an ex-partner, who obtains images or videos in the course of a prior relationship and aims to publicly shame and humiliate the victim, in retaliation for ending a relationship. However, in many cases, images can be obtained by hacking the victim/survivor's computer, social media accounts or phone, and the aim might be to inflict damage on the life of a person. According to studies and data, it is clear that this crime is gendered because women are the main targets. The emphasis on the ICT dimension does not exclude the possibility that this crime can be committed offline, but it is evident that the prohibition of this behaviour has emerged as a consequence of the widespread use of ICT.
- Hate speech on the basis of gender ("sexist hate speech") is a form of gender-based ICT-facilitated violence against women that is not specifically addressed in any EU instrument. The Council of Europe Gender Equality Strategy has defined sexist hate speech as the "expressions which spread, incite, promote or justify hatred based on sex", recognising that it both

reproduces and exacerbates gender inequality.⁴³

2.2 The lack of data on violence against women within the EU: the seriousness of the problem

The first data of the EU Gender Equality Index in the domain of violence appear in 2017. As stated in the previous chapter, this domain of the EU Gender Equality Index 2017 builds upon the findings of an EU-wide survey on violence against women conducted by the European Union Agency for Fundamental Rights (FRA) in 2012. The FRA survey responds to calls over many years from international and regional organizations for a comparable data collection on violence against women. Before the FRA survey, there was in fact an extreme lack of comparable data on violence against women in the EU Member States. Some of the EU Countries did not have dedicated surveys on violence against women, others have tried to collect some data on the issue but the results of their surveys were not comparable, for instance, due to the variations in the topic they were focused on (e.g. domestic violence, VAW more broadly etc.), in the samples and interviewing methods (e.g. face-to-face interviews, telephone interviews etc.), in the questions and in the time period they were carried out.⁴⁴

In the context of the European Union, the Eurostat, as the statistical office of the EU, in the past focused on collecting data in the area of crime, more specifically on crimes that had a cross-border element such as, relative to violence against women, trafficking on women and girls. It is useful to remind that crime is one of the sensitive areas where Member States want to maintain their national sovereignty and, thus, the EU has its stronger legal competence to act on crimes when they have a cross-border element. This situation is reflected by the fact that there is specific EU legislation on trafficking but there is no generic EU legislation on violence against women.⁴⁵

43. Gender Equality Strategy Council of Europe, “Combating Sexist Hate Speech,” 2016,

44. FRA, “Violence Against Women: An EU-wide survey,” *FRA-European Union Agency for Fundamental Rights, Luxembourg*, 2014,

45. Meurens et al., “Tackling Violence Against Women and Domestic Violence in Europe: The Added Value of the Istanbul Convention and Remaining Challenges”

In parallel with the adoption of the Victims' Rights Directive in 2012, Eurostat started to focus also on other areas of crime, in the context of violence against women, such as domestic violence. In particular, Eurostat worked to enhance an EU-wide data collection on criminal victimization to encompass crimes which are not typically cross-border, that should have been called the EU's "Crime and Safety Survey". However, this initiative met some resistance at the level of the European Parliament and in the end it did not work out.

Despite the failure of that initiative, the EU institutions agreed on a package of legislative proposals for victims of crime based on the Victims' Rights Directive. That resulted in a situation whereby legislation was being enacted in the Member States to try to meet the new standards of the Directive. However, Member States struggles with that, in the absence of a specific legal instrument that could express the extent and nature of crimes against women in detail.

In the meantime, the European Parliament, aware of the repeated calls for improved data collection, adopted a Resolution in 2009 that called on FRA to collect data on violence against women. It was at that moment that the Agency decided to allocate resources to develop a European Union-wide survey on the issue, whose results are now at the attention of the EU institutions and Member States.

2.2.1 The FRA survey on Violence Against Women: numbers from the EU Countries

The most comprehensive survey on violence against women at EU level is published by the European Union Agency for Fundamental Rights (FRA) (or Fundamental Rights Agency) in 2014.

The EU founds the FRA as an independent body in 2007 with the objective of providing the institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to rights, values and freedoms enshrined in the EU's Charter of Fundamental Rights, including gender equality (Title III of the EU Charter). In

order to reach that goal, the FRA performs several tasks such as collecting and analysing comparable data.

In the European Union, policy makers are still struggling with a lack of comprehensive and comparable data on violence against women, that consequently obscures the scale and nature of the problem. In response, the FRA survey was conducted in 2012 with the objective of providing the first EU-wide dataset on the extent, nature and consequences of violence against women, as reported by women. Its results were meant to inform policy makers in order to highlight the different manifestations of violence against women - which included new or newly recognized forms of violence such as stalking or cyber-violence - and to encourage them to take appropriate action against them.⁴⁶ This time, the focus was not on more specific (and "rare") forms of violence such as trafficking in women for sexual exploitation, female genital mutilation or forced marriage. In fact, one of the main strengths of the survey was that it was set out to capture the experiences of women in the "general population". This was the reason why the survey employed a broad-based definition of violence and asked several questions about women's experience of physical, sexual and psychological violence.

In particular, the survey was based on face-to-face interviews with 42 000 women, aged 18-74, who were selected randomly in all 28 EU Member States on their experiences of physical, sexual and psychological violence over the past year and since the age of 15. Questions were also asked about incidents of stalking, sexual harassment and cyber-violence.

The FRA survey presented many differences with the other surveys performed at a EU-level and at a national level: many surveys at a EU-level were conducted with very different approaches with the effect that the results of these surveys were commonly merged together and considered comparable when they were not. For instance, the European Health Interview Survey has used different sampling frames according to the country being surveyed (such as telephone lists, census data etc.) as well as different methodologies for questionnaires applications (such

46. Joanna Goodey, "Violence against women: Placing evidence from a European Union-wide survey in a policy context," *Journal of interpersonal violence* 32, no. 12 (2017): 1760-1791

as face-to-face interviews, telephone interviews etc.) Different approaches were also adopted in surveys at a national level. On the opposite, the FRA survey provided for a high level of standardisation relative to the method of first contact with the samples and all interviews were face-to-face.

First, the samples were selected through a specific procedure: the survey population was divided into small geographical areas (clusters), women were selected at random from random clusters and asked to take part in the survey. Additional measures were adopted to further enhance quality in the sampling approach, for example only one woman per randomly selected household could be interviewed. It is important to remind that each EU Member State had its own different approach when it was time to inform individuals about the FRA survey. For instance, the Nordic Countries in the EU - Denmark, Sweden and Finland - first selected individuals and then asked them by telephone if they wanted to take part in the FRA survey, whereas in Malta, Slovenia and United Kingdom letters were sent before a visit to secure an interview. However, in all cases at the point of first contact it was stated that the survey was about women's well-being and safety, in order to not put women at risk with the danger that any potential perpetrator of violence in the household could overhear a conversation or hear a letter.

Second, the FRA survey used the face-to-face interview's method for each participant, that ensured for the collection of more comparable data.

Regarding the results of the FRA survey, the data show a detailed picture of women's experiences of violence in the EU:⁴⁷

- 33% of women (one in three) in the EU has experienced some form of physical and/or sexual violence since the age of 15. Among those, 21% of victims of sexual violence suffered from panic attacks after the event, 35% became depressed as a result of sexual violence, and 43% had difficulty in subsequent relationships.
- Out of those women who indicated in the survey that they have a current partner or have had a previous partner, 22% have experienced physical or

47. FRA, "Violence Against Women: An EU-wide survey"

sexual violence by a partner since the age of 15.

- 20% have experienced physical violence by someone other than their partner since the age of 15.
- 43% have experienced some form of psychologically abusive and/or controlling behaviour when in a relationship.⁴⁸
- 18% have experienced stalking since the age of 15. 5% have experienced stalking in the 12 months prior the interview. 23% indicated in the survey that they had to change their email address or phone number in response to the most serious case of stalking.
- 55% have experienced sexual harassment in some form.
- 20% of young women (18-29) have experienced cyber harassment. 11% of women have experienced inappropriate advances on social websites or have been subjected to sexually explicit email or SMS messages.

One of the main findings of the FRA survey, as highlighted by Joanna Goodey in her article, is that:

“there is a striking difference between what women in the general population say they have experienced as violence and what official criminal justice data are able to tell us about the extent of violence against women”.⁴⁹

Consequently, it may be assumed that the majority of women do not report their experience of violence anywhere, authorities included. In the context of the survey, when women were asked why they did not contact the police when they experienced serious incidents of violence, the answers varied: some women said that they preferred dealing with the matter themselves or with the help of friends or family members; others felt shame or embarrassment; others did not consider the incident serious enough to receive the attention of the police; and others believed that the police would not or could not do anything.

48. Rosamund Shreeves, “Violence against Women in the EU: State of Play,” 2021,

49. Goodey, “Violence against women: Placing evidence from a European Union-wide survey in a policy context”

In comparison with the police, health care institutions were reported to be contacted by one third of women experiencing sexual violence by a partner and 28% experiencing sexual violence by a non-partner. Very few women reported to social services, a women's shelter, or a victim support organization. In sum, these data showed for the first time that violence against women is an extremely under-reported issue and, when reported, it is most likely to receive the attention of services other than the police. This considerations leads to the finding that the full scale of violence against women is not reflected in official data, as represented in figure 1.

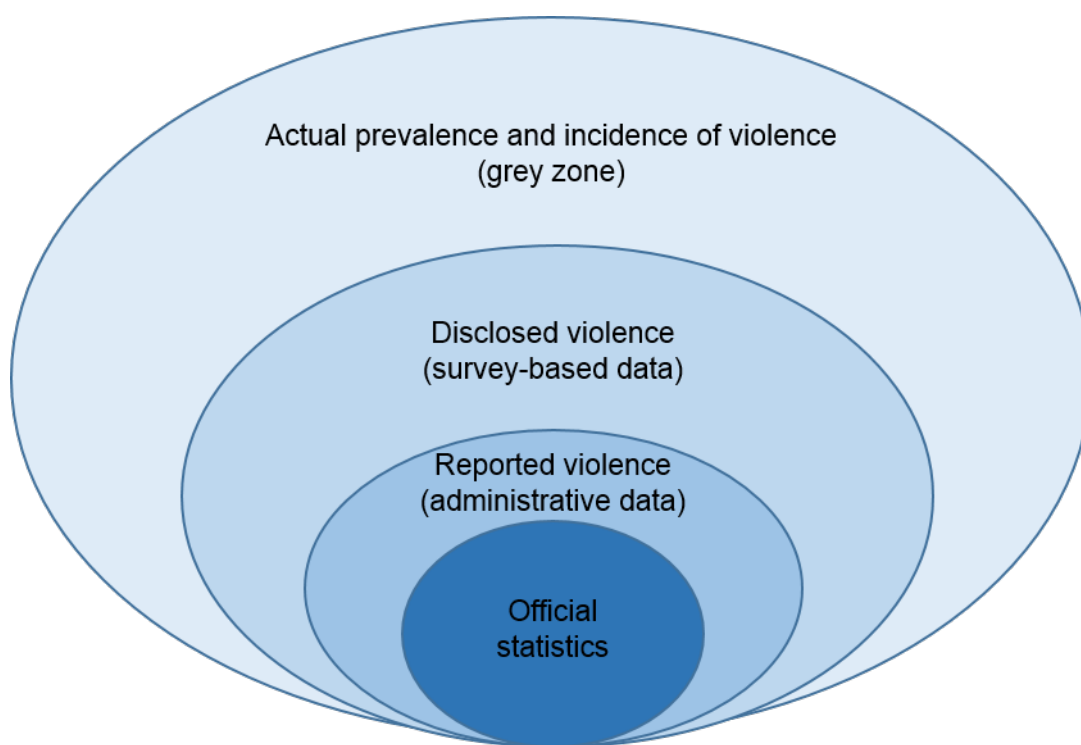


Figure 1: EIGE, “Data Collection on Violence Against Women,” <https://eige.europa.eu/gender-based-violence/data-collection?lang=nl>

In conclusion, the FRA survey provides for the first time a comprehensive data-set for the European Union that can be used to inform policy and combat violence against women in the EU. However, there is still a lot of work to do in order to make surveys a reliable tool to detect the hidden and pervasive form of

violence that is VAW. Nonetheless, this survey has served as the catalyst for a 2016 Eurostat survey on gender-based violence and, more recently, Eurostat is currently coordinating another survey on gender-based violence in the EU, even though not all Member States are taking part. EIGE, together with the EU's Fundamental Rights Agency, will collect data for the remaining countries to have an EU-wide comparable data on violence against women. Data collection will be completed in 2023, and the results will be used to update the domain of violence in the Gender Equality Index 2024.⁵⁰

2.3 The Nordic Gender Equality Paradox

The three EU Nordic Countries - Sweden, Denmark and Finland - are the most gender equal countries in the EU, according to the EU Gender Equality Index. However, Nordic Countries also report surprisingly high prevalence rates of Intimate Partner Violence Against Women (IPVAW) both in the FRA survey on VAW and in national surveys. This coexistence of both high levels of gender equality and high rates of VAW is known as the "*Nordic Paradox*". This puzzling phenomenon implies that it appears to be a link between gender equality and IPVAW prevalence but in the opposite direction than expected. In fact, past available research on the subject suggest that gender inequality is related to higher risk of IPV victimization for women, in particular in low and middle-income countries, and that women victimization is expected to decrease as gender equality increases, as it is the case in high-income countries.⁵¹ On the opposite, the FRA survey showed a positive relationship between country-level gender equality and prevalence of IPVAW. For example, countries like Portugal, Italy or Greece, with IPV prevalence rates of 19%, have all Gender Equality Indexes more than 30 points lower than Nordic countries, which in turn have substantially higher IPV rates (between 9% and 14% higher).

Researches have been conducted in order to study whether there is a connection

50. EIGE, "Violence in European Union for the 2021 edition," <https://eige.europa.eu/gender-equality-index/2021/domain/violence>

51. John Archer, "Cross-cultural differences in physical aggression between partners: A social-role analysis," *Personality and social psychology review* 10, no. 2 (2006): 133–153

between gender equality and IPVAW or not. The researchers Garcia and Merlo in their article argue that it is complex to give to this question a clear answer, as well as violence against women, especially in the form of intimate partner violence, is such a complex multilevel phenomenon. Moreover, the authors believe that investigating between country differences, as in the FRA survey, on the association between gender equality and IPV risk based only on country-level aggregated information is not enough. According to them, research should rather focus on gaining a better understanding of "*individual heterogeneity of responses rather than only rely on differences between country averages*", and this heterogeneity should be decomposed in "*different cross-classified and multiple membership levels including for instance the household, proximal social networks, the neighborhood, the work place as well as the region and the country where the individual is living*".⁵²

The recent research conducted by Humbert et al. seems to have moved an important step towards the study of the factors at both an individual and country level that contribute to the prevalence of violence against women. In order to conduct the study, the authors used a multilevel analytic approach, based on Heise's model.⁵³ They argued that the Nordic Paradox can be better understood by looking at how differences in the prevalence of violence against women might arise from different sources, including socio-cultural, situational, personal and methodological factors, as represented in figure 2.

- Socio-cultural factors that can affect the level of disclosure of violence in a country are drinking patterns, violence in society, gender norms in relation to work and a victim-blaming attitude. On this last point, it is important to note that the attitude of addressing part of the responsibility of an episode of violence to a victim can prevent women from disclosing that violence, as they may be feeling stigmatised or victimised.

52. Enrique Gracia and Juan Merlo, "Intimate partner violence against women and the Nordic paradox," *Social Science & Medicine* 157 (2016): 27–30

53. Lori L Heise, "Violence against women: An integrated, ecological framework," *Violence against women* 4, no. 3 (1998): 262–290

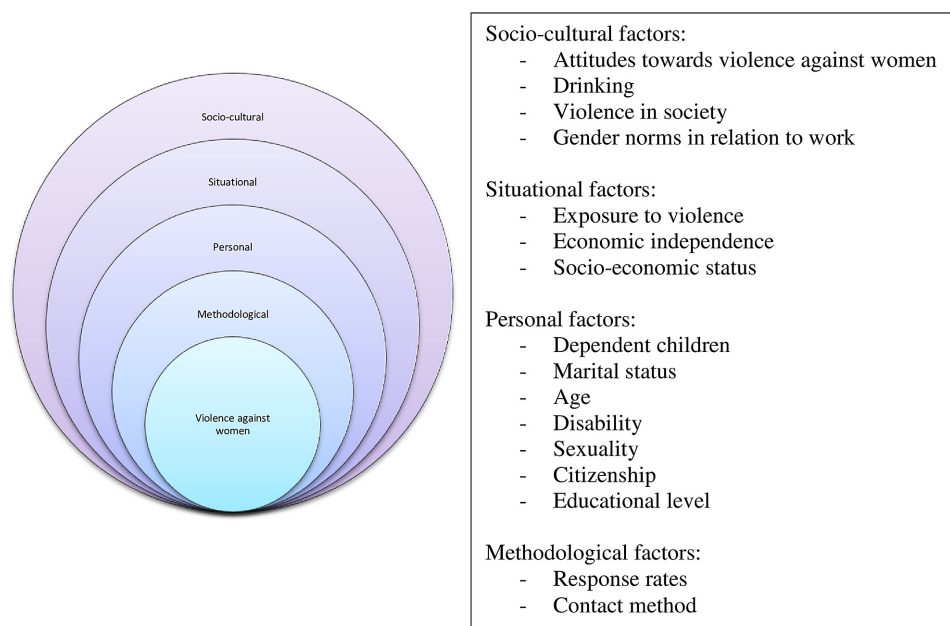


Figure 2: Anne Laure Humbert et al., “Undoing the ‘Nordic Paradox’: Factors affecting rates of disclosed violence against women across the EU,” *PLoS one* 16, no. 5 (2021): e0249693

- Situational factors that may influence disclosure of violence include the exposure of violence against women in society. For example, sexual harassment was exposed and made more visible after the #MeToo movement, with the consequence that women were both able to name their experiences of violence and disclose them through a platform. The level of societal awareness can in fact affect the degree to which the issue exists, or it is recognized. A lack of societal awareness of IPVAW can lead to situations in which a victim “does not see it... does not place the label of violence on it”.⁵⁴ In light of the above, higher levels of gender equality in the Nordic Countries might guarantee a higher societal awareness of IPVAW, and thus higher levels of disclosure of it.
- Personal factors can also increase the level of disclosure. Age can be one of these factors: for instance, young women are more likely to hold an informed attitude and thus to become aware of the different forms of violence. Other

⁵⁴ Wemrell et al., “The Nordic Paradox. Professionals’ Discussions about Gender Equality and Intimate Partner Violence against Women in Sweden,” 7.

factors that may play a role in this context include disability, sexuality, citizenship and educational level.

- Methodological factors can also affect the level of disclosure of violence. One factor is the method used in the surveys to contact the samples because different methods can lead to different outcomes. Another factor is the rates of responses from women because higher response rates might dilute the number of disclosed incidents when more women take part.

Although there seems that gender equality levels are positively related to the disclosed prevalence of violence against women, the study from Humbert et al. shows that the effect is not statistically significant when variables about the aforesaid factors are added. This suggests that differences in the prevalence of violence against women among EU Countries are influenced by other factors besides levels of gender equality.

The consequence of this finding is that the Nordic Paradox disappears because it is just the effect of a higher rate of disclosure that can be assumed in a more gender equal country. Moreover, if higher gender equality promotes a high level of disclosure of violence, then it can be assumed that less gender equal EU Countries may present lower levels of disclosure of violence. However, a lower level of disclosure does not mean lower prevalence of violence against women, but, on the opposite, it suggests that VAW is a hidden social problem that is more widespread than it appears from the surveys.

2.4 Conclusion

Violence against women is the most persistent form of gender inequalities. It unfolds in different forms and manifestations, many of which remain hidden and undisclosed, as domestic violence. In the European Union, VAW remains a critical issue despite the many achievements in terms of gender equality. The survey conducted by the Fundamental Rights Agency in 2014 on violence against women reveals, *inter alia*, that on average at least one in three women in the EU has

experienced violence over their lifetime. The EU Nordic Countries - Sweden, Denmark and Finland - report both the highest rates of VAW and the highest rates of gender equality in the EU Gender Equality Index. However, the study conducted by Humbert et al. seems to undo this Nordic Paradox and demonstrate that factors other than gender equality can provide an alternative ranking to that provided by the FRA survey. The natural conclusion is that Nordic countries present higher rates of VAW not *despite* the higher gender equality but *because* a higher gender equality presumably leads to higher levels of disclosure of violence.

In this context, it is important for the EU to keep track of the phenomenon of VAW through other EU-wide surveys and to develop new ways to shed light on the *grey zone* of the actual prevalence and incidence of violence in the European Union.

During the latest years, the prevalence and incidence of violence in the EU seems to have increased. The following section is aimed at exploring the impact of one of the most pervasive health crises of the XXI century, the Covid-19 pandemic, on the phenomenon of violence against women. The pandemic has indeed contributed to increase not only VAW episodes but also people's awareness of the issue, especially in the form of domestic violence. In fact, during the Covid-19 pandemic, people all over the world stayed informed on what was happening daily more than ever through the Tv, social media and other channels, and day by day the news have been showing a constant growth of cases of domestic violence.

3 An EU-wide issue exacerbated by the Covid-19 pandemic

Research shows that humanitarian crises and other similar emergencies tend to exacerbate violence, including violence perpetrated against women.⁵⁵ One of the recent health crisis that confirms this statement is the Covid-19 pandemic.

Covid-19 is the coronavirus disease caused by the virus, named as "severe acute respiratory syndrome coronavirus 2", that was first identified in December in 2019 in China and has since become a pandemic, resulting in the deaths of hundreds of thousands of people around the world. Since Covid-19 has been declared a global pandemic, national governments announced measures to beat the virus and protect their citizens.

During the pandemic, many people across the world were asked to stay at home and this contributed to the increase of domestic violence globally, especially where strong governmental measures to prevent the transmission of the virus were adopted. Those measures can be summarised into two categories: "lockdown" and "stay-at-home" orders. The lockdown is one of the main instruments that governments across the world have used to minimise the spread and Covid-19; it includes restrictions on the freedom of movement of people, closure of public spaces and services such as schools, shops, and restaurants. Whereas, stay-at-home orders are measures that asks people of a country or a certain area within that country to only leave their home for "essential" needs such as buying medicines or food.⁵⁶ In addition to restrictions on mobility and in-person contact, many support services, such as clinical management of rape and mental health, have run on reduced capacity so as to direct efforts to the care of Covid-19 patients. Among the support services, shelters for victims of domestic violence have been considered in many instances as "non essential services", and, thus, their capacity

55. Diana Nadine Moreira and Mariana Pinto Da Costa, "The impact of the Covid-19 pandemic in the precipitation of intimate partner violence," *International journal of law and psychiatry* 71 (2020): 101606

56. Meurens et al., "Tackling Violence Against Women and Domestic Violence in Europe: The Added Value of the Istanbul Convention and Remaining Challenges"

to prevent and respond to violence against women were extremely limited.

Navigating life in times of Covid-19 is not easy for victims of violence. During the pandemic, evidences indicate that there has been an increase in the prevalence and intensity of violence against women in most of the countries of the world, including the ones in the European Union. In fact, governmental measures that were taken to restrict the transmission of the virus in order to protect the health of the citizens had the paradoxical effect to put victims of violence in danger.

The present section is aimed at shedding light on this pandemic paradox and, more generally, on the impact of the Covid-19 pandemic on domestic violence within the European Union. Moreover, one of the subsection provides for an overview of the main measures with whom the EU Countries reacted to the increase of domestic violence during the pandemic.

3.1 The pandemic paradox: the impact of Covid-19 on Domestic Violence

Domestic violence is one of the most hidden forms of violence that has been particularly exacerbated by Covid-19.. As previously mentioned, according to Article 3(b)of the Istanbul Convention, domestic violence encompasses ”all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.” The context where episodes of domestic violence usually happen is home.

”Violence is not confined to the battlefield” said António Guterres, the secretary-general of the United Nations, in a statement and video released in multiple languages after the Covid-19 outbreak.⁵⁷ *”For many women and girls, the threat looms largest where they should be safest. In their own homes”* he said.

Home should be a safe space to live. However, data suggests for many women home has become less safer since the outbreak of COVID-19. Increased domestic

57. UN, “International Day for the Elimination of Violence against Women 25 November. Secretary-General’s Message - 2021,” <https://www.un.org/en/observances/ending-violence-against-women-day/messages>

violence has already been witnessed in previous crises, including health crises: in fact, much evidence demonstrates that stressful events can lead to increased aggression in the home, for instance, recessions, the 2008 economic crisis and natural disasters. The Covid-19 pandemic is not an exception, and the numbers from the EU Countries confirm this evidence: in France, cases of domestic violence have increased by 30% since the lockdown in March 2020; helplines in Cyprus have experienced a 30% increase in registered calls; whereas, in Italy domestic violence helplines registered a decline in calls by 55% at the beginning of the first lockdown in March 2020, but research demonstrated that women just find it difficult to ask for help during the lockdown. This latest example confirms what was previously stated in the last section: domestic violence is notoriously hard to measure accurately because often women do not report this violence, or do not report it until such time as they feel like their life is at risk.

The lack of data on the issue and the difficulties to measure it are some of the reasons why domestic violence is still one of the major global public health problems worldwide. With lockdown or stay-at-home measures, the risk of domestic violence dramatically increases because, for instance:

- The likelihood to spend time in close contact with the perpetrator increases. This circumstance exposes the victim to the control of the perpetrator: for example, he may limit access to digital tools to access friends and family, social services, or informal support networks; moreover, he may also control or restrict access to finance or health items such as hand sanitiser, soap, medications, or limit interaction or access to health services
- As economical resources become more scarce (e.g due to job losses during the pandemic), women may be at greater risk for experiencing economic abuse.
- School closed mean more stress for women who, as a consequence of the closures, bear the brunt of increased care work.⁵⁸

58. WHO et al., *COVID-19 and violence against women: what the health sector/system can do*, 7 April 2020, technical report (World Health Organization, 2020)

In conclusion, as reminded by Bradbury-Jones et al. in their article "The pandemic paradox: The consequences of COVID-19 on domestic violence"⁵⁹, during the COVID-19 crisis, the exhortation to "stay at home" has major implications for those women already living with someone who is abusive or controlling. In this context, domestic violence in fact happens "behind closed doors" and out of the view, in a literal sense, of other people.

3.1.1 ... and online violence

Nowadays, internet is one of the main channels through which people, including women, can express themselves. Soraya Chemaly points out the bright side of it:

*"This "virtual" world opens doors to information, education, markets, jobs and communities that, in the past, would have been completely inaccessible to most people, particularly girls and women. Social media, information and communication technologies are vital tools for women. Being able to tap into the web gives women unparalleled opportunities to express themselves and engage in civic and public life."*⁶⁰

However, online media and social platforms have opened the possibilities to express personal opinions, but they also facilitated insults, defamation, threats and hate speech. One of the dark sides of the XXI digital transformation is in fact the rise of a new form of violence: online violence against women (or cyber violence). The previous section provided for two examples of online violence against women: non-consensual dissemination of intimate/private/sexual images and hate speech on the basis of gender. However, online violence against women encompasses a wider range of acts online or through technology that are a digital reflection of the gender-based violence experienced by women in the offline world. As the use of internet and other technological devices increases, the issue of online violence increases: in 2014, the FRA survey reported that 14% of women in the EU have

59. Caroline Bradbury-Jones and Louise Isham, "The pandemic paradox: The consequences of COVID-19 on domestic violence," *Journal of clinical nursing*, 2020,

60. Eugenia Siapera, "Online misogyny as witch hunt: primitive accumulation in the age of techno-capitalism," in *Gender hate online* (Springer, 2019), 21–43

experienced stalking in the form of offensive or threatening communication since the age of 15.

This issue has become even more problematic recently. During the Covid-19 pandemic, women's presence in cyberspaces has increased for various reasons, including work, study, social interactions, entertainment, and others. Inevitably, episodes of violence in the cyberspace have increased as well: in 2020, it was estimated that 1 in 2 young women experienced gender-based online violence; the main victims of this form of violence have been women who are active in public life, such as politicians, journalists and human rights defenders. Just like offline violence, experiencing online violence can lead to negative psychological, social and reproductive health impacts on victims, and sometimes also to offline physical and sexual violence. Moreover, it can have the effect of silencing women, hindering their participation in society and undermining the principle of democracy, as enshrined in Article 2 TEU.

Online violence cases will very likely rise due to the increase in the number of young women using the internet, even after the state of emergency.⁶¹ For this reason, it is necessary that Countries adopt urgent measures, as legislative protections, to respond to this new reality and protect women from this modern form of violence. The EU and the EU Countries seem to move in the right direction: in December 2021, the European Parliament asked the EU to adopt a common definition of gender-based cyber-violence and to make it punishable by law, with harmonised minimum and maximum penalties for all EU countries.⁶² Moreover, the proposal on a new Directive combating violence against women and domestic violence refers to online violence against women as well as a form of violence to prevent and persecute.

61. Leila Mohammadi, "Cyber violence against young women during COVID-19," <https://comein.uoc.edu/divulgacio/comein/es/numero102/articles/1-mohammadi-cyber-violence-against-young-women-during-covid-19.html>

62. EUMonitor, "How the EU is tackling gender-based violence," https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vlmlkfsdb5tu?ctx=vhshnf7snxu9&start_tab1=35

3.2 The EU’s (re)action: promising measures and exemplary practices

Evelyn Regner, Chair of the European Parliament’s Committee on Women’s Rights and Gender Equality stated that the COVID-19 pandemic starkly highlights gender inequality in all its shapes and forms.⁶³ At the beginning of the pandemic, she said:

”Those days and weeks ahead are especially dangerous for women. We are all facing major psychological challenges through isolation or quarantine, but women and sometimes children in unsafe homes are facing a particularly gruelling stress test. We, therefore, must now pay particular attention to this issue and expand our actions to stop violence against women.”

During the Covid-19 pandemic, violence against women - especially domestic violence - reported worrying data in the European Union, that required a quick response from the EU Member States. The European Institute for Gender Equality conducted a study in the EU on intimate partner violence against women (IPVAW), a specific form of domestic violence, during the pandemic.⁶⁴ More specifically, the study at issue examines the EU Countries’ action to protect women from such violence during the recent health crisis. Undoubtedly, preventing IPVAW during the pandemic has been a hard challenge for the EU Countries. Nonetheless, national governments of all the 27 EU Member States strengthened existing measures and/or introduced new measures to support victims during the pandemic.

The most prevalent measure identified in EIGE’s report was aware awareness-raising campaigns. In fact, nearly all Member States launched awareness-raising campaigns on IPVAW in the context of Covid-19. For instance, Slovenia launched

63. EP, “COVID-19: Stopping the rise in domestic violence during lockdown,” <https://www.europarl.europa.eu/news/it/press-room/20200406IPR76610/covid-19-stopping-the-rise-in-domestic-violence-during-lockdown>

64. EIGE, ed., *The Covid-19 pandemic and intimate partner violence against women in the EU* [in English] (Publication Office of the European Union, 2021)

one of this campaigns which was undertaken by police encouraging victims to report episodes of violence and to reassure them that support was available in spite of the pandemic.

Other measures implemented during the pandemic were the communication and support tools. Some countries adopted new helplines or email or messaging services that victims could use for support and advice; other countries implemented existing helplines by increasing their hours of operation, including 24-hours services. However, helplines can be dangerous for victims who may be in lockdown with perpetrators and thus many Member States implemented more discreet channels such as mobile phone apps, instant messaging services (e.g. Skype, WhatsApp) or similar. Spain developed an original communication tool which was the codeword *Mascarilla 19* ("Mask 19" in English) which could be used by victims to alert staff in pharmacies that they were in danger.

A third measure adopted by 16 Member States in times of Covid was changes to shelter accommodation. The study reported 11 Member States as providers of additional shelter accommodation in either public housing or private hotels during the pandemic. However, it is difficult to apply social distancing measures in a shelter accommodation because of the close proximity of residents. Despite the additional protective measures that have been adopted, in the end the overall capacity of shelter accommodation was reduced as a result of Covid-19 because of the requirement to ensure social distancing among residents to minimise virus transmission. In response to reduced shelter capacity, Ireland launched a promising initiative: Airbnb started to provide for free emergency accommodation for victims of violence, in collaboration with Safe Ireland and other service providers.

Lastly, between the beginning of March and early July 2020, new legislation or amendments to existing legislation in response to Covid-19 were introduced in 14 Member States. The most common type of legislative change was to ensure continuity of services to support women victims and their children. Some EU Member States adopted new legislation to prevent victims from being trapped with their perpetrators during the lockdown (e.g some legislative measures were focused on

providing provisions for victims to safely leave perpetrators). Other EU Member States adopted some changes to the functioning of their justice system, including Courts using digital solutions to continue criminal proceedings or prioritising intimate partner violence court cases. For instance, the judicial services in Ireland – courts, probation services and prisons – prioritized domestic violence cases.

To sum up, it can be claimed that all the 27 EU Member States reacted to the increase of IPVAW during the Covid-19 pandemic. However, the study found that none of the Member States had an emergency strategy addressing IPVAW in times of crisis in place before the pandemic. Moreover, most of the national policies and action plans above-mentioned were reactive responses developed and implemented after the Covid-19 outbreak. Considering the seriousness of the issue, EIGE recommends EU Member States to have gender-sensitive disaster plans in place to tackle peaks of IPVAW *before* the disaster strike and not when the situation has already reached crisis point.

3.2.1 The EU Nordic Countries

During Covid-19, even the Nordic Countries, leaders of gender equality, - including three EU Countries (Sweden, Denmark and Finland) - had to face what was defined an "*epidemic of violence*" in the words of Katrín Jakobsdóttir, Prime Minister of Iceland and responsible for gender equality policy.⁶⁵ However, as demonstrated in the previous section, Nordic Countries have always scored a high prevalence of violence against women . Thus, despite not having a comprehensive emergency strategy to tackle this issue, the EU representatives of the Nordic region - Sweden, Denmark and Finland - were quite prepared to address the increase in VAW during the pandemic.

In Sweden, for instance, hotline Kvinnofridslinjen (i.e., women's peace line) reported an increase of calls by 10% relative to 2019; the hotline centre suggested the rise in calls was not directly linked to the pandemic but followed an increasing

65. Co-operation Nordic, "How the Nordic region is countering setbacks to gender equality during the crisis," <https://www.norden.org/en/news/how-nordic-region-countering-setbacks-gender-equality-during-crisis>

trend since 2017. Several years before the pandemic, the Swedish government had already increased its funding – approximately 9 million euro in 2020 – to civil society organizations which address issues of violence against women by intimate partners or other family members.⁶⁶ Whereas, during the pandemic, the Swedish National Board of Health and Welfare funded women’s shelters, ran an information campaign on VAW and kept working on several governmental assignments on VAW.⁶⁷ In Denmark, a research conducted by the State Institute Public Health estimated that 38,000 women are exposed to physical violence by a partner every year and this number has been stable since 2005.⁶⁸ During the pandemic, the Danish government funded shelters and other services for survivors of domestic violence.⁶⁹ Those measures were also adopted in Finland.

In conclusion, it can be claimed that EU Nordic Countries were aware of the phenomenon of violence against women much before the pandemic, and the peak of cases of IPVAW registered in the recent years did not catch them unprepared. This circumstance demonstrate that if a Country and its citizens are more aware of the issue of violence against women then it is easier to manage and address, even in times of crisis.

3.3 Conclusion

Based on the previous section, it can be concluded that violence against women - especially domestic violence in the form of intimate partner violence against women - is a EU-wide issue that already existed but was exacerbated by the Covid-19 pandemic. The recent global pandemic created in fact new risks factors for victims of violence; for instance, social distancing measures contributed both to protect victims from the virus and to expose them to their perpetrators.

However, the pandemic was not only a cause but also - and more of - an

66. X Calò, R Occhiuzzi, and P Profeta, “COVID-19 and its economic impact on women and women’s poverty,” *FEMM European Parliament*, 2021,

67. Meurens et al., “Tackling Violence Against Women and Domestic Violence in Europe: The Added Value of the Istanbul Convention and Remaining Challenges”

68. ISS, *I Danmark—Epidemiologisk overvågningsrapport. Statens Serum Institut*, 2019

69. Meurens et al., “Tackling Violence Against Women and Domestic Violence in Europe: The Added Value of the Istanbul Convention and Remaining Challenges”

exacerbation of a problematic issue that already existed across the world, including the European Union. The EU Member States reacted against a "common enemy" and either strengthened existing measures and/or introduced new measures to tackle the spike of violence against women registered during the pandemic. Even in the EU Nordic Countries, where levels of violence against women have always been high, governments showed a renewed attention to the problem.

The following section provides an overview of how VAW is regulated in Europe from a legal perspective and, more specifically, in the EU's legal framework. Moreover, it sheds light on the process of - missed - EU accession to the Istanbul Convention, which is the most comprehensive international Treaty meant to prevent and combat violence against women and domestic violence.

4 Criminalisation of Violence Against Women in Europe and the EU

If *Defrenne II* is the landmark judgement of EU Gender Equality Law, then *Opuz v. Turkey*⁷⁰ is the landmark decision that made Europe aware of the seriousness of the issue of violence against women. This judicial case was brought in front of the European Court of Human Rights in 2002 by Opuz, a victim of domestic violence, against the Turkish government for failing to protect her and her mother from attacks perpetrated by her husband. In 1995, Nahide Opuz married her perpetrator, who regularly abused her wife and the members of her family. This cycle of violence continued for several years and arrived to a climax when the husband decided to kill Opuz's mother in March 2002. That year, Opuz brought an application before the ECHR alleging that the Turkish government violated three articles of the European Convention on Human Rights: first, she argued that the Turkish Government breached Article 2 (the right to life) and 3 (the prohibition of torture and inhuman treatment) of the Convention by failing to protect her and her mother, despite a known pattern of violent abuse and threats to their lives; second, she also argued that the local authorities who should have protected her and her mother violated Article 14 (prohibition of discrimination) of the Convention as their inadequate attempt to help them reflected widespread gender discrimination in Turkish legal institutions and Turkish society in general.⁷¹ In the end, the Court considered the Turkish Government responsible for the violations of Articles 2, 3 and 14 of the Convention. Moreover, the Court ruled that the violence suffered by the applicant and her mother may be regarded as gender-based violence and that, for the first time, gender-based violence was a form of discrimination under the European Convention on Human Rights.⁷²

The Council of Europe (CoE) reminds that *Opuz v. Turkey* helped to bring about the the Council of Europe convention on preventing and combating violence

70. *Opuz v. Turkey*, App no. 3401/02

71. Tarik Abdel-Monem, "Opuz v. Turkey: Europe's Landmark Judgment on Violence against Women," *Human Rights Brief* 17, no. 1 (2009): 5

72. *Opuz v. Turkey*, at para 200.

against women and domestic violence (“Istanbul Convention”), which launched in May 2011.⁷³ The Istanbul Convention is an international Treaty that opens the path for creating a legal framework at pan-European level to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence. Turkey was the first Country to sign up to the Istanbul Convention in 2011 and the first (and only) Country to withdraw in 2021. The reason for the withdrawal, mentioned by the Turkish president Recep Tayyip Erdoğan, was that Turkey had sufficient national measures to protect women’s rights and prevent domestic violence and, thus, there was no need for an international one. Various EU institutions and officers expressed their concern for Turkish women and for this radical decision. Among them, Ursula von der Leyen, the European Commission’s President, said that *”women deserve a strong legal framework to protect them”*.⁷⁴

The present section is aimed at explaining the main legal instruments for the criminalization of violence against women in Europe and the EU, starting with the Istanbul Convention.

4.1 The Istanbul Convention: a new legally binding gendered perspective

The Council of Europe adopted the Istanbul Convention on 6st April 2011, and it entered into force on 1st August 2014. In Europe, the Istanbul Convention is the first legal instrument to set legally binding rules and standards specifically meant to prevent and combat violence against women, from its causes to its consequences. One of the main achievements of the Convention is that it has helped to increase awareness of the issue of VAW in Europe and, more generally, at the international level. The Convention is structured around four pillars, called the *”4Ps”*: prevention, protection, prosecution, and policy. In sum, the Convention aims to tackle the root causes of VAW and encourage everyone to contribute eradicating those

73. Ibid.

74. ECA Maastricht, “Turkey’s Withdrawal From the Istanbul Convention-facts and reactions,” <https://ecamaastricht.org/blueandyellow-zoomingin/turkeyistanbulconvention>

causes (Prevention); also, it promotes measures to protect all victims from violence (Protection) and to ensure that investigations and judicial proceedings regarding the perpetrators of such violence are carried out without delay (Prosecution); lastly, it requires Countries to adopt and implement coordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of the Convention (Policy). The scope of the Convention is broad and it includes: domestic violence, psychological violence, stalking, physical violence, sexual violence (including rape), forced marriage, female genital mutilation, forced abortion, forced sterilisation and sexual harassment. In addition, the Convention covers a broad range of measures, including data collection, awareness-raising and provision of support services.

Once a government has ratified the Istanbul Convention, it must take measures to implement its provisions aimed to prevent and combat violence against women. A monitoring mechanism is in place to assess how the provisions of the Convention are put into practice and to provide guidance to national authorities. It consists of two bodies: the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and the Committee of the Parties. The former is an independent body composed of 15 independent experts, which is responsible for monitoring the implementation of the Convention by the Countries that have ratified it. In particular, those Countries have to fill a questionnaire prepared by GREVIO on legislative and other measures giving effect to the provisions of the Convention. The latter is composed of the representatives of the national governments who joined the Convention and it adopts recommendations on measures to be taken to implement the conclusions and suggestions offered by GREVIO in relation to a specific country.

The most innovative feature of the Istanbul Convention is a gendered approach to violence against women, which means that the Convention recognizes VAW as a form of gender-based violence. In fact, violence against women is gendered since it is "directed towards a woman because she is a woman or it affects women disproportionately" (Article 3 Istanbul Convention). Acknowledging that violence is

not-gender neutral is crucial if it to be tackled appropriately. However, the gendered approach to violence is also the most controversial aspect of the Convention, according to the Countries who have not ratified it. In fact, the main arguments against the Convention refer to the belief that the Istanbul Convention is a threat to the "traditional values" of a Country, that are based on the idea of families grounded in "natural" or "biological" roles of women and men.⁷⁵

Considering the different traditions of the Countries, the Istanbul Convention had the need for a comprehensive, holistic approach that could encourage a common action to effectively combat violence against women. For this reason and for ensuring that both women and men are protected by its provisions, the Istanbul Convention used a gender-neutral approach to criminalise various forms of violence. Nevertheless, the Convention stipulates that violence against women is distinctly gendered and it is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men (Preamble).

To sum up, the Istanbul Convention used a gender-neutral approach when defining the different forms of violence, but stayed true to a gendered approach by clarifying that violence against women is a gendered issue. After ratifying the Convention, European Countries become bound to adopt this gendered-approach, that, for example, can take the form of gender-specific offences. However, many EU Member States adopted gender-neutral legal texts and policies, for instance in France legislative texts do not recognise the gender-based nature of VAW.

In its first report, GREVIO criticised the gender-neutral approach of national legal provisions and policy documents on VAW because it "*fails to address the specific experiences of women that differ significantly from those of men thus hindering their effective protection*".⁷⁶ In other words, this approach had the consequence of limiting the protection of women that the Convention was meant to guarantee: in Norway, for instance, the law on shelters for domestic violence victims adopted a gender-neutral approach and this resulted in 22 of the 52 shelters being reserved

75. Meurens et al., "Tackling Violence Against Women and Domestic Violence in Europe: The Added Value of the Istanbul Convention and Remaining Challenges"

76. GREVIO, "1st General Report on GREVIO's Activities," 2020, Available%20at%20https://rm.coe.int/1st-general-report-on-grevio-s-activities/16809cd382.

for men, and, consequently, less shelters for female victims in need. In sum, while it is important to address all experiences of violence, it is also important to recognize that some forms of violence still affect women disproportionately and, thus, require a specific gendered-approach. For this reason, GREVIO recommends the parties of the Convention to ensure the gendered dimension of violence is reflected in their legislation and policies.

As of April 2022, the Istanbul Convention has been signed by all EU Member States, and ratified by 21 (Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden). In 2021, as previously mentioned, Turkey withdrew from the Convention and, in July 2020, the Polish government announced its intention to withdraw as well, but this has not yet been enacted.

Bulgaria, Czechia, Hungary, Latvia, Lithuania and Slovakia - six Countries with relatively low Gender Equality Indexes - have not ratified the Convention. There are several political and social factors that could have inhibited those Countries from acceding fully to the Convention. As mentioned above, those Countries that did not ratify the Istanbul Convention perceive it as a threat to traditional values certain groups want to uphold, such as the image of a traditional family composed by a father and a mother. On the same line, it is useful to remind that conservative activists and religious leaders in those Countries believe that gender is a biological category based on biological sex, which translates into a binary understanding of gender. Consequently, it is difficult for them to open up to a concept of gender as a societal construction based on stereotypes - as it is in the Convention. For instance, the Constitutional Court of Bulgaria ruled that Article 14(1) of the Convention, which explicitly defines gender as "socially constructed", contradicts the national Constitution. In Czechia, some representatives of churches across the country addressed a letter to the Parliament in 2018, stating that the Convention would result in the degradation of the relationship between women and men. In February 2017, a conservative Hungarian organiza-

tion published a petition against the ratification of the Convention, framing that the Convention was a 'Trojan horse' to usher in unwanted 'gender ideology' into the country.⁷⁷

In conclusion, the Istanbul Convention is an international treaty that offers a comprehensive framework to tackle VAW through a gendered understanding of such violence. Under the Convention, the use of the term "gender" aims to acknowledge how harmful attitudes and perceptions about roles and behaviour expected of women in society play a role in perpetuating violence against women. Such terminology does not replace the biological definition of "sex", nor those of "women" and "men", but aims to stress how much inequalities, stereotypes and violence do not originate from biological differences, but from harmful preconceptions about women's attributes or roles that limit their agency. In this context, the Convention considers the eradication of violence against women and domestic violence as a milestone in the advancement of equality between women and men. Moreover, the Convention is legally binding, which means that countries who decide to be part of it become obliged to comply with it. As demonstrated above, several countries are resistant towards the idea of being bounded to the Convention because of the several factors that make it a threat for their societies.

This could be (one of) the reason(s) why the European Union has not acceded to the Istanbul Convention yet. In order to complete the accession, the Council needs the consent of the European Parliament, whose members are directly elected in their national Countries and might not agree with the EU accession to the Convention. In fact, in case of EU accession to the Istanbul Convention, all the EU Member States would be bound by the EU policies that implement the Convention, according to Article 216(2) TFEU. The following section will explain the EU missed accession to the Convention in detail.

77. Meurens et al., "Tackling Violence Against Women and Domestic Violence in Europe: The Added Value of the Istanbul Convention and Remaining Challenges"

4.1.1 The EU missed accession to the the Istanbul Convention

The EU has been reluctant in ratifying international conventions in the field of human rights; for the time being, it has only ratified the UN Convention on the Rights of Persons with Disabilities. On 25 February 2014, the European Parliament adopted a Resolution where it 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 European Commission to launch the procedure for EU accession to the Istanbul Convention.⁷⁸

The central question is the following: does the EU have competence in the field of prevention and suppression of violence against women? As highlighted by Sara De Vido in her article⁷⁹, the answer to the central question above should be indeed positive. First, the Convention is open for signature by the Member States of the Council of Europe, the non-Member States which have participated in its elaboration and the European Union (Article 75); consequently, it can be stated that the Convention paves the way for the EU accession. Secondly, as highlighted in the European Commission "Roadmap" in 2015, the EU has external competence to conclude international agreements where Treaties or legally binding EU acts so provide, where the agreement is necessary to achieve one of the objectives referred to by the Treaties, or is likely to affect common rules or alter their scope (Article 216(1) TFEU); consequently, the EU has competence to ratify the Convention since violence is a form of gender-based discrimination, and gender equality constitutes one of the objectives enshrined in the founding Treaties.

In March 2016, the Commission issued two proposals for Council Decisions, one on the signing and the other on the conclusion (ratification) of the Convention on behalf of the European Union. The Council decided that the draft decision on the signing of the Convention should have been divided into two decisions, one covering judicial cooperation in criminal matters and the other asylum and non-

78. Martina Schonard, "Briefing on the achievements of the FEMM committee in the area of gender equality during the 2014-2019 term," 2019,

79. Sara De Vido, "The ratification of the Council of Europe Istanbul Convention by the EU: a step forward in the protection of women from violence in the European legal system," *Eur. J. Legal Stud.* 9 (2016): 69

refoulement. These two Council decisions concerning the signing of the Istanbul Convention by the EU have been adopted in May 2017: the first decision refers to Article 82(2) and Article 84 TFEU as legal bases, and authorizes the signing, on behalf of the EU, of the Istanbul Convention with regard to matters related to judicial cooperation in criminal matters (Article 1).⁸⁰; the second decision refers to Article 78(2) as legal base and authorizes the signing, on behalf of the EU, of the Istanbul Convention with regards to asylum and non-refoulement (Article 1).⁸¹ On 13 June 2017, the EU became a signatory to the Istanbul Convention.

Following the signature, the Council and the Commission have been working on Council decisions on the Convention's conclusion, with the aim of completing the EU's accession to the Convention. The procedure to be followed in order to complete the EU's accession requires that the Council adopts a decision in that sense, following a Commission proposal and the consent of the European Parliament.⁸²

However, obtaining the consent of the European Parliament is not an easy task. On 25 November 2019, a plenary debate took place on the EU accession to the Istanbul Convention. On the one hand, some speakers argued in favour of this process, others claimed that the Convention promoted unwelcome gender ideologies and that certain provisions exceeded the scope of the Convention's declared objectives. Nevertheless, on 28 November 2019, the European Parliament adopted Resolution 2019/2855(RSP) on the EU accession to the Convention, calling for the ratification.

More recently, the European Parliament asked for an opinion from the European Court of Justice on the compatibility with the Treaties of the proposals for this accession, in accordance with the procedure set in Article 218(11) TFEU.

80. Council Decision (EU) 2017/865 of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters No. 2017/865, OJ, L 131, 11–12 (2017)

81. Council Decision (EU) 2017/866 of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regards to asylum and non-refoulement No. 2017/866, OJ, L 131, 13–14 (2017)

82. Schonard, "Briefing on the achievements of the FEMM committee in the area of gender equality during the 2014-2019 term"

Following this request, on 6 October 2021 the CJEU pronounced its opinion⁸³, answering three questions from the EP: first, if Articles 82(2) and 84 TFEU⁸⁴ are the appropriate legal bases for the act that concludes the Istanbul Convention, on behalf of the European Union; second, whether and, if yes, under what conditions, the Council may or even has to split a decision to conclude an international agreement into several separate decisions; and third, whether that conclusion would be compatible with the Treaties, despite the absence of a common accord of all Member States through which they give their consent to being bound by the Istanbul Convention.

On the first question, the Court gave a positive answer: it stated that the appropriate substantive legal bases for the adoption of the Council's act that concludes, on behalf of the EU, the Istanbul Convention are Article 82(2) TFEU and Articles 84 TFEU - that are part of Chapter 4 of the TFEU on judicial cooperation in criminal matters - in view of their broad scope of application. However, the Court specified that the act concluding the Istanbul Convention should also be based on Articles 336 TFEU, in matters of public administration, and Article 78(2), in matters of asylum and non-refoulement.

Regarding the second question, the Court stated that the Council can divide an international agreement into two separate decisions only as far as that decision considers Ireland and the Kingdom of Denmark as non-participants in the measures adopted in respect of the conclusions of that agreement. According to Protocol No. 21 and Protocol 22 to the TEU and TFEU, the participation of Ireland and Denmark is in fact limited with regards to certain areas of cooperation of the Union.

Lastly, the Court answered the third question by affirming that the Treaties do not prohibit the Council from concluding the Istanbul Convention while waiting for the common accord of the Member States. It would, however, also be com-

83. Convention d'Istanbul, No. Avis 1/19 (2021)

84. Article 82(2) TFEU provides for minimum rules to facilitate mutual recognition of judgments and judicial decisions, and police and judicial cooperation in criminal matters; whereas, Article 84 TFEU provides for the adoption of measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonization of the laws and regulations of the Member States.

patible with the Treaties if the Conclusion were adopted only after such common agreement had been established. It is exclusively for the Council to decide which of those two solutions is preferable.⁸⁵

In conclusion, the Council has not adopted a decision on the conclusion, on behalf of the European Union, of the Istanbul Convention yet. However, important steps have been taken in that direction. It is also important to remember that agreements concluded by the EU are binding on its institutions and its Member States under Article 216(2) TFEU. Thus, in case of EU accession to the Istanbul Convention, the Member States will be bound by both the EU policies that implement the Convention and the duties arising from their own ratification.⁸⁶

4.1.2 The digital dimension of VAW: the missing piece

According to GREVIO, violence against women taking place in the digital sphere is meant to become the most prevalent form of violence in the future, considering the importance that technology achieved in the XXI century. However, discourses about information and communication technology often focus on access rights, safety online and privacy and, thus, are not often informed by the prevalence of online violence against women. This circumstance is reflected at the international and European level, with legal frameworks that do not specifically address the digital dimension of VAW.

The Istanbul Convention does not explicitly cover online violence against women. However, during its 21st plenary meeting, GREVIO decided to prepare its first General recommendation dedicating it to the implementation of the Convention in relation to the digital dimension of violence against women, in line with its mandate under Article 69 of the Convention.⁸⁷ With this General Recommendation, GREVIO seeks to offer an holistic interpretation of the Istanbul Convention that

85. Ibid., para 226.

86. Linda Senden Birte böök Susanne Burri and Alexandra Timmer, “Comparative analysis of gender equality law in Europe 2021. The 27 EU Member States, Albania, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Turkey and the United Kingdom compared,” *European network of legal experts in gender equality and non-discrimination*, 2022,

87. Article 69 – General recommendations: GREVIO may adopt, where appropriate, general recommendations on the implementation of this Convention.

implicitly includes online violence against women.⁸⁸

First, GREVIO recognizes that the various forms of online violence fall within the scope of application of the Istanbul Convention (Article 3a). Moreover, according to Article 5(2) of the Convention, State Parties have to take the necessary measures to exercise their duty of "due diligence" to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of the Convention that are perpetrated by non-state actors. GREVIO considers this obligation to cover all expressions of violence against women, including online violence.

Despite not being a legally binding instrument, GREVIO's First General Recommendation provides for an interpretation of the Convention that imposes a binding obligation on the European Countries who are parties of the Convention to prevent and persecute online violence. In Europe there is no legally binding instrument that addresses online violence explicitly yet. However, in the EU context, a proposal for a new Directive on violence against women and domestic violence seems to give an explicit recognition of various forms of online violence.

The following subsection provides for an overview of the hard law, soft law and other legal instruments through which the EU responded to the issue of violence against women.

4.2 The EU response to violence against women

The European Union was born with an economic purpose and this imprint reflected in a specific focus of the Community towards everything that could improve economic cooperation among the Parties. The first article that gave attention to gender equality in the EU (Article 119 EEC) was also meant to protect economic interests, until it was defined as a keeper of a fundamental right of women to receive the same pay as men after the Defrenne trilogy. Since then, the action of the EU has been mainly devoted to the achievement of gender equality, and fewer attention has been dedicated to violence against women.

The only reference to violence against women in the EU Treaties context can

88. GREVIO, "GREVIO General Recommendation No. 1 on the digital dimension of violence against women," *Council of Europe*, 2021,

be found in Declaration 19 on Article 8 TFEU, that has been added to the Treaty. In this Declaration, the Member States express their political commitment to combat all kinds of domestic violence, in order to eliminate inequalities between women and men. After that, several legal instruments have been adopted in the EU in order to tackle the phenomenon of violence against women. However, De Vido in her article argues that the EU action with regards to the protection of women from violence can be considered "*fragmented*"⁸⁹. This subsection provides for some arguments that support this thesis.

4.2.1 The lack of specific hard law on VAW in the EU

There is no legally binding instrument in the EU that specifically addresses violence against women, yet. However, several hard law measures have been adopted over the years in different areas in which women can be victims of violence, and in those areas where there is violence that has a cross-border element, because this is where the EU has the strongest competence for crime-related action:⁹⁰

- Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of human trafficking: this directive offers supports to third-country national who became victims of human trafficking and who are willing to cooperate with the national authorities against their traffickers.
- Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation ("Recast Directive") and Directive 2004/113/EC on implementing the principle of equal treatment between men and women in the access to and supply of goods and services: those directives are specifically focused on equal treatment and non-discrimination, but they also provide for a definition and condemn harassment and sexual harassment. In particular, the Recast Directive defines harassment and sexual harassment as forms of discrimination on the grounds of sex and states that harassment should be

89. De Vido, "The ratification of the Council of Europe Istanbul Convention by the EU: a step forward in the protection of women from violence in the European legal system"

90. Anne Bonewit, "The issue of Violence against Women in the european Union," 2016,

prohibited in the workplace and in access to employment, vocational training and training.

- Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity: this directive can be important for women because it may help them to gain stronger economic positions and economic independence, which will make easier for them to escape violent relationships .
- Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims: this directive was meant to "establish minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings" and "it also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof"(Article 1). Despite those general premises, the single provisions of this Directive fails to ensure gender-specific protection for women. For example, most of the provisions refer to children victims of trafficking in human beings, whereas none of them refer specifically to women.
- Directive 2011/99/EU on the European Protection Order (EPO)("European Protection Order Directive") : this directive allows a judicial (or equivalent) authority in a Member State, in which it has been adopted a measure to protect a person against a criminal act, to issue an EPO that enables a competent authority in another Member State to continue the protection of that person in its territory, in accordance with the national law of the issuing State. As this Directive covers is based on the principle of mutual recognition of judgements, it does not interfere with the definition of crimes which are punished in national laws, and it does not deal with the prevention of violence either.
- Directive 2012/29/EU ("The Victims' Right Directive") on common minimum standards on the rights, support and protection of victims: this Di-

rective lays down minimum standards on the rights, protection and support of all victims of crime in the EU. In particular, it obliges Member States to support the victim and/or their family members, to protect the victim but also to give victims the right to be informed during, for example, the prosecution of the perpetrator. Despite being a more general legal instrument, specific provisions on violence against women have been included⁹¹ and could fill an important gap in current EU and national legislation relative to the victims' need for specialist support services that are free of charge and confidential. However, those specialized services are insufficient and unequally distributed in and among Member States. Moreover, this general instrument does not contain neither general provisions on preventing and combating violence against women or definitions of the different forms of violence, but it just deals with the protection of victims; as a consequence, although in theory once recognised as a victim a woman should be entitled to a uniform treatment in procedural proceedings throughout the EU in line with the Victims' Directive, in practice she may not be recognized as a victim in every EU Member State (e.g. stalking is not recognized as a crime in every EU legal system) and thus her violence might not be persecuted in her State.⁹²

- Regulation EU) No. 606/2013 on mutual recognition of protection measures in civil matters ("Mutual Recognition of Civil Protection Regulation"): this regulation sets up a mechanism allowing for a direct recognition of protection orders issued as a civil law measure between Member States. This legislative measure also provides protection to victims of VAW, as gender-based violence and violence in close relationships such as physical and sexual violence, harassment and stalking are named as examples for protection measures in the Directive (Preamble, recital 6).

91. Artt. 9 and 22.

92. S Walby and P Olive, "The European Added Value of a Directive on Combatting Violence Against Women: Annex 2 Economic Aspects and Legal Perspectives for Action at the European Level," 2013,

- Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (“Digital Services Act”) and amending Directive 2000/31/EC: the aim of the Commission with this proposal was to make the online world a safer space where fundamental rights are protected. In order to reach this objective, the DSA proposal sets out a horizontal legal framework for regulatory oversight, accountability and transparency of online service providers. This directive would be useful in the context of preventing and combating online violence as it contains due-diligence obligations for certain intermediary service providers to address illegal online content. However, there is no definition of what constitutes an illegal content at a EU level.

As this list confirms, several hard law measures in the context of the EU that address violence against women have been adopted so far. However, it is evident that those legal instruments do not constitute a comprehensive legal framework on the issue in the EU context, as it is the Istanbul Convention in the wider European context. First, the EU action remains fragmented in the context of defining, preventing and persecuting violence against women in a global and consistent manner. Examples of this fragmented approach are the Directive on the European Protection order and the Victims’ Rights Directive, whose general provisions on the protection of victims of crime address the issue of violence against women only indirectly. Second, even the EU existing instruments that were meant to address violence against women more specifically (e.g. the Directive on preventing and combatting trafficking in human beings and protecting its victims), in the end fail to adopt a gender-based approach. Lastly, it is interesting to note that the list does not encompass any directive specifically tackling the issue of domestic violence (or IPVAW), despite being the actual most prevalent and hidden form of violence against women.

4.2.2 ... and the proliferation of soft law

Moving from hard law to soft law, it should be acknowledged that the EU has been prolific in the adoption of non-legally binding measures to address violence against women. In fact, over the years all of the three EU institutions - European parliament, Council of the European Union and European Commission - have issued a number of reports, communications, resolutions, and recommendations aimed at combating this problem.

The European Parliament has been active in addressing violence against women as early as 1979, when it voted in favour of establishing the EU Parliament Committee on Women's Rights and Gender Equality. There are several important resolutions that have been adopted by this committee: for instance, the first resolution was of 11 June 1989 in which the Parliament asked the Council and the Commission to step up to take action but also to research violence against women in both the public and the private sphere; whereas, another resolution of 26 November 2009 called upon the Commission to propose a Directive on action to prevent and combat all forms of violence against women, and called upon the Member States to collect statistics about cases of VAW, to raise more awareness about the issue.

In 2008, the Council adopted EU guidelines on violence against women and girls and combating all forms of discrimination against them. In these guidelines, the Council has set three aims for the EU to contribute to: prevention of violence, protection and support of victims and the prosecution of perpetrators. Two years later, the Council adopted the first Council conclusions on eradication of violence against women, in which called upon the Member States to develop strategies against violence and to spend sufficient resources for preventing and combating violence, including awareness raising campaigns. More recently, in June 2014, the Council Conclusions on preventing and combating all forms of violence against women and girls, including female genital mutilation were adopted. In these conclusion, the Council encourages the Member States to adopt national action plans and legislation to prohibit all forms of violence against women, including new

forms such as online violence.

As far as concerns the work of the Commission, violence against women was included for the first time in the Roadmap for equality between women and men 2006-2010 and became one of the main points of the Strategy for Equality between Women and Men 2010-2015. In 2010, the Commission adopted the Women's Charter, in which, inter alia, promised to put in place a comprehensive and effective policy framework against gender-based violence.⁹³ In 2020, the European Commission published a second Roadmap for the EU accession to the Istanbul Convention and an inception impact assessment, that highlights three possible legislative and non legislative scenarios for future EU action.⁹⁴ Among them, Option No. 3 consists of a "holistic legislative initiative on preventing and combatting gender-based violence and domestic violence" aimed at "a comprehensive sectoral directive to prevent such violence, strengthen the protection of victims and witnesses and punish offenders." A proposal for a Directive on preventing and combatting violence against women and domestic violence has indeed - finally - been published on 8 March 2022, international women's day.

4.2.3 ... and other non-legally binding acts

In addition to the soft law, the EU has also adopted several non-legally binding measures, initiatives and policies in order to prevent and fight violence against women. Among those measures, according to Montoya⁹⁵, the Daphne project is the most extensive advocacy endeavor.

The Daphne project was an European Commission's initiative started as a response to growing concern about the abuse and sexual exploitation of children and women in Europe. The project has run in three phases: the Daphne Initiative (1997-99); the Daphne Program (2000-2003); and Daphne II (2004-2008).

93. Bonewit, "The issue of Violence against Women in the european Union"

94. Birte böök and Timmer, "Comparative analysis of gender equality law in Europe 2021. The 27 EU Member States, Albania, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Turkey and the United Kingdom compared"

95. Celeste Montoya, "The European Union, capacity building, and transnational networks: Combating violence against women through the Daphne program," *International Organization* 62, no. 2 (2008): 359-372

The purpose was to develop a coordinated and comprehensive approach to dealing with the issue of violence in European society by supporting and promoting cooperation with and among nongovernmental organizations (NGOs), increasing and improving the research on violence to provide more accurate information, developing preventative measures, and strengthening the protection of victims.⁹⁶

References to violence against women can be found in other initiatives: in 2015, the European Commission and EEAS adopted a gender action plan for external relations for 2016-2020, which prioritises violence against women and girls; in 2017, the European Union and the United Nations launched the Spotlight Initiative, with an initial investment of around €500 million, to support measures to eliminate violence against women and girls, in line with the 2030 Agenda for Sustainable Development; lastly, combating gender-based violence was one of the priorities in the EU's Strategic Engagement for Gender Equality for 2016-2019.⁹⁷

4.3 Conclusion

In the words of Sara De Vido, it can be concluded that *"although the EU has been particularly active in the adoption of measures aimed at reaching gender equality and protecting female victims of violence"*,⁹⁸ its action so far has been *fragmented*. The author argues that a comprehensive legal framework on VAW could be provided by the EU accession to the Istanbul Convention.

However, she also reminds that the Professor Sylvia Walby and Philippa Olive argue in their paper on the European Added Value⁹⁹ that EU directives against specific types of violence against women and a general directive about violence against women are possible and could lead to that comprehensive legal framework that the EU needs as well.¹⁰⁰ Indeed, the European Commission has recently

96. Ibid.

97. Shreeves, "Violence against Women in the EU: State of Play"

98. De Vido, "The ratification of the Council of Europe Istanbul Convention by the EU: a step forward in the protection of women from violence in the European legal system"

99. The European Added Value Unit is part of the Directorate for Impact Assessment and European Added Value, which in turns is a depending entity of the Directorate General for Parliamentary Research within the Secretariat of the European Parliament.

100. Walby and Olive, "The European Added Value of a Directive on Combatting Violence Against Women: Annex 2 Economic Aspects and Legal Perspectives for Action at the European

issued a proposal for a new Directive on violence against women and domestic violence, whose main points will be analysed in one of the sections of the following Chapter. Maybe this Directive could be the missing piece the EU needs, and has always needed.

Level”

Chapter III

5 The next steps forward

As showed in the previous chapter, women have always been targets of violence but this phenomenon has been highlighted and exacerbated by COVID-19. In fact, it can be claimed that violence against women has finally been recognized as a priority within the European Union especially after the recent health crisis. On the one hand, the pandemic shed light on some persistent deep-rooted gender inequalities in most of the Member States' societies and put decades of progress on gender equality at risk. For instance, women had to face a greater care burden due to lockdowns, higher precariousness in the job market and the worrying increase in domestic violence. On the other hand, the "bright side" of the pandemic in the context of violence against women is that it increased Member States' and EU' *awareness* of the scale and seriousness of the issue, which is an essential premise of taking action against such issue.

When the pandemic hit in 2020, the Member States in general - with the exception of the few EU Nordic Counties - were quite taken aback from the steep increase in cases of violence against women, especially in the form of domestic violence, and the pandemic highlighted the ineffectiveness of their legal frameworks to respond properly to such phenomenon. Since then, the EU institutions have started arming themselves by taking forward several initiatives to help prevent and combat violence against women.

5.1 How to fill the legal gaps at national and European level?

One of the reasons why there is an extreme need for a legal instrument that addresses violence against women at EU level in a comprehensive manner is because there are many "*legal gaps*" on the subject at national and European Level.

As far as the national level is concerned, it should be remarked that Member

States have been adopting across the years very different approaches to the problem of violence against women. Those different approaches may have been the mirror of the Member States' own national history and culture, or a specific religion, or the way in which that Member State deals with power relations between men and women, or other reasons. What is relevant in the context of violence against women is the impact that those factors had on the regulation of VAW in the national legal systems. There can be distinguished three main ways Member States have attempted to regulate this phenomenon from a legal perspective: a few Member States adopted a comprehensive and gender-specific regulation of VAW; the majority adopted a more fragmented legislation made of single acts recognizing the gendered dimensions of some forms of violence; and the rest of the Member States lacked of the recognition of that specific gendered dimension when defining some crimes that are related to violence against women.¹⁰¹ As a consequence of the existence of these different approaches, the level of protection of women against all forms of violence today differs widely from one EU Member State to the other. For instance, if a woman becomes a victim of domestic violence in a Member State whose legal system has been sensitised against such issue (e.g by recognizing the gendered dimension of domestic violence) she would receive a different level of protection than in a legal system which has gender-blind provisions.

As far as an European level is concerned, the Istanbul Convention is widely recognized as the first attempt to regulate violence against women in the broadest way possible, encompassing all forms of violence. However, the Istanbul Convention presents several gaps as well, starting from the absence of an explicit recognition of the forms of violence against women that happen in the online world. Another weakness of the Convention is that it does not have direct effect as EU laws and, thus, a violation or non implementation of the Convention by a Party results in a state report from the Convention monitor mechanism (GREVIO and the Committee of the Parties), which can order or perform country visits at most. Moreover, if an individual recourse before the European Court of Human Rights against a State

101. Ibid.,p.10-11.

that has a record of violence against women, this person will receive a judgement that has more of a persuasive character and lacks of enforceability.

Those legal gaps would be filled with an all-encompassing EU legally binding instrument. In particular, binding EU legislation would respond to a need for uniformity in matters of regulation of VAW at a national level, and, hopefully, it would provide for the same level of protection to VAW in the different legal systems. Moreover, unlike the Istanbul Convention, in cases of violation of an EU binding instrument, there would be access to the CJEU through the preliminary reference procedure, under certain circumstances, and judgements of the CJEU would be immediately enforceable.

5.1.1 ... and at EU level?

As it is clear from the previous Chapter, the EU has adopted some binding measures in the last few years that have an indirect impact on the eradication of violence against women, but its action remains fragmented and fails to tackle the issue in a comprehensive manner. The recent proposal for a new Directive is specifically focused on violence against women and could fill the legal gaps at EU level on the matter.

The "Gender Equality Directives"¹⁰², for instance, state that harassment and sexual harassment at work and in access to goods and services are contrary to the principle of equal treatment between men and women. The current proposal would complement these legal instruments by setting minimum standards on support and access to justice of victims of such harassment.

Another example can be the Victims' Rights Directive, that applies to all victims of crime in general and does not provide for specific provisions tailored to victims of the several forms of violence against women. The current proposal

102. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

would be a *lex specialis* to the Victims' Rights Directive, complementing its rules to provide for a targeted recognition of the specific needs of victims of VAW.¹⁰³

5.2 Specific hard law on VAW in the EU: legal bases and legal obstacles

For several years, the European Parliament has been expressing its concern for the absence of a specific legally binding instrument on violence against women at EU level. At the moment, in fact, the EU policy against VAW is largely based on resolutions of the Parliament, Council conclusions, and Commission strategies. None of these legal instruments is legally binding for EU Member States. Whereas, the directives that indirectly touch the issue such as the Victims' Rights Directive are legally binding but they are not "specific enough".¹⁰⁴ Moreover, there are large differences between Member States in the definition and criminalization of the different forms of VAW.

An adequate and uniform level of protection of women in the EU could be reached only if this fragmented legal framework is modified into a comprehensive one. Tackling violence against women in a comprehensive manner has been consistently promoted by the European Parliament, throughout reports and resolutions: for instance, on 26 November 2009, the European Parliament published a resolution calling upon the European Commission to "establish a clear legal basis for combatting all forms of violence against women and to start work on drafting a proposal for a comprehensive directive on action to prevent and combat all forms of violence against women".

According to the experts who analysed the European Added Value Assessment 2013, directives against specific forms of violence against women and a general directive on VAW are possible and the Treaties offer several provisions that could constitute their legal bases. Those provisions are part of Title V of the TFEU,

103. Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence No. 2022/0066 COM/2022/105 final (2022)

104. Walby and Olive, "The European Added Value of a Directive on Combatting Violence Against Women: Annex 2 Economic Aspects and Legal Perspectives for Action at the European Level"

concerning the area of freedom security and justice:

- Article 82(2) TFEU allows the European Parliament and the Council to establish minimum rules, by means of directives, in order to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension.
- Article 83 TFEU allows the European Parliament and the Council to establish minimum rules, by means of directives, on the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension. According to its paragraph 1, those areas of crimes include trafficking in human beings, sexual exploitation of women and children and computer crimes.
- Article 84 TFEU allows the European Parliament and the Council to establish measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States. This provision would be a useful legal basis for a directive whose aim is not to harmonize the national legislation of the Member States, but to supplement the existing EU law on victims in the field of prevention of violence.

On 8 March 2022, the European Commission proposed a new Directive on combating Violence Against Women and Domestic Violence based on Articles 82(2) and 83(1) TFEU. This directive would be the first all-encompassing hard law measure on violence against women and its specific forms. However, this directive encounters some legal obstacles because it necessarily touches upon many areas of law where the EU has limited competence. According to Article 5(2) TFEU, "Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. The competences not conferred upon the Union in the Treaty remain with the Member States". The EU has a well established competence in some areas that are touched by the proposed directive, but not in

many others. This circumstance prevents the EU from adopting any overly one dimensional approach.

The area of freedom, security and justice is an area of shared competence between the EU and the Member States, according to Article 4(2)(j) TFEU. The possibility for the EU to act in this area is extremely important for the purpose of acting against VAW in the EU. In particular, with the use of Article 83 TFEU as a legal basis, the new directive could provide for the first time the establishment of minimum rules on a complete definition of the phenomenon of violence against women and its specific forms. However, by now, Article 83(1) TFEU covers only some forms of VAW such as sexual exploitation of women but leaves aside the majority of them (e.g. domestic violence, stalking etc). This absence is the main obstacle for the recourse to this legal basis for a comprehensive directive on VAW. However, this legal obstacle may be overcome by the mechanism called the "*passerelle clause*" provided in paragraph 3 of the Article, according to which the Council could adopt a decision identifying other areas of crime (such as violence against women and its forms) by unanimity, after obtaining the consent of the European Parliament. In 2014, the Council already received a call from the European Parliament for a unanimous Council decision adding gender-based violence to the crimes listed in Article 83(1) TFEU.

Another legal obstacle for the directive is the circumstance that Article 83 TFEU refers to crimes with a cross-border dimension, and not all cases of violence raise cross-boarder issues. However, the unequal level of protection of women victims of violence across the EU Countries contradicts the principle of freedom of movement enshrined in the TEU.¹⁰⁵ In this respect, the new Directive would favor free movement of women throughout the EU territory because it would ensure that the same minimum standards of protection are applied wherever they are in the EU.

105. Article 3(2) TEU: The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

5.3 Proposal for a new Directive on combating Violence Against Women and Domestic Violence: main points

“I want Europe to be at the side of women with protection and support. I want a society where violence against women is prevented, condemned, and prosecuted when it occurs. The time for justice and equality is now. That’s why we come forward today with the right rules to accelerate change.”

Those are the words of President of the European Commission, Ursula von der Leyen, commenting on the new proposal for a directive on violence against women and domestic violence proposed by the European Commission on 8 March 2022, International Women’s Day.¹⁰⁶ For the first time in the EU, this directive would establish a targeted and coordinated approach to tackle violence against women and domestic violence through a set of minimum standards, but nonetheless leaving flexibility to Member States as regards the content of the measure and the possibility to apply a higher level of protection. Interestingly, the structure of this directive reminds the four pillars of the Istanbul Convention, namely prevention, protection, prosecution, and policy.

In particular, the proposed directive is structured in seven Chapters and 52 Articles: Chapter 1 contains general provisions on the subject matter (Article 1), on the need to pay particular attention to victims at an increased risk of violence when implementing the measures under this directive (Art 2), on the scope of the proposal (Article 3) and the definition of some key terms used in the directive (Article 4); Chapter 2 refers to provisions on minimum rules on the definition of criminal offences and penalties based on Article 83(1) TFEU; Chapter 3 includes rules on the protection and access to justice of all forms of violence against women and domestic violence, including online violence (e.g. Article 25 ensures the removal of online content in relation to offences of cyber violence and a possibility

106. EC, “International Women’s Day 2022: Commission proposes EU-wide rules to combat violence against women and domestic violence,” https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1533

of judicial redress for affected users); Chapter 4 concerns victim support, which victims must receive before, during and for an appropriate time after criminal proceedings; Chapter 5 focuses on the necessity to effectively prevent VAW by adopting preventive measures (e.g awareness-raising campaigns, research and education programmes) (Article 36) but also by training professionals to respond to instances of violence in an appropriate manner (Article 37); Chapter 6 focuses on coordination and cooperation of Member States' national policies on VAW but also coordination on a EU-level (e.g. exchanging information and best practices with relevant Union agencies) (Article 43); lastly, Chapter 7 contains some final provisions.

One of the key elements of the proposed directive is the criminalisation of rape based on lack of consent (Article 5), female genital mutilation (Article 6), and cyber violence (or online violence) in the forms of non-consensual sharing of intimate images (Article 7), cyber stalking (Article 8), cyber harassment (Article 9) and cyber incitement to hatred or violence (Article 10). In particular, the explicit criminalisation of online violence is one of the main features of the directive, that highlights its added value vis-a-vis the Istanbul Convention, which on the opposite does not specifically cover it. Moreover, the directive would complement the proposed Digital Services Act (DSA) by defining illegal content related to cyber violence, and would supplement it by containing measures to support victims of cyber violence and to prevent such violence from happening in the first place. Furthermore, in December 2021, the European Commission proposed an initiative to add hate crime and hate speech to the list of crimes in Article 83(1) TFEU, that would in this way serve as a basis for criminalising some specific forms of serious online and offline violence against women and girls.

Another key element is the emphasis on the protection and support of victims, from the reporting phase to judicial proceedings. Regarding the reporting phase, the directive introduces more gender-sensitive, safer and easier ways to reports acts of violence and requires professionals such as healthcare workers who suspect any imminent risk of serious physical harm for their patients to report it with-

out being hindered by confidentiality regimes (Article 16). Moreover, authorities will be obliged to conduct individual risk assessments (Articles 18 and 19) when the victim makes contact and to provide protection in a timely and coordinated manner (Article 20). Hopefully, this last measure could have an effect on the lack of reports of violence to the police, as one of its causes is a lack of trust in the authorities. Regarding the judicial proceedings, the directive provides that evidences or questions relating to the victims' private life can only be used when strictly necessary (Article 22). Moreover, victims would have the right to claim full compensation from offenders for damages, including costs for "healthcare services, support services, rehabilitation, loss of income and other reasonable costs that have arisen as a result of the offence or to manage its consequences, (...) physical and psychological harm and moral prejudice" (Article 26).

Other important provisions of the proposed directive refer to the necessity to provide dedicated support services to victims (Article 27), including rape crisis centers (Article 28), national helplines available free of charge all day long and all year round (Article 31), and targeted support to victims at an increased risk of violence. Moreover, Member States should also enhance their cooperation and coordination in the area of violence against women by exchanging best practices and consulting each other in criminal cases (Article 39). According to Article 44 of the proposed directive, Member States shall have a system in place for the collection, development, production and dissemination of statistics on violence against women or domestic violence every five years. This last kind of measure could contribute at shedding light on the actual scale of violence against women in the EU.

According to Article 50, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after entry into force] at the latest. The adoption of the new directive will require the vote of both the European Parliament and the Council, according to the ordinary legislative procedure.¹⁰⁷ As it usually happens, several amendments will probably be adopted before the directive will come into force.

107. Article 294 TFEU.

5.3.1 ... and main weaknesses

The proposed Directive on combatting violence against women and domestic violence has been subject for discussion among EU agencies and experts that are active in the field of EU Gender Equality Law. In particular, the discussion around the Directive has mainly focused on its grey areas, and its prospects for improvement. One of the main contributions to the discussion comes from WAVE (Women Against Violence Europe), which is a feminist network of over 150 European women's NGOs working towards prevention and protection of women and children from violence. On International Women's Day 2022, the WAVE Network welcomed the announcement of the proposal for an EU Directive specifically focused on the issue of violence against women and considered it a big step in the right direction.¹⁰⁸ However, the WAVE Network highlighted some of the main weaknesses of the proposed Directive in its more recent press release¹⁰⁹, and called to action to Members of the European Parliament to strengthen the proposed draft.

Ideally, the EU Directive should support, protect and strengthen victims' rights with a human rights, victim-centred and intersectional approach. However, the proposed directive seems to adopt more of an harm-centered, perpetrator-centered and not-enough-intersectional approach. The recent press release from WAVE sheds light on these weaknesses.

First, Stephanie Futter-Orel, Executive Manager at WAVE, argues that the current EU Directive proposal is created from a harms-based perspective, as the main target of this Directive is women who have experienced gender-based violence and therefore have specific needs because of the harm caused by this type of violence. However, *"needs are not the same as rights and the Directive falls short of fully recognizing the rights of victims of gender-based violence and the dispro-*

108. WAVE, "WAVE's Statement on the EU draft-Directive on combating violence against women and domestic violence," March 8, 2022, <https://wave-network.org/waves-statement-on-the-eu-draft-directive-on-combating-violence-against-women-and-domestic-violence/>

109. WAVE, "Feminist Funds and Women Specialist Services launch a call to action to Members of the European Parliament to strengthen the proposed draft EU Directive on combating GBV against women girls," June 2, 2022, <https://wave-network.org/prospera-wave-press-release-eu-directive/>

portionate impact gender-based violence has on women and girls”, she said. For this reason, WAVE proposes adopting a right-based approach ensuring the rights of the victims of gender-based violence are enforceable and upheld.

Second, other experts claim that the recent proposal focuses too much on criminalisation and too little on prevention of violence against women. More specifically, Irene Zeilinger, from Garance International, proposed refocusing the core of the EU Directive on prevention because focusing on criminalisation would mean letting violence occur and intervening when violence has already harmed victims the most. Moreover, Lisa Gauvin-Drillaud, co-founder of Stop-Fisha, tackles the importance of prevention of gender-based online violence, that should be underlined more in the final version of the Directive¹¹⁰, and strives for an emphasis on education on consent, gender equality, healthy sexuality and digital technology. Furthermore, when violence has already occurred, it is important to replace this ”perpetrator-centered” approach with a victim-centered approach, taking into account the complexity and danger of the woman pathway out of violence, as highlighted by Susana Pavlou, Director of the Mediterranean Institute for Gender Studies.

Third, the proposed Directive seems to lack a comprehensive intersectional approach. Adopting an intersectional approach would mean recognizing that all oppression is interconnected, since factors such as class, race, ability, age, religion, gender expression, gender identity and sex characteristics all overlap and create interdependent systems of discrimination or disadvantage. The proposed Directive contains one clause that takes an intersectional approach into account, according to which ”when implementing the measures under this Directive, Member States shall take into consideration the increased risk of violence faced by victims experiencing discrimination based on a combination of sex and other grounds so as to cater to their enhanced protection and support needs”(Article 2). However, much more can be done, and much more attention could be given to women in vulnerable

110. At present, the proposed directive refers to prevention of violence against women in Chapter 5, which contains only three articles, namely: Article 36 on preventive measures; Article 37 on training and information for professionals; and Article 38 on intervention programmes.

positions; in fact, the WAVE network expects the EU Directive to firmly assure the rights of black women, ethnicized and racialized women, LGBTQI+ women, women with dis/abilities, migrant and refugee women, and otherwise marginalized women.¹¹¹

5.4 Other measures by EU Member States and EU institutions

A new directive on preventing and combatting violence against women and domestic violence is certainly an important milestone in the process of eradicating this issue within the EU. However, an holistic comprehensive approach can be reached by complementing this directive with other measures adopted both at national and EU level.

On a national level, the Member States have an important role in combatting VAW, mainly because the EU has only limited competence in this field. Therefore, they have to take action to ensure the protection of women and girls in practice, for instance by exchanging information and best practices, conducting more research, gathering more data on the issue, training people who work with victims on a gender-sensitive approach, or improve facilities for victims such as shelters. A recent report published by the European Commission in 2022 on gender equality in the EU offers some examples of measures that have been adopted in the Member States in the latest years in the context of eliminating VAW¹¹²: in Portugal, for instance, the GAVA project (“Gabinete de Apoio a Vitima”, in english Victim Support Office) has been functioning for several years by now as a structure of care, monitoring and specialized support to victims of gender-based violence in the municipality of Odemira; in Slovenia, the project ‘Key online’ was created with a focus on raising awareness of girls in primary and secondary schools through workshops on how to recognize cyber violence and how to ask for support if they

111. WAVE, “WAVE’s Statement on the EU draft-Directive on combating violence against women and domestic violence”

112. EC, ed., *COMMISSION STAFF WORKING DOCUMENT. 2022 report on gender equality in the EU* [in English] (2021)

are experiencing it; ultimately, in 2021 the Finnish government submitted a bill to Parliament to attribute to the Non-Discrimination Ombudsman the additional role of rapporteur on violence against women, with the duty to monitor the issue but also assess measures and policies for its prevention and elimination.

On a EU level, the EU institutions could also take several actions to contribute to the issue. For instance, last year was the last of the EU's funded project called "Cybersafe", which started with the purpose of providing information and tools to prepare workshops on the issues of gender-based online violence among the Member States, in order to raise awareness and to encourage young people to engage in safe and responsible online behaviours. Moreover, the "WeToo Project" was recently funded under the EU's Rights, Equality and Citizenship programme with the aim of enhancing the capacities of frontline workers (social workers, anti-violence operators, women's clinics' medical staff etc) to identify gender-based violence cases. In the future, the European Parliament could keep pressuring the Commission with adopting a strategy and proposing directives on VAW. The Council, as requested by the Parliament, could include VAW in the list of cross-border crimes in Article 83(1) TFEU by adopting an unanimous decision. The same applies to hate speech and hate crime, as requested by the Commission in 2021. The Commission could adopt a specific Strategy against VAW to raise awareness on the topic at EU and national level, and, moreover, it could establish a European Observatory on VAW, that would become part of EIGE and contribute to the gathering of data on the issue.

5.5 Conclusion

In conclusion, the next step forward a strong EU action against the issue of VAW is the proposal for a new specific Directive to tackle the issue from its roots to its consequences. In fact, this Directive seems to have the potential to represent for the EU what the Istanbul Convention represents for its Parties: an all-encompassing legal instrument that sets legally binding standards specifically to prevent gender-based violence, protect victims of violence and punish perpetrators. The directive

goes a step further than the Convention, by explicitly criminalizing the different forms of online violence.

However, the directive is just one of the several steps that the EU and the EU Member States could take in the direction of creating a safer Europe for women. In fact, both at a national and EU level there are many measures that could be adopted and could support the directive to finally create a comprehensive legal framework in matters of violence against women.

Conclusion

Across the years, EU Gender Equality Law has been enriched with new legislative instruments that focus not only on economic and social rights of women but also on violence against women, which is an issue that obstacles the exercise of those rights and the very basis of them, the right to life. In fact, violence against women is not only the main gender inequality that women face but also the root cause of other gender inequalities because it obstacles women's participation in economic, social, political and cultural life. The action from both the EU Member States and EU institutions in this context have been fragmented for several years. In fact, the missing EU accession to the Istanbul convention and the lack of a specific binding legislation on the issue have made it difficult for the EU to have an effective impact on its eradication. However, something seems to have recently changed: the Covid-19 health crisis has been a tragedy for the European Union, and the world in general; nonetheless, the pandemic had the effect of being a driving force for a multitude of initiatives that have been adopted in the EU with the aim of slowing down the steep rise of cases of VAW, especially in the forms of domestic violence and online violence.

The conclusion of this thesis is that the European Union has finally made some important steps towards a comprehensive legal framework in matters of violence against women, with a major awareness of the scale and seriousness of the issue, especially after the Covid-19 pandemic. The proposed Directive seems to be the starting point of a journey to a renewed sensitivity in the EU towards improving gender equality, and reducing gender inequalities. Nonetheless, according to some experts of the WAVE Network, the new Directive still needs some adjustments, in order to embrace a rights-based, prevention-centered and intersectional approach. Apart from the directive, it is important to understand that a comprehensive approach may include other measures at a national and EU level, and an important dose of cooperation between the two.

After all, the European Union is the union of its Countries, and a country is the union of its citizens. Some countries are more gender equal societies than

others, as some people have more gender equal attitudes than others. For instance, the EU Nordic Countries - Sweden, Finland, and Denmark - have certainly shown to be leaders of gender equality, and quite aware of the issue of violence against women, despite the absence of a comprehensive legal framework on that issue at a EU level so far. In the end, the success of an EU directive on violence against women or any other measure is in the hands of the EU Member States, and its citizens. In fact, a directive is meant as a legislative act that sets out a goal but leaves to the individual countries the choice on how to reach that goal. Moreover, the previous chapters show that the EU has a shared - and limited - competence in matters of violence against women. It is indeed up to the Member States to take the responsibility for a massive change in reversing the scale of VAW, with the help and tools of the European Union.

The legal journey towards a complete gender equal EU is still long, but we are on the right path.

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Abbreviations

BBC: British Broadcasting Corporation

CoE: Council of Europe

CJEU: European Court of Justice

EC: European Commission

ECHR: European Court of Human Rights

EEC: European Economic Community

ECSC: Coal and Steel Community

EIGE: European Institute for Gender Equality

EGEI: European Gender Equality Index

EP: European Parliament

EU: European Union

Euratom: European Atomic Energy Community

FRA: Fundamental Rights Agency

GREVIO: Group of Experts on Action against VAW and Domestic Violence

ICT: Information and communications technology

IPVAW: Intimate Partner Violence Against Women

ISS: Statens Serum Institut

LGBTQI+: Lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI)

NGO: Non-Governmental Organization

OECD: Organisation for Economic Co-operation and Development

TUE: Treaty on the European Union

TFEU: Treaty on the Functioning of the European Union

UN: United Nations

VAW: Violence against Women

WAVE: Women Against Violence Europe

WHO: World Health Organization