

Master in Advanced European and International Studies

Applied European Policy and Governance Studies

*Progressive Milestone or Missed
Opportunity? A Critical Analysis of
Directive (EU) 2024/1385 on Combating
Violence Against Women and Domestic
Violence*

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List of Abbreviations

Council	Council of the European Union
EC	European Commission
EIGE	European Institute on Gender Equality
EP	European Parliament
EU	European Union
FGM	Female Genital Mutilation
FRA	Fundamental Rights Agency
GES	Gender Equality Strategy of 2020-2025
OLP	Ordinary Legislative Procedure
The Proposal	The European Commission Proposal for a Directive of the European Parliament and of the Council of 14 May 2024 on Combating Violence against Women and Domestic Violence
VAW	Violence Against Women
VAW Directive or Directive	The Directive EU 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence
VDL	Ursula von der Leyen mandate.

INTRODUCTION¹

In recent years, several high-profile cases across the European Union (EU) have brought the issue of violence against women (VAW) into the public spotlight. These cases highlight the ongoing seriousness and prevalence of the problem, despite advancements in legal protections and policies. Notable cases include Julie Van Espen (2019) in Belgium, the Cecchetti case (2023) in Italy, the Mazan process (2024) in France. These episodes demonstrate that violence against women remains a persistent structural problem within Member States and expose failures in prevention, protection, and prosecution at the national level. In addition, significant divergences between Member States' legal frameworks have resulted in a fragmented landscape across the EU. It helps explain the rationale for EU intervention, but it does not in itself guarantee that the EU Directive on Combating Violence Against Women and Domestic Violence offers an adequate response to the structural nature of the violence against women.

Against this background, this thesis asks *whether Directive (EU) 2024/1385 on Combating Violence Against Women and Domestic Violence constitutes a truly progressive legal development for gender equality in the EU.*² It explores the political and legal discussions surrounding the Directive and assesses how the final version differs from the Commission's original Proposal³.

Methodologically, the thesis employs process tracing to analyse the evolution of the Directive. It examines official institutional documents, legislative reports, and academic literature to identify key changes made during negotiations, the actors involved, and the motivations behind these changes.

¹ Perplexity and Grammarly were used for language editing, grammar review, assistance with structuring this master's thesis, and brainstorming formulations and ideas. All legal, research, analytical work, and final drafting decisions were made by the author.

² European Union, *Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence*, OJ L 202, 13 June 2024. From now on, it will be referred to as the VAW Directive or the Directive.

³ European Commission, *Proposal for a Directive of the European Parliament and of the Council on Combating Violence Against Women and Domestic Violence*, COM(2022) 105 final. From now on, it will be referred to as the Proposal.

The analysis is guided by a theoretical framework that combines liberal and radical feminist theories. It shows that the Directive primarily reflects a liberal feminist approach, though it also contains elements open to radical feminist critique. Furthermore, since the thesis aims to analyse the Directive and trace its development, it includes a description of the EU decision-making process, forming the first part of the study. The second part explains why the Commission proposed recognising violence against women at the EU level for the first time. It then compares the Proposal and the Directive chapter by chapter, highlighting differences, improvements, and setbacks. Feminist theories are used throughout this analysis. Finally, based on the comparative findings, the final chapter focuses on the catalogue of offences, the section with the most notable changes, and assesses the role of European actors in shaping the final version. It concludes with a critical evaluation.

CHAPTER 1: CONCEPTUAL AND INSTITUTIONAL FRAMEWORK

This chapter sets out the conceptual framework for analysing the VAW Directive. It argues that feminist theories, especially liberal and radical feminism, provide appropriate tools for assessing the Directive's goals and limitations. Liberal feminism serves as the primary lens, while radical feminism offers a complementary, critical perspective that challenges the liberal approach and interrogates the extent to which the Directive addresses the structural nature of violence against women. This chapter also presents the key features of the EU decision-making process to understand the institutional dynamics involved in creating EU law, setting the stage for the subsequent analysis of the Directive.

Section 1: Feminist Theory and the EU Directive on Combating Violence Against Women and Domestic Violence: A Liberal and Radical Feminist Analysis.

The conceptual framework for analysing the WAV Directive combines liberal and radical feminist theories. These perspectives provide both complementary and critical insights into the origins of gender-based violence and the state's role in tackling it. In this study, liberal feminism serves as the main theoretical perspective, as the Directive aligns with a typical liberal approach. As later discussed, it aims to combat gender-based violence through legal reforms, standard rights, and procedural safeguards, all aimed at advancing women's equality and protection within existing legal and institutional contexts.

Radical feminism is also incorporated because it has been pivotal in politicising violence against women, especially through the slogan “the personal is political,” the women's liberation movement, and critiques of the public/private divide. These views underscore violence against women as a structural element of patriarchy and a responsibility of the state, enabling a critical evaluation of the Directive's objectives and limitations. Collectively, these perspectives highlight both the strengths and weaknesses of the Directive's rights-based due diligence framework and provide criteria to assess its effectiveness in addressing violence against women.

A. Liberal feminism

Liberal societies historically excluded women from civil and political rights, believing only men, as rational humans, deserved such rights.⁴ Liberal feminism emerged to address this paradox, calling for women to be recognised as rational beings equal to men and advocating equal civil and political rights.⁵ Associated with the first wave of feminism (19th and early 20th centuries), it established itself as a distinct political and theoretical movement by applying Enlightenment ideas of reason, equality, and individual liberty to demands for women's participation in public life. Given this brief background, it is essential to analyse the main characteristics of liberal feminism as a theoretical framework, since these traits will be crucial in evaluating the Directive's position on gender-based violence.

A first and central characteristic of liberal feminism is its commitment to the idea that women are rational beings, equally capable of reason, self-determination, and moral judgment.⁶ As seen, the liberal doctrine, which characterised 'human' as a rational being entitled to liberty and rights, was, in practice, applied only to *men*. Crucially, liberal feminism insists that the inequalities between women and men are not natural or biologically determined but socially constructed.⁷ It is this rejection of biological determinism that forms the theoretical foundation of the liberal feminism demand for

⁴ Chris Beasley, "Modernist Emancipatory Feminism: Liberal Feminism – Wollstonecraft to Wolf," in *Gender and Sexuality: Critical Theories, Critical Thinkers* (London: Sage, 2005), 30.

⁵ Olympe de Gouges, *Déclaration des droits de la femme et de la citoyenne* (1791), arts. 1–17, orthographe modernisée, transcription d'Éliane Viennot, SIEFAR, <https://www.siefar.org/wp-content/uploads/2015/09/Gouges-Déclaration.pdf> (accessed 13 April 2026). With her *Déclaration*, de Gouges responded to the *Déclaration des droits de l'homme et du citoyen* by asserting that "women are born free and equal in rights with men" and claiming equal civil and political rights, including rights to freedom, property, security and divorce; Mary Wollstonecraft, *A Vindication of the Rights of Woman* (1792) 138. Wollstonecraft rejected the idea that women are inherently irrational. Instead, she believed that women should have access to the same educational opportunities as men so they could develop their rational abilities. Because women could demonstrate the same reasoning abilities as men, they, therefore, deserved the same rights and freedoms.

⁶ Loretta Kensinger, "(In)Quest of Liberal Feminism," *Hypatia* 12, no. 4 (1997), 184 (citing Valerie Bryson). Liberal feminism is "based on the belief that women are individuals possessed of reason, that as such they are entitled to full human rights, and that they should therefore be free to choose their role in life and explore their full potential in equal competition with men".

⁷ Socially constructed means it results from discriminatory laws, customs, and institutions that have systematically excluded women from public life and denied them the chance to develop and demonstrate their rational capacities

equal rights: if women's subordination is the result of unjust social arrangements rather than inherent incapacity, then reforming those arrangements is necessary.

Closely related to this is liberal feminism's focus on individualism, which is the second key characteristic of the theory. It conceptualises rights and freedoms as belonging to individuals rather than groups. According to Jaggard, the core idea of liberal feminism is that a woman should have the freedom to determine her social role, similar to a man.⁸ This view sees women as rational individuals motivated by *self-interest*. Thus, liberal feminism focuses on individual rights, presuming that all individuals are equal and entitled to these rights, rather than attributing rights solely based on gender.⁹

Bryson, however, criticises this individualistic perspective on feminist politics. Liberal individualism views society as composed of free individuals responsible for their own lives, with the state's role as ensuring equal rights and eliminating formal barriers. After that, it becomes each person's responsibility to make the most of their own circumstances. This premise clashes directly with what feminism needs to be able to say: that women suffer from a *collective, group-based* disadvantage that is not explained by individual choices or circumstances but by shared structural inequalities that affect women *as a group* precisely because they are women. As Bryson argues, "the liberal belief that it is up to each person to make the best of his/her own life clashes with feminism's awareness of group disadvantages and the need for collective action".¹⁰ Because liberal individualism can only recognise harm done to individuals, it struggles to conceptualise women's oppression as a collective experience rooted in structural power imbalances. Consequently, it is difficult to justify group-based political responses that effectively address this oppression.¹¹ Guney makes this limitation concrete in the context of violence against women. She argues that "domestic violence does not stem from individual factors, decisions, or characteristics, but from societal patriarchal structures that position men in

⁸ Kissinger, "(In)Quest of Liberal Feminism," 184 (citing Alison Jaggard).

⁹ Cottais, "Liberal Feminism," 9.

¹⁰ Valerie Bryson, *Feminist Political Theory: An Introduction*, 2nd ed. (New York, Palgrave Macmillan, 2003) 157.

¹¹ Example of group-based political responses: affirmative action, collective protection, and structural reform

a higher status in terms of power”¹². Therefore, the “invocation of an individualistic rights mechanism to reduce intricate power relations, whilst ignoring the patriarchal social constructions in a simplistic and formalistic manner, would not be sufficient to redress these inequalities”.¹³ This is where radical feminism, discussed in the next section, offers a different approach by shifting the focus from individual rights to collective oppression, emphasising that violence against women should be seen within the wider context of patriarchy that sustains it.

A third key characteristic is that liberal feminism is a reformist movement. Instead of trying to dismantle existing institutions, it relies on them - the law, the state, and democratic processes - to address discriminatory patterns. It believes in the system's capacity to be reformed.¹⁴ Here, law is seen as the key instrument for removing obstacles to women's equal participation in public life. This reformist approach is evident in the VAW Directive, which mainly addresses gender-based violence by criminalising specific offences, standardising victims' rights, and providing procedural safeguards, with the objective of creating a coordinated legal and institutional framework. However, it does not directly target the underlying root causes.

Fourthly, and particularly in relation to the research, liberal feminism emphasizes the distinction between the public and private spheres. Its main focus has been on public sectors such as the labor market, political participation, education, and legal rights. This perspective stems from the idea that, historically, liberal theory has linked reason and citizenship with the public sphere, which has traditionally marginalized women, confining them to the private domestic realm.¹⁵ According to this view, women will attain liberation once obstacles to their involvement in the public sphere are removed and their civil rights are upheld.¹⁶

¹² Gizem Guney, “The Istanbul Convention: A Radical Feminist Instrument?” (PhD diss., University of Sussex 2018), 61.

¹³ Ibid.

¹⁴ Cottais, “Liberal Feminism,” 2. By working within the prevailing political and legal systems, liberal feminism has achieved concrete results: many liberal feminist campaigns are credited with legal, economic, social, and political changes that have enhanced women's lives. See Kensinger, “(In)Quest of Liberal Feminism,” 187.

¹⁵ Ibid., 184 (citing Alison Jaggar).

¹⁶ Ibid.

However, this vision is contestable. Bryson argues that the public/private division is “heavily gendered, with women linked to the private and men to the public,” and that this perspective ultimately undermines the activities traditionally associated with the private sphere.¹⁷ By treating the private sphere as outside the realm of politics, liberal feminism renders invisible what takes place *within* it. Issues such as domestic violence, sexual coercion, and unequal distribution of caring responsibilities all become personal problems rather than political issues. Therefore, this distinction hinders the recognition that private aspects of life can actually be the arenas of sexual politics or oppression.¹⁸ Adding on that, women’s private responsibilities directly limit their capacity to engage equally in public life. This leads to disparities in income, career progression and political representation.¹⁹

Okin, a liberal feminist, also insists that family and domestic life cannot be excluded from political and normative scrutiny. She broadly argues that the public/private separation is not a neutral boundary between ‘political’ and ‘non-political’ spheres, but a tool that enables liberal theory to ignore the power relations that structure households. For her, the traditional gender-based family structure is key in fostering unequal power dynamics, as women’s reliance on men economically increases their susceptibility to male dominance.²⁰ These family structures influence individuals’ opportunities, economic independence, and their ability to engage as equals in society.²¹ Okin argues that these issues should be considered in the context of justice rather than as private concerns.²²

Yet, this limitation is especially important for the study of violence against women. Traditionally seen as a private issue outside the scope of public law, such violence reveals

¹⁷ Bryson, *Feminist Political Theory: An Introduction*, 155.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Susan Moller Okin, “Justice and Gender,” *Philosophy & Public Affairs* 16, no. 1 (1987), 42–49, 16. Okin presents an internal critique of liberal theory, inspired by Rawls. She starts with two Rawlsian assumptions: first, that sex is a morally arbitrary characteristic, and second, that principles of justice regulate society’s ‘basic structures’—major institutions shaping individuals’ life chances. She argues that a coherent liberal theory should treat the family as a fundamental institution and apply its justice principles to its internal organization. In her view, the persistent gendered division of labor, women’s economic dependence, and their vulnerability to male authority within the family demonstrate that existing liberal societies do not meet their own standards of equal liberty and fairness.

²¹ *Ibid.*

²² *Ibid.*, 51–52.

the blind spot Bryson and Okin identify in the liberal framework. A strategy that depends on legal reform to combat gender-based violence must confront the challenge of using tools to uncover a problem that liberal theory itself has often obscured. Radical feminism has engaged with this tension more explicitly.

Liberal feminism is best characterised as a form of feminism that advocates equal opportunity rather than equal outcomes. Its primary aim is to ensure that all individuals are treated equally and similarly. The equality it advocates is *formal equality*, emphasising equal treatment of women and men by focusing on their similarities.²³ Jaggar notes that “liberal feminists aim to eliminate laws that assign different rights, responsibilities, and opportunities to women and men. They also oppose protective legislation for women, arguing that everyone should be subject to the same health and safety standards.”²⁴

To complete the formal understanding of equality, liberal feminism advocates for a neutral state that treats all individuals equally.²⁵ It emphasises that the state’s role is not to address structural inequalities, but to ensure that individuals, regardless of sex, compete on equal terms by removing discriminatory laws and expanding access to institutions traditionally reserved for men. Therefore, “as long as the state is neutral towards all individuals, it is taken to be promoting equality”.²⁶

Bryson points out a deeper conflict. The push for formal legal equality results in the “Wollstonecraft’s dilemma”: women should be treated the same as men *only if they can behave like men*, based on a male standard of equality. Although presented as universal, this standard is actually strongly gendered. Acknowledging the structural conditions that differentiate women’s situation from men’s risks being seen not as addressing inequality, but as emphasising women’s difference and potential inferiority.²⁷ In other words, formal equality puts women in a difficult position: claim sameness with men to gain equal rights on terms that ignore the structural inequalities that affect their lives, or claim recognition

²³ Guney, “The Istanbul Convention: A Radical Feminist Instrument?” 28-29.

²⁴ Kensinger, “(In)Quest of Liberal Feminism,” 185-186 (citing Alison Jaggar).

²⁵ Guney, “The Istanbul Convention: A Radical Feminist Instrument?” 29.

²⁶ Ibid.

²⁷ Bryson, *Feminist Political Theory: An Introduction*, 148. For instance, the domestic responsibilities, caring burdens and specific violence women face.

of their unique situation, risking the reinforcement of stereotypes that justify their subordination.

Guney then concretises this theoretical paradox in the legal context, demonstrating its practical consequences on two levels. Overall, the state's basic duty to treat everyone equally, including women on the same terms as men, is insufficient to address disadvantages rooted in historical and structural gendered frameworks.²⁸ More broadly, when issues affecting women mainly arise from the gender-based distribution of power outside direct discrimination, liberal feminist approaches emphasising procedural equality often fail to provide an effective legal response.²⁹ At the specific level of violence against women, restrictions on formal equality become particularly evident. When liberal feminism advocates for equality between women and men, this often results in classifying victims and perpetrators without regard to gender. In practice, a formal equality framework would require the state to treat a woman victimised by her male partner, a man victimised by his female partner, and violence by a stranger as fundamentally the same, all merely categorised as violence.³⁰ Therefore, liberal feminism's view on equality overlooks the fact that women are more frequently victims of violence, which stems from patriarchal systems.³¹ Taken together, these limitations point to the need for a complementary theoretical framework capable of naming what liberal feminism cannot: that violence against women is not a series of individual harms to be remedied only through neutral legal mechanisms, but a structural and collective phenomenon rooted in patriarchal power. This is recognised in the radical feminism theory, to which this analysis now turns.

Before moving forward, it is important to summarise the core insight from liberal feminist theory for examining the VAW Directive. This perspective's emphasis on formal equality will be used to evaluate whether gender-neutral standards mask the gendered aspects of

²⁸ Guney, "The Istanbul Convention: A Radical Feminist Instrument?" 29. For instance, regarding pregnancy-related issues, men do not have access to maternity leave or reproductive rights, so legal arguments for women's protections frequently fall short. This is because, within a framework that measures equality against male standards, denying these rights is not seen as discrimination.

²⁹ Ibid.

³⁰ Ibid., 30.

³¹ Ibid., 29.

violence. Its reformist stance and acceptance of the public/private divide will question the effectiveness of current institutions and legal frameworks in tackling VAW. All these characteristics will guide the analysis for understanding the Directive's aims and constraints.

B. Radical feminism

As the preceding section made clear, liberal feminism's focus on formal equality, individual rights, and reform-oriented legal approaches overlooks several core aspects of violence against women. It views the state as a neutral defender of rights rather than an institution capable of perpetuating gendered power dynamics. Violence against women is seen as isolated harm that can be fixed through legal means, rather than a structural phenomenon rooted in patriarchal dominance. Additionally, the private sphere, where most gendered violence occurs, is rendered invisible under the public/private distinction central to liberal thought. Radical feminism confronts these limitations directly, providing a framework that explicitly states what liberal feminism cannot, which is that violence against women is not an individual anomaly but an inherent aspect of patriarchal power.

Radical feminism is part of the second wave of feminism, emerging from a broader surge of social and political activism in the 1960s.³² However, in these movements, efforts to oppose women's subjugation were often ignored or dismissed. This led to the emergence of Women's liberation movements, which sought to challenge male dominance in response to gender-based injustices.³³

The foundational characteristic of radical feminism is its identification of patriarchy as the root cause of women's oppression. Here, 'radical' is used in its etymological sense of going to the *root*.³⁴ Sexism is seen as the primary oppression: unless it is eradicated, it

³² Nancy Fraser, "Feminism's Two Legacies: A Tale of Ambivalence," *The South Atlantic Quarterly* (2015): 699; Charlotte Kroløkke and Anne Scott Sørensen, *Gender Communication: Theories & Analyses: From Silence to Performance* (London: SAGE, 2006), 8–9. Radical feminism emerged from global radical youth movements that opposed imperialism, racial discrimination, sexual oppression, and capitalism. However, in these movements, women were relegated to secondary positions, with men dominating strategies and public discourse. See Bryson, *Feminist Political Theory: An Introduction*, 164.

³³ Fraser, "Feminism's Two Legacies: A Tale of Ambivalence," 699.

³⁴ Breanne Fahs, "Feminist Frictions: The Urgent Need for Radical Feminism Today," *Signs: Journal of Women in Culture and Society* 49, no. 2 (2024), 480.

will continue to generate and sustain other forms of domination.³⁵ Therefore, radical feminists focus on the underlying structures that produce women's oppression and call for a transformation of the entire system.

Patriarchy is conceptualised as a system of structures and institutions created and maintained by men to uphold and reproduce male dominance and female subordination.³⁶ It secures privileges for men as a group in the private, public, economic, and political spheres. This system operates through institutions such as law, religion, and the family, along with ideologies that maintain the idea of women's natural inferiority.³⁷

MacKinnon expands this analysis into a theory of gender dominance, suggesting that inequality between women and men is fundamentally embedded in the very organising principle of social relations.³⁸ From her perspective, liberal feminism's emphasis on formal equality and equal treatment rooted in similarity preserves underlying male dominance, since the very concept of equality has been shaped by a male standard. What counts as the standard, the neutral, the universal is, in fact, male experience elevated to a general principle. From this perspective, "the state is male in the feminist sense: the law sees and treats women the way men see and treat women", so that the liberal state "coercively and authoritatively constitutes the social order in the interest of men as a gender".³⁹ This makes law and the state central mechanisms through which patriarchy is maintained rather than neutral tools for its reform.

Carol Smart reinforces MacKinnon's critique by showing that law is indeed a patriarchal institution through law is sexist, law is male, and law is gendered.⁴⁰ Through her concept,

³⁵ Robyn Rowland and Renate Klein, "Radical Feminism: Critique and Construct," in Sneja Gunew (ed.), *Feminist Knowledge: Critique and Construct* (London: Routledge, 1990), 271-272. The other forms of domination are racism, class exploitation, ageism and economic exploitation.

³⁶ *Ibid.*, 277.

³⁷ *Ibid.*

³⁸ Catherine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1991), 237-238.

³⁹ *Ibid.*, 161-162.

⁴⁰ Carol Smart, "The Women of Legal Discourse," *Social & Legal Studies* 1, no. 1 (1992): 31-32. *Social and Legal Studies* 31-33. She highlights three distinct stages of its expression. At the first stage, the *law is sexist*: it actively disadvantages women by setting different, unfair standards (allocating fewer resources, denying equal opportunities, and ignoring harms specific to women). At the second stage, the *law is male*: the principles of objectivity and neutrality are not universal but rooted in masculine values elevated as the norm. Consequently, when women stand before the law, masculine standards are applied. At the third stage,

law produces and fixes certain forms of masculinity and femininity rather than applying neutral rules to already-given, gender-free subjects. Therefore, the law's claim to neutrality is misleading. It conceals the ways in which legal norms, categories and procedures are structured around and in the interests of male experience.

As seen, formal equality presupposes that women and men are similarly situated. However, presupposition is fundamentally false. According to MacKinnon, women and men do not start from the same position, and applying identical rules to structurally unequal groups does not produce equality but reproduces and legitimises existing hierarchies of dominance and subordination.⁴¹ From this perspective, formal equality is a mechanism of the perpetuation of women's oppression. It renders invisible the structural conditions that produce inequality by threatening them as irrelevant to the question of equal treatment. What radical feminism demands instead is substantive equality: an approach that takes as its starting point not the similarity between men and women but the structural power relations between them, measuring equality not by whether women are treated the same as men but by whether the conditions of their subordination are being actively dismantled.⁴² This distinction is crucial for evaluating the Directive. If its equality framework remains grounded in formal equality, it risks reproducing the liberal blind spot that radical feminism identifies, addressing the symptoms of violence against women while leaving untouched the structural conditions of male dominance that produce it.

Additionally, socialisation processes ensure that women and men adopt behaviours and beliefs appropriate to their roles as members of dominant or subordinate groups.⁴³ In this sense, patriarchy is both embedded in formal institutions and lived out in everyday interactions, from intimate relationships to the workplace and public space.

the *law is* gendered: law does not merely treat men and women differently but actively helps create what "men" and "women are.

⁴¹ Catherine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, MA: Harvard University Press, 1987), 32–35; See also MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1991), 215–221.

⁴² *Ibid.*, 40–41; See MacKinnon, *Toward a Feminist Theory of the State*.

⁴³ Rowland and Klein, "Radical Feminism: Critique and Construct," 277. Bryson, *Feminist Political Theory: An Introduction*, 166–167: patriarchy is primarily maintained by a process of conditioning that begins with childhood socialisation in the family and is reinforced by education, literature and religion to the point that its values are internalised by women and men.

Thus, radical feminists argue that women's oppression is systemic, captured in Ruth Bleier's definition: "*By patriarchy I mean the historical system of male dominance, a system committed to the maintenance and reinforcement of male hegemony in all aspects of life – personal and private privilege and power as well as public privilege and power. Its institutions direct and protect the distribution of power and privilege to men.*"⁴⁴

Connected to this is the view that violence against women is a patriarchal control mechanism. Radical feminism analyses men's violence, highlighting its deep roots in culture, which makes it seem normal and justified.⁴⁵ Beebeejaun-Musulium's research supports this understanding: it concludes that abuse stems from the patriarchal system and serves as a tool for men to maintain their dominant position, especially when that dominance is perceived to be under threat.⁴⁶

Thus, men's violence against women is simultaneously a cause and consequence of unequal power relations between men and women.⁴⁷ This circular process is conceptually important. Violence sustains women's subordination by restricting their freedom, independence, and participation in public life, while structural inequality between men and women creates conditions where violence becomes normalised and facilitated. Moreover, feminist perspectives on such violence encompass physical force or threats, but also sexual, psychological, verbal, and economic abuse, as well as financial exploitation, coercion, control, harmful traditional practices, and violence occurring both online and offline.⁴⁸ This structural view of violence has significant implications for the Directive: if violence against women both results from and sustains gender inequality in a self-perpetuating cycle, then a legal approach mainly aimed at criminalising individual acts and punishing perpetrators can only tackle part of the issue. It addresses specific forms of violence but does not change the underlying structural factors that produce it.

⁴⁴ Rowland and Klein, "Radical Feminism: Critique and Construct," 277.

⁴⁵ Ibid., 287.

⁴⁶ See Zareen Nishaat Beebeejaun-Muslum, "Gender Relation, Patriarchal Control and Domestic Violence: A Qualitative Study in Mauritius," *European Journal of Humanities and Social Sciences* 4, no. 3 (2024).

⁴⁷ Antonio Álvarez del Cuvillo, Fabio Macioce, and Sofia Strid, "Feminist Political and Legal Theories," in Dragica Vujadinović, Mareike Fröhlich, and Thomas Giegerich (eds.), *Gender-Competent Legal Education* (Cham: Springer, 2023), 73.

⁴⁸ Ibid., 74.

A third key characteristic of radical feminism is the claim that the personal is political. This slogan captured the challenge posed by the liberal distinction between the *public sphere* of law and politics and the *private sphere* of family and intimate relations, considered beyond political scrutiny. As seen, liberal feminism largely accepts the public/private division by focusing its demand on equal access to the public sphere and leaving the private sphere untouched.

This liberal vision is structurally embedded in international human rights law itself. The public realm is the space where states are active and accountable, while the private realm functions as a control-free zone into which law is not meant to intrude.⁴⁹ Consequently, this division has historically excluded ‘normal’ private acts such as domestic violence from being recognised as a human-rights violation at the international level.⁵⁰ By insisting that what happens within couples and families must be treated as political, as this sphere reflects and reinforces patriarchal social order, radical feminism directly challenges the liberal public/private division and exposes it as a further mechanism of women’s oppression.

This theoretical claim is grounded methodologically in women’s lived experiences. Radical feminism, as Rowland and Klein stress, is woman centred. It creates a new theory of women’s oppression out of women’s own experience.⁵¹ The primary tool for achieving this was consciousness-raising groups in which women shared and collectively analysed their own lives, revealing that what had previously been experienced as individual problems were, in fact, systematic features of male domination.⁵² Through this process and activism, radical feminism politicised the issue of violence against women, shifting it from a private concern to a recognised crime and public matter, requiring institutional intervention.⁵³

⁴⁹ For the analysis, see Guney, “The Istanbul Convention: A Radical Feminist Instrument?” 53-60.

⁵⁰ Ibid., 55-56.

⁵¹ Rowland and Klein, “Radical Feminism: Critique and Construct,” 271-272.

⁵² Bryson, *Feminist Political Theory: An Introduction*, 164-165.

⁵³ Cottais, “Radical Feminism,” 10; Kensinger, “(In)Quest of Liberal Feminism” 189.

This politicisation has important implications for state responsibility. Radical feminists view the state as a patriarchal institution, reflecting and promoting men's interests, since its structure and laws are constructed and organised by men to serve male dominance.⁵⁴ Because of its patriarchal features, authorities have often hesitated to intervene in the private sphere or offer sufficient support for women seeking to escape domestic violence. In this sense, the state can be seen as a perpetrator of women's oppression.⁵⁵ It explains why radical feminists are reluctant to collaborate with it and actually advocate for the abolition of its patriarchal structure.⁵⁶

However, Bryson cautions against seeing the state as a uniform instrument of patriarchal oppression that feminists should reject outright. Instead, she sees the state as a conflict zone, biased against women but not impossible to challenge.⁵⁷ But to do so, it is crucial to understand the underlying power dynamics and the challenges women face.⁵⁸ This nuanced view is important for assessing the EU Directive. While radical feminism highlights the Directive's flaws, it does not argue that legal tools are entirely ineffective. Instead, it calls for the state to take proactive, transformative action by addressing the root causes of violence and transforming the structural conditions that sustain male dominance.⁵⁹

The principle of due diligence offers a way to redefine state responsibility for violence against women. Instead of holding individual perpetrators accountable, due diligence is seen as a *positive obligation for states*: preventing, investigating, and punishing gender-based violence, as well as addressing the institutional practices and social conditions that facilitate such harm.⁶⁰ It challenges the traditional public/private separation because it

⁵⁴ MacKinnon, *Toward a Feminist Theory of the State*, 161-162.

⁵⁵ *Ibid.*

⁵⁶ Cottais, "Radical Feminism," 8.

⁵⁷ Bryson, *Feminist Political Theory: An Introduction*, 196-197.

⁵⁸ *Ibid.* She illustrates this statement with an example: a law granting women the right to leave abusive husbands is insufficient if enforcement is biased by a sexist police force rooted in a culture linking sexuality with domination. However, when such laws are part of a broader feminist movement, focusing on exposing violence, making it unacceptable, increasing police accountability, providing safe shelters, and boosting women's economic independence, they can be significant achievements.

⁵⁹ Cottais, "Radical Feminism," 10.

⁶⁰ Federica Valerio, "Reframing Institutional Responsibility for Gender-Based Violence Against Women: Feminist Legal Theory, International Law and Due Diligence," *Violence Against Women* (2026), 3, 8–10. Viewed in this way, failures such as ineffective investigations, or causing secondary victimisation are seen

treats violence by private individuals as a matter of state responsibility whenever authorities fail to act. In these situations, the state is no longer perceived as neutral but becomes implicated in the harm.⁶¹

Interpreted through a feminist lens, due diligence becomes a principle of responsiveness, requiring the state to combat impunity not primarily by increasing penalties but by ensuring accountability.⁶² It would require institutions to take women's experiences seriously and to respond accordingly.⁶³ For this thesis, due diligence is an important element in the analysis of the Directive, notably in examining the positive obligations it imposes on states to modify the structural conditions that facilitate such violence.

This thesis uses radical feminism to critique the EU's response to VAW. It will help to examine whether the Directive perceives VAW as isolated acts or as part of a broader system of women's control. The saying 'personal is political' would be used to analyse how the Proposal politicises such violence and holds States accountable. Its review of gendered institutions within the state and legal systems will help determine if the criminal justice response risks re-victimisation or seeks to challenge it. By distinguishing between formal and substantive equality, this theory will help assess whether the Directive addresses underlying systemic gender inequality or merely formal equality. These insights will guide the analysis from a radical feminist perspective.

Section 2: The EU Decision-Making Process

Understanding how the European Union makes decisions across its three main institutions is also crucial for analysing the VAW Directive. The institutions have to cooperate to institutionalise legislation, but it is not always easy to reconcile these bodies because the European Commission (Commission) represents the EU's overall interests, the European Parliament (EP) represents the citizens, and the Council of the European Union (Council)

as forms of institutional violence - harms caused by identifiable institutions, their policies, decisions, and omissions that may lead to state responsibility.

⁶¹ Ibid., 5 and 7.

⁶² Ibid., 8 and 11.

⁶³ Ibid.

represents the governments of the EU Member States.⁶⁴ The process by which the policies are typically decided is the ordinary legislative procedure (OLP), as well as the special legislative procedure. This subchapter examines the OLP, the procedure used for EU Directive 2024/1385. During this process, all three institutions participate in decision-making.

Before any proposal, the Commission conducts an impact assessment to evaluate the potential economic, social, and environmental effects.⁶⁵ At the same time, national parliaments can submit reasoned opinions, believing the proposal breaches the subsidiarity principle.⁶⁶ After this, the OLP begins according to Article 294 TFEU. It first starts with a proposal from the Commission, exercising its right of initiative. In this process, both the EP and the Council decide jointly and equally on whether to adopt the proposal. Under the OLP, the Parliament and the Council can hold up to three readings, with the possibility of ending the procedure at any stage if agreement is reached.⁶⁷ The Figure below illustrates the main OLP steps.⁶⁸

⁶⁴ European Union, “Policy, Law – Decision-Making Process,” European Union, updated 2026, https://european-union.europa.eu/institutions-law-budget/law/how-eu-policy-decided_en (accessed April 29, 2026). Additionally, the European Economic and Social Committee and the Committee of the Regions may be consulted to issue non-binding opinions on proposals within their areas of competence.

⁶⁵ Ibid. The Impact Assessment Report details the advantages and disadvantages of the policy and considers input from NGOs, industry groups, national authorities, and expert panels to gather diverse perspectives. During this process previous policies and laws are considered, along with national governments' opinions on whether the issue should be handled at the national rather than the EU level, in accordance with the subsidiarity principle.

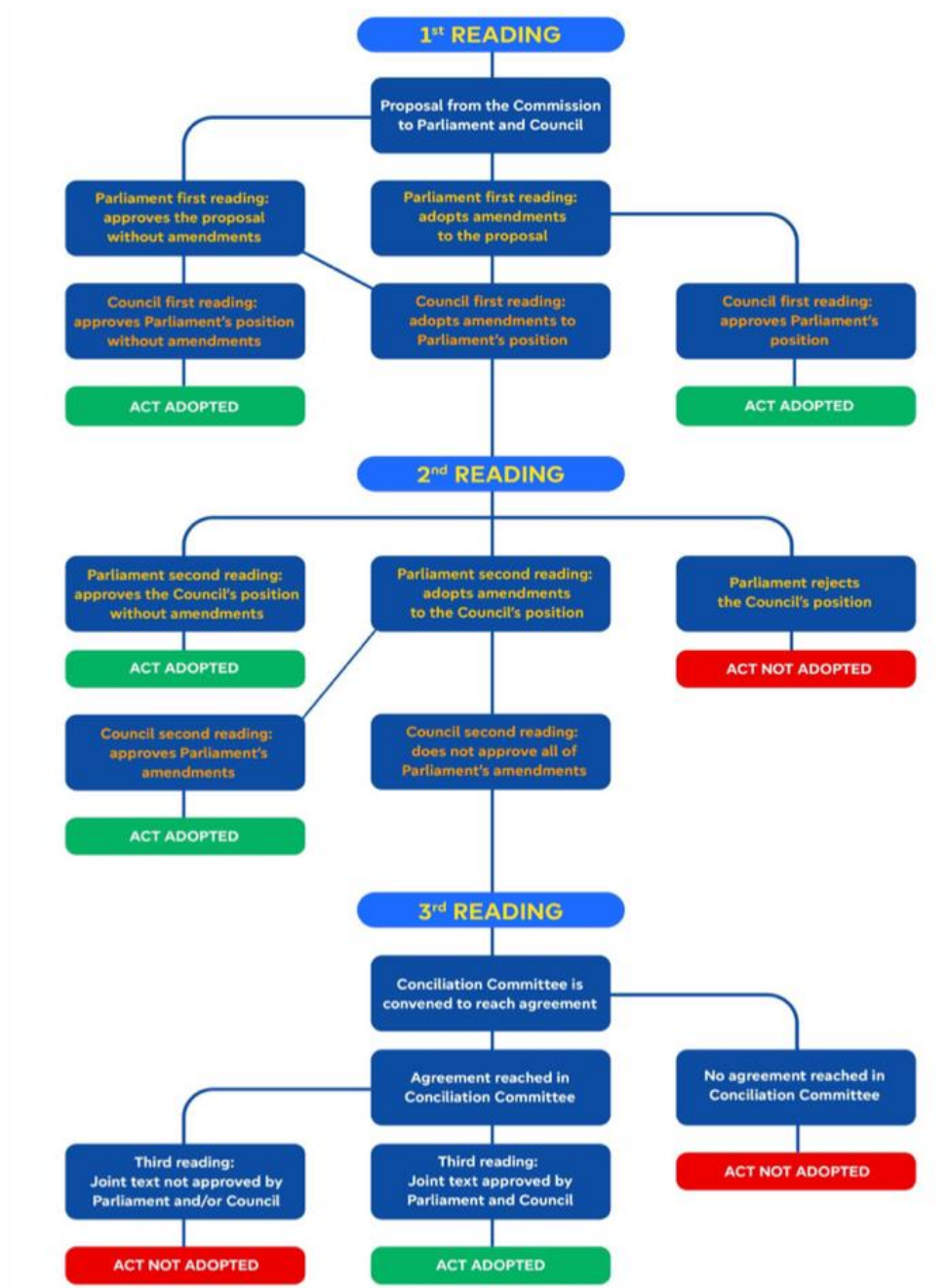
⁶⁵

⁶⁶ European Union, *Consolidated Version of the Treaty on European Union*, Official Journal C 326, 26 October 2012, art 5(3). This procedure is known as the “Subsidiary control mechanism,” but for this research, it is unnecessary to delve into it in detail.

⁶⁷ Council of the European Union, “Ordinary Legislative Procedure,” Council of the EU, updated 2026, <https://www.consilium.europa.eu/en/council-eu/decision-making/ordinary-legislative-procedure/> (accessed April 29, 2026); European Union, *Consolidated Version of the Treaty on the Functioning of the European Union*, Official Journal C 326, 26 October 2012, arts 289 and 294.

⁶⁸ European Parliament, *Handbook on the Ordinary Legislative Procedure: A Guide to How the European Parliament Co-Legislates* (Brussels: European Parliament, Legislative Activities Unit (LEGI), Secretariat General, December 2024), 24, https://www.europarl.europa.eu/cmsdata/292561/OLP_Handbook_Dec2024_EN.pdf (accessed April 29, 2026).

The ordinary legislative procedure step by step (Article 294 TFEU)



During the first reading, the Parliament and the Council analyse the proposal simultaneously. The first step is taken by the EP, which adopts a draft report from the responsible committee. It can either adopt the proposal with or without amendments or reject it. The European Committee establishes a negotiation team, with a Rapporteur as its leading figure. After the report is drafted, the document reaches the plenary, which, by

approving the mandate, gives the Rapporteur the green light to start the informal meetings.⁶⁹ Regarding the Council, the proposal is reviewed technically by the responsible Working Party.⁷⁰ Next, a political step occurs in COREPER, which may either approve the Working Party's work or modify it to establish a mandate.⁷¹ After the European Parliament has proceeded further, it is the Council's turn to adopt the position of the Parliament at first reading. It can either accept the EP amendments, thereby adopting the legislative act, or propose further amendments and adopt a different stance during the first reading. This alternative position, known as the "General Approach," is then submitted to Parliament for a second reading.⁷²

In the meantime, informal meetings called trilogues can occur. During these sessions, the COREPER president, the Council Secretariat, the Committee Chair, the rapporteur, and their Shadows engage, with oversight from Senior Officials of the Commission. They discuss the proposal and collaborate to reach a compromise, resulting in a provisional political agreement likely to become law.⁷³ Although not explicitly mentioned in the Treaties, trilogues have become the main venue for interinstitutional negotiations.⁷⁴

⁶⁹ European Parliament, "Overview – Ordinary Legislative Procedure," European Parliament, updated 2026, <https://www.europarl.europa.eu/olp/en/ordinary-legislative-procedure/overview> (accessed April 29, 2026).

⁷⁰ Working parties are part of the EU Council's preparatory bodies. They examine specific topics and issues thoroughly, providing the Council with detailed analysis before any discussions or decisions are made during a Council meeting. See Council of the European Union, "The Council's Working Parties," Council of the EU, updated 2026, <https://www.consilium.europa.eu/en/council-eu/how-the-work-in-the-council-is-organised/the-council-s-working-parties/> (accessed April 29, 2026).

⁷¹ Council of the European Union, "Ordinary legislative procedure". COREPER, the Committee of the Permanent Representatives of EU member states, serves as the primary preparatory body for the Council of the European Union. Its main function is to coordinate and prepare for various Council meetings by examining agenda items in advance. COREPER consists of 'permanent representatives' from each member state, who hold ambassadorial status to the EU, along with their deputies. These representatives negotiate on behalf of their governments. There are two groups within COREPER: Coreper I, which includes deputy permanent representatives, handles issues related to Agriculture, Fisheries, Competitiveness, Education, Youth, Culture, Sports, Employment, Social Policy, Health, Consumer Affairs, Environment, Transport, Telecommunications, and Energy. Coreper II comprises permanent representatives and prepares work for the Economic, Financial, Foreign Affairs, General, and Justice and Home Affairs Councils. Council of the European Union, "What is Coreper?," Council of the EU, updated 2026, <https://www.consilium.europa.eu/en/council-eu/how-the-work-in-the-council-is-organised/what-is-coreper/> (accessed April 20, 2026).

⁷² Council of the European Union, "Ordinary legislative procedure". These steps of the procedure are not subject to a time limit.

⁷³ For more information on Trilogues: European Parliament, "Interinstitutional Negotiations," European Parliament, updated 2026, <https://www.europarl.europa.eu/olp/en/interinstitutional-negotiations> (accessed April 29, 2026) See Figure 2 Annex.

⁷⁴ European Parliament, "Overview – Ordinary legislative procedure". The majority of legislative files now reaching agreement during the first or second reading through informal compromises

However, if the Council and Parliament cannot agree, the process moves to the second reading, following a similar procedure.

Since the VAW Directive was adopted at first reading, the subsequent stages of the OLP (second and third readings) are not analysed in this thesis. For a general overview of these stages, see the Figure above presenting the OLP.

Having outlined the general legislative process, it is helpful to place the VAW Directive within this context. The Commission presented its proposal on 8 March 2022, deliberately coinciding with International Women’s Day, and the final act was published in the Official Journal on 25 May 2024, nearly two years later. In line with the principle of conferral⁷⁵, the Directive is based on Articles 82(2) and 83(1) TFEU, which empower the EU, respectively, to lay down minimum rules on aspects of criminal procedure and victims’ rights, and on the definition of criminal offences and sanctions in specified areas of serious cross-border crime.⁷⁶ In very broad terms, the VAW Directive aims to use this dual legal basis to criminalise forms of violence that disproportionately affect women and to enhance the protection and support available to victims across the Union. A more detailed examination of the Directive’s objectives and substantive content will be provided in Chapter 2.

Applying the OLP to the Directive, the Commission made the proposal, which Helena Dalli, the Commissioner for Equality at DG JUST, was responsible.⁷⁷ For the EP, the relevant Committees were Civil Liberties, Justice and Home Affairs (LIBE), with Incir from the S&D as the Rapporteur; and Women’s Rights and Gender Equality (FEMM), with Frances Fitzgerald as Rapporteur. Secondary committees include Budget (BUDG),

⁷⁵ European Union, Treaty on the Functioning of the European Union, art. 294; see also European Parliament, “Overview – Conciliation,” European Parliament, updated 2026, <https://www.europarl.europa.eu/olp/en/conciliation/overview> (accessed April 29, 2026).

⁷⁶ European Commission, *Proposal for a Directive of the European Parliament and of the Council on Combating Violence Against Women and Domestic Violence*, 8–9.

⁷⁷ Law Tracker, “Procedure 2022/0066 (COD) – Proposal for a Directive of the European Parliament and of the Council on Combating Violence Against Women and Domestic Violence,” https://law-tracker.europa.eu/procedure/2022_66?lang=en (accessed April 29, 2026); European Parliament, “Procedure File: 2022/0066(COD) – Combating Violence Against Women and Domestic Violence,” Legislative Observatory, [https://oeil.europarl.europa.eu/oeil/en/procedure-file?reference=2022/0066\(COD\)](https://oeil.europarl.europa.eu/oeil/en/procedure-file?reference=2022/0066(COD)) (accessed April 29, 2026).

represented by Alexandra Geese from the Greens, which evaluates the financial implications of the proposal; Employment and Social Affairs (EMPL), with Ros Estaras Ferragut, analysing impacts on the labour market and employment conditions; and Legal Affairs (JURI), with Manon Aubry from the Left, reviewing the legislative text's legal basis and consistency.⁷⁸

Before reaching the ministerial level, the text is reviewed by the Council's technical working groups, consisting of Member States' national experts. In this case, the group is Judicial Cooperation in Criminal Matters (COPEN), which assesses proposals related to the mutual recognition of judicial decisions, procedural rights, information exchange, and tools to support cross-border criminal cooperation.⁷⁹ It then reports to the Justice and Home Affairs Council (JHA).⁸⁰

These entities assist in preparing the Council for meetings by bringing together relevant ministers to achieve agreements. The list of ministries involved is not publicly disclosed; however, it can be inferred that the Justice Minister and, if applicable, the Gender Equality Minister participate in the discussions. Participation may also vary depending on the specific topic being discussed. In addition, the negotiation continued across several presidencies, beginning with France (January to June 2022) and ending with Belgium (January to June 2024).⁸¹ Consequently, this is an intergovernmental process: the Council's final position emerges from balancing different national interests, steadily harmonising them until consensus is achieved, after which it is negotiated with the European Parliament.

⁷⁸ Law Tracker, "Procedure 2022/0066 (COD)" and European Parliament. Legislative Observatory.

⁷⁹ Council of the European Union, "Working Party on Judicial Cooperation in Criminal Matters (COPEN)," Council of the EU, <https://www.consilium.europa.eu/en/council-eu/search-the-list-of-council-preparatory-bodies/working-party-on-judicial-cooperation-in-criminal-matters-copen/> (accessed April 29, 2026).

⁸⁰ Ibid. This Council is part of COREPER II, composed of member states' ambassadors, to develop political agreements

⁸¹ Council Decision (EU) 2016/1316 of 26 July 2016 amending Decision 2009/908/EU, laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council OJ L208/42. List of presidencies during the Directive 2024/1385 process:

- France: January-June 2022
- Czech Republic: July-December 2022
- Sweden: January-June 2023
- Spain: July-December 2023
- Belgium: January-June 2024.

The decision-making process involving the Parliament and the Council shows that the directive emerges from a complex balance of European institutions and various political interests, rather than a simple choice. Adding the sensitive issue of criminal law, especially violence against women, makes reaching a compromise even more challenging.

This chapter outlines the conceptual framework for analysing the VAW Directive, mainly based on liberal feminism, which emphasises formal equality and legal reform within existing institutions. Radical feminism is used to critically highlight the limitations of this approach by viewing violence against women as a result of patriarchy and questioning the public-private divide. The interaction of these perspectives will evaluate the Directive's ambitions and shortcomings, revealing how progressive it truly is. Combining this feminist framework with an overview of EU decision-making provides context for later analysis of institutional actors' positions during the legislative process and their influence on the final Directive.

CHAPTER 2: THE ORIGINS AND CONTENT OF THE EU DIRECTIVE COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

This second chapter explores the origins of the VAW Directive and what it ultimately contains. The first section looks back at how the idea of a Directive addressing such violence emerged and how the Commission decided to act. The second section then sets the Commission's original proposal side by side with the final Directive, identifying any main changes per chapter.

Section 1: Historical Overview of the EU Directive Combating Violence Against Women and Domestic Violence

The adoption of EU Directive 2024/1385 on Combating Violence Against Women and Domestic Violence must be understood as the culmination of years of fragmented responses, increasing empirical evidence, and renewed political commitment at the EU level. For a long time, the EU lacked a dedicated tool to tackle violence against women comprehensively, instead relying on a patchwork of legislation and measures that left significant gaps in victim protection. Meanwhile, EU-wide surveys consistently showed the alarming and persistent extent of gendered violence, highlighting the inadequacy of national responses. Understanding the origins of the Directive, therefore, involves examining these three interconnected developments: the evidence collected through EU surveys, the legislative patchwork that preceded it, and the political momentum generated by the von der Leyen Commission. Together, these factors exposed a double failure: the fragmentation of EU law and the heterogeneity of Member States criminal frameworks, which made a dedicated instrument necessary.

A. EU-wide Surveys: 2014 and 2024

A first key factor explaining the emergence of the VAW Directive is the development of the EU survey on violence against women. In this regard, the first major step was the 2014 Fundamental Rights Agency (FRA) survey.⁸² This EU agency conducted a survey

⁸² The Fundamental Rights Agency (FRA) was established in 2007 to support the Union and its Member States by providing expertise and assistance on fundamental rights. Its aim is to help them take measures or develop policies that fully respect fundamental rights within their areas of competence. See consolidated

at the request of the EP in 2009 due to a lack of comparable and reliable data across the MS on women's experience of violence.⁸³ Before that survey, knowledge about violence against women was largely fragmented. National studies used different definitions and methods, while official statistics capture only a limited part of the phenomenon, especially related to intimate partner violence and other forms of abuse that remain undisclosed.⁸⁴ The 2014 FRA survey was, therefore, both a necessity and an attempt to make such violence visible at the EU level through a common methodological framework.

The 2014 FRA survey revealed alarming findings.⁸⁵ For example, 33% of women have experienced physical and/or sexual violence since age 15, and 22% of women with a partner have faced such violence since age 15.⁸⁶ Additionally, 18% have experienced stalking, and 55% have encountered one or more types of sexual harassment.⁸⁷ The survey indicated that 20% of women aged 18-29 had experienced cyber violence since they were 15.⁸⁸

The report also highlighted that violence against women and domestic violence were heavily under-reported, as victims often do not notify the police or relevant support services. The reasons vary, including difficulties in reporting incidents and a belief that police might not take action.⁸⁹ The study confirms this trend, showing that 66% of partner violence victims and 75% of non-partner violence victims did *not* contact authorities or organisations after the most serious incident.⁹⁰ In other words, only 33% and 26% respectively did. Specifically, 14% of victims of partner violence and 13% of victims of

text: Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, art. 2

⁸³ European Union Agency for Fundamental Rights, *Violence against Women: An EU-Wide Survey. Main Results Report* (Luxembourg: Publications Office of the European Union, 2014), 7–8. The European Parliament called for “the collection and compilation by the FRA of reliable, comparable statistics on all grounds of discrimination [...], including comparative data on violence against women within the EU”

⁸⁴ *Ibid.*

⁸⁵ European Commission, *Impact Assessment Report Accompanying the Proposal for a Directive on Combating Violence Against Women and Domestic Violence*, Commission Staff Working Document, SWD(2022) 62 final (Brussels, 2022), for more data.

⁸⁶ European Union Agency for Fundamental Rights, *Violence against Women: an EU-wide Survey*, 21.

⁸⁷ *Ibid.*, 167.

⁸⁸ European Commission, *Impact Assessment Report*, 11.

⁸⁹ European Union Agency for Fundamental Rights, *Violence against Women: an EU-wide Survey*, 14.

⁹⁰ *Ibid.*, 60.

non-partner violence reported the incidents to the police. Furthermore, 25% of victims mentioned shame or embarrassment as reasons for not reporting.⁹¹ These findings are particularly important because they reveal the limits of relying solely on criminal justice data to understand the scope of the problem.

This way, the 2014 survey not only pointed out a widespread social problem but also showed that violence against women was underestimated due to limitations in current legal and statistical methods. It exposed flaws in the evidence and institutions designed to address the problem, thus politicising the debate on VAW at the EU level. By providing comparable data across the Union for the first time, it gave EU institutions a more solid empirical foundation to argue that individual national responses were inadequate.

The more recent 2024 EU gender-based violence survey, conducted jointly by FRA, European Institute of Gender Equality (EIGE)⁹², and Eurostat, confirms the concerns raised in 2014. The report explicitly states that the results of the earlier FRA survey had left ‘no doubt about the urgent need to counter violence against women’.⁹³ This joint survey was conducted in response to repeated calls for ‘comprehensive, regular and comparable data collection’ at both the EU and Member State levels after 2014.⁹⁴

After a decade, the 2024 results confirm that VAW remains a widespread and prevalent issue across the Union. To cite some results, the report indicates that 30,7% of women in the EU-27 have experienced physical violence, threats, or sexual violence at some point

⁹¹ Ibid., 55.

⁹² EIGE is the European Institute for Gender Equality, created in 2010 in to contribute to and strengthen the promotion of gender equality, including gender mainstreaming in all Community policies and the resulting national policies, and the fight against discrimination based on sex, and to raise EU citizens' awareness of gender equality by providing technical assistance to the Community institutions, in particular the Commission, and the authorities of the Member States. in the preamble of the regulation creating the EIGE, it is stated that: (5) “The Commission's first annual report on equality between men and women to the Spring European Council in 2004 concluded that *significant gender gaps exist in most policy fields, that inequality between men and women is a multi-dimensional phenomenon* that has to be tackled by a comprehensive mix of policy measures and that enhanced efforts are needed to meet the Lisbon strategy targets.” See European Parliament and Council of the European Union. Regulation (EC) No 1922/2006 of 20 December 2006 establishing a European Institute for Gender Equality. *Official Journal of the European Union* L 403 (2006).

⁹³ European Union Agency for Fundamental Rights (FRA), European Institute for Gender Equality (EIGE), and Eurostat, EU Gender-Based Violence Survey: Key Results. Experiences of Women in the EU-27 (Luxembourg: Publications Office of the European Union, 2024), 5.

⁹⁴ Ibid., 5-6.

in their lives. Among them, 17,7% have faced such violence from an intimate partner, and 19.3% have experienced physical violence, threats, or sexual violence from a domestic perpetrator, which includes an intimate partner, a relative, or another person living in the same household.⁹⁵

The survey also highlights ongoing issues with under-reporting and incomplete data collection. Of women who experienced physical violence, threats, or sexual violence, just 13.9% reported the incidents to the police, while 20.5% reached out to healthcare or social services.⁹⁶ It further notes that official statistics, like police records and crime surveys, offer only a limited and incomplete view of women's experiences. This is particularly true when such data are not specifically designed to thoroughly investigate intimate partner and domestic violence, or when the questions and survey conditions fail to create a truly safe and comfortable environment for women to discuss these incidents.⁹⁷ It also warns that survey estimates are still likely to understate the true scale of violence, since some women may choose not to disclose incidents even in a carefully designed survey setting.⁹⁸ The continued need for surveys reflects both the widespread prevalence of violence and the difficulties in measuring it accurately, stemming notably from societal taboos and fear of speaking out.

Taken together, the 2014 and 2024 surveys reveal strong continuity in the overall pattern of VAW across the EU. Both indicate that approximately one in three women has faced serious violence, with most victims not seeking police or support services. In both, violence is widespread, under-reported, and not fully captured by official data alone. These findings reveal a persistent gap between women's experiences and the limited reach of national justice and support systems. Rather than a temporary crisis, they reflect a long-standing issue of gendered violence that current frameworks have failed to address. Consequently, the surveys serve as crucial evidence, both descriptively and as a basis for EU action. They underscore the scale of the problem and the inadequacy of fragmented

⁹⁵ Ibid., 14 and 20.

⁹⁶ Ibid., 14, 17-18.

⁹⁷ Ibid., 7.

⁹⁸ Ibid.

responses, reinforcing the need for a more unified EU approach, exemplified by the VAW Directive.

B. The Legal EU Patchwork and Member States Heterogeneity

Before the VAW Directive, there was no single EU instrument specifically addressing violence against women and domestic abuse. Instead, the Union relied on a patchwork of soft measures and sector-specific directives that only partially tackled different forms of gendered violence.⁹⁹ This resulted in a fragmented framework at the EU level built around instruments such as the Victim's Rights Directive, the European Protection Order, and the Anti-Trafficking Directive.¹⁰⁰ Although important, these measures lacked a comprehensive approach to VAW and, therefore, failed to create a unified framework for criminalising such conduct, despite being necessary.

This fragmentation at the EU level mirrored the uneven responses to, and protections against, gendered violence among Member States. Indeed, comparative research on sexual violence across Europe highlights significant differences in how countries define and prosecute rape or other sexual offences, as well as the degree of protection given to victims.¹⁰¹ While some countries have adopted progressive consent-based models, others continue to rely on traditional force-based frameworks. Equally, legislative responses to related conduct, such as stalking and non-consensual sharing of intimate images, remain inconsistent across jurisdictions.¹⁰² As a result, the level of protection afforded to women

⁹⁹ Valentine Berthet and Lise Rolandsen Agustín, "EU Values in Gendered Violence Legislation: The Directive on Combating Violence Against Women and Domestic Violence," in Gabriele Abels et al. (eds.), *The European Commission under President Ursula von der Leyen: Gender, Leadership, Policies and Crises* (Oxford: Oxford University Press, 2025), 326.

¹⁰⁰ European Commission, *Impact Assessment Report*, 20.

¹⁰¹ European Commission, *Impact Assessment Report*, 12-20: The report states that, although measures to protect and prevent women from violence exist, their standard and effectiveness vary across Member States. See in addition: Paola Frati, Stefania De Simone, Giovanni Pollice, Elena Giacani, Luigi Cipolloni, and Francesco Orsini, "Legal Perspectives on Sexual Violence: A Cross-European Study," *Forensic Sciences* (2025), 23–24; Carlotta Rigotti, "A Long Way to End Rape in the European Union: Assessing the Commission's Proposal to Harmonise Rape Law through a Feminist Lens," *New Journal of European Criminal Law* (2022), 11–13. Regarding the last article, it specifically focuses on the varying definitions and interpretations of rape across EU countries, highlighting how differently the topic is addressed at the national level.

¹⁰² Paola Frati, Stefania De Simone, Giovanni Pollice, Elena Giacani, Luigi Cipolloni and Francesco Orsini, "Legal Perspectives on Sexual Violence: A Cross-European Study" 10-22 for the results.

depends heavily on the jurisdiction in which violence occurs, leading to unequal legal safeguards across the EU.

Therefore, this double fragmentation, both among Member States' criminal laws and within the EU's legal framework, has significant consequences. It undermines the consistent protection of women's fundamental rights, as similar acts of violence are often penalised very differently throughout the Union. But it also complicates judicial cooperation and the mutual recognition of remedies across the EU.

Against this background, the need for a dedicated Directive became increasingly compelling, especially given the persistent global issue. A specific legal measure was seen as a way to address the structural differences that impact both the visibility of violence against women and the uniformity of legal safeguards throughout the Union.

C. Von der Leyen Commission I Gender Equality Strategy 2020-2025: Ending gender-based violence

Another major factor in the rise of the VAW Directive was the political shift introduced by Ursula von der Leyen (VDL) through the Gender Equality Strategy 2020-2025 (GES).¹⁰³ The appointment in 2019 of VDL as the *first woman* President of the European Commission was a symbolic and significant institutional milestone in a body historically dominated by men.¹⁰⁴ Throughout the institution's history, women accounted for fewer than 20% of all Commissioners, and the Commission had generally not been regarded as women-friendly.¹⁰⁵ Against this background, the VDL presidency made a deliberate attempt to elevate gender equality as a *key* political focus for the Commission, after decades of neglect.

¹⁰³ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Union of Equality: Gender Equality Strategy 2020–2025*, COM(2020) 152 final (Brussels: European Commission, 2020).

¹⁰⁴ European Commission, Opening Statement in the European Parliament Plenary Session: As Delivered by Ursula von der Leyen, Candidate for President of the European Commission, 16 July 2019 (Brussels: European Commission, 2019), 3, 6–7.

¹⁰⁵ Petra Debusscher, “The EU Gender Equality Strategy 2020–2025: The Beginning of a New Season?,” in *Social Policy in the European Union: State of Play 2022. Policymaking in a Permacrisis*, eds. Bart Vanhercke, Sebastiano Sabato, and Slavina Spasova (Brussels: European Trade Union Institute, 2023), 93.

In her 2019-2024 Political Guidelines, VDL prioritised "A Union of Equality" as a key goal of her mandate. This was reflected in a new European Gender Strategy focused on achieving equal pay, promoting gender balance in decision-making, and taking stronger measures against gender-based violence.¹⁰⁶ For the purpose of this research, only the latter will be examined. VDL described gender-based violence as 'a terrifying reality' in the Union, and affirmed that the EU accession to the Istanbul Convention would remain a key priority for the Commission. She further added that if accession remained blocked in the Council, she would consider tabling *proposals* on minimum standards regarding certain types of violence, strengthening the Victims' rights Directive and proposing to add violence against women to the EU crimes list in the Treaties.¹⁰⁷ In that sense, the Guidelines provided the initial political script, which the Gender Equality Strategy 2020-2025 translated into a structured action program.

Placed in the longer history of EU gender equality policy, the 2020-2025 Strategy represents both continuity and rupture. As Debusscher explains, EU gender equality policy evolved from the equal-pay provision in the Rome Treaty, through stages of equal treatment, positive action, and gender mainstreaming, and more recently towards an intersectional perspective.¹⁰⁸ Yet, this development was marked by uneven progress, institutional downgrading, and repeated political blockages. Nonetheless, the GES follows, to some extent, the Commission's Juncker 2016-2019 Strategic Engagement for Gender Equality, which had already identified combating VAW as a priority.¹⁰⁹ However, the four-year program was widely criticised for its weak legal status, the absence of concrete benchmarks, and the lack of a dedicated budget.¹¹⁰

¹⁰⁶ Ursula von der Leyen, *A Union that Strives for More: My Agenda for Europe. Political Guidelines for the Next European Commission 2019–2024* (Brussels: European Commission, 2019), 11.

¹⁰⁷ *Ibid.*

¹⁰⁸ Debusscher, "The EU Gender Equality Strategy 2020-2025: the beginning of a new season?," 92.

¹⁰⁹ The 2016-2019 Strategic Engagement for Gender Equality was delivered under the Juncker Commission (2014-2019). It is based on 5 key priorities: increasing female labour-market participation and the equal economic independence of women and men; reducing the gender pay, earnings and pension gaps and thus fighting poverty among women; promoting equality in decision-making; ; combating gender-based violence and protecting and supporting victims; and promoting gender equality beyond the EU. European Commission, *Strategic Engagement for Gender Equality 2016–2019* (Brussels: European Commission, 2015), 6, 9.

¹¹⁰ Debusscher, *The EU Gender Equality Strategy 2020–2025: The Beginning of a New Season?*, 94. The Staff Working Document is a purely factual and informative document with no legal effect. It reflects the position of the authoring service within the Commission and does not commit the Commission to a particular stance (as it has not been adopted or approved by the College). Conversely, Communications by

Against this background, the 2020-2025 Strategy is introduced as a renewed political and institutional commitment. It explicitly outlines its main actions aimed at achieving “a *gender equal Europe* where gender-based violence, sex discrimination and structural inequality between women and men are a thing of the past. A Europe where women and men, girls and boys, in all their diversity, are *equal*. Where they are *free* to pursue their chosen path in life, where they have equal opportunities to *thrive*, and where they can equally participate in and *lead* our European society.”¹¹¹

It emphasises gender equality as both a Treaty obligation and a fundamental right, with the Commission structuring its work around six main priorities.¹¹² The primary goal among these is to eliminate violence and stereotypes, which includes two sub-themes: ending gender-based violence and challenging gender stereotypes.

The Strategy introduces the section by defining gender-based violence as one of “our societies’ biggest challenges”, “deeply rooted in gender inequality”, and reaffirms that the Istanbul Convention definition of GBV is “violence that is directed against a woman because she is a woman or that affects women disproportionately”.¹¹³ In doing so, it directly links the EU’s approach to the Convention’s framework, treating the Istanbul Convention as the “benchmark for international standards” in this field. The GES commits the EU to “do all it can” to *prevent and combat gender-based violence, support and protect victims, and hold perpetrators accountable*.¹¹⁴ These commitments echoed with the Istanbul Convention’s four-pillar framework of prevention, protection, prosecution and integrated policies.

the Commission are soft law instruments that the Commission adopts without binding force. They are used to clarify the Commission’s political vision and choices, aiming to convince the audience that these are well-founded and justified. European Commission, “DGT’s Guide to Documents,” European Commission, 2024, 10, 15, https://commission.europa.eu/system/files/2024-02/DGTguide_to_documents_for_external_use_27.02.2024.pdf (accessed May 25, 2025).

¹¹¹ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Union of Equality: Gender Equality Strategy 2020–2025*, 2.

¹¹² Ibid. The other five priorities are: Thriving in a gender equal economy (closing gender gaps in the labour market, achieving equal participation, addressing the gender pay and pension gap, closing the gender care gap); Leading equally throughout society (achieving gender balance in decision making and politics); Gender mainstreaming and an intersectional perspective in EU policies; Funding actions to make progress in gender equality in the EU; And addressing gender equality and women’s empowerment across the world.

¹¹³ Ibid., 3.

¹¹⁴ Ibid.

To pursue these goals within the limits of EU competence, the GES sets out an ambitious criminal-law agenda. It first indicates that, should EU accession to the Convention remain blocked, the Commission will propose measures that achieve the same aims as the Istanbul Convention. In particular, it would introduce an initiative to broaden the scope of criminal law harmonisation to include specific forms of gender-based violence, as outlined in Article 83(1) TFEU.¹¹⁵ In short, the Commission intends to expand the Eurocrime list to include gender-based violence, without, however, providing a list of offences. At the same time, the strategy notes, to the extent that some forms of violence are already apprehended by the existing Eurocrimes list, the Commission will propose additional measures to prevent and combat specific forms of gender based violence, including *sexual harassment*, *abuse of women* and *female genital mutilation*.¹¹⁶ Together, these tracks signal the Commission's ambition to strengthen its criminal law policies by broadening the legal foundations of treaties, despite the issue's sensitive nature. Additionally, they demonstrate the Commission's firm dedication to addressing gender-based violence, regardless of the approach.

The next important element is prevention. The GES emphasises that addressing gender-based violence requires early intervention through education on gender equality, support for non-violent relationships, and violence-prevention initiatives focused on men, boys, and masculinities. It calls for a multidisciplinary strategy involving the criminal justice system, victim support services, perpetrator programs, and social and health services, and announces the creation of an EU network to facilitate sharing best practices among member states.¹¹⁷

Third, GES recognises online and cyber-violence as an emerging priority. In this regard, the Commission goes beyond the Istanbul Convention, which does not regulate forms of technology-facilitated abuse.¹¹⁸ The Strategy notes that cyberviolence against women has become “pervasive” and constitutes a barrier to women's participation in public life, insofar as bullying, harassment, and abuse on social media significantly impact women's

¹¹⁵ Ibid. The *Eurocrime* list in Article 83(1) TFEU identifies particularly serious crimes with a cross-border dimension for which the EU may adopt minimum rules on the definition of offences and sanctions.

¹¹⁶ Ibid.

¹¹⁷ Ibid., 4

¹¹⁸ European Commission, *Impact Assessment Report*, 8.

everyday experiences.¹¹⁹ To address this, the Commission plans to introduce the Digital Services Act, which aims to clarify online platforms' responsibilities regarding illegal content and to establish a new cooperation framework among internet companies to enhance women's safety online.¹²⁰

Finally, the Strategy stresses the importance of data collection as a foundation for effective policy. It underlines that gender-based violence remains under-reported and often ignored, as mentioned in the surveys section.¹²¹ As a result, the Commission highlighted the need for comprehensive, comparable, and up-to-date data on gender-based violence.¹²² It therefore announces the 2024 EU-wide survey.¹²³ This focus on data directly tackles the longstanding issues of fragmentation and heterogeneity that characterised the EU's previous approach.

The Istanbul Convention is central to the GES. Although the EU signed the Convention in 2017, it had not ratified it by the time the 2020-2025 GES was published. As a result, the Strategy places strong emphasis on completing the accession process, calling on the Council to conclude the decision on EU accession and urging Member States to ratify and implement the Convention.¹²⁴ EU accession had been delayed for several years due to opposition from governments like Bulgaria, Hungary, Poland, and Slovakia.¹²⁵ These governments, often supported by conservative and religious groups, challenged the notion of 'gender' and portrayed the Convention as a threat to 'traditional family values'.¹²⁶

¹¹⁹ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Union of Equality: Gender Equality Strategy 2020–2025*, 5.

¹²⁰ Ibid.

¹²¹ Ibid., 3.

¹²² Ibid., 5.

¹²³ Ibid.

¹²⁴ Ibid., 7.

¹²⁵ Debusscher, *The EU Gender Equality Strategy 2020–2025: The Beginning of a New Season?*, 95. It is worth to note that in 2026, EU member states that still have not ratified the Istanbul Convention are Bulgaria, Czech Republic, Hungary, Lithuania and Slovakia. Council of Europe, "Chart of signatures and ratifications of Treaty 210: Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)", <https://www.coe.int/en-GB/web/conventions/full-list?module=signatures-by-treaty&treatyenum=210> (accessed June 1, 2026).

¹²⁶ Ibid.

But, in 2019, the European Parliament requested an opinion from the Court of Justice of the European Union on the EU's capacity to accede to the Convention. Delivered in 2021, the Court confirmed that the EU has competence to accede based on the Treaties and clarified that unanimity in the Council is not legally required to conclude such an agreement, even if the Convention only partially falls within EU competences.¹²⁷ This opinion removed the main legal objections, paving the way for the Council to approve the EU's accession, even if not all EU Member States are parties to it or agree to it.¹²⁸ It further strengthened the Commission's broader claim that EU-level measures on gender-based violence are rooted in the Treaties.

In 2023, in light of the Opinion and political pressure, the Council finally approved the EU's accession to the Istanbul Convention, thereby making the EU a party to it. This accession is nevertheless limited: EU law only allows the Union to assume obligations in areas within its competences, such as judicial cooperation, asylum, and aspects of EU institutions and public administration, leaving many of the Convention's more feminist-driven provisions unaddressed.¹²⁹

Thus, taken together, the Strategy and the push for accession to the Istanbul Convention signal a shift in how the EU frames gender-based violence. Under VDL, gender equality and freedom from gender-based violence move from being a marginal, often under-resourced policy to a central test of what the Union stands for. In this configuration, the Commission does not simply seek to align EU policies with the Istanbul Convention's standards, it also uses the GES to present gender equality and the protection of women as fundamental Union values. Tolerating gender-based violence within the EU conflicts with the Union's identity as a community founded on fundamental rights, equality, and the rule of law. This ambition is a core element of the "Union of Equality" project, even

¹²⁷ CJEU (Grand Chamber) Opinion 1/19 (6 October 2021) §338. The opinion stipulates that the EU can act based on articles 78(2), 82(2), 84, and 336 TFEU. See also, European Parliament, "EU Accession to the Council of Europe Convention on Preventing and Combating Violence against Women ('Istanbul Convention')," Legislative Train Schedule, <https://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-eu-accession-to-the-istanbul-convention> (accessed June 1, 2026).

¹²⁸ Debusscher, *The EU Gender Equality Strategy 2020–2025: The Beginning of a New Season?*, 95.

¹²⁹ Berthet and Agustin, "EU Values in Gendered Violence Legislation the Directive on Combating Violence Against Women and Domestic Violence," 328.

though efforts to anchor a broader gender framework as a shared union value continue to face opposition from member states.¹³⁰

Read through the lens of liberal feminism, the GES reflects a reformist project that seeks to secure formal equality between women and men through law, policy and institutional adjustment. It presents gender equality as an obligation flowing from the treaties and uses EU instruments as the main vehicles for change. In this sense, the Strategy prioritises equality within the current framework, rather than calling for a fundamental restructuring of that framework.

Yet von der Leyen politicises this agenda in ways that resonate with a core radical-feminist insight: the ‘personal’ is political. By repeatedly mentioning VAW in her speeches, Political Guidelines, and the GES, she reintroduces a traditionally private issue into the political arena, placing it at the centre of EU political debate and ensuring it receives increased visibility. However, the means she deploys to address this structural problem remain purely liberal.

Thus, the VAW Directive represents the convergence of several long-standing pressures. The 2014 and 2024 surveys established an empirical basis, showing that about one in three women in the EU has faced severe physical or sexual violence, with most victims never reporting these crimes. The existing legal framework was inadequate, lacking a unified definition or criminalisation of VAW. This issue was worsened by the inconsistent approaches of member states, where different definitions and prosecution practices for sexual offences influenced the level of protection women received, depending on the jurisdiction of the violence. Finally, the political shift under President VDL gained momentum by highlighting gender equality as a core EU value and committing to legislative action. The Gender Equality Strategy 2020-2025 translated

¹³⁰ The Commission employs the Gender Equality Strategy to construct and assert gender equality and freedom from gender-based violence as central EU values, rooted in the Treaties, the Charter, and the rule of law. By presenting the fight against violence towards women as essential to safeguarding equality, human dignity, and fundamental rights, the Commission aims to both align the EU with the Convention and emphasise that this battle is fundamental to the Union's value. Nonetheless, this approach faces opposition, as several Member States have rejected the broader “gender” framework and oppose considering gender equality in this context as a shared Union value. See *Ibid.*, 334.

political ambitions into specific legislative actions, whether through EU accession to the Istanbul Convention or through EU autonomous measures. Together, these elements underscored the importance of a fully dedicated Directive to combat the persistent global problem of VAW.

Section 2: Overview of the Directive and Comparison Between the Commission's Proposal and the Final Directive

This section reviews the VAW Directive and compares it with the initial Commission Proposal. It sets the stage for Chapter 3's analysis of the roles and influence of key European actors in the legislative process. The comparison covers six aspects: the legal bases and objectives (1), the catalogue of offences (2), victim protection and access to justice (3), support (4), prevention (5), and coordination (6). Chapter 7 is excluded because it addresses implementation and transposition, which are not relevant to this analysis. However, it is important to note that the VAW Directive needs to be implemented by 2027, and an impact report must be submitted by 2032.¹³¹

A. Objective and legal bases.

As outlined in the preceding section, the absence of a comprehensive EU legislative instrument specifically addressing VAW prompted the Commission to propose new legislation on 8 March 2022. The main objective of the Proposal is “to *prevent and combat violence against women and domestic violence* to ensure a high level of *security* and the full *enjoyment of fundamental rights* within the Union”, explicitly linked to the broader objective of equality and non-discrimination.¹³²

It conceptualises VAW as a form of gender-based violence grounded in *structural discrimination stemming from historically unequal power dynamics* between men and

¹³¹ European Union, *Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence*, arts 45 and 49.

¹³² European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, 2. Violence against women is also seen as a violation of fundamental rights: human dignity, the right to life and integrity of the person, the prohibition of inhuman or degrading treatment or punishment, the right to respect for private and family life, personal data protection, and the rights of the child. *Ibid.*, 20.

women, and also acknowledges that VAW is directed against women because she is a woman or that affects women disproportionately.¹³³ The final Directive maintained this objective, describing itself as a comprehensive framework to prevent and combat VAW throughout the Union, while retaining the proposal's structural and fundamental-rights understanding.¹³⁴

To achieve this aim, the Proposal, and in essence the Directive, outlines three related goals: making existing EU instruments more effective; filling gaps and harmonising minimum standards across criminalisation and procedural safeguards; and aligning EU law with international standards, notably the Istanbul Convention, while addressing blind spots such as cyber violence.¹³⁵

Accordingly to the treaties, the Directive is grounded in two legal bases: Articles 83(1) and 82(2) TFEU, given the criminal nature of the issue. Article 83(1) TFEU¹³⁶ supports the Directive's list of criminal offences and penalties by linking them to two established Eurocrime categories, following the unsuccessful attempt to include gender-based violence in the list.¹³⁷ The two categories are sexual exploitation and computer crime. This provision is the primary instrument through which the EU exercises its competence in substantive criminal law. However, its scope is inherently limited, as harmonisation is

¹³³ Ibid., 1 and Recital 7. It further states that it is rooted in socially constructed roles, behaviours, activities, and attributes considered appropriate for each gender. See European Commission, *Impact Assessment Report*, 24. It report affirmed that gender-based violence is disproportionately perpetrated against women. In the majority of cases of physical violence, the perpetrator is a man or a group of men.

¹³⁴ European Union, *Directive (EU) 2024/1385*, art. 3(1), Recitals 1-3 and 10.

¹³⁵ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, 1. See European Union, *Directive (EU) 2024/1385*, Recitals 4-5, 17-21. It recognised the insufficiency of Union and national measures regarding VAW-specific needs, emphasising the importance of respecting international obligations and stating the rationale for harmonising certain forms of cyber-violence.

¹³⁶ European Union, *Consolidated Version of the Treaty on the Functioning of the European Union*, art. 83(1): The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish *minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis*.

These areas of crime are the following: terrorism, trafficking in human beings and *sexual exploitation of women* and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, *computer crime* and organised crime.

On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

¹³⁷ Sofia Braschi "The new EU Directive on combating violence against women and domestic violence" (De Gruyter, 2025) 428.

only possible if a conduct falls within one of the listed categories and satisfies the requirements of seriousness and cross-border dimension.¹³⁸

Article 82(2) TFEU, in turn, addresses the victims' rights and procedural safeguards under the Directive. It authorises the EU to establish essential minimum rules on victims' rights and certain aspects of criminal procedure, aimed at supporting the mutual recognition of judgments and enhancing judicial cooperation in criminal cases.¹³⁹ In the case of the VAW Directive, the provision supports measures for victim protection and access to justice, as well as prevention, support, and cooperation. The Commission justified recourse to this provision by pointing to the fragmented and outdated existing framework and to the cross-border nature of VAW, particularly cyber-violence.¹⁴⁰

Having clarified the objectives and legal foundations of the VAW Directive, the next section turns to its substantive content, examining each chapter in turn and comparing the Proposal with the final text.

B. The Catalogue of offences related to violence against women

Chapter 2 of both the Proposal (arts 5-13) and the Directive (arts 3-13) sets out an EU-wide catalogue of offences, aiming to establish minimum harmonisation for crimes related to sexual exploitation and computer crime, as part of the EU's response to VAW. However, substantial changes are evident when comparing the two texts.

¹³⁸ Ibid.

¹³⁹ European Union, *Consolidated Version of the Treaty on the Functioning of the European Union*, OJ C 202, 7 June 2016, art. 82(2): *To facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension*, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, *establish minimum rules*. Such rules shall take into account the differences between the legal traditions and systems of the Member States. They shall concern:

(a) mutual admissibility of evidence between Member States;

(b) the rights of individuals in criminal procedure;

(c) the rights of victims of crime;

(d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

¹⁴⁰ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, 3. The cross-border aspect is especially significant in cyber violence, as such violence spreads and intensifies beyond individual Member States through the internet, making unilateral actions inherently insufficient to address the issue.

In the area of sexual exploitation-related crimes, the most significant changes is the complete removal of rape as a harmonised offence. The Commission had proposed to require Member States criminalise rape in the basis of absence of consent, defined as any act involving a woman that leads her to engage in or be involved *in a non-consensual sexual act*, such as vaginal, anal, or oral penetration with any part or object. In this case, non-consensual sexual acts were understood to include situations where the woman does not voluntarily agree or cannot freely consent because of her physical or mental condition. This includes situations where she is unconscious, intoxicated, asleep, ill, or disabled, which prevent her from forming free will. It also clarified that silence, non-resistance, or a past sexual conduct could not be used to infer consent, while consent could be withdrawn at any time.¹⁴¹

This provision was regarded as innovative because it sought to move away from the traditional coercion-based definition of rape, which was still applied in sixteen Member States at the time, while only nine had adopted a purely consent-based definition.¹⁴² Building on this idea, several studies indicate that national laws concerning rape are still fragmented and inconsistent.¹⁴³ This hampers effective prevention efforts and restricts victims' access to justice, protection, and support. As a result of the removal, this situation is likely to persist. Including a criminalising rape provision in the Directive would have created a consistent "yes means yes" standard across the Union.¹⁴⁴ Yet, the article was ultimately removed from the final Directive during the legislative process, and a common understanding of rape disappeared entirely from the list of offences.

¹⁴¹ Ibid., Art 5.

¹⁴² European Commission, *Impact Assessment Report* 16 and 172. The coercion-model means that rape is punishable in the presence of the use of force, threat or coercion. The Member states adopting purely consent based definition of rape are Belgium, Croatia, Cyprus, Denmark, Germany, Ireland, Luxembourg, Malta, Sweden.

¹⁴³ Mireia Brunet Villarejo, "Why was rape regulation omitted from the first EU Directive on violence against women?" *Quaderns IEE: Revista de l'Institut d'Estudis Europeus*, 4(3) (2025) 136-138. See already mentioned Paola Frati, Stefania De Simone, Giovanni Pollice, Elena Giacani, Luigi Cipolloni and Francesco Orsini, "Legal Perspectives on Sexual Violence: A Cross-European Study"; Carlotta Rigotti, A long way to end rape in the European Union: Assessing the commission's proposal to harmonise rape law, through a feminist lens".

¹⁴⁴ Ibid., 136-138.

Despite this important loss, some provisions remained stable. The female genital mutilation (FGM) provision, for instance, was kept intact.¹⁴⁵ It means that during the negotiations, the offence itself was not seriously questioned under the requirements of Article 83(1). However, a new offence is recognised in the final Directive's list: forced marriage.¹⁴⁶ Braschi points out that FGM and forced marriages are both forms of honour-based violence that have become more prominent in Europe recently, especially related to migration and alarms from international human rights groups.¹⁴⁷ These practices once received limited attention in many Member States, mainly due to the few cases reported. However, in the last couple of decades, they have become more recognised as distinct forms of gender-based violence within the EU, leading to the development of specific criminal laws.¹⁴⁸

Regarding computer crime, both texts identify four ICT-based forms of violence, an innovation compared with the Istanbul Convention. The content of the cybercrime offences is not reduced but mainly reorganised. For the non-consensual sharing of intimate or manipulated material, the core conduct remains (making sexually explicit images, videos, or manipulated material accessible without consent, including by means of deepfakes, and threats to do so), but the Directive specifies the conduct "likely to cause

¹⁴⁵ European Union, *Directive (EU) 2024/1385* art 3: Member States shall ensure that the following intentional conduct is punishable as a criminal offence: (a) excising, infibulating or performing any other mutilation to the whole or any part of the labia majora, labia minora or clitoris; (b) coercing or procuring a woman or a girl to undergo any of the acts referred to in point (a).

¹⁴⁶ European Union, *Directive (EU) 2024/1385*, art 4: Member States shall ensure that the following intentional conduct is punishable as a criminal offence: (a) forcing an adult or a child to enter into a marriage; (b) luring an adult or a child to the territory of a country other than the one in which he or she resides with the purpose of forcing that adult or child to enter into a marriage.

¹⁴⁷ Braschi "The new EU Directive on combating violence against women and domestic violence", 432.

¹⁴⁸ Ibid. However, the impact assessment report mentions that 9 Member States still do not criminalise FGM, and 7 do not criminalise forced marriages. European Commission, *Impact Assessment Report* 16.

serious harm”.¹⁴⁹ It also adds, unlike the Proposal, an explicit safeguard clause stating that this offence must be applied without prejudice to certain fundamental principles¹⁵⁰

Cyberstalking appears, at first sight, to be significantly narrowed. The Proposal describes it using three criteria: ongoing threatening or intimidating behaviour that causes fear for personal safety; persistent, non-consensual surveillance via ICT; and doxing intended to provoke others into causing physical or psychological harm.¹⁵¹ Instead, the Directive has reduced this offence to a surveillance-and-tracking lens.¹⁵² This focus is supported by recitals, which highlight that cyberstalking is a modern form of violence involving the misuse of technology to intensify coercive and controlling behaviours, manipulation, and surveillance.¹⁵³ But, in comparison to the Proposal, the Directive specifies that criminal liability should be confined to cases likely to result in serious harm.¹⁵⁴

¹⁴⁹ European Union, *Directive (EU) 2024/1385*, art 5(1). See recital 19: Especially due to its tendency for easy, swift and broad distribution and perpetration, as well as its intimate nature, making images, videos or similar material depicting sexually explicit activities or the intimate parts of a person accessible to the public by means of ICT without that person’s consent can be very harmful for victims. The relevant offence defined in this Directive should cover all types of such material, such as images, photographs and videos, including sexualised images, audio clips and video clips. *It should cover situations where making the material accessible to the public by means of ICT occurs without the victim’s consent*, irrespective of whether the victim consented to the generation of the material or might have transmitted it to a particular person. *The offence should also include the non-consensual production, manipulation or altering, for instance by image editing, including by means of artificial intelligence, of material that makes it appear as though a person is engaged in sexual activities*, in so far as the material is subsequently made accessible to the public by means of ICT without the consent of that person. *Such production, manipulation or altering should include the fabrication of ‘deepfakes’*, where the material appreciably resembles an existing person, objects, places or other entities or events, depicts the sexual activities of a person, and would falsely appear to other persons to be authentic or truthful. *In the interest of effectively protecting victims from such conduct, threatening to engage in such conduct should also be covered.*

¹⁵⁰ Ibid., art 5(2): §1 (a) and (b) *does not affect the obligation to respect the rights, freedoms and principles referred to in Article 6 TEU and applies without prejudice to fundamental principles related to the freedom of expression and information and the freedom of the arts and sciences*, as implemented in Union or national law.

¹⁵¹ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, art 8.

¹⁵² European Union, *Directive (EU) 2024/1385*, art 6: cyber stalking is now defined as *any intentional conduct of repeatedly or continuously placing a person under surveillance*, without that person’s consent or a legal authorisation to do so, by means of ICT, *to track or monitor that person’s movements and activities*, where such conduct is likely to cause serious harm to that person.

¹⁵³ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, recital 20; European Union, *Directive (EU) 2024/1385*, recital 21.

¹⁵⁴ European Union, *Directive (EU) 2024/1385*, recital 22.

However, the threatening conduct and doxing elements were not completely erased, instead, they were absorbed into the cyberharassment provision.¹⁵⁵ The Directive also preserved its initial pile-on harassment scenario but introduced the new offence of cyberflashing¹⁵⁶. According to these changes, the recitals were also revised to explicitly address these patterns: pile-on harassment, cyberflashing, and doxing are acknowledged as serious forms of cyberharassment that can cause significant psychological harm, social exclusion, and even suicide.¹⁵⁷ It highlights their specific impact on women in prominent positions of power, as well as on « everyday » women.

For cyber incitement to violence or hatred, the final text retained the core definition, but introduced an optional filter allowing Member States to limit criminalisation to conduct likely to disturb public order, or that is threatening, abusive, or insulting.¹⁵⁸ While the recital justifies this addition as a means of safeguarding freedom of expression, it also increases MS discretion and risks narrowing the practical scope of protection of gender-based online incitement.¹⁵⁹

Regarding the rules on inciting, aiding and abetting, as well as attempt move from a uniform approach to a more differentiated one. Under the proposal, inciting, aiding and abetting applied to all the main offences and attempt to rape and FGM only.¹⁶⁰ The Directive instead ties each form of secondary liability to specific offences.¹⁶¹ Incitement

¹⁵⁵ Ibid., art 7(a) restated the threatening-conduct element whereas (b) takes over the doxing one.

¹⁵⁶ Ibid., art 7(b) defines the pile-on harassment as *engaging, together with other persons*, by means of ICT, in publicly accessible threatening or insulting conduct directed at a person; and (d) the **cyberflashing** defines as the unsolicited sending, by means of ICT, of an image, video or other similar material *depicting genitals* to a person.

¹⁵⁷ Ibid., recital 24.

¹⁵⁸ Ibid., art 8(2)

¹⁵⁹ Ibid., recital 26.

¹⁶⁰ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, art 11: (1) Member States shall ensure that inciting and aiding and abetting the commission of any of the criminal offences referred to in Articles 5 to 9 are punishable as criminal offences (all offences). (2) Member States shall ensure that an attempt to commit any of the criminal offences referred to in Articles 5 and 6 is punishable as a criminal offence. (only rape and FGM).

¹⁶¹ European Union, *Directive (EU) 2024/1385*, art 9: (1) Member States shall ensure that *inciting* the commission of any of the criminal offences referred to in Articles 3 to 6 and Article 7, first paragraph, point (b), is punishable as a criminal offence. (2) Member States shall ensure that *aiding and abetting* the commission of any of the criminal offences referred to in Article 3, first paragraph, point (a), and Articles 4 to 8 is punishable as a criminal offence. (3) Member States shall ensure that an *attempt* to commit any of the criminal offences referred to in Articles 3 and 4 is punishable as a criminal offence.

now covers FGM, forced marriage, non-consensual sharing, cyberstalking and only one limb of cyberharassment. Aiding and abetting applies to the principal FGM conduct and to all offences from forced marriage through cyber incitement. The attempt is confined to FGM and forced marriage. This recalibration makes the framework more tailored and removes attempted rape as a harmonised category.

From the remaining provisions, the final Directive simplifies and somewhat softens the penalty structure compared to the Proposal. While the Proposal differentiated maximum penalties and set higher levels, the Directive prescribes only a single minimum level for all cyber-violence offences, leaving the discretion largely to MS to calibrate higher penalties.¹⁶²

Regarding aggravating circumstances, both texts describe them in non-binding terms, but the Directive reorients their focus. Specifically, some circumstances, such as recording/photographing and spiking, were removed, while new criteria were introduced, including offences against a public person, questions of honour, and discrimination.¹⁶³ Therefore, it kept the overall structure but slightly refocused the catalogue of aggravating factors.¹⁶⁴

The jurisdiction rules remain largely the same, but the limitation periods shift from a detailed, offence-specific system in the Proposal to a broad obligation in the Directive. Member States are required to establish sufficiently long limitation periods to enable effective investigation, prosecution, and adjudication, with the duration being ‘commensurate with the gravity’ of the offence.¹⁶⁵ This provides greater flexibility and national discretion, making the actual duration of protection more reliant on domestic decisions.

¹⁶² Ibid., art 10; European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, art 12.

¹⁶³ Ibid., art 11 (n-p).

¹⁶⁴ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, art 13 (n-o). The erased criteria were “the offence was filmed, photographed or recorded in another form and made accessible by the offender” and “the offence was committed by causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances”.

¹⁶⁵ European Union, *Directive (EU) 2024/1385*, art 13.

Viewed from a feminist perspective, the list of offences crystallises this tension between a radical diagnosis and a liberal remedy. The Directive explicitly describes VAW as a result of structural discrimination and historically unequal power dynamics, primarily affecting women by men, and rooted in gendered social roles.¹⁶⁶ It also describes domestic violence as a “serious social problem which often remains hidden”, echoing radical feminism’s focus on the private sphere as a source of violence.¹⁶⁷ In addition, it portrays practices like forced marriage and FGM as acts that enforce domination and social control over women’s bodies and sexuality.¹⁶⁸ However, at the level of offences, these explicit structural and gendered insights are translated into a liberal, rights-based catalogue that criminalises FGM, forced marriages, and ICT-facilitated abuse, ensuring minimum standards of protection.

C. Victim protection and access to justice

Regarding victim protection and access to justice, the Directive (arts 14-24) largely reflects the Proposal's (arts 16-26) main objective. It builds a victim-centred framework that links accessible reporting, specialised investigations and prosecutions, the assessment of individual risks and support needs, the issuance of emergency barring and protection orders, the safeguarding of the victim's privacy, the removal of online material, and the obtaining of compensation from offenders.

The Proposal develops this framework in response to the problem of heavy underreporting of VAW offences and to the fact that, even when complaints are made, victims remain in vulnerable situations that may lead them to withdraw their complaints under pressure. It therefore seeks to make reporting simpler, safer, and more accessible, for instance by introducing new channels, including online systems.¹⁶⁹ Building on this, the Proposal requires an individual risk assessment from the first contact with the authorities to determine the level and nature of the danger posed by the offender.¹⁷⁰ On

¹⁶⁶ Ibid., recital 10.

¹⁶⁷ Ibid., recital 11.

¹⁶⁸ Ibid., recital 15-16.

¹⁶⁹ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, art 16.

¹⁷⁰ Ibid., art 18.

that basis, the authorities are to adopt appropriate protection measures, such as protection orders.¹⁷¹

The Directive largely aligns with this approach and even strengthens it in some ways. It enhances the practicality of reporting by establishing channels that are "accessible, easy-to-use, safe, and readily available," including online options.¹⁷² Additionally, it improves the protection order system by allowing victims to be notified of any breaches impacting their safety.¹⁷³ It also suggests reviewing the individual assessment after such breaches to update protection measures in response to changing risk patterns.¹⁷⁴

However, it is noted that the Directive often downplays details that could better align national systems and offer stronger protection to victims. For example, the article on protecting the victim's private life. The exclusion of evidence about the victim's past sexual behaviour in criminal cases, intended to prevent secondary victimisation, is now evaluated through a relevance-necessity test.¹⁷⁵ Although recital 48 explains that such evidence should only be admitted to address a specific issue or to uphold the defence's right,¹⁷⁶ the shift remains important as it replaces a clear prohibition with a discretionary

¹⁷¹ Ibid., art 21.

¹⁷² European Union, *Directive (EU) 2024/1385*, art. 14(1).

¹⁷³ Ibid., art 19(6)

¹⁷⁴ Ibid., (5).

¹⁷⁵ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, art 22. It states: In criminal investigations and court proceedings, questions, enquiries and evidence concerning *past sexual conduct* of the victim or other aspects of the victim's private life related thereto *are not permitted*. European Union, *Directive (EU) 2024/1385*, art 20. Whereas the **Directive** openly states: In criminal proceedings, evidence concerning the past sexual conduct of the victim or other aspects of the victim's private life related thereto is permitted only where it is relevant and necessary.

¹⁷⁶ Ibid., recital 37: *Presenting evidence of past sexual behaviour* to challenge the credibility and lack of consent of victims in sexual violence cases, especially rape cases, *may reinforce the perpetuation of damaging stereotypes of victims and lead to repeat or secondary victimisation*. Therefore, without prejudice to the rights of defence, questions, enquiries and evidence concerning past sexual conduct of the victim *should not be permitted* in criminal investigations and court proceedings; European Union, *Directive (EU) 2024/1385*, recital 48: *Presenting evidence of past sexual behaviour, the sexual preferences of the victim and the attire or outfit of the victim to challenge the credibility and lack of consent of victims* in sexual violence cases, especially rape cases, *can reinforce the perpetuation of damaging stereotypes of victims and lead to repeat or secondary victimisation*. Therefore, Member States should ensure that evidence concerning the past sexual conduct of the victim, or other aspects of the victim's private life connected thereto, *is only permitted where it is necessary* to assess a specific issue in the case at hand or for the exercise of the rights of defense.

test, which risks reopening space for the examination of victims' sexual histories and thereby contributing to secondary victimisation.¹⁷⁷

Similarly, the mandatory guidelines for law enforcement and judicial authorities become optional. Yet the content of potential guidelines is richer, replacing “shall ensure” with “may ensure” removes a binding obligation to have a tailored and sensitive approach to VAW issues within institutional routines.¹⁷⁸

The most significant change concerns compensation. To avoid secondary victimisation, the Proposal states that victims should be able to receive compensation during criminal proceedings. This compensation should be comprehensive and unlimited, covering specific heads of damage.¹⁷⁹ The Directive still recognised a right to full compensation from offenders, but “in accordance with national law” and it no longer provides a detailed list of eligible compensation harms or harmonised limitation periods.¹⁸⁰ This change reflects a clear watering down from the Proposal's original, more ambitious plan, removing the robust harmonisation and procedural safeguards.

It is important to note that Directive's Recital 12 clarifies that the measures are aimed at addressing the particular needs of women and girls, who are disproportionately affected

¹⁷⁷ The concern here is that allowing questions or evidence on the victim's prior sexual conduct can be humiliating, retraumatising and deter them from engaging with the criminal process. See Dublin Rape Crisis Centre, *Submission to Joint Committee on Justice on the Topic of Victim's Testimony in Cases of Rape & Sexual Assault* (2021), 9, accessed 17 June 2026. https://www.drcc.ie/assets/files/pdf/drcc_submission_to_joint_oir_cte_justice_on_victim_testimony_feb_2021.pdf; Jade Jeffrey, “The Criminal Injustice System: An Analysis of Professional Perspectives of Secondary-Victimisation for Female Victim/Survivors of Domestic and Sexual Violence Navigating the Legal System” (master's thesis, University of Worcester, 2021), 10.

¹⁷⁸ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, art. 23; European Union, *Directive (EU) 2024/1385*, art. 21.

¹⁷⁹ *Ibid.*, art 26 (3): The compensation shall place victims in the position they would have been in had the offence not taken place, taking into account the seriousness of the consequences for the victim. Compensation shall not be restricted by the fixing of an upper limit. (4): *The damage shall include* 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. The amount of the damages awarded shall also compensate for physical and psychological harm and moral prejudice.

¹⁸⁰ European Union, *Directive (EU) 2024/1385*, art 24 (1): Member States shall ensure that victims have the right to claim, in accordance with national law, full compensation from offenders for damages resulting from offences of violence against women or domestic violence. (2): Member States shall ensure, where appropriate, that victims are able to obtain a decision on compensation in the course of criminal proceedings.

by the forms of violence discussed. However, it also acknowledges that victims of such violence include all individuals, regardless of gender.¹⁸¹ This means that the chapter, tailored around gendered harms, is accessible to any victim of VAW or domestic violence.

Viewed within the feminist framework, this Directive's approach to victim protection and access to justice appears as a reformist, rights-based strategy aligned with liberal feminist principles. It emphasises legal rights and procedural safeguards to enhance access to justice for victims in criminal proceedings. The extension of these mechanisms to all victims demonstrates a concern for equal access to institutional remedies, even though the Directive recognises that women and girls are its primary targets. However, the final compromise reveals the limitations of the legal-reformist approach. By reopening the door for sexual history evidence and weakening institutional commitments, such as guidelines and the compensation framework, the Directive falls short of the profound institutional changes that radical feminism considers essential for addressing the patriarchal structures underlying violence.

D. Victim support

The final Support chapter of the Directive (arts 25-33) largely mirrors the Proposal (arts 27-35), maintaining its core objective and structure. Both versions ensure that VAW victims can *access specialised, accessible, and responsive* support services tailored to their individual needs. To achieve this objective, the texts require Member States to organise a minimum infrastructure of services. It is centred on specialist support services (including rape crisis and sexual-violence centres and FGM-specific support), advisory services on workplace sexual harassment, free and nationwide 24/7 helplines, sufficient and accessible shelters, and other safe accommodations. They also include child-appropriate services and specific measures for victims in especially vulnerable situations.

¹⁸¹ Ibid., recital 12: *The measures under this Directive are designed to address the specific needs of women and girls, given that, as confirmed by data and studies, they are disproportionately affected by the forms of violence covered by this Directive, namely violence against women and domestic violence. However, other persons also fall victim to those forms of violence and should therefore also benefit from the same measures for victims provided for in this Directive.* Therefore, the term 'victim' should refer to all persons, regardless of their gender, and, unless specified otherwise in this Directive, all victims should benefit from the rights related to the protection of victims and access to justice, victim support and preventive measures.

Together, these measures aim to formalise the commitment to protect victims by integrating it into a framework of institutional obligations and a service structure that should be accessible before, during, and after proceedings, but also regardless of whether the victim is engaged in the criminal justice system.¹⁸²

Although both texts convey the same message, some differences persist, notably in wording. The comparison reveals a softening of certain obligations. While the Proposal frequently used the formula ‘Member States *shall ensure*’, the Directive at several points replaced it with more flexible expressions such as ‘Member States *shall may*’ or ‘*are encouraged to*’. This is noticeable, for instance, for the harmonised helpline number¹⁸³ and the organisation of specialist support services in times of crisis.¹⁸⁴ Even though minor, the shift from mandatory to advisory language still gives national authorities greater discretion over how and how far they implement the support services. It moves from a conception of support as an essential service to a ‘best-efforts’ standard, more easily aligned with national budget and administrative constraints.

That being said, these developments must be read against the COVID-19 period. According to the EIGE, as well as the Commission Impact assessment, crises like

¹⁸² Ibid., recital 57; Alina Elena Ramaru and Laura Martin Miraut, “Violence against Women within the Framework of the European Union: Present and Future European Directive,” paper presented at the international conference “European Union’s History, Culture and Citizenship,” Pitești, 26 May 2023, 157.

¹⁸³ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, art 31(4). The Proposal stated that Member States *shall ensure* that the ‘helplines service’ for victims of violence against women is operated under the harmonised number at EU level “116 016” and that the end-users are adequately informed of the existence and use of such number; European Union, *Directive (EU) 2024/1385*, art 29(6). The Directive states: Member States *are encouraged to ensure* that the ‘helplines services’ for victims of violence against women are reachable through the harmonised number at Union level, namely ‘116 016’, in addition to any existing national number or numbers.

¹⁸⁴ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, recital 49 and European Union, *Directive (EU) 2024/1385*, recital 62. Both states that “specialist support services, incl. shelters and rape crisis centres, *should be considered essential during crises and states of emergency*, including during health crises. The aim should be *to continue to offer those services in situations where instances of domestic violence and violence against women tend to surge*. When looking at the European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, art 27(6), it kept the importance of maintaining service continuity during crises, stating that “Member States *shall ensure* that specialist support services remain fully operational for victims of violence against women and domestic violence during times of crisis (...). Looking at the European Union, *Directive (EU) 2024/1385*, art 25(7), however, states “Member States *shall aim to ensure* that specialist support services remain fully operational for victims in times of crisis, (...)”. The wording change, weakening the states obligation.

COVID-19 can increase the risk of VAW.¹⁸⁵ The study shows that none of the Member States had an emergency strategy for addressing surges in intimate partner violence during crises before the pandemic. Any policies or action plans were reactive, developed and implemented only after COVID-19.¹⁸⁶ In this light, weakening States' obligations to provide support services during crises is concerning. It is important to remember that states bear responsibilities to protect their citizens. And these include women, and even during crises, even when more urgent issues might take precedence

Ultimately, from a feminist perspective, this chapter aligns with a liberal reformist strategy. It primarily seeks to enhance institutional support for victims within current state systems, rather than aiming to transform the social factors that generate violence.

E. Prevention

Regarding the prevention chapter, both the Proposal (arts 36-38) and the Directive (arts 34-37) aim to promote the State's duty to move beyond a purely reactive model and to address the social and cultural roots of VAW.¹⁸⁷ Both texts present a broadly similar overall architecture. The Proposal already required States to adopt preventive measures, provide professional training and establish intervention programmes. The final text preserves these three pillars. With regard to preventive measures, both envisage awareness-raising campaigns, education, research, dissemination of public information, action against harmful gender stereotypes, promotion of gender-based equality, and encouragement of positive behavioural change, including among *men and boys*.¹⁸⁸ This

¹⁸⁵ European Institute for Gender Equality (EIGE), *The Covid-19 Pandemic and Intimate Partner Violence against Women in the EU* (2021), 11–12. European Commission, *Impact Assessment Report*, 12.

¹⁸⁶ *Ibid.*, 33-34.

¹⁸⁷ European Union, *Directive (EU) 2024/1385*, recital 73. Prevention is organised around 3 measures. **Primary** preventive measures aim to prevent violence from occurring (e.g., awareness-raising campaigns and targeted education programmes to increase understanding among the general public of the different manifestations of all forms of violence and their consequences and to increase knowledge about consent in interpersonal relationships at an early age). **Secondary** preventive measures aim to detect violence early and prevent its progression or escalation at an early stage. **Tertiary** prevention focuses on preventing reoffending and revictimisation and on properly managing the consequences of the violence and could include the promotion of bystander intervention, early intervention centres and intervention programmes.

¹⁸⁸ On the latter information, European Union, *Directive (EU) 2024/1385*, art. 34(5) specifically notes: Preventive measures shall aim to challenge harmful gender stereotypes, to promote gender equality, mutual respect and the right to personal integrity, and *to encourage all persons, especially men and boys, to act as positive role models* to support corresponding behaviour changes across society.

approach aligns with the GES, which, as a reminder, presents VAW as stemming from gender inequality and advocates prevention measures¹⁸⁹. The Directive thus maintains the GES core idea that VAW cannot be solved solely through criminalisation but requires a broader, long-term social change strategy.¹⁹⁰

Nonetheless, the comparison also underscores differences in two key areas, primarily the inclusion of a specific clause on rape prevention and consent. The Proposal did not feature such provision, instead focusing on criminalising rape through a definition based on consent. After that removal, the Directive introduced Article 35, which aims to change behavioural patterns rooted in historically unequal power relationships and stereotypes, especially in sexual contexts. It emphasises the central role of freely given *consent*, using awareness campaigns, education, and the spread of rape-prevention information.¹⁹¹ This addition is crucial to the comparison, as it might suggest that the final text seeks to compensate, at the level of prevention, for what was lost at the level of substantive criminal law. Following this logic, the provision on intervention programmes aimed at minimising VAW risk remains largely unchanged, except for a new recommendation to encourage *rape* offenders to participate.¹⁹²

The other difference lies in the training regime. The Proposal required professionals likely to come into contact with victims to receive general and specialist training and targeted

¹⁸⁹ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Union of Equality: Gender Equality Strategy 2020–2025*, 3–4.

¹⁹⁰ This reading builds on the Directive’s framing of violence against women as rooted in historically unequal power relations and gendered socialisation (European Union, *Directive (EU) 2024/1385*, recital 10), and its preventive obligations to change behavioral patterns, social norms, and institutional practices related to consent, sexuality, and gender roles (European Union, *Directive (EU) 2024/1385*, arts 34–35). By viewing violence against women as part of a broader system of patriarchal power that needs transformation, rather than as isolated acts to be solely addressed through individual criminal justice approaches, this perspective aligns more closely with radical feminist analyses of male violence as a structural means of women’s subordination. At the same time, it remains embedded in a predominantly liberal feminist framework, given its reliance on individuals rights, non-discrimination guarantees and procedural safeguards as the main tools for addressing such violence.

¹⁹¹ European Union, *Directive (EU) 2024/1385*, art 35.

¹⁹² *Ibid.*, art. 35 (3): Consent education material as referred to in the third subparagraph of paragraph 1 shall promote the understanding that consent must be given voluntarily as a result of a person’s free will, mutual respect, and the right to sexual integrity and bodily autonomy. Such material shall be adapted to the evolving capacity of the persons to whom it is addressed.

information, and it listed a broad range of actors.¹⁹³ The final Directive keeps this logic but nuances it. It distinguishes more clearly between the obligation to *ensure* training for certain officials (police officers and court staff) and the obligation to promote or offer training to other groups (healthcare, social services, and educational professionals).¹⁹⁴ It also adds more detailed rules on judges, prosecutors, lawyers, and female genital mutilation-related health training.¹⁹⁵ However, the rest of the professional training remains basically the same.¹⁹⁶

From a feminist perspective, the chapter integrates both liberal and radical feminist logics. It adopts a liberal feminist stance by emphasising education and institutional training to promote equality and improve state responses. At the same time, it incorporates elements from more radical critiques by acknowledging that VAW stems from unequal power dynamics and aiming to change social norms, behaviours, and institutional practices that uphold such violence.¹⁹⁷ This is supported by the due diligence perspective in the Directive, which expects the state not just to punish private acts after they occur but to take active, preventive measures against gender-based violence. However, the final

¹⁹³ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, art. 37. The list: “ (...) to ensure that professionals likely to come into contact with victims, including *law enforcement authorities, court staff, judges and prosecutors, lawyers, providers of victim support and restorative justice services, healthcare professionals, social services, educational and other relevant staff* receive both general and specialist training and information to a level appropriate to their contacts with victims (...)”

¹⁹⁴ European Union, *Directive (EU) 2024/1385*, art. 36 (1): “(...) *ensure* that officials likely to come into contact with victims, such as *police officers and court staff*, receive both general and specialist training and targeted information to a level appropriate to their contact with victims in order to enable them to identify, prevent and address instances of violence against women or domestic violence and to treat victims in a trauma-, gender- and child-sensitive manner; *ibid.*, art. 36 (2): (...) *promote or offer* training to *healthcare professionals, social services and educational staff* likely to come into contact with victims in order to enable them to identify instances of violence against women or domestic violence and to direct victims to specialist support services.

¹⁹⁵ *Ibid.*, art 36(3): for judges and prosecutors and art 36(4) for lawyers.

¹⁹⁶ *Ibid.*, art. 36(6-9): for Workplace supervisors, media training, and training for authorities received reports from victims.

¹⁹⁷ *Ibid.*, art 35(1): Member States shall take appropriate measures to promote changes in behavioural patterns rooted in the historically unequal power relations between women and men or based on stereotyped roles for women and men, in particular in the context of sexual relationships, sex and consent. See *ibid.*, recital 10: Violence against women is a persisting manifestation of structural discrimination against women, resulting from historically unequal power relations between women and men. It is a form of gender-based violence inflicted primarily on women and girls by men. It is rooted in socially constructed roles, behaviour, activities and attributes that a given society considers appropriate for women and men. Consequently, a gender-sensitive perspective should be taken into account in the implementation of this Directive. Also, *ibid.*, recital 75: Member States should take measures *to prevent the cultivation of harmful gender stereotypes* in order to *eradicate the idea of the inferiority of women or stereotyped roles* of women and men.

chapter mainly pursues these goals through governance, education, and professional regulation, rather than through far-reaching structural change of patriarchal legal and social systems.

F. Coordination and cooperation

The coordination section in both the Proposal (arts 39-44) and the final Directive (arts 38-44) shares the same main goal: to require Member States to develop a consistent governance and data system for violence against women and domestic violence. This includes statewide policies, a designated coordinating entity, multi-agency cooperation, NGO involvement, EU-level coordination, and systematic data gathering. Overall, Articles 38 to 44 of the final Directive remain very close to the Proposal, indicating that this section was not significantly altered during negotiations.

However, in line with the approach used for the other chapter, some elements were rephrased. For example, Art. 39 of the final Directive adds the requirement for MS to develop a “national action plan” by 2029. Meanwhile, Art. 44 on data collection is experiencing the most significant changes. In the final Directive, Art. 44(2) is more precise in specifying the type of data to be collected on VAW, whereas the Proposal was less explicit on these points.¹⁹⁸ Additionally, 44(3) relaxes the Proposals' strict mandate to perform prevalence surveys every five years, proposing instead that they occur at “regular intervals,” indicating a less rigorous obligation similar to the support chapter. Simultaneously, by mandating that States employ common methods and standards developed jointly with the EIGE, the Directive creates a unified EU data-collection framework for WAV. This addresses issues where different definitions and methods used by States hinder cross-country comparisons and EU monitoring efforts. In this context, the chapter aligns with GES, emphasising the importance of comparable EU-wide data and enhanced monitoring tools.¹⁹⁹

¹⁹⁸ Ibid., art 44. It requires annual data on the number of reported offences and convictions, the number of victims who have been killed, the number and capacity of shelters per Member States, and the number of calls to national helplines.

¹⁹⁹ European Commission. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Union of Equality: Gender Equality Strategy 2020–2025*, 5.

From a theoretical perspective, this chapter blends liberal and radical feminist elements. It reflects liberal feminist principles by aiming to improve the state's response through better organisation, coordination, and monitoring. Simultaneously, it incorporates a radical dimension through a due diligence approach.²⁰⁰ However, because this radical potential is primarily realised through bureaucratic and technocratic methods, the Directive does not directly transform patriarchal institutions. Instead, it creates mechanisms that can, in practice, reveal structural and institutional VAW.

To conclude, this chapter shows how the VAW Directive emerged from a lengthy, uneven process in which the EU moved from isolated soft-law initiatives to the acknowledgement of VAW as a specific policy area requiring a dedicated, binding act. Within this evolving landscape, the Commission's proposal marked an opportunity to strengthen the EU's approach to VAW by outlining an ambitious and coherent framework on criminalisation and victims' protection. The comparison with the final text confirms that the basic architecture and the underlying understanding of VAW as a structural, gender-based harm have been largely preserved. At the same time, the analysis shows that this continuity relies on compromises: key original obligations have been softened through wording adjustments, thereby giving Member States more discretion and reducing the EU's efforts to promote greater harmonisation. This recalibration is especially evident in the list of offences. Here, the removal of the proposed EU-level definition and criminalisation of rape, the addition of forced marriages and adjustment to the ICT-related offences show how political and legal constraints shaped the proposal's ambition. Rape, in particular, has shifted from a harmonised offence to a presupposed one. The Directive detailed how it should be prevented while remaining silent on its legal definition, leaving it to national discretion and, therefore, to different understandings. Viewed in a broader historical context, these findings suggest that the VAW Directive is a significant but carefully negotiated step forward, whose limits and compromises will need to be explained by the actor-focused analysis in the next chapter.

²⁰⁰ To recap, the due diligence principle requires states not only to refrain from direct violence but also to proactively prevent, investigate, punish, and address gender-based violence by private actors. The Directive enforces this through a positive obligation for states to coordinate efforts, collect data, provide training, and monitor, thereby implementing the standards. It also emphasises that inaction by states can itself perpetuate the problem of VAW.

CHAPTER 3: INSTITUTIONAL ACTORS AND LEGISLATIVE COMPROMISES

Before turning to the actors and dynamics that shaped the Directive, it is useful to briefly recall the main steps of the legislative procedure. As outlined in Chapter 1, the VAW Directive was adopted through the OLP, following the standard steps from the Commission proposal to final adoption, including interinstitutional negotiations. The Proposal was published on 8 March 2022. Afterwards, the file was examined by the Council through the Working Party COPEN in 2022-2023, and a difficult compromise led to the JHA's adoption of the General Approach on 9 June 2023. In the EP, the joint FEMM-LIB report was adopted in the committee on 28 June 2023, and the July 2023 plenary authorised the opening of interinstitutional negotiations. After several trilogues, a political agreement was finalised on 6 February 2024 and endorsed by the FEMM-LIBE on 15 February 2024. The text was adopted by the final plenary session in April 2024 (with a majority in favour), formally approved by the Council on 7 May 2024, and signed on 14 May 2024, concluding the legislative process.²⁰¹

Building on the comparative analysis, which identified the main substantive changes between the Proposal and the final text, this chapter shifts the focus to the actors and dynamics that produce those changes. It examines which institutional actors were most influential in shaping the Directive and what political, legal or ideological considerations motivated their positions. The analysis is based primarily on formal institutional documents and therefore traces only the motivations explicitly articulated in them.

The analysis focuses on the roles of the European Commission (1), the European Parliament (2), and the Council (3) within the legislative process. Specifically, the chapter on the catalogue of offences in the Directive (Articles 3-13) emerged as the central focus of legislative discussions, with most of the identified changes occurring there. Therefore, the detailed review is limited to this part of the VAW Directive.

²⁰¹ European Parliament, "Legislative Proposal on Combating Violence against Women and Domestic Violence: A New Push for European Democracy," *Legislative Train Schedule* (Accessed June 1 2026) <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-legislative-proposal-on-gender-based-violence>.

Section 1: European Commission

The first actor to be examined is the European Commission. As the only EU institution holding the right of legislative initiative, the Commission played a central role in defining the initial scope and ambition of the VAW Directive. However, its direct involvement in the OLP largely ended once the Proposal was tabled.

As explained previously, the Proposal emerged from a broader political and legal context marked by fragmentation in both Member States' criminal laws and the EU legal framework.²⁰² The present section, therefore, does not revisit that context in detail. Instead, it focuses on how the Commission translated that context into a specific legal design for the catalogue of offences. Indeed, through its Proposal, the Commission determined which forms of violence should be addressed at the EU level, and how far the Union should intervene in an area traditionally regulated by Member States. This is determined according to the Impact Assessment Report.²⁰³ Therefore, the following analysis will examine two aspects of this role: the selection of a directive as the legislative instrument and the configuration of the catalogue of offences.

A. Choice of instrument: a Directive

The Commission's decision to regulate VAW by means of a directive is not accidental; it reflects a deliberate political choice.

In the explanatory memorandum, the Commission justified this choice by stating that, under the selected legal bases (arts 82(2) and 83(1) TFEU), the appropriate instrument to use was a directive. This instrument was introduced to simplify the legal framework by consolidating relevant EU rules into a single act, providing professionals and victims with clearer, more transparent guidance.²⁰⁴ The Commission also stressed that the new directive would supplement the existing framework rather than replace it entirely.²⁰⁵ Its

²⁰² See Chapter 2, section 1: Historical Overview of the EU Directive Combating Violence Against Women.

²⁰³ See European Commission, *Impact Assessment Report*.

²⁰⁴ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, 11.

²⁰⁵ *Ibid.* The current framework is notably referring to the Victims' Rights Directive.

focus is on establishing specific obligations for victims of VAW and Domestic Violence, acting as a *lex specialis* instrument for this group, similar to directives on trafficking, child abuse, and terrorism.²⁰⁶ This dedicated directive on VAW, rather than incremental amendments, underscores the Commission's and VDL's commitment to fulfilling the GES 2020-2025 goals and to recognising VAW as a critical issue requiring action.

However, at the same time, choosing a directive is not neutral. Given the severity and prevalence of VAW, a question arises: why not opt for a regulation? A *directive*, by definition, binds Member States only as to the result to be achieved, leaving them a margin of discretion as to the form and methods.²⁰⁷ A *regulation*, instead, binds in its entirety and is directly applicable.²⁰⁸ Therefore, a regulation would have had more power and impact in the national system.

Nonetheless, in a sensitive area such as criminal law, which is closely connected to state sovereignty, the flexibility given by the directive was likely a key factor in the Commission's decision. It must also be considered that the EU has limited competence in this domain and that a more invasive tool would likely encounter political opposition.²⁰⁹ This reading is supported by the Impact Assessment Report, which shows that the Commission preferred a comprehensive yet minimal-harmonisation option over far-reaching alternatives.²¹⁰

²⁰⁶ Ibid. See European Commission, *Impact Assessment Report*, 31.

²⁰⁷ European Union, *Consolidated Version of the Treaty on the Functioning of the European Union*, art 288.

²⁰⁸ Ibid.

²⁰⁹ European Union, *Consolidated Version of the Treaty on the Functioning of the European Union*, art 4(2)(j). The criminal area, part of the freedom, security and justice sector is a shared competence. To add on that, see European Commission, *Impact Assessment Report*, 31-32: the report states that, according to the CJEU Opinion 1/19 on the EU accession to the Istanbul Convention, aspects of substantive criminal law remain the primary responsibility of Member States and that criminalisation of specific types of conduct remains to a great extent *subject to national law*. And thus, the Proposal takes this into account by proposing criminalisation only to a *very limited extent*.

²¹⁰ European Commission, *Impact Assessment Report* 40-45, 67. The report compares different options. The first policy mainly includes moderate measures to align with Istanbul Convention standards within the EU's scope. The second presents more comprehensive and detailed measures across five problem areas, including cyber-violence and sexual harassment. This second option is split into sub-options 2A and 2B, with 2B imposing stricter obligations. The Commission favours option 2A, seeing it as the most effective while maintaining proportionality and allowing flexible implementation. See also Ramaru and Martin Miraut, "Violence against Women within the Framework of the European Union: Present and Future European Directive", 153, which interprets this as a deliberate choice to avoid a more extensive regulatory approach, considering proportionality and the sensitive nature of criminal law.

In this light, the choice of a directive can be understood as a pragmatic compromise: it goes beyond simple amendments or soft-law measures by establishing a specific EU framework on VAW, while avoiding the more rigid harmonisation that a regulation would entail.

B. Catalogue of offences under Sexual Exploitation and Computer Crime

The Commission situates the Directive within the Union's equality goals, in line with its GES 2020-2025. It grounds the initiative in the treaties, describing VAW as a phenomenon that undermines core values of gender equality and non-discrimination by endangering women's rights "in all areas of life".²¹¹ The Impact Assessment describes VAW as stemming from structural inequalities and historically unequal power imbalances, often driven by misogyny. It is characterised by traits such as occurring in the *private sphere* and the pervasive elements of *coercive control* – a form of violence different from that experienced by men.²¹² This structural and gendered diagnosis is reflected in the Proposal.

Within this equality-based and structural framework, the Commission translates its diagnosis into a list of offences based on the two crime categories in Article 83(1) TFEU that can be applied here: sexual exploitation of women and children, and computer crime.

The Commission's approach to sexual exploitation is notably intriguing and has attracted criticism.²¹³ The Proposal takes a broad view of this concept. It argues that 'sexual exploitation' encompasses "any actual or attempted abuse of a position of vulnerability, differential power or trust, including, but not limited to, profiting monetarily, socially or politically from a sexual act with another person. The exploitative element can refer to the achievement of power or domination over another person for the purpose of sexual

²¹¹ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, recital 2.

²¹² European Commission, *Impact Assessment Report 9*. Other VAW specificities identified are suffering from systemic under-reporting, disrupted criminal proceedings. See chapter 1, section 2 on radical feminism as wording echoed with radical feminist idea.

²¹³ This would be addressed later in the Council section.

gratification, financial gain and/or advancement.”²¹⁴ On this basis, the Commission includes consent-based rape and FGM, stating that they inherently involve these elements, reflecting the typical power imbalance between women and men.²¹⁵

Regarding computer crime, the Commission defines it as offences against or closely connected to the use of information and communication technology. It highlighted that employing such technologies as a means of attack can increase the severity of the offence in terms of quantity, quality, intensity, target choice, and duration beyond what is possible with other methods.²¹⁶ The Proposal and the Impact Assessment also stress that cyberviolence has an inherent cross-border dimension and can spread and intensify beyond the territory of a single Member State.²¹⁷ On that basis, the Commission’s action is necessary and derives from the nature of cyber violence itself. Under this category, it identifies four types of offences: non-consensual sharing of intimate images, cyberstalking, cyberharassment, and cyber incitement to violence or hatred.²¹⁸

It is worth noting that, previously, EU measures in the computer crime area focused only on ‘cyber-dependent offences’ - acts that can only be committed using ICT.²¹⁹ However, this Proposal is the first to extend harmonisation to ‘cyber-enabled offences’, which are traditional crimes that can be committed physically but are facilitated and aggravated by technology.²²⁰ This broadens the concept of computer crime, pushing beyond previously recognised boundaries and demonstrating the Commission’s willingness to address such issues.

²¹⁴ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, 8.

²¹⁵ Ibid. Female genital mutilation is an exploitative practice performed for the purpose of preserving and asserting domination over women and girls and to exert social control over girls and women’s sexuality. It is sometimes performed in the context of child or forced marriage or domestic violence. This reflects the typical power imbalance between women and men in such cases, which is also prevalent in the case of rape. In addition, see *ibid.*, recital 13 for rape and 16 for FGM.

²¹⁶ Ibid., 9.

²¹⁷ Ibid. See European Commission, *Impact Assessment Report* 32.

²¹⁸ See *ibid.*, recital 17 to 23 for the ICT crimes (19 for non-consensual sharing of intimate images; 20 for cyberstalking; 21 for cyberharassment; 22-23 for cyber incitement to violence or hatred).

²¹⁹ Braschi “The new EU Directive on combating violence against women and domestic violence”, 428-429. For definition see, Colin Murphy, *Briefing: Understanding Cybercrime*, European Parliamentary Research Service, 2024, 2.

²²⁰ Ibid.

Thus, as seen, the Proposal's Chapter 2 addresses certain forms of VAW, establishing basic rules for their definitions and penalties. Although these offences are chosen because they mainly impact women, the criminalisation process is generally gender-neutral, covering all victims, including men and non-binary individuals.²²¹ Rape and FGM are the only offences explicitly linked to women and children as victims.²²² This raises the question of whether such a predominantly gender-neutral approach can adequately reflect the structural and gendered aspects of VAW, as it is anchored in a liberal equality model that, as discussed in chapter 1, fails to capture women's specific situation. Besides this, it continues to support the 'Union of Equality' project.

Overall, the Commission's selection of instruments and catalogue setup shaped the VAW Directive as innovative yet thoughtfully considered. Elevating VAW to a standalone EU legislative topic demonstrates the Commission's genuine commitment to addressing the issue. At the same time, doing so through a minimum-harmonisation directive and predominantly gender-neutral drafting signals a reluctance to fully translate its own structural and gendered diagnosis of the problem into binding EU criminal law.

Section 2: European Parliament

The second actor analysed is the European Parliament, representing EU citizens' voices. As a co-legislator under the OLP, the EP has an important role in shaping the VAW Directive. Looking at the history, the Parliament's engagement with VAW began before this Directive. It first expressed concerns in 1986 and has since repeatedly called on the Commission to propose a comprehensive directive to prevent and combat VAW, with requests made in 2009, 2011, and 2013.²²³ In 2014 and again in 2021, the EP advocated

²²¹ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, 17.

²²² Ibid.

²²³ Anna Dimitrova-Stull, *Briefing: Violence against women in the EU: State of play*, European Parliamentary Research Service (2014) 5–6. The different calls were made through 'resolution'. In **2009**, Parliament urged the Commission to develop a comprehensive directive on preventing and addressing all types of violence against women. It emphasised that Member States should treat sexual violence and rape, including within marriage, informal relationships and/or perpetrated by male relatives—as crimes that automatically lead to prosecution; In 2011, it was noted that women across the EU do not all enjoy equal protection from male violence. MEPs appreciated the Commission's pledge to develop a strategy in this area and suggested implementing a comprehensive approach to fight gender-based violence.; In **2013**, Parliament again urged the Commission to develop an EU strategy to address violence against women,

for gender-based violence to be recognised as a new crime category under Article 83(1) TFEU and for EU-wide criminalisation of such violence.²²⁴

In this context, the EP's many calls for action were finally acknowledged when the Commission introduced the VAW Proposal in 2022. This section examines its impact on the legislative debate through its Report, its Position at the first reading, and the final four-column table agreement.

A. Inclusion of new crimes

EP's most visible attempt to influence the VAW Proposal lies in its effort to broaden the catalogue of gender-based issues beyond what the Commission proposed. In its report, the EP extends the Directive scope to cover five additional offences: sexual assault, intersex genital mutilation, forced sterilisation, forced marriage, and sexual harassment at work.²²⁵ It also expands the recital's list of relevant criminal conduct under national law to include intimate partner violence, sexual exploitation through prostitution of others and attempts to prevent voluntary termination of pregnancy.²²⁶ This expanded vision is operationalised in Chapter 2 of the EP Report through new offence provisions (Article 5a and Articles 6a-d), which are faithfully reproduced in the EP-dedicated column of the four-column table.²²⁷

In a note transmitted by the Council Presidency²²⁸, the EP maintains that these behaviours represent serious, gendered forms of violence or exploitation, primarily impacting

including drafting a directive that sets minimum standards. It also called for signing and ratifying the Istanbul Convention.

²²⁴ Ibid. See European Parliament, *Resolution of 16 September 2021 with recommendations to the Commission on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU* (2021/2035(INL)), OJ C117, 11 March 2022.

²²⁵ European Parliament, *Report on the Proposal for a Directive of the European Parliament and of the Council on Combating Violence against Women and Domestic Violence* (COM(2022)0105 – C9-0058/2022 – 2022/0066(COD)) (A9-0234/2023, 6 July 2023), amendment 5 (recital), Amendments 105-109 (sexual assault, intersex genital mutilation, forced sterilisation, forced marriages, and sexual harassment at work).

²²⁶ Ibid., Amendment 5.

²²⁷ Council of the European Union, *Proposal for a Directive Combating Violence against Women and Domestic Violence – Final Four-Column Table Following the Trilogue on 6 February 2024* (2022/0066(COD)). WK 2166/2024 INIT. 9 February 2024, lines 13, 113 and 118a-d.

²²⁸ Council of the European Union, *Directive on combating violence against women and domestic violence - Information on new crimes included in the EP mandate*, Note from the Presidency to Delegations, WK 15058/2023 INIT, 15 November 2023. This source is used for the whole paragraph explaining the EP justification to include those crimes into the catalogue.

women. They entail severe violations of dignity, bodily integrity, and fundamental rights, and are inconsistently and insufficiently criminalised across Member States.²²⁹ Specifically, sexual assault is seen as comparable in harm and cross-border relevance to rape, necessitating EU-wide harmonisation. Intersex genital mutilation and forced sterilisation are justified through analogy with FGM and torture, highlighting their lack of medical necessity, absence of free and informed consent, long-term physical and psychological harm, and their role as tools of social control over women. Forced marriage and workplace sexual harassment are described as widespread practices that daily undermine women's autonomy, health, and socio-economic rights - therefore, it necessitates harmonised criminalisation to ensure uniform and effective protection.

However, when looking at the final four-column tables and the EP position, this extensive catalogue was significantly reduced during trilogue. The Council column consistently removes the new EP offences, and in the agreement column, only forced marriage remains as an autonomous crime.²³⁰ Likewise, the EP's attempt to expand the list of recitals of criminal conduct did not survive the negotiations.²³¹

B. Consent-based rape

Beyond proposing new crimes, the EP's other important intervention in the debate concerned the consent-based rape offence. In its report, the EP endorsed the Commission's understanding of rape, confirming it should be defined by the absence of freely given consent, rather than by force.²³² The EP therefore agreed with the

²²⁹ Ionel Zamfir, *Briefing: Combating violence against women and domestic violence*, European Parliamentary Research Service (2024), 4. A 2022 EU-wide study by the European Parliament found no uniform criminalisation of all forms of GBVAW across the EU. Although most Member States criminalise FGM, forced marriage, forced abortion, and forced sterilisation, only three countries have established these as specific offences. See European Parliament, *The legislative frameworks for victims of gender-based violence (including children) in the 27 Member States*. Study requested by the FEMM committee. Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies (2022) 22-23.

²³⁰ Council of the European Union, *Final Four-Column Table*, lines 113 and 118a-d. Regarding **forced marriage**, the provision generally remains unchanged, except that 'woman' has been replaced with 'adult' to ensure gender neutrality (line 118c).

²³¹ *Ibid.*, line 13.

²³² European Parliament, *Report on the Proposal for a Directive on Combating Violence against Women and Domestic Violence*, 153.

Commission's broad understanding of sexual exploitation, and, at the same time, that rape is under such Eurocrime category.

Although it shared this understanding, the EP still suggested some modifications to improve the provision. Specifically, it proposed expanding the definition of rape beyond just 'penetration' to include 'any other non-consensual act of a sexual nature,' considering the seriousness of these acts to be comparable to penetration.²³³ Accordingly, it aimed to refine 'consent' by emphasising that all circumstances matter when assessing it, especially in situations where a woman cannot freely refuse or withdraw consent, such as fear, intimidation, or other particularly vulnerable circumstances.²³⁴

Considering that, the EP is viewed as a strong supporter of the rape provision, in line with the Commission's perspective. However, like the amendments to the list of new crimes, the consent-based rape offence was removed completely from the final text following the Council's stance.²³⁵ This outcome highlights the EP's limited influence in the discussion.

C. ICT-related crimes

Regarding the cyber-violence offences, the EP largely followed the Commission's approach but sought to refine certain elements. It fully endorsed the four core cyber-offences proposed by the Commission, without adding new categories of ICT-related crime.

Its most notable intervention concerned the refinement of the cyberharassment provision. In the four-column table, the EP added a line clarifying that cyberharassment covers the unsolicited sending of any material depicting a person's genitals, known as 'cyber-flashing'.²³⁶

²³³ Ibid. See Council of the European Union, *Final Four-Column Table*, line 23b.

²³⁴ Ibid., 153 and amendment 103. See, Council of the European Union, *Final Four-Column Table*, line 113.

²³⁵ Council of the European Union, *Final Four-Column Table* line 113.

²³⁶ European Parliament, *Report on the Proposal for a Directive on Combating Violence against Women and Domestic Violence*, amendments 26 and 117. See, Council of the European Union, *Final Four-Column Table*, line 132a.

Apart from this addition, the EP's influence remains limited. When looking at the four-column table, the Council's position continues to dominate in the restructuring and interpretation of the ICT offences.

D. Aggravating circumstances

Concerning the aggravating circumstances, the EP influenced the debate to some degree, mainly by strengthening the existing list. Its Report shows that the Commission's original list remains, but it recommends adding more scenarios. These include cases in which the offence was committed against a public official, a journalist, or a human rights defender, on the basis that such attacks pose a significant threat to democracy across the Union.²³⁷ Similarly, the EP recommended clarifying that an aggravating circumstance applies when the crime is committed with the intent to punish based on factors such as sexual orientation, gender expression, gender identity, sex characteristics, skin colour, religion, social origin, or political beliefs.²³⁸ It also emphasised that crimes intended to preserve or restore the so-called “honour” of a person, family, or community should be considered an aggravating factor.²³⁹ All of these scenarios were kept in the final text.

Not all EP amendments were included in the final text. For example, the expansion of the vulnerability factor to cover specific contexts such as pregnancy, situations of distress, and living in institutions was dropped during negotiations.²⁴⁰ Additionally, the proposal that offences committed for profit or gain, or with the intent to profit or gain, should be considered aggravating circumstances did not pass.²⁴¹

E. Other provisions: penalties and limitation periods

In these areas, the EP had little influence. Its stance mostly aligned with the Commission proposal, with only minor changes—mainly related to the new crimes list, which was

²³⁷ Ibid., 154. See Council of the European Union, *Final Four-Column Table*, line 161a.

²³⁸ Council of the European Union, *Final Four-Column Table*, line 161d.

²³⁹ Ibid., line 161c.

²⁴⁰ Ibid., line 148b. The other added situations were residence status, being a trafficking victim, and living in institutions such as retirement homes, children's homes, reception centres, detention facilities, or asylum seeker accommodation centres

²⁴¹ Ibid., line 161b.

ultimately not adopted, so these changes were also dropped. However, the four-column table underwent significant modifications after the Council's position, indicating its substantial influence.²⁴²

This analysis shows that, despite its long-standing calls on VAW, the EP's concrete influence in the negotiations remains limited. Its ambitious vision to broaden the Directive catalogue was largely stripped out, with only forced marriages ultimately retained in the final agreement. The EP's concrete gains are confined to targeted points, such as recognising cyber-flashing within the cyberharassment offence and inserting a limited set of aggravating circumstances. Therefore, the EP was mostly a symbolic-norm entrepreneur rather than a decisive lawmaker on the Directive catalogue.²⁴³

Section 3: Council of the European Union

Since this thesis aims to examine the interinstitutional dynamic and, due to capacity constraints, cannot analyse each Member State's stance on every article in the VAW Directive's chapter, it will focus on the most significant issues. Instead, the analysis will primarily rely on the General Approach report, which reflects the Council's position as the collective view of all 27 Member States, as well as the final four-column table.

A. Council's legal stance on sexual exploitation offences

The Council's Legal Service (CLS) opinion on the VAW Directive is crucial for understanding the Council's stance on sexual exploitation offences. Essentially, the CLS was asked whether Article 83(1) TFEU allows for minimum standards concerning the crimes outlined in Articles 5-10 of the Proposal, including rape, FGM, and ICT-related offences. More specifically, for this subsection, whether rape and FGM can be regarded

²⁴² For limitation periods: European Parliament, *Report on the Proposal for a Directive on Combating Violence against Women and Domestic Violence* 134-136; See Council of the European Union, *Final Four-Column Table*, lines 173-178. For penalties: *ibid.*, amendment 120-123; See Council of the European Union, *Final Four-Column Table*, lines 139-144.

²⁴³ By 'symbolic norm entrepreneur,' the thesis suggests that the EP was active in proposing ambitious normative ideas. However, most of these ideas did not translate into binding laws, so their role was primarily to shape the agenda rather than the final legal outcomes, at least for the catalogue section. While it effectively motivated the Commission to act symbolically, it was less impactful in the legislative process.

as falling within the existing Eurocrime area of “trafficking in human beings and sexual exploitation of women and children”.

Regarding rape, the CLS provides a cautious response. When tracing the development of the “trafficking in human beings and sexual exploitation of women and children” category, it states that *sexual exploitation* emerged as a component of *trafficking*.²⁴⁴ Indeed, international and EU frameworks usually view ‘sexual exploitation’ crimes as involving an *exploitative* element, not a ‘pure’ sexual violence rooted in a lack of consent.²⁴⁵ In this reading, rape is not considered inherently associated with the sexual exploitation category. Instead, its defining component is *sexual violence*, which impacts physical integrity rather than the exploitation recognised in trafficking law.²⁴⁶

However, the CLS recognises that there have been some deviations from this limited interpretation, particularly with respect to the Child Sexual Abuse Directive.²⁴⁷ Against this background, the terms “sexual exploitation” could, in principle, be interpreted more broadly, to the extent of including rape and other violence-centred offences.²⁴⁸ Nonetheless, it does stress that such a decision would result in three main outcomes: (1) it would establish a precedent for extensive interpretation of all euro crimes; (2) to uphold non-discrimination, it would necessitate interpreting sexual exploitation of women and children as sexual exploitation of persons, requiring a gender-neutral EU definition of rape; and (3) it would pose considerable legal risks in possible litigation.²⁴⁹

Indeed, the non-discrimination aspect is particularly important. According to the CLS, the Commission limited the definition of rape to cases involving *women* as the victim,

²⁴⁴ Council Legal Service, *Opinion of the Legal Service: Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, Council document 14277/22, 31 October 2022 (Brussels: Council of the European Union), paras 17-18, 26, 44.

²⁴⁵ *Ibid.*, paras 29-30, 33.

²⁴⁶ *Ibid.*, paras 32, 44.

²⁴⁷ *Ibid.*, para 39: the CLS states that, with regards to Article 3(5)iii of Child Abuse Directive, the main constitutive element of the crime is actually focused on the *use of violence as a form of sexual abuse*, and concerns not only cases where the child has not reach the age of sexual consent, but also cases where the minor has reached that age. Admittedly, such a provision is based on an extensive interpretation of the notion of “sexual exploitation” as comprising crimes centred on sexual violence, and thus capable of including rape.

²⁴⁸ *Ibid.*, paras 35-37, 39-41, 45.

²⁴⁹ *Ibid.*, paras 46 and 83(b).

establishing an EU-level rape offence solely against women. This contrasts with the gender-neutral approach of the Istanbul Convention.²⁵⁰ The CLS considers that this approach would be difficult to harmonise with treaty provisions on equal treatment, since men face similar situations regarding the protection of sexual freedom and physical integrity. There is no objective and proportionate reason to limit the crime of rape exclusively to women.²⁵¹ It thus indicates that, if rape were to be treated as a form of sexual exploitation, it would require reclassifying the offence in a gender-neutral way to prevent discrimination issues.²⁵²

Regarding FGM, the CLS adopts a more lenient position. It recognises this offence as having an exploitative aspect, especially considering its significant impact on minors' vulnerable circumstances, which could imply that it falls under the category of "sexual exploitation of children".²⁵³

At the same time, the CLS suggests a more legally solid option: instead of broadening the sexual exploitation interpretation to include rape, the Council could expand the list of eurocrimes and introduce a new category for "sexual abuse and sexual violence concerning a person."²⁵⁴ In its view, rape and FGM clearly fulfil the criterion of being a particularly serious crime. It also believes that, based on objective factors, these issues may have cross-border aspects, highlighting the necessity of addressing them on a common basis.²⁵⁵ This route would be more consistent with the structure of Article 83(1) and help minimise the risk of legal disputes regarding competence.

As mentioned, this legal reasoning directly influenced the Council's actions concerning the offence catalogue. During its GA, the Council chose to remove rape as an EU-level offence, while FGM remained included.²⁵⁶ This stance was upheld in the final four-

²⁵⁰ Ibid., paras 20-21.

²⁵¹ Ibid., paras 20-23.

²⁵² Ibid., para 83(b).

²⁵³ Ibid., para 47.

²⁵⁴ Ibid., paras 48-49.

²⁵⁵ Ibid., paras 49-51.

²⁵⁶ Council of the European Union, *Outcome of Proceedings: Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence – General approach*, Council document 10717/23, 15 June 2023 (Brussels: Council of the European Union), arts. 5-6.

column table, which confirmed the decision not to include rape in the Directive, and generally, not to incorporate any other crimes proposed by the EP, except for forced marriage.²⁵⁷

That being said, this decision was not unanimously approved by the Council. The statement from Member States after the General Assembly indicates that this cautious legal interpretation was politically debated within the institution. A first group of states - Belgium, Greece, Italy, and Luxembourg - explicitly supports the overall compromise text but criticises the insufficient political effort concerning the criminalisation of rape.²⁵⁸ They oppose the restrictive interpretation suggested by several MS and emphasise that the CLS opinion acknowledges a broader understanding of sexual exploitation that could include rape. For these governments, the absence of a consent-based EU definition of rape is viewed as a missed opportunity rather than a legal requirement.²⁵⁹

In contrast, Poland's statement solidifies its position within the restrictive camp. It declines to support the GA and, citing the CLS opinion, contends that certain offences are not clearly encompassed by the European categories.²⁶⁰ It further stated that the eurocrime should have initially been extended unanimously under Article 83(1) TFEU. It warns that acting without this decision would bypass the unanimity requirement and result in an ultra vires expansion of EU competences. Similar concerns are raised by the Czech Republic and Estonia, which warn against an overly broad interpretation of the treaties.²⁶¹ In addition, doctrinal commentators emphasise that this restrictive stance was also observed in France and Germany. Both countries, generally seen as advocates of gender equality,

²⁵⁷ Council of the European Union, *Final Four-Column Table* line 109 – 118(d).

²⁵⁸ General Secretariat of the Council, *Note: Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence – General approach – Statements*, Council document 9305/23 ADD 1, 31 May 2023 (Brussels: Council of the European Union) 2-3.

²⁵⁹ *Ibid.*

²⁶⁰ General Secretariat of the Council, *Note: Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence – General approach – Statement by Poland*, Council document 9305/23 ADD 2, 7 June 2023 (Brussels: Council of the European Union) 2.

²⁶¹ General Secretariat of the Council, *Note: Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence – General approach – Statements*, 4.

aligned with the group opposing a harmonised EU-wide rape offence, claiming it did not align with the traditional concept of sexual exploitation.²⁶²

Ultimately, the Council's approach to rape seems driven more by political choice than by strict constitutional limits. The CLS outlined lawful options, such as adopting a broader interpretation of sexual exploitation that includes consent-based rape or employing the unanimity procedure to introduce a new Eurocrime area. However, most Member States opted against these measures. While it is true that some pointed to the unification process as the clean solution, the political and legal complexities, such as the need for unanimity and criminal-law standards, make achieving unity challenging. Their decision not to use the available interpretations or procedural options effectively leaves women's protection against non-consensual sex fragmented across national borders.

B. ICT-related crimes

Unlike the category of sexual exploitation, the Council's approach to ICT-related offences does not involve a fundamental challenge to EU competence but rather focuses on recalibrating the scope of harmonisation. The CLS accepts that Articles 7-10 of the Proposal can be anchored in the 'computer crime' category, interpreting it as extending beyond classic attacks on information systems to computer-assisted offences intrinsically linked to the use of ICT.²⁶³ Given that cyberviolence offences often rely on the amplifying effect of online dissemination and ICT-based actions, the CLS considers them to meet the seriousness and cross-border criteria of Article 83(1) TFEU.²⁶⁴ The Council debate therefore shifts from whether the EU may legislate to how far it should do so.

The GA and four-column table reports show that the main changes identified in the comparative analysis are directly from the Council. This is especially evident in the reorganisation of cyberstalking and cyberharassment: conduct initially covered by Article 8 is redistributed, with stalking narrowed to ICT-enabled surveillance, while threatening

²⁶² Mireia Brunet Villarejo, "Why was rape regulation omitted from the first EU Directive on violence against women?" 138-1341.

²⁶³ Council Legal Service, *Opinion of the Legal Service: Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, paras 55-59.

²⁶⁴ *Ibid.*, 59.

behaviour and doxxing-like activities are reclassified under Article 9 as forms of harassment.²⁶⁵ Although the Council justified this change by stating that the acts in Article 7 of the Proposal were more “related to harassment than stalking”, academic commentators also note that harassment is a broad term encompassing various behaviours, some of which *overlap* with stalking or hate speech.²⁶⁶

The Council also introduces a seriousness threshold, limiting the criminalisation of ICT-related conduct *only* to situations where it is likely to *cause serious harm*.²⁶⁷ This choice is also reflected in the recital 18 of the GA.²⁶⁸ These changes can be seen as the Council applying the seriousness requirement as a filter to narrow the scope of criminalisation to core online abuse.

A similar pattern appears for cyber incitement to violence or hatred. The Council also add a seriousness threshold, limiting the criminal law's applicability to conduct that poses a danger to the public.²⁶⁹ However, according to academic commentators, this restriction is typically necessary to criminalise hate speech.²⁷⁰ The Council follows this logic, defending its position by citing its compliance with EU standards on racism and xenophobia.²⁷¹

²⁶⁵ Council of the European Union, *Final Four-Column Table* lines 125-128 to 130-132(b).

²⁶⁶ General Secretariat of the Council, Note: *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence – Proposal from the Presidency for a redraft of Articles 1–15*, WK 1034/2023 INIT, 24 January 2023 (Brussels: Council of the European Union), Art. 8; Braschi “The new EU Directive on combating violence against women and domestic violence”, 437.

²⁶⁷ Council of the European Union, *Final Four-Column Table* lines 121-122, 127, 131-132(a).

²⁶⁸ Council of the European Union, *Outcome of Proceedings – General approach*, recital 18: Moreover, in order to only set minimum rules for the most serious forms of cyber violence, the relevant incriminations should be limited to conduct which is likely to cause serious harm or serious psychological harm to the victim, or to conduct which is likely to cause the victim to seriously fear for their own safety or that of their dependants. See Council of the European Union, *Final Four-Column Table* line 27.

²⁶⁹ Braschi “The new EU Directive on combating violence against women and domestic violence”, 43. See Council of the European Union, *Outcome of Proceedings – General approach*, 55. The Article 10(2): Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting.

²⁷⁰ *Ibid.*

²⁷¹ General Secretariat of the Council, Note: *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence – Proposal from the Presidency for a redraft of Articles 1–15*, art. 10.

Finally, the Council inserts an explicit safeguard regarding the non-consensual sharing of intimate or manipulated material. It explicitly states that criminalisation must respect fundamental rights, including freedom of expression and information.²⁷²

Overall, these Council-led amendments sharpen the definitions and align them with current standards. However, they also lead to a narrower form of harmonisation, with ICT-offences being closely limited by the seriousness threshold, public order concerns, and restrictions on fundamental rights.

C. Aggravating circumstances

Regarding aggravating circumstances, the Council mostly maintains the Commission's list but reduces the strength of the EU-level obligation. The four-column table confirms that the main aggravating factors suggested by the Commission are included, with an added clear amendment that "may, *in accordance with* the relevant provisions of *national law*," these factors be considered as such.²⁷³ This phrasing highlights that Member States retain the discretion to determine how these circumstances impact sentencing in practice.

Meanwhile, this is also the area where the Council shows the greatest consideration of the EP's input. Looking at the four-column table, the EP proposed aggravating factors survived into the final text, with only a couple of amendments dropped.²⁷⁴ By contrast, two of the Commission's more specific circumstances (the recording and causing the victim to be under the influence of alcohol or drugs) are deleted.²⁷⁵ This decision is troubling, considering that studies show perpetrators often use alcohol and other substances to enable sexual assault and weaken the victim's ability to consent.²⁷⁶ Thus, the Council's decision not to consider such conduct as an aggravating factor seems inconsistent with the evidence on how gender-based sexual violence is truly committed.

²⁷² Council of the European Union, *Final Four-Column Table* line 123(b).

²⁷³ *Ibid.*, line 146

²⁷⁴ *Ibid.*, lines 148, 152 and 161(b)

²⁷⁵ *Ibid.*, lines 160-161.

²⁷⁶ See Philip Smith, et al., "Intimate partner violence and specific substance use disorders: findings from the National Epidemiologic Survey on Alcohol and Related Conditions". *Psychol Addict Behav* (2012); Peter R. Giancola, et al., "Men and Women, Alcohol and Aggression" *Experimental and Clinical Psychopharmacology* (2009).

Overall, the Council's influence is to stabilise a relatively classic list of aggravating circumstances while, however, downgrading the degree of harmonisation. The Directive outlines a standard list of factors that may be regarded as aggravating, leaving considerable discretion in determining which factors are relevant and how heavily they should influence sentencing.

D. Other provisions: penalties and limitation periods

On penalties, the GA follows the Commission in requiring that offences be punishable by effective, proportionate and dissuasive sanctions, but calibrates this to its narrower catalogue of offences. Since rape is dropped, the detailed minimum penalty scheme concentrates on FGM and the ICT-based crimes. All ICT offences are subject to a minimum penalty of one year's imprisonment, thereby erasing the differentiated Commission structure and lowering the penalties for some of them.²⁷⁷ The GA also deletes the Commission's reference to increased minimum penalties in the presence of aggravating circumstances. This result leaves more leeway to member states.²⁷⁸

On limitation periods, the Council's approach is similarly cautious. While accepting that serious gender-based violence requires sufficiently long limitation periods to allow victims to report and pursue proceedings, the GA does not specify exact time limits. Instead, it states that it must be for a sufficient period after the crime's occurrence. It erases the distinctions the Commission, and later the EP, had drawn between crimes.²⁷⁹ Simultaneously, it states that this period should match the severity of the offence.²⁸⁰ In its explanation, the Council links this formulation to a desire to confine the Directive's practical impact to "the most serious cases".²⁸¹ However, in legal terms, this considerably expands the discretion of Member States.

²⁷⁷ Council of the European Union, *Final Four-Column Table* lines 143-144.

²⁷⁸ *Ibid.*, line 142.

²⁷⁹ Council of the European Union, *Outcome of Proceedings – General approach*, 60; Council of the European Union, *Final Four-Column Table* lines 173- 178.

²⁸⁰ *Ibid.*, 59.

²⁸¹ General Secretariat of the Council, *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence – Proposal from the Presidency for a redraft of Articles 1–15*, Art. 15 comment.

Thus, this chapter shows that the final form of the Directive Chapter 2 results from a complex interplay among the three main European institutions. However, their influence on the legislative discussion differs. The Commission elevated VAW to a distinct legislative priority within the EU, publicly recognising the structural and gendered nature of inequality. It proposed this in a directive framework, establishing a minimum harmonisation of an innovative catalogue of offences with broad definitions of ‘sexual exploitation’ and ‘computer crime’. After completing this step, its influence in the legislative debate became more limited.

During negotiations, the European Parliament emerged as the most ambitious among the actors in normative terms. Many of the Directive’s progressive proposals originated from the EP: from the introduction of new offences, enhanced aggravating circumstances, and efforts to keep a consent-based rape definition. Despite its vigorous advocacy, the EP’s influence on the final legal text was limited due to opposition from the Council. Its role is more symbolic than decisive in shaping the final legal text, at least regarding Directive’s Chapter 2.

In contrast, the Council acts as the primary driver of legislative compromise. In relation to sexual exploitation, it based its decision on a narrow interpretation of EU authority to exclude consent-based rape from the Directive. This omission is widely considered regrettable and has faced criticism from many NGOs and scholars.²⁸² In the field of ICT-related violence, the primary restrictions were all initiated by the Council.

²⁸² To cite a few, see Dilken Çelebi, Lisa Marie Koop and Leokadia Melchior, “Germany Blocks Europe-Wide Protection of Women Against Violence”, *Verfassungsblog*, 17 January 2024 <https://verfassungsblog.de/germany-blocks-europe-wide-protection-of-women-against-violence/> (Accessed June 20, 2026); Women Against Violence Europe (WAVE), “A Step Forward, Yet Many Missed Opportunities: WAVE’s Initial Response to the EU Directive on Combating Violence Against Women and Domestic Violence”, 6 February 2024 <https://wave-network.org/eud-statement-0702024/> (Accessed June 20, 2026); European Women’s Lobby, “EU Directive on Violence against Women” <https://womenlobby.org/our-work/ending-vawg/eu-directive-on-violence-against-women/> (Accessed June 20, 2026); “Joint civil society reaction to the adoption of the EU Directive on combating violence against women and domestic violence”, Platform for International Cooperation on Undocumented Migrants (PICUM) blog, 7 May 2024 <https://picum.org/blog/joint-civil-society-reaction-to-the-adoption-of-the-eu-directive-on-combating-violence-against-women-and-domestic-violence/> (Accessed June 20, 2026).

In other words, while the Commission suggested opening the legislative debate, the EP sought to expand it further, but it was ultimately the Council that set the outer limits of what could be adopted, in this case.

CONCLUSION: EU DIRECTIVE COMBATING VIOLENCE AGAINST WOMEN, BETWEEN PROGRESSIVE AMBITION AND POLITICAL COMPROMISE

This thesis aimed to examine whether Directive (EU) 2024/1385 on Combating Violence against Women and Domestic Violence represents an important and progressive legal milestone for gender equality within the EU. To explore this, it integrates liberal and radical feminist theories with process tracing of legislative negotiations, emphasising the interinstitutional dynamics. Additionally, it includes a doctrinal analysis of the Directive's final content.

The analysis shows that the Directive serves as a legal innovation and also as a politically constrained compromise. It originates from the ongoing structural violence against women, VDL's 'Union of Equality' project, and the EU criminal law framework. By examining its origins, content, and negotiations, the thesis illustrates how the Directive both advances and limits women's protection in the EU.

As a legal innovation, the Directive is the first to specifically address violence against women and domestic violence through a dedicated, comprehensive EU instrument. It responds to a situation where one in three women in the Union has faced severe physical or sexual violence, with many victims not reporting these incidents to authorities, and where national laws and support systems remain deeply uneven. Against this context, the Directive unifies a previously fragmented landscape by criminalising certain forms of violence, setting minimum standards for victim protection and support, and introducing obligations for prevention, coordination and data collection. It integrates violence against women into the EU's core equality and fundamental rights framework, fulfilling the commitment outlined in the 2020-2025 Gender Equality Strategy to eliminate gender-based violence.

Yet, the Directive's final form is inseparable from the institutional bargaining that shaped it. The Commission started by framing VAW as rooted in structural inequalities and historically unequal power imbalances, drawing on radical feminist ideas. It proposed an ambitious measure based on EU criminal law powers, including a list of offences related to sexual exploitation and cybercrime. The EP advanced this agenda with several amendments, especially expanding the list of offences and defending a consent-based approach to rape. However, the Council imposed restrictions: relying on a narrow interpretation of Article 83(1) TFEU and concerns over competence and sovereignty, it removed the rape offence from the Directive and eased certain obligations, giving member states more discretion and increasing disparities. Therefore, the final instrument reflects a compromise, balancing caution and national control rather than a straightforward legal expression of the Commission's diagnosis or the EP's mission.

This process also reveals how feminist claims were translated and filtered through EU institutions. On the one hand, the Directive clearly reflects the belief that law and existing institutions can improve the protection of women. It formalises recognition of violence against women, sets enforceable standards, and creates new obligations for states, such as victim protection, support services, prevention and data collection. On the other hand, the legislative process shows how the Directive's more ambitious goals were toned down when faced with issues like formal equality, gender-neutral language, and Member States' desire to maintain control over sensitive areas of criminal law. This tension helps explain the gap between the directives' strong structural language and its more cautious provisions.

Therefore, the thesis states that the VAW Directive should be seen as a partial step forward rather than a final achievement. It is progressive because it finally gives VAW a dedicated place in EU law, strengthens minimum standards for certain offences, and enhances victims' protection, support, and preventive measures across the EU. It is partial because it leaves central questions unresolved, most notably the lack of harmonisation on rape, the persistence of broad national discretion and the gap between an explicitly structural analysis of violence and a legal response that remains cautious.

However, the true impact of the Directive will only be clear once member states implement it. With the transposition deadline set for 2027, it is not yet possible to assess its practical effectiveness in safeguarding women across the EU. Future research should shift focus from legislative design to practice. It will be essential to examine how Member States transpose the directive, how national institutions interpret and enforce its provisions, and whether the core framework of prevention, protection, support, and coordination results in meaningful improvements in women's everyday lives. Examining the implementation process will also test a central claim of this thesis: whether a legal instrument operating within current institutions can genuinely challenge structural violence, or if it will simply be absorbed into the existing routines that have historically failed women.

This inquiry is especially necessary because the issue extends beyond legislative gaps. It also concerns how the internal justice system functions and whether state institutions genuinely recognise VAW as a structural problem rather than isolated incidents. As highlighted by high-profile cases such as the recent *Lyhanna* case in France, failures often stem not only from missing laws but also from institutional disbelief, minimisation, inadequate protection, poor investigations, and the authorities' continued inability or unwillingness to treat women's experiences with the seriousness they deserve. Therefore, the core question is not only whether states punish violence when it occurs, but primarily whether they recognise their role in creating the conditions that normalise, ignore, or inadequately address such violence. Only the future will answer this question.

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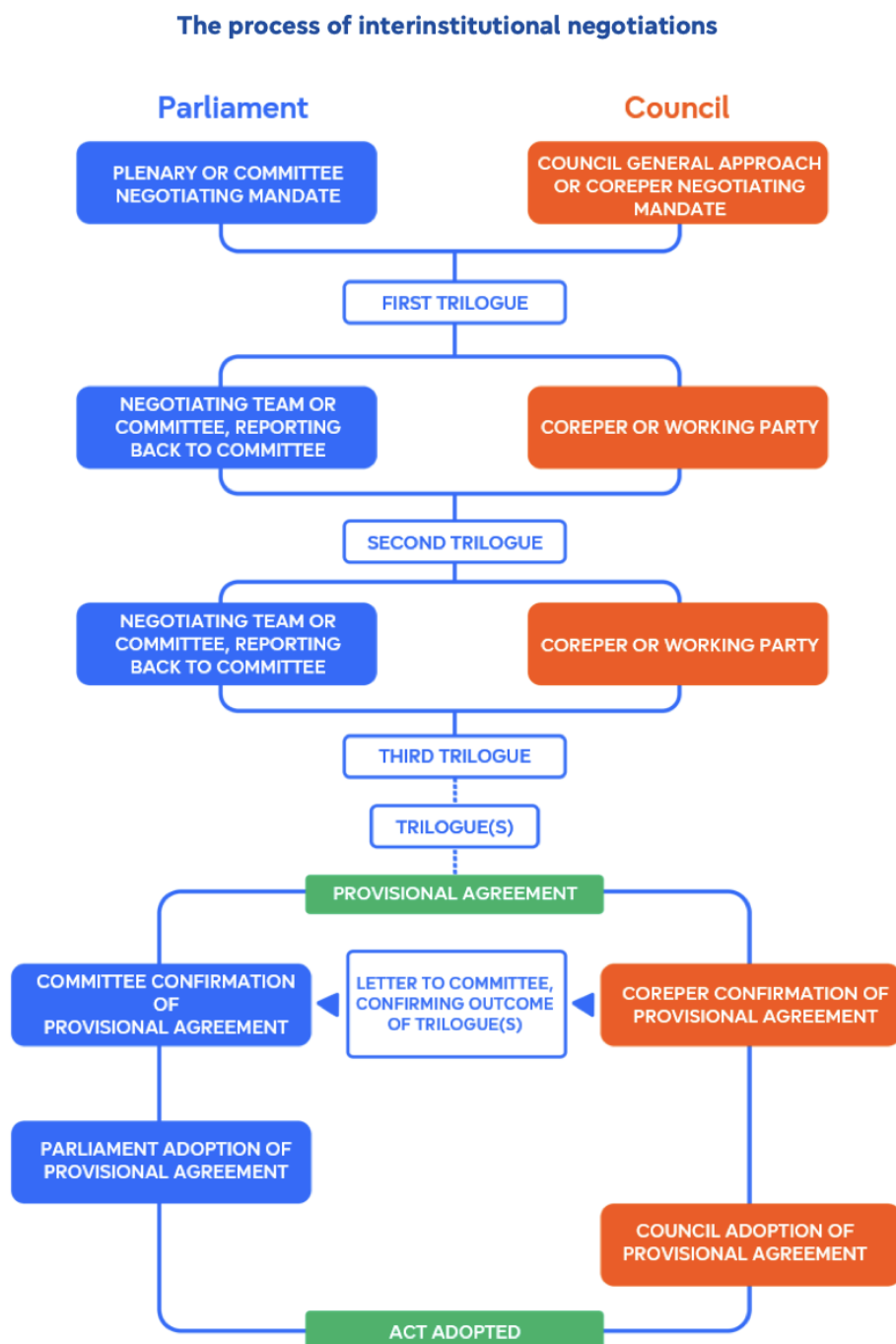
ANNEXES

1. Factsheet Table: Summary

Information of the proposal	Title	The Directive EU 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence.
	Interinstitutional reference	2022/0066(COD)
	Date	8 March 2022
	Legal basis	Articles 82(2) and 83(1) TFEU
	Legislative procedure	Ordinary legislative procedure
	Aim of the proposal	The proposal aims to effectively prevent and combat violence against women and domestic violence. It criminalises certain forms of violence that disproportionately affect women and strengthens victims' rights. For that, it enshrines minimum standards in EU law for criminalising certain forms of gender-based violence; improve access to justice, protection and support for victims; better coordination and cooperation between the competent authorities of the Member States; and effective prevention measures against violence against women and domestic violence
Council of the European Union	Council Presidency	The proposal was presented under the French Presidency (2022). But the directive was adopted under the Belgian Presidency (2024).
	Responsible Working Party	Judicial Cooperation in Criminal Matters (COPEN)
	Responsible COREPER	COREPER II in Justice and Home Affairs (JHA)
European Parliament	EP Committee leading and EP Rapporteur	Civil Liberties, Justice and Home Affairs (LIBE) — Evin INCIR (S&D) Women's Rights and Gender Equality (FEMM) — Frances FITZGERALD (EPP)

	EP Committee consulted	Budget (BUDG) — Alexandra GEESE (Greens) Employment and Social Affairs (EMPL) — Rosa ESTARÀS FERRAGUT Legal Affairs (JURI) — Manon AUBRY (The Left)
European Commission	DG and Commissioner responsible	DG Justice and Consumers (DG JUST) under Helena DALLI (Commissioner for Equality).

2. The Trilogues²⁸³



²⁸³ European Parliament. *Handbook on the Ordinary Legislative Procedure: A Guide to How the European Parliament Co-Legislates*. Brussels: European Parliament, Legislative Activities Unit (LEGI), Secretariat General, December 2024, 47. https://www.europarl.europa.eu/cmsdata/292561/OLP_Handbook_Dec2024_EN.pdf (Accessed April 29, 2026).