



Gender-based violence as a new area of crime listed in Article 83(1) TFEU

European added
value assessment

STUDY

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Gender-based violence as a new area of crime listed in Article 83(1) TFEU

European added value assessment

This European added value assessment (EAVA) supports the European Parliament's legislative-initiative report on a 'Proposal for a Council decision to identify gender-based violence as a new area of crime listed in Article 83(1) TFEU' 2021/2035(INL). The assessment reviews the significant harm generated by gender-based violence in the EU and presents evidence supporting the classification of gender-based violence as a particularly serious crime with a cross-border dimension. Through improving prevention, prosecution and protection, EU action could generate significant benefits to victims and society; considering only the economic dimension, by decreasing the incidence of gender-based violence, it could generate benefits in the order of €25.1 billion in the short term, and between €54.4 billion and €83.9 billion in the longer term. Moreover, the EAVA identifies complementary EU action that could enhance the European added value of this policy option, such as expanding the mandate of the equality bodies, promoting the quality of survey and administrative data and supporting education activities and training.

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Executive summary

Why this assessment?

Gender-based violence (GBV) is defined as an act of violence 'directed against a person because of his or her gender and expectations of his or her role in a society or culture'.¹ While forms of GBV can be inflicted on both women and men, its victims are primarily women,² since GBV stems from social norms that assign predetermined and subordinate roles to women and from structural inequalities between men and women that are evident worldwide, including in the European Union (EU). The most recent EU-wide survey indicates that **33 % of women have suffered physical and/or sexual violence since the age of 15 years** (and 8 % in the sole year prior to the survey).³ The forms of GBV are wide-ranging and include acts such as domestic and intimate partner violence, stalking, femicide and female genital mutilation. GBV infringes the fundamental rights of individuals and can inflict substantial physical, sexual, psychological and economic harm upon its victims as well as having negative effects for society.⁴

The EU does not have a specific legal instrument to address GBV, despite the harm and costs it impacts on individuals and society. Moreover, the EU's anti-discrimination legislation does not recognise GBV as an extreme form of discrimination. Member States vary widely in their understanding and treatment of GBV. Furthermore, while 21 Member States have ratified the Istanbul Convention and are legally bound to its provisions, including the criminalisation of various forms of GBV, gaps have been identified in its implementation.

In recognition of the severe impacts of GBV and the targets set at the international and EU level to eliminate it, the European Parliament⁵ is drawing up an own-initiative legislative report on a **'Proposal for a Council decision to identify GBV as a new area of crime listed in Article 83(1) TFEU'** (2021/2035(INL)). Article 83(1) authorises the EU to establish minimum rules 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'.⁶

This European added value assessment (EAVA) was written in support of the European Parliament's legislative initiative in the area of GBV. The assessment presents an objective, evidence-based review of the issues in the status quo and the reasons why the EU should take a strong stance on GBV. It assesses the European added value of the proposal put forward by the European Parliament as well as several alternative and complementary options for EU action.

Why should the EU act?

GBV has a range of negative impacts on the physical and mental health of victims, which can translate into economic costs for society. Overall, focusing on women, the European Institute for Gender Equality (EIGE) **estimates that the costs of GBV in the EU amount to €290 billion per**

¹ [Defining Violence against Women and Girls](#), UN Women webpage.

² [What is gender-based violence?](#) European Institute for Gender Equality (EIGE) website.

³ [Violence against women: an EU-wide survey. Main results](#), European Union Agency for Fundamental Rights Agency (EU FRA), 2014.

⁴ [What is gender-based violence?](#) European Commission website.

⁵ The proposal is being put forward by the Committees on Civil Liberties, Justice and Home Affairs (LIBE) and on Women's Rights and Gender Equality (FEMM).

⁶ [Article 83\(1\)](#) of the Treaty on the Functioning of the European Union (TFEU).

year.⁷ These costs do not include the societal costs of gender-based cyber-violence, which have been estimated at €49-89 billion,⁸ or the costs of violence against LGBTIQ people, who can also be victims of gender-based violence.⁹

This assessment identifies five reasons why the EU has grounds to criminalise gender-based violence:

- reason 1: Gender-based violence is a serious crime. The societal costs of gender-based violence exceed those of other crimes listed in Article 83(1), such as corruption (€250 billion), organised crime (€110 billion) and illicit drug trafficking (€30 billion);¹⁰
- reason 2: The nature of gender-based violence has a cross-border dimension. GBV is a structural issue with common drivers and impacts across all Member States. The uptick in violence against women (VAW) and children during the coronavirus pandemic can also be understood as a 'new development in crime' in line with Article 83(1) TFEU;¹¹
- reason 3: Criminalising GBV would promote a more harmonised, cross-border response to the need of protecting victims. The effectiveness of protection orders and service providers supporting victims is hindered by challenges that are shared by the Member States, including divergent laws and practices;
- reason 4: Criminalising GBV would enhance the coherence of EU action in the area of gender equality. Combating GBV is one of the key priorities of the EU's 2020-2025 gender equality strategy and the EU's external action.¹² Sexual exploitation of women and children, and trafficking of human beings, which may include acts of GBV, are already treated as particularly serious crimes under Article 83(1) TFEU;
- reason 5: Citizens believe that GBV should be punishable by law. The vast majority of Europeans (88 %) believe that domestic violence against women (84 %) and against men (80 %) is 'unacceptable and should always be punishable by law'. Similar views are held in Member States that have not ratified the Istanbul Convention.¹³

Scope of the assessment

The assessment focused on the proposal of the European Parliament to **define gender-based violence as a new area of crime under Article 83(1) TFEU**; subsequently, this definition would serve as a legal basis for the adoption of a directive setting minimum standards for the prosecution of crimes and the protection of victims.

In addition to assessing this option, this EAVA identified other policy options as well. Two other legislative options it examined are the EU's ratification of the Istanbul Convention and the extension

⁷ The costs of gender-based violence in the EU, a forthcoming (2021) publication by the European Institute for Gender Equality (EIGE).

⁸ N. Lomba, C. Navarra, M. Fernandes, [Combating Gender-based Violence: Cyber Violence](#), briefing, EPRS, European Parliament, 2021.

⁹ W. van Ballegooij and J. Moxom, Cost of Non-Europe Report – [Equality and the Fight against Racism and Xenophobia](#), EPRS, European Parliament, 2018.

¹⁰ For more information, see Section 4.2.1.

¹¹ Article 83(1) notes that 'on the basis of developments in crime, the Council may adopt a decision identifying other areas of crime'.

¹² Joint Communication from the Commission to the European Parliament and the Council EU of 25 of November 2020 on the EU gender action plan (GAP) III – an ambitious agenda for gender equality and women's empowerment in EU external action, [SWD\(2020\) 284 final](#).

¹³ [Special Eurobarometer 449: Survey on gender-based violence](#), European Commission, November 2016.

of the scope of the EU's legislative framework on discrimination to include GBV. The assessment also reviewed three complementary avenues for EU action that could promote the effectiveness of the legislative action. These are:

- expanding the mandate of the equality bodies to include GBV;
- supporting harmonised data collection on GBV; and
- supporting school programmes and training for civil servants on GBV.

The assessment also considered enhanced cooperation in line with Articles 82(3) and 83(3) TFEU as an alternative action to the legislative options.

European added value

The table below summarises the European added value (EAV) assessment of the main legislative option – defining GBV as a new area of crime under Article 83(1) TFEU. The legal and economic bases for this action are strong – they suggest that the criteria under Article 83(1) are fulfilled, given that:

- GBV is a particularly serious crime;
- the nature of GBV has a cross-border dimension;
- there is a special need for a cross-border response to GBV.

The **European added value of this legislative option is high** and would derive mainly from **efficiency and effectiveness** considerations. Its implementation would be likely to generate greater harmonisation in the understanding and treatment of GBV (efficiency); greater prosecution of perpetrators and protection of victims in the short-term, and more prevention in the longer-term (effectiveness), ultimately leading to lower prevalence of GBV. The feasibility of the option is considered moderate because of the requirement for unanimity within the Council. The economic assessment found that this policy option could generate **substantial benefits in the order of €25.1 billion per year in the short term** (within five years) **and between about €54.4 billion and €83.9 billion per year in the longer term** (within about 10 years) – still including the effect of increased costs in the area of criminal justice – offsetting the potential costs of implementation. These estimates are likely to be the lower bounds of the potential benefits of combatting GBV at EU level. The inclusion of gender-based cyber violence (GBCV) in its scope could increase the benefits further. Other actions could also bolster the European added value of this policy option, namely: expanding the mandate of the equality bodies; promoting the quality of survey and administrative data; and supporting education activities and training to contribute to addressing the root causes of GBV and to enhancing prevention, prosecution and the protection of GBV victims.

European added value of a policy option classifying GBV as a new area of crime under Article 83(1) TFEU

European added value					
<i>Coherence</i>	<i>Efficiency</i>	<i>Effectiveness</i>			<i>Feasibility</i>
Coherence of EU gender equality and anti-discrimination legislation	Harmonisation in the understanding and treatment of GBV across Member States	Protection of GBV victims	Prevention of GBV	Prosecution of GBV perpetrators	
Moderate/High	High	High	Moderate/High ^a	High	Moderate

Source: Prepared by the authors. Note: ^a = short run (five years) /long run (10 years)

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1. Introduction to the assessment

On 2 March 2021, the European Parliament Committees on Civil Liberties, Justice and Home Affairs (LIBE) and Women's Rights and Gender Equality (FEMM) jointly requested permission to draw up an own-initiative legislative report on a 'Proposal for a Council decision to identify gender-based violence as a new area of crime listed in Article 83(1) TFEU' (2021/2035(INL)). Own-initiative legislative reports (INL) should lead to action by the European Commission as stipulated in Article 10 of the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

This European added value assessment (EAVA) backs the European Parliament's right to request legal action through its evidence-based review of the problem, the possible policy options and their potential impacts. This EAVA draws on an extensive review of the literature, including peer-reviewed research studies and policy reports, a legal analysis and a survey among the members of the European Network of Equality Bodies' (Equinet) Working Group on Gender Equality. Key sources included a European added value assessment carried out in 2013¹⁴ and a Cost of Non-Europe study carried out in 2018.¹⁵ A comprehensive assessment of the impacts was carried out through qualitative scoring and quantitative modelling of the potential economic gains from criminalising gender-based violence.

Section 2 presents an overview of gender-based violence in the EU, focusing in particular on the way it is defined, its prevalence and its impacts. Section 3 reviews the international, the EU's and the Member States' legal frameworks concerning gender-based violence as well as the EU policy context. Section 4 reviews the issues in the current situation - the *status quo* - and why the EU should act. Section 5 then assesses the potential impact of listing gender-based violence among the crimes under Article 83(1) in both quantitative and qualitative terms, and reviews other possible policy options. Here, positive net benefit is defined as that which would be better achieved by the EU than at national level alone and would potentially yield European added value.

Background

Violence directed towards a person because of her/his gender and because of the social expectations related to them is a reality throughout the European Union and a human rights infringement. It disproportionately affects women, constitutes both a cause and a consequence of gender-based discrimination, and is rooted in inequalities between men and women.¹⁶

Gender equality is a priority for EU citizens: in a 2017 Eurobarometer survey,¹⁷ the vast majority of respondents stated that promoting gender equality is highly relevant to them, to society and to the economy. Other Eurobarometer surveys¹⁸ recorded the wish of EU citizens to act more on gender equality. Gender-based violence (GBV) is part of this struggle against gender inequality.

Though gender-based violence is high on the EU agenda, the issue is still present across all of the EU Member States. In an EU-wide survey, 33 % of women indicated having suffered physical and/or

¹⁴ M. Nogaj, [Combating Violence against Women: European Added Value Assessment](#), EPRS, European Parliament, 2013.

¹⁵ W. van Ballegooij and J. Moxom, [Equality and the Fight against Racism and Xenophobia](#), EPRS, European Parliament, 2018.

¹⁶ For further details, see Section 4 on 'Issues in the status quo and reasons for EU action' and Section 5 on 'Possible EU policy options to act on gender-based violence'.

¹⁷ [Special Eurobarometer 449: Survey on gender-based violence](#), European Commission, November 2016.

¹⁸ [Parlemeter 2016. Eurobarometer](#), European Parliament, November 2016 and [Eurobarometer Survey 89.2: Delivering on Europe](#), European Parliament, May 2018.

sexual violence, 22 % intimate partner violence, 18 % stalking and 55 % have faced sexual harassment.¹⁹

The European Union currently has no specific legally binding rules to adequately prevent and end gender-based violence.²⁰ (To this end, the EPs own-initiative legislative report and the present paper look at gender-based violence as a new area of EU crime.) Therefore it is relevant to mention that although a non-negligible part of society accepts forms of gender-based violence, the vast majority of Europeans condemn such acts (2016 Eurobarometer²¹). For example, seven out of 10 respondents – ranging from 89 % in Italy to 32 % in Estonia – declared that sexual harassment of women is common in their Member State. Some 96 % of the respondents said that domestic violence against women is unacceptable and 84 % that it should always be punished by law. Eurobarometer²² also asked for respondents' perceptions on six other forms of gender-based violence: a majority indicated that all of them are wrong and they are either against the law or should be qualified as such. This ranges from 86 % concerning forcing a partner to have sex to 41 % concerning repeatedly criticising a partner to make them feel inferior.

Gender-based violence can be seen and experienced in a variety of forms, be they psychological, physical or sexual violence and harassment (for instance, rape and other sexual crimes as well as 'honour' crimes, to name a few). Even though non-exhaustive, this list of examples gives some idea of the scale of the issue. Gender-based violence has a huge impact on society and the economy, but an even more dramatic one on the individuals experiencing it.²³ They suffer severe consequences affecting their health, economic or societal status and families.. Previous analyses by the EPRS²⁴ and the European Institute for Gender Equality (EIGE)²⁵ have placed the costs of violence against women at several hundred billion euros.

Already before the coronavirus pandemic, the European Parliament and others saw a pressing need for action. This seems to be even more relevant now. According to several Member States, the European Commission and EIGE, the 19 pandemic seems to have aggravated the situation concerning gender-based violence.²⁶ For example, in 2020, France, Lithuania and Ireland all reported significant increases in reports of domestic violence in the first weeks of the pandemic alone.²⁷ A recent study looks at both the economic impact of the corona pandemic on women in five EU Member States, and the measures to combat it. Violence was identified as an issue that had grown worse, with women being significantly more affected than men.²⁸

¹⁹ [Violence against women: an EU-wide survey. Main results](#), European Union Agency for Fundamental Rights Agency (EU FRA), 2014.

²⁰ For more information, see Section 4.

²¹ [Special Eurobarometer 449: Survey on gender-based violence](#), European Commission, November 2016.

²² *ibid.*

²³ For more information, see Sub-chapter 2.3, on 'What are the impacts of gender-based violence'.

²⁴ M. Nogaj, [Combating Violence against Women: European Added Value Assessment](#), EPRS, European Parliament, 2013.

²⁵ [Estimating the costs of gender-based violence in the European Union: Report](#), European Institute for Gender Equality (EIGE), 2014.

²⁶ For more information, see Sections 4.2.3, Reason 3: There is a special need for the response to gender-based violence to have a cross-border dimension, and 4.2.4, Reason 4: Criminalising gender-based violence would enhance the coherence of EU action in the area of gender equality.

²⁷ For more information, see Section 4.2.4. Reason 4.

²⁸ 'Higher incidences of violence, and particularly intimate-partner violence, have not merely increased but also caused a greater number of women victims than men victims. The growth of such phenomenon has been also denominated the 'shadow pandemic,' as violence throughout Europe has tended to intensify alongside the COVID-19 crisis and its related governmental measures.', [COVID-19 and its economic impact on women and women's poverty - Insights from](#)

2. Gender-based violence in the EU

Gender-based violence is a global challenge deeply rooted in inequalities on the grounds of gender.²⁹ Definitions of it are to be found in different studies and legislative acts at the international, regional or national level. There is no uniform approach to determining what kind of criminal offences qualify as gender-based violence.³⁰

This section offers a brief overview of the existing definitions of gender-based violence at the international, regional and EU level.

2.1 What is gender-based violence?

The United Nations (UN) defines gender-based violence as an act of violence 'directed against a person because of his or her gender and expectations of his or her role in a society or culture'.³¹ Consequently, men and boys, as well as women and girls may be victims of forms of gender-based violence (e.g. sexual violence, intimate partner violence, stalking). However, both the UN and the European Commission note that this expression of violence not only affects women disproportionately but is also rooted in gender inequalities and discrimination faced by women in relation to social expectations and social norms. Therefore, the terms 'gender-based violence' and 'violence against women' are often used interchangeably. As underlined by EIGE,³² using the 'gender-based' wording is important as it highlights that violence against women is rooted in power inequalities between women and men.

It should also be noted that in the EU context, the Victims' Rights Directive provides a wider perspective, since its definition of gender-based violence includes gender identity or gender expression, which can include LGBTIQ persons.³³ Under the directive, violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and 'honour crimes', are all understood to be a form of discrimination and a violation of the fundamental freedoms of the victim.³⁴

One important subset of gender-based violence that disproportionately affects women is the category of intimate partner violence (IPV), which focuses on violence directed against current or former partners.³⁵ The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) follows this approach. It recognises in its

⁵ [European Countries](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, May 2021.

²⁹ Communication from the Commission on a Union of equality: gender equality strategy 2020-2025, [COM/2020/152](#), March 2020.

³⁰ [Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, October 2020.

³¹ [Defining Violence against Women and Girls](#), UN Women webpage.

³² [What is gender-based violence?](#) European Institute for Gender Equality (EIGE) website.

³³ R. Shreeves, [The rights of LGBTI people in the European Union](#), briefing, EPRS, European Parliament, 2021.

³⁴ [Directive 2012/29/EU](#) of 25 October on establishing minimum standards on the rights, support and protection of victims of crime (Victims' Rights Directive); see Recital 17.

³⁵ [Glossary of definitions of rape, femicide and intimate partner violence](#), European Institute for Gender Equality (EIGE), 2017.

preamble that women and girls are disproportionately affected by GBV in comparison with men. It provides definitions for violence against women, domestic violence, and gender-based violence against women, among other concepts. For the purpose of the Istanbul Convention, the latter means 'violence directed against a woman because she is a woman or that affects women disproportionately'.³⁶ It is worth noting, however, that men and children are equally protected by the provisions of the Istanbul Convention as victims of domestic violence or violence that occurs within the domestic unit or between former or current spouses or partners.³⁷

Both the structural nature of violence rooted in gender discrimination and the higher number of women victims of gender-violence than men have already been recognised at the international level in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Declaration on the Elimination of Violence against Women (DEVAW) of 1979 and 1993 respectively. Table 1 summarises the key definitions of gender-based violence at the international, regional and EU level. It notes the focus of the definition, its relevance to tackling gender-based violence and whether it is legally binding.

For these reasons, this study focuses on violence against women, without ignoring the broader picture. When working on their qualitative analysis, its authors have also aimed to take into consideration the fact that that discrimination and social norms are also root causes of violence against LGBTIQ. The way gender relations are shaped by social norms can play a role in condoning both violence against women and against LGBTIQ people.

³⁶ See Article 3 of the [Convention on preventing and combating violence against women and domestic violence](#) (Istanbul Convention), Council of Europe, 2011.

³⁷ *ibid.*

Table 1: Overview of the definitions of gender-based violence

Level	Treaty/Organisation	Definition	Focus	Relevance to combat gender-based violence	Legal or not legal definition
International	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Gender-based violence is an act 'directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty'. ^a	Discrimination against women and gender-based violence	Indirectly relevant	Legally binding
	Declaration on the Elimination of Violence against Women (DEVAW)	Violence against women is 'any act or gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'. ^b	Violence against women	Directly relevant	Not legally binding
	UN Women	Gender-based violence is an act 'directed against a person because of his or her gender and expectations of his or her role in a society or culture. Gender-based violence highlights the gender dimension of these types of acts'. ^c	GBV	Directly relevant	Not legally binding
Regional	Istanbul Convention	Gender-based violence against women is 'violence directed against a woman because she is a woman or that affects women disproportionately'. Domestic violence is understood as all acts of violence 'that occur within the family or domestic unit or between former or current spouses or partners'. ^d	Violence against women and domestic violence	Directly relevant	Legally binding only in those countries that have ratified the Convention ^e
EU	European Commission in the EU gender equality strategy	It uses the definition of gender-based violence against a women of the Istanbul Convention. ^f	Gender-equality	Directly relevant	Not legally binding

Level	Treaty/Organisation	Definition	Focus	Relevance to combat gender-based violence	Legal or not legal definition
	Victims' Rights Directive	Gender-based violence is an act of violence that is 'directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately'. ^g	Support and protection of victims	Indirectly relevant	Legally binding
	European Institute for Gender Equality (EIGE)	Intimate partner violence is understood as 'a pattern of assaultive and coercive behaviours, including physical, sexual and psychological acts, as well as economic coercion, which adults or adolescents may use against their intimate partners without their consent'. ^h	Intimate partner violence	Indirectly relevant	Not legally binding

Source: Compiled by the authors.

Note: ^a [General Recommendation No 19 on violence against women](#), Committee on the Elimination of Discrimination against Women, (CEDAW), 1992.

^b See Article 1 of the [Declaration on the Elimination of Violence against Women](#), (DEVAW) UN Office of the High Commissioner for Human Rights, 1993.

^c [Defining Violence against Women and Girls](#), UN Women webpage.

^d See Article 3 of the [Istanbul Convention](#).

^e These countries are: Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden. Please see Figure 6.

^f Communication from the Commission on a Union of equality: Gender Equality Strategy 2020-2025, [COM/2020/152](#), March 2020.

^g See Recital 17 of the [Victims' Rights Directive](#).

^h [Glossary of definitions of rape, femicide and intimate partner violence](#), European Institute for Gender Equality (EIGE), 2017.

2.2 How prevalent is gender-based violence in the EU?

The prevalence of gender-based violence is not well established in the EU. The lack of consensus concerning its definition, as noted in Section 2.1, poses a key challenge. Nonetheless, data on gender-based violence is available from surveys and national administrative institutions that handle reports of gender-based violence, such as the police, health and social services and the judicial system. EIGE is leading an effort to promote the availability, quality and comparability of administrative data on gender-based violence in the EU.³⁸ Its research finds that under-reporting is a significant challenge – it is estimated that only one in three women who are physically or sexually abused by their partners reports it.³⁹ Under-reporting may be due to structural inequalities that 'lock' women into a subordinate position in society and in their relationships with men (See Section 4.1.1). A study by the European Union Agency for Fundamental Rights (FRA) suggests that reporting of gender-based violence may also be low due to inadequate responses on the part of the police and healthcare providers, incomplete networks of support organisations, and shortcomings in the referral of victims to support services.⁴⁰ In particular, the study found that doctors and hospitals often fail to report incidents of gender-based violence to the police or the public prosecutor's office.⁴¹ Another FRA study found that the reporting rate for sexual violence is higher than for other forms of violence that may also inflict physical and psychological harm.⁴²

The FRA carried out a survey on violence against women in 2011,⁴³ which remains the best available source for assessing the prevalence of gender-based violence in the EU.⁴⁴ Overall, the survey finds that an estimated 33 % of women in the EU have experienced physical and/or sexual violence since the age of 15m while 8 % had experienced it in the 12 months prior to the interview. This survey was carried out in response to a request from the European Parliament in 2009, which was reinforced by the Council.⁴⁵ While more recent EU figures are not available, the European Parliament and the European Commission have called attention to spikes in reports of gender-based violence during the coronavirus pandemic.⁴⁶ According to a very recent study done for the European Parliament, the

³⁸ This effort was launched in 2013 with the publication on [Mapping the current status and potential of administrative data sources on gender-based violence in the EU](#), EIGE, 2014.

³⁹ [Violence against women: an EU-wide survey. Main results](#), FRA, 2014. The same source notes that one in four victims of non-partner violence report the incident to the authorities.

⁴⁰ [Women as victims of partner violence - Justice for victims of violent crime Part IV](#), FRA, 2019.

⁴¹ *ibid.*

⁴² [Crime, Safety and Victims' Rights - Fundamental Rights Survey](#), FRA, 2021. The study found a reporting rate of 60 % for sexual violence, 39 % for violence with psychological consequences and 43 % for violence with any injuries.

⁴³ [Violence against women: an EU-wide survey. Main results](#), FRA, 2014.

⁴⁴ However, Eurostat is currently doing a comprehensive survey on gender-based violence and other forms of interpersonal violence, which is expected to be released in 2023. European Commission answer to a European Parliament Question, [E-005214/2020](#), February 2021.

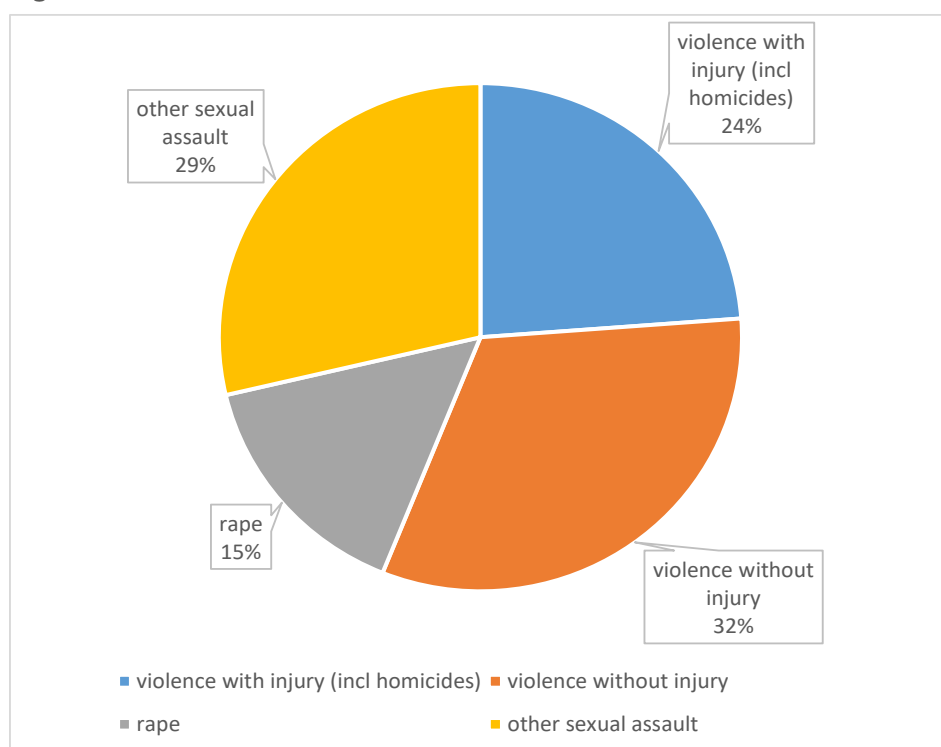
⁴⁵ Council conclusions on the eradication of violence against women in the European Union, 3000th employment and social policy meeting, Brussels, 8 March 2010. More specifically, the European Parliament called for the collection and compilation by the FRA of reliable, comparable statistics on all grounds of discrimination [...], including comparative data on violence against women within the EU'.

⁴⁶ [Covid-19: Stopping the rise in domestic violence during lockdown](#), study, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, September 2020; [The gendered impact of the COVID-19 crisis and post-crisis period](#), European Parliament, 2020; [International Women's Day 2021: Covid-19 pandemic is a major challenge for gender equality](#), European Commission, 2021. The press release notes that 'the number of reports on domestic violence in France increased by 32 % during the first week of the lockdown, in Lithuania by 20 % in the first three weeks. Ireland saw a five-fold increase in domestic violence orders and Spanish authorities reported an 18 % rise in calls during the first fortnight of confinement.'

cases of intimate partner violence have increased both in number and severity. Rather than declining, workplace harassment has moved online. There is moreover evidence that women bear heavier consequences of the economic crisis, which in turn may also impact their risk of victimisation.⁴⁷

According to a recent EIGE study, gender-based violence (women victims) in the UK comprises several types of crimes (see Figure 1). The study found a higher risk of violence (with and without injury) among victims of intimate partner violence, which is a subset of victims of gender-based violence (see Figure 2).

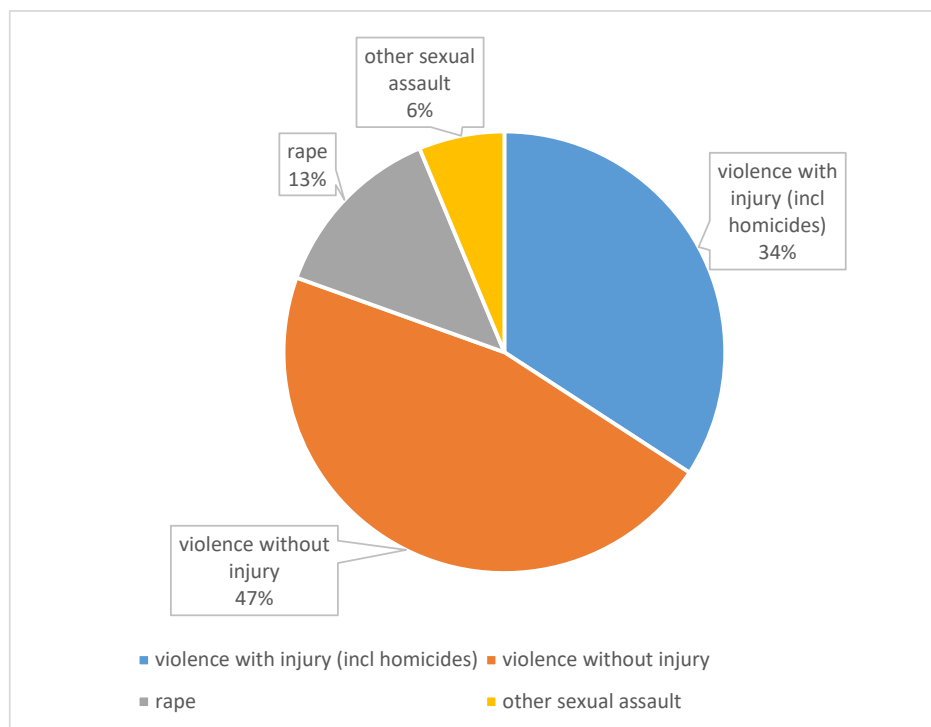
Figure 1 – Gender-based violence in the UK



Source: The costs of gender-based violence in the EU, EIGE, forthcoming (2021).

⁴⁷ [COVID-19 and its economic impact on women and women's poverty – Insights from 5 European Countries](#), study, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, May 2021.

Figure 2: Intimate partner violence in the UK



Source: The costs of gender-based violence in the EU, EIGE, forthcoming (2021).

Insight into the prevalence of gender-based violence against LGBTIQ persons in the EU can be obtained from a survey carried out by the FRA in 2019. This study investigated the prevalence of hate-motivated violence and harassment against LGBTIQ people in the EU. Overall, 38 % of LGBTIQ people experienced harassment in the 12 months before the survey. With respect to violence, 11 % of LGBTIQ people experienced a physical or sexual attack in the five years before the survey. The rates were substantially higher amongst transgender individuals (17 %) and intersex individuals (22 %).⁴⁸ The differences in the wording of questions, timing and samples do not permit direct comparisons of these findings with those from the survey on violence against women.

It should be noted that there is an intersectional dimension to gender-based violence and that a complex set of vulnerabilities comes into play. Both individual trajectories and traumas, and social conditions, including economic poverty and early school leaving, are factors that contribute to the likelihood of gender-based violence, which points to the potential benefits of social policies that take account of the gender dimension.⁴⁹ Since gender-based violence is fuelled by some form of social acceptance of violent and coercive behaviours, women from minority, ethnic or religious groups are particularly vulnerable. Furthermore, while GBV affects women regardless of their sexuality or gender identify, LGBTIQ women are particularly likely to experience violence.

In its 2012 survey, the FRA identified higher levels of violence against women with certain characteristics, in particular non-heterosexual women and women with a health problem or a

⁴⁸ [A long way to go for LGBTI equality](#), FRA, 2020.

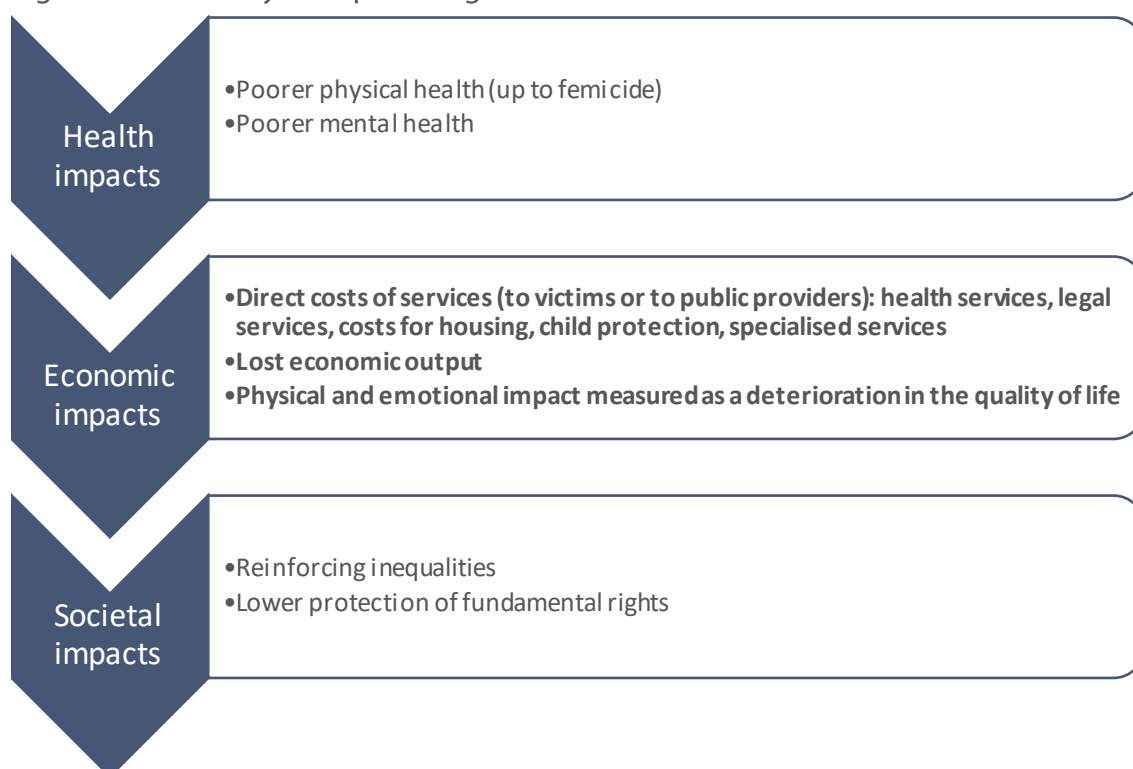
⁴⁹ B. Sanz-Barbero, P. L. Pereira, G. Barrio & C. Vives-Cases, '[Intimate partner violence against young women: prevalence and associated factors in Europe](#)', *Journal of Epidemiology and Community Health*, Vol. 72(7), 2018, pp. 611-616.

disability. Women with a migrant background face a higher risk of intimate partner violence and psychological violence.⁵⁰ In another survey, the FRA investigated hate-motivated harassment and violence experienced by minorities and noted that women of ethnic and religious minorities are especially at risk of discrimination. The survey found that 16 % of respondents had been the targets of offensive or threatening comments, while 4 % had been threatened with violence in person.⁵¹ These findings highlight the importance of recognising intersectional forms of gender-based violence and the need for a targeted policy response.

2.3 What are the impacts of gender-based violence

Firstly, GBV has negative impacts on the physical and mental health of the victims. This in turn has a number of economic consequences and costs, i.e. some of the costs individuals and society incur because of the prevalence of GBV can indeed be monetised. Moreover, GBV has broader societal impacts and the lack of political action to tackle it has intangible but no less important costs. Figure 3 summarises the impacts of gender-based violence.

Figure 3 – Summary of impacts of gender-based violence



Source: Created by the authors. The impacts that are quantified in the economic assessment are in bold.

Research on these impacts has mainly focused on violence against women, this being the most structural and widespread form of gender-based violence. In the first instance, violence has serious

⁵⁰ [Violence against women: an EU-wide survey. Main results](#), FRA, 2014.

⁵¹ [Second European Union Minorities and Discrimination Survey Main results](#), FRA, 2017.

consequences for **the physical and mental health** of women who are victims. A 2013 WHO⁵² worldwide survey analyses the health impacts of intimate partner violence and of non-partner sexual violence. Globally, 38 % of all murders of women are reported as being committed by intimate partners and 42 % of victims of abuse from a partner report injuries. Moreover, intimate partner violence (IPV) is an important contributor to women's vulnerability to sexually-transmitted diseases⁵³ and lower sexual and reproductive health outcomes, since violent and controlling behaviours by partners are often associated with lowering women's control over their reproductive life. Furthermore, living in an abusive environment marked by chronic stress can be an important risk factor for maternal health, which may also affect babies' birth weight. The probability of mental health problems, especially depression and suicidal thoughts, is also increased for victims. The mental health impacts of non-partner sexual violence are also extremely relevant, especially in relation to depression, anxiety and alcohol use disorders.

More recent literature⁵⁴ identifies higher rates of depression, post-traumatic stress disorder anxiety, alcohol and drug abuse, and suicidal ideation linked to gender-based violence. It also underlines that emotional forms of violence should not be underestimated and that individuals from stigmatised groups, including LGBTIQ, sex workers and migrants, are particularly vulnerable because support networks or health providers may fail to recognise violence suffered by them.

At the EU level, the 2014 EU FRA survey⁵⁵ looks into the immediate emotional response, the long-term psychological impacts and the incidence of physical injuries. In the first category, fear, anger and shame are prevalent; sexual violence is often associated with feelings of shame and guilt, indicative of the stigma that victims carry. The most common long-term psychological consequences of physical and sexual violence are anxiety, a sense of vulnerability and loss of self-confidence. About half of the victims suffered injuries, for example, 17 % of the victims of sexual IPV suffered more than one type of physical injury as a result of the most serious incident they suffered.

Some of these health impacts can be quantified in terms of costs and/or have **economic consequences**. Several studies have attempted to estimate these costs. The main reference for the EU is an EIGE study done in 2014⁵⁶ and recently updated.⁵⁷ This case study considers the following sources of costs:

- direct cost of services (to victims or to public providers);
- lost economic output; and
- physical and emotional impacts measured as a reduction in the quality of life.

The first cost category includes the costs associated with the direct consequences of violence and increased costs for seeking legal remedy and health care. They include the costs of providing the

⁵² World Health Organization, London School of Hygiene and Tropical Medicine, South African Medical Research Council. [Global and regional estimates of violence against women](#): Prevalence and health effects of intimate partner violence and non-partner sexual violence. Geneva, Switzerland: World Health Organization, 2013.

⁵³ In some regions, victims are 1.5 times more likely to contract HIV.

⁵⁴ J. Mannel, S. Hawkes, '[Decriminalisation of gender-based violence is a global health problem](#)', *Journal BMJ Global Health*, Vol. 2, Issue 3, 2017.

⁵⁵ [Violence against women: an EU-wide survey. Main results](#), FRA, 2014.

⁵⁶ [Estimating the costs of gender-based violence in the European Union: Report](#), EIGE, 2014.

⁵⁷ 'The costs of gender-based violence in the EU', EIGE, (forthcoming in 2021). This study relies on the extrapolation on the EU-27 of a case study conducted in the United Kingdom.

necessary health services⁵⁸ to treat physical and psychological harm due to violence, the costs of increased use of the criminal justice service (police and prosecutors), the costs of civil proceedings of victims that seek to separate from abusive partners (both privately and publicly funded costs), the costs of moving and changing house (both privately funded and public aid for housing for homeless people as a consequence of IPV), and specialised costs for mitigation and prevention. The category also covers costs for child protection services, as there is abundant evidence of the negative consequences of GBV for children who witness it.⁵⁹

The second category includes the costs due to the negative impacts of violence on the victim's ability to work. For example, as indicated in an EPRS study,⁶⁰ recent research conducted in Belgium found that 73 % of those subjected to domestic violence reported an effect on their ability to work. A recent EPRS study⁶¹ estimates the lost economic output due to mental health impairments caused by cyber-violence victimisation of women, both in terms of lost work days and lower productivity. A study on the costs of violence against women in Italy calculates the costs of work days lost, reduced productivity, and the cost of replacing absent workers. It furthermore calculates the lost tax income and the multiplier effect of households' lost incomes.⁶²

The third category estimates the cost of the physical and emotional impact on victims, measuring the loss of healthy life years due to different types of crime.⁶³ This is a method that allows a monetary value to be attached to different health conditions, to translate losses usually not measured in terms of money into economic losses.⁶⁴

A forthcoming EIGE study estimates that total yearly costs of GBV against women in the EU-27 stand at **€290 billion**.⁶⁵ This represents an increase with respect to 2014 estimates worth €225 billion.⁶⁶ Figure 4 below provides a breakdown of the costs of GBV against women as estimated by this forthcoming study. The greatest source of economic loss due to GBV is the monetary value of loss in quality of life that monetises the physical and emotional impacts of violence.

⁵⁸ Health costs may be underestimated, since there is evidence that victims of sexual violence experience greater need of medical assistance after some years have passed (WHO, 2013).

⁵⁹ Similar cost categories are used in a study on Italy that estimates increases in health care costs, including psychological support and medical, police, legal and welfare costs (including shelters).

⁶⁰ Ballegoij and Moxom, Equality and the Fight against Racism and Xenophobia, EPRS, 2018.

⁶¹ N. Lomba, C. Navarra, M. Fernandes, [Combating gender-based violence: Cyber violence](#), study, EPRS, European Parliament, 2021.

⁶² [Quanto costa il silenzio? Indagine nazionale sui costi economici e sociali della violenza contro le donne](#), Intervita, 2013.

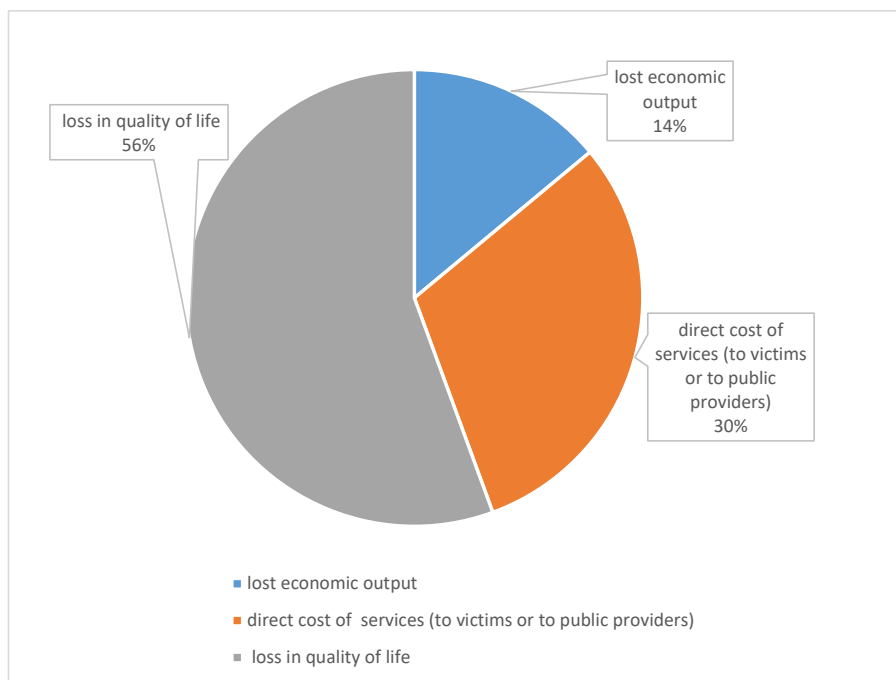
⁶³ Based on Burden of Disease methodology. See e.g. Dolan, P., Loomes, G., Peasgood, T., Tsuchiya, A. (2005), '[Estimating the intangible victim costs of violent crime](#)', *British Journal of Criminology*, 45(6): 958–976.

⁶⁴ The Italian study adopts an alternative approach but seeks to achieve the same output: providing a monetary value of the loss in terms of quality of life to give social visibility of the personal damages incurred by victims.

⁶⁵ Forthcoming (2021) EIGE study on 'The costs of gender-based violence in the EU'. This figure represents about 80 % of all costs of gender-based violence estimated in the study, which also includes the costs of gender-based violence against men (the total costs being €366 billion). A sensitivity check based on the relative prevalence of violence against women in the EU Member States as compared to the UK (on which the calculations are based) allows to verify the overall magnitude of the costs of gender-based violence. Weighting the costs of GBV against women with respect to FRA (2014) data on violence against women, we obtain an overall cost of €278 billion.

⁶⁶ [Estimating the costs of gender-based violence in the European Union: Report](#), EIGE, 2014.

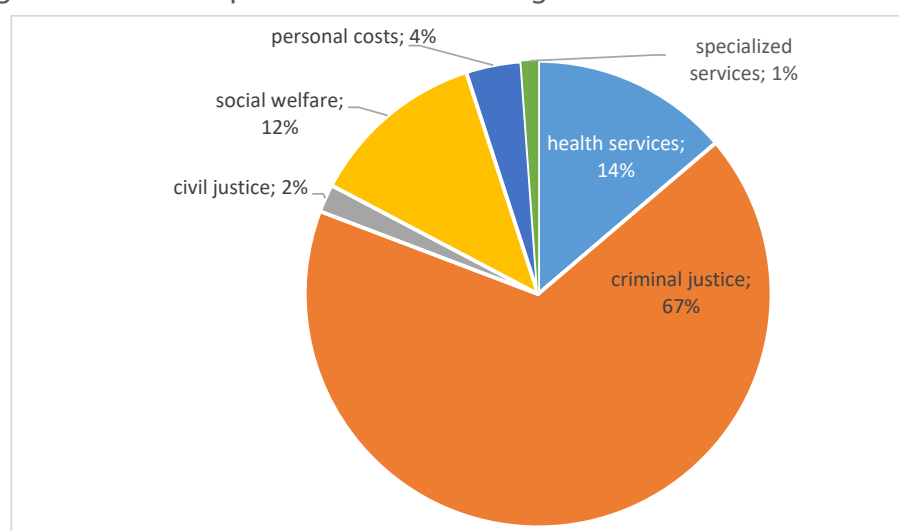
Figure 4 – A breakup of the costs of gender-based violence



Source: Created by the authors on the basis of the forthcoming EIGE study.

The study also presents estimates for specific components within the direct cost of services to victims and providers, which make up 30 % of the overall costs. The biggest costs were associated with the criminal justice system (€20.4 billion, 67 % of direct costs).

Figure 5 – A breakup of the direct costs of gender-based violence



Source: Created by the authors on the basis of the forthcoming EIGE study.

Similar studies have been conducted in single countries. For example, a study on the cost of violence against women in Italy⁶⁷ placed this cost at €24.5 billion, using categories similar to those above. Direct costs for healthcare are relatively bigger than in the UK study, but overall the loss due to emotional and physical damages represents a bigger share of the total costs (86 %). An earlier study on Sweden (2006)⁶⁸, focusing on IPV (and not considering loss in the quality of life), placed the costs at about €330 million.

Gender-based violence has broader **social costs** that are not quantifiable but are no less important. First of all, GBV represents a violation of fundamental rights. In 1992, the General Recommendation of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) established that gender-based violence is 'a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men' (Article 1). As indicated by the FRA (2014), the final declaration of the Fourth World Conference on Women in Beijing in 1995⁶⁹ voiced the increased public 'recognition of violence against women as a hindrance to women's full enjoyment of their human rights' (p. 9).

Moreover, violence is, on one hand, the product of gender inequalities (see Section 4.1.1, Issue 1), and on the other, it is a tool for reinforcing gender hierarchies and power imbalances between women and men (Fulu 2016).⁷⁰ It crystallises power relations in a vicious circle, by reinforcing inequalities and strengthening gender stereotypes. Research shows that gender stereotypes and fixed social norms and prescriptions about gender roles are also harmful to men. A WHO⁷¹ study from 2014 finds that men's behaviours related to perceived 'masculinity' traits are among the factors that expose men to greater health risks (risk-taking behaviours, alcohol abuse, lower reporting of illnesses, and lower use of health care services). Although no quantification of these costs has been done, it highlights that both women and men would benefit from deconstructing models of 'toxic masculinity'.⁷²

Moreover, the above costs do not include the societal costs of gender-based cyber violence, estimated at between €49 billion and €89 billion,⁷³ or the costs of assault directed to LGBTIQ people. A 2018 EPRS study⁷⁴ finds that people who are discriminated against face a greater probability of assault, and this is true for several categories of people that are victims of discrimination, including women and LGBTIQ persons. This increased probability of victimisation leads to poorer health conditions that in turn cause lower earnings, leading to lower aggregate GDP.

⁶⁷ [Quanto costa il silenzio? Indagine nazionale sui costi economici e sociali della violenza contro le donne](#), Intervita, 2013.

⁶⁸ [Cost of Violence against Women](#), UN Women, 2006.

⁶⁹ Beijing Declaration and Platform for Action (1995) Recitals 117-118.

⁷⁰ [Violence against women and girls](#), GSDRC website.

⁷¹ P. Baker, S. Dworkin, S. Tong, I. Banks, T. Shand, & G. Yamey, 'The men's health gap: Men must be included in the global health equity agenda', *Bulletin of the World Health Organization*, 2014, pp. 618-620.

⁷² Models of behaviour related to the idea of men as socially dominant and somehow allowed to exert violence or expected to behave aggressively.

⁷³ N. Lomba, C. Navarra, M. Fernandes, [Combating Gender-based Violence: Cyber Violence](#), EPRS, European Parliament, 2021.

⁷⁴ Ballegooij and Moxom, Equality and the Fight against Racism and Xenophobia, EPRS, 2018.

3. Existing international and EU legal frameworks and recent EU policy developments

This section offers an overview of the existing regulatory framework at the international, EU and national level. It also briefly presents activities undertaken by the European Parliament and the European Commission.⁷⁵ In this context, it is worth noting the absence of a holistic approach to combat gender-based violence at EU level.

3.1 International and EU legal frameworks

At the international level, there is an extensive body of instruments to address gender-based violence, albeit limited mainly to combating gender discrimination. All the Member States are legally bound to put CEDAW's provisions into practice, namely to ensure the principle of equality between men and women, eliminate any acts of discrimination against women and develop a proper public framework to protect victims. CEDAW does not provide any provisions that are focused on gender-based violence.⁷⁶ However, it has adopted a general recommendation (No 19) to broaden the scope of discrimination against women recognised in CEDAW, to violence against women. The UN General Assembly Declaration on the Elimination on Violence against Women (DEVAW) was the first instrument to cover physical, sexual and psychological violence as human rights violations, although it is not legally binding.⁷⁷ The Convention on the Rights of Persons with Disabilities (CRPD) requires states parties to ensure that women and children with disabilities are protected against violence and abuse, taking into account gender-based aspects.⁷⁸

The Istanbul Convention establishes the first comprehensive and binding framework in Europe for combating violence against women and domestic violence, protecting victims and punishing perpetrators. Although it is applicable to children and men, its preamble sets out that women and girls are disproportionately affected by gender-based violence. It provides definitions of gender, gender-based violence and domestic violence, among other concepts, and criminalises various forms of violence against women such as stalking or forced marriage. As at May 2021, all EU Member States had signed the convention and 21 had ratified it. Despite the repeated calls by the EU institutions, the EU's accession to the convention has not yet been concluded.⁷⁹ At Council of Europe level, it is worth noting too, that the European Court of Human Rights (ECtHR) has established jurisprudence on gender-based violence.⁸⁰

CEDAW, the ECHR, the UNCRDP and, especially the Istanbul Convention, all deal with gender discrimination and gender-based violence and/or domestic violence. An overview of these

⁷⁵ For more details on EU policy actions on the Istanbul Convention as well as on preventing and combating certain forms of gender-based violence, see [Legislative proposal to prevent and combat certain forms of gender-based violence](#); [Prevention of violence against women](#); and [EU accession to the Council of Europe convention on preventing and combating violence against women \('Istanbul Convention'\)](#).

⁷⁶ [Overview of the Convention](#), UN webpage.

⁷⁷ Annex 1 to [Combating violence against women](#), EPRS, European Parliament, 2013.

⁷⁸ See preamble and Article 16 of [Convention on the Rights of Persons with Disabilities](#) (CRPD), UN, 2006.

⁷⁹ U. Jurviste R. Shreeves, [The Istanbul Convention: A tool to tackle violence against women and girls](#), EPRS, European Parliament 2020. See also [EU accession to the Istanbul Convention](#), Legislative Train, European Parliament, version of 4 September 2020.

⁸⁰ [List of relevant judgments of the European Court of Human Rights concerning the Istanbul Convention](#), Council of Europe website.

instruments at international and regional level is provided in Table 2, which summarises their main characteristics.

Table 2 – Overview of the international framework on combating gender-based violence

International Framework	Focus	Is the EU part of it? ^a	Are all the Member States part of it?	Do they provide proper instruments to monitor the implementation?
CEDAW	Discrimination against women. The General Recommendation No 19 clarifies that the Convention includes VAW	No	Yes	Committee on the Elimination of Discrimination Against Women
ECHR	Human rights and fundamental freedoms	No. However, the ECHR is part of the common constitutional principles of the Member States and therefore part of the general principles of EU law. Furthermore, the Charter of Fundamental Rights has at the minimum the same scope as the ECHR	Yes, some of them with reservations	European Court of Human Rights CoE mechanisms like the Commissioner for Human Rights
CRPD	Human rights and fundamental freedoms by all persons with disabilities	Yes	Yes	Committee on the Rights of Persons with Disabilities
Istanbul Convention	Violence against women and domestic violence	No	Not all of them. Bulgaria, Czechia, Hungary, Latvia, Lithuania and Slovakia are not states parties	GREVIO Committee of the parties

Source: Compiled by the authors.

Note: ^a Since the adoption of the Lisbon Treaty, The EU has had full legal personality to sign international agreements within the scope of its competences. The ratification by the EU of the UN Convention on the Rights of Persons with Disabilities was the first international agreement to which the Union became a party. Article 47 TEU recognised the legal personality of the EU and therefore enabled it to join international conventions.

At the EU level, there is no specific legal instrument to address gender-based violence. Several directives and regulations in the areas of equality between women and men, judicial cooperation in criminal matters and asylum policy, however, have covered the issue partially.⁸¹

In the area of equality between women and men, it is noteworthy that the principle of non-discrimination is one of the cornerstones of EU action. The TEU enshrined equality between women and men as an EU value and objective in Articles 2 and 3.

Moving to the TFEU, equality between women and men and the fight against discrimination are enshrined in Articles 8 and 10, which empower the EU to take gender-sensitive considerations into account when enacting policies. Article 19 allows the EU to act to combat discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 157, on the other hand, enables the EU to adopt legislation to ensure the application of the principle of equal treatment in matters of employment and occupation, especially in pay.

The Charter of Fundamental Rights of the European Union (CFR), which has had legally binding force since the Lisbon Treaty,⁸² recognises the principles of non-discrimination (Article 21) and equality between men and women (Article 23). The rights, freedoms and principles set out in the CFR have the same legal value as the Treaties (as stated in Article 6 TEU), and the CFR only applies to the EU institutions and national authorities when they are implementing EU law.⁸³

Following these legal provisions set out in the Treaties, in the context of equality between women and men in the workplace and in the access to and supply of goods and services, harassment and sexual harassment are explicitly recognised as a form of discrimination in the following directives: Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, Directive 2010/41/EU⁸⁵ on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, and Directive 2004/113/EC⁸⁶ on implementing the principle of equal treatment between men and women in the access to and supply of goods and services. These directives introduce the obligation for the Member States to designate equality bodies for the 'promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex'. Providing support to victims, conducting surveys, publishing reports or recommendation and exchanging relevant information with EU bodies such as EIGE are all matters that these directives regulate.

In the area of judicial cooperation in criminal matters, measures to protect victims' rights are covered mainly by two directives: on the European protection order and on victims' rights.⁸⁷

⁸¹ [Ending gender-based violence](#), European Commission website.

⁸² See Annex A.1 to the Treaty on the Functioning of the European Union (TFEU).

⁸³ See Article 51 of Charter of Fundamental Rights of the European Union (CFR).

⁸⁴ [Directive 2006/54](#) of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

⁸⁵ [Directive 2010/41/EU](#) of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity.

⁸⁶ [Directive 2004/113](#) of 13 December 2004 on implementing the principle of equal treatment between men and women in the access to and supply of goods and services. See especially Articles 20, 11 and 12 respectively for equality bodies regulation.

⁸⁷ [Directive 2011/99/EU](#) of 13 December 2011 on the European protection order (EPO) and [Directive 2012/29/EU](#) of 25 October on establishing minimum standards on the rights, support and protection of victims of crime ('Victims' Rights Directive').

Marking an important step in the deepening of the area of freedom, security and justice, the former one is based on the principle of mutual recognition of judgments while the latter is focused specifically on the right to information, victims' support and protection. Although these legal instruments might offer protection to victims of gender-based violence, they are not tailored to their special needs.

Lastly, in the area of **asylum policies**, acts of a gender-specific nature are recognised explicitly as acts of persecution in the Qualification Directive. Gender related aspects, including gender identity, must be taken into account by the Member States when assessing the reasons that have pushed a victim to seek that protection.⁸⁸

To a limited extent, gender-based violence is covered by other pieces of EU legislation as well. One such example is Regulation EU No 606/2013 on mutual recognition of protection measures in civil matters, which applies to protection measures seeking to prevent, among others, 'any form of gender-based violence or violence in close relationship'. However, the same regulation states that it applies to all victims 'regardless of whether they are victims of gender-based violence'.⁸⁹ In the same vein, the Directive on Preventing Human Trafficking, which establishes minimum rules concerning the definition of criminal offences and sanctions, recognises the gender-specific phenomenon of trafficking and acknowledges that women and men are trafficked for different reasons.⁹⁰ Sexual exploitation and sexual abuse are likewise a highly gendered issue.⁹¹ The Directive on sexual abuse and sexual exploitation of children and child pornography⁹² sets out minimum standards for the protection of victims of such crimes.⁹³

The picture is not much different at the national level. An analysis of the 27 **Member States** shows that they divergent approaches when it comes to tackling gender-based violence. Countries that have ratified the Convention have different frameworks from those that have not ratified it. Moreover, the countries that are parties to the Convention envisage taking further actions to properly fight against violence on the grounds of gender. Differences on matters of common understanding and on definitions across Member States hinder the EU's efforts in combating gender-based violence. Moreover, the EU does not fully extend its competence with regard to criminal matters, which limits the scope of proper harmonisation.

⁸⁸ [Directive 2011/95/EU](#) of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted. See especially Article 2, 9 and 10.

⁸⁹ See Recital 6 of [Regulation \(EU\) No 606/2013](#) of 12 June 2013 on mutual recognition of protection measures in civil matters.

⁹⁰ See Recital 3, 25 and Article 1 of [Directive 2011/36/EU](#) of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

⁹¹ [Sexual exploitation and prostitution and its impact on gender equality](#), Policy Department Citizens' Rights and Constitutional Affairs, European Parliament, 2014.

⁹² [Directive 2011/92/EU](#) of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.

⁹³ The areas of trafficking in human beings and sexual exploitation are included as areas of serious crime with cross-border dimension under Article 83(1) TFEU. As a consequence, the EU has competence to "establish minimum rules concerning the definition of criminal offences and sanctions.

3.2. EU policy context

European Parliament

The European Parliament has taken a stance on violence against women since the 1980s.⁹⁴ It has repeatedly asked the European Commission and the Member States to act in order to prevent and fight gender-based violence.⁹⁵ The Parliament's Committees on Civil Liberties, Justice and Home Affairs (LIBE) and Women's rights and gender equality (FEMM) have always been very active on the issue; for instance, they created a Working Group on Violence against Women in 2015.⁹⁶ Back in 1986, Parliament adopted a resolution in which it flagged violence against women as a severe problem. In 2009, Parliament asked the Commission to come up with a comprehensive approach on preventing and combating violence against women.⁹⁷

It was in a 2014 resolution⁹⁸ that the European Parliament asked for gender-based violence to be included in the list of areas of serious crime for the first time. The resolution states that the Council should be asked to activate the '*passerelle* clause'⁹⁹ by adopting a unanimous decision to include violence against women and other forms of gender-based violence as an area of crime in Article 83(1) TFEU. In the same resolution, Parliament also requests the start of the procedure for the EU's accession to the Istanbul Convention, as well as calling for a legal proposal to prevent violence against women and girls based on Article 84 TFEU to support Member States in their fight on violence against women.

In the following years, Parliament vocally spoke in favour of adding gender-based violence to the list of EU crimes in several resolutions. In its interim resolution of 2017, Parliament urged the Council for a swift ratification of the Istanbul Convention by the EU, whilst also raising issues concerning the scope of EU accession.¹⁰⁰ At the beginning of 2021, Parliament again took a stance and supported the Commission's aim to include the objectives of the Istanbul Convention via legal means in case of a delay and/or impasse as regards EU accession.¹⁰¹

European Commission

Addressing equality between women and men has also been on the European Commission's agenda for decades. The Commission has suggested, adopted and acted on issues of equality

⁹⁴ [Resolution](#) of 11 June 1986 on violence against women, European Parliament.

⁹⁵ [Resolution](#) of 25 November on the Stockholm Programme, European Parliament; [Resolution](#) of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women, European Parliament; [Resolution](#) of 6 February 2013 on the 57th session on UN CSW: Elimination and prevention of all forms of violence against women and girls, European Parliament.

⁹⁶ [The elimination of violence against women: a European challenge](#), European Parliament website.

⁹⁷ [Resolution](#) of 26 November 2009 on the elimination of violence against women, European Parliament.

⁹⁸ [Resolution](#) of 25 February 2014 with recommendations to the Commission on Combating Violence against Women, European Parliament.

⁹⁹ The '*passerelle* clause' in Article 83 TFEU is a mechanism that allows the Council to add a new area of crime into the domain of EU regulation. A directive dedicated to this new area could then be adopted in accordance with the ordinary legislative procedure. For a more in-depth analysis, see S. Kotanidis, [Passerelle clauses in the EU Treaties](#), EPRS, European Parliament, December 2020.

¹⁰⁰ [Resolution](#) of 12 September 2017 on the proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence, European Parliament.

¹⁰¹ [Resolution of 21 January 2021 on the EU Strategy for Gender Equality](#) (2019/2169(INI)), European Parliament.

between women and men on several occasions, including through its strategy for equality for the 2010-2015 period¹⁰² or its strategic engagement for gender equality over the 2016-2019 period.¹⁰³

Preparing for EU accession to the Istanbul Convention has been one of the main priorities. The corresponding roadmap of October 2015¹⁰⁴ was followed by two proposals for Council decisions in 2016.¹⁰⁵ The convention itself was signed by the EU in 2017.¹⁰⁶ However, the EU has not yet ratified the convention and has therefore not formally acceded to it.¹⁰⁷

In 2019, the Commission President, Ursula von der Leyen, indicated in her political guidelines her ambition to present legislative proposals on the prevention of and fight against specific forms of gender-based violence. Von der Leyen stated the Commission's intention to suggest the inclusion of gender based violence in the list in of EU crimes (Article 83(1) TFEU).¹⁰⁸ In 2020, in its new gender equality strategy for the 2020-2025 period, the Commission also announced that it would suggest proposals to include the objectives of the Istanbul convention within the limits of EU competences.¹⁰⁹ The strategy includes extending the areas of EU crimes to specific forms of gender-based violence and additional measures under the standing areas of serious crime as defined in Article 83(1) TFEU. Accordingly, this goal has been included in the Commission's working programme 2021 and initiatives to achieve it should be presented in the final quarter of 2021.¹¹⁰

In this connection, the corresponding European Commission impact assessment, published in December 2020, suggests three options. First, monitoring of the existing framework and non-legislative measures as included in the European strategy for gender equality. Second, adopting non-legislative measures and 'targeted legislative measures in specific areas'. And third, a fully-fledged legislative proposal with binding minimum standards.¹¹¹

¹⁰² Communication from the Commission on a Strategy for equality between women and men 2010-2015, [COM\(2010\) 491 final](#), September 2010.

¹⁰³ Commission staff working document "[Strategic engagement for gender equality 2016-2019](#)" SWD(2015) 278 final, December 2015.

¹⁰⁴ European Commission Roadmap of October 2015 on [\(A possible\) EU Accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence \(Istanbul Convention\)](#).

¹⁰⁵ Proposal for a Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence, [COM/2016/0111 final - 2016/063 \(NLE\)](#), European Commission, and, Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence, [COM/2016/0109 final - 2016/062 \(NLE\)](#), European Commission.

¹⁰⁶ [Council Decision \(EU\) 2017/865 of 11 May 2017](#) on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, and, [Council Decision \(EU\) 2017/866 of 11 May 2017](#) on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to asylum and non-refoulement.

¹⁰⁷ [EU accession to the Istanbul Convention](#), Legislative Train, European Parliament, as of 4 September 2020.

¹⁰⁸ Ursula von der Leyen, [A Union that strives for more. My agenda for Europe: Political guidelines for the next European Commission 2019-2024](#), European Commission 2019.

¹⁰⁹ Communication from the Commission on a Union of equality: Gender Equality Strategy 2020-2025, [COM/2020/152](#), March 2020.

¹¹⁰ Communication from the Commission on Work Programme 2021: A Union of vitality in a world of fragility, [COM \(2020\) 690 final](#), October 2020.

¹¹¹ Inception Impact Assessment, [Gender-based and domestic violence initiative](#), European Commission, December 2020.

4. Issues in the status quo and reasons for EU action

4.1. Analysis of the issues in the status quo

Three sets of issues might be identified in the current status quo. The first set is related to the structural inequalities that promote gender-based violence. The second is related to the fact that the current legal international and EU frameworks are limited and lack an effective enforcement mechanism. The third has to do with the fact that the Member States lack a common approach and understanding. Incidentally, these issues result in a limited amount of comparable, disaggregated and standardised data at EU level.

Each set of issues is described in more detail below.

4.1.1. Issue 1: Structural inequalities that promote gender-based violence

Gender-based violence is a widespread phenomenon across the EU and the rest of the world, which is rooted in structural inequalities and patriarchal social norms that condone violence and control over women.¹¹² In turn, violence is, itself, a tool to reinforce gender hierarchies and power imbalances between women and men.¹¹³

The WHO acknowledges that the crystallisation of gender roles and gender stereotypes may contribute to creating social acceptance of violent and abusive behaviours.¹¹⁴ The different roles and behaviours of men and women are shaped and reinforced by gender norms within society, and social expectations define 'appropriate' behaviours for women and men. These are often sources of inequalities that both create and are reinforced by economic inequalities (lower access to employment, selection into lower-paying jobs, lower earnings for the same qualification levels, etc), inequalities in access to basic services (e.g. health care) and inequalities in political representation and participation in the public sphere.

Within the EU, the gender employment and gender wage gaps are stark. According to Eurostat data from 2018, women's gross hourly wages are 14.8 % lower than those of men.¹¹⁵ As a consequence of lower earnings, women's pensions are also lower: the gender pension gap is around 37.2 % for pensioners aged 65 to 79.¹¹⁶ A major cost imposed by the pay and employment gaps is women's economic dependence on a higher-earning partner, which can make it more difficult for women to

¹¹² For example, in the case of the USA, a 2015 study, [A First Look at Gender Inequality as a Societal Risk Factor for Dating Violence](#), found a positive correlation between gender inequalities and GBV. Its Gender Inequality Index includes five indicators: 1) maternal mortality; 2) adolescent birth rate; 3) government representation; 4) educational attainment; and 5) labour force participation, while GBV is measured through dating violence among adolescents. Similarly, in a study on 44 countries, Heise and Kotsadam (2015) find that factors associated with a higher prevalence of GBV are male authority over female behaviour, norms justifying wife-beating and the extent to which law and practice disadvantage women compared with men in access to land, property and other productive resources. See L. Heise, A. Kotsadam, '[Cross-national and multilevel correlates of partner violence: an analysis of data from population-based surveys](#)', *The Lancet Global Health*, Vol. 6, Issue 6, June 2015.

¹¹³ E. Fulu, '[Violence against women and girls](#)', *Professional Development Reading Pack*, No 32, 2016.

¹¹⁴ [Promoting gender equality to prevent violence against women](#), World Health Organization (WHO).

¹¹⁵ Difference in the average gross hourly wage of men and women, Gender gap in unadjusted form, Eurostat, 2021.

¹¹⁶ [Pension Adequacy Report](#), European Commission, Directorate-General for Employment, Social Affairs and Inclusion, 2018, and [Report on equality between women and men in the EU](#), European Commission, 2018.

leave abusive relationships, possibly leading to increased intimate partner violence.¹¹⁷ Studies find a negative association between women's economic empowerment and the probability of their being victims of intimate partner violence.¹¹⁸ Countries with a high proportion of women in the formal work force display lower prevalence of IPV.¹¹⁹

The Eurobarometer provides insights into social norms, which are a key factor in driving structural inequalities and also a consequence of these inequalities. According to a 2016 Eurobarometer,¹²⁰ the majority of Europeans condemn GBV, but there are significant indicators of social acceptance in non-negligible parts of the population. Almost all respondents say domestic violence against women is unacceptable, although 12 % do not think it should always be punished by law and 15 % consider domestic violence to be a private matter that should be handled within the family. Eleven percent say forcing a partner to have sex should not be against the law and 18 % say touching a colleague in an unwanted or inappropriate way, or overly controlling a partner should not be illegal. Some 27 % say sexual intercourse without consent may be justified in at least one of the proposed situations. More than one respondent in five (22 %) consider that women often make up or exaggerate claims of abuse or rape, indicating potentially victim-blaming views.

It has to be noted that those social norms that assign fixed and subordinate roles to women are strongly related to the social norms that produce discrimination towards LGBTIQ people and condone homophobic and transphobic violence, being norms that tend to rest on a crystallised view of behaviours that are socially expected from women and men. Those very social norms can, through channels different than violence, also be detrimental to men (irrespective of their sexual orientation) since they reinforce models of masculinity that have negative impacts on men's mental and physical health (see Section 2.3).

4.1.2. Issue 2: The international legal framework is not enforceable in the EU

As explained in Section 3.1, there is an extensive legal framework at the international and the regional level that addresses gender-based violence. However, **only the Istanbul Convention offers a holistic approach; so far, however, the EU and six Member States have not ratified it.**¹²¹ Furthermore, there is a lack of enforceability of the decisions or judgments that the international and regional legal frameworks' monitoring mechanisms provide, either because there is no individual recourse envisaged or they do not have direct effect on states parties; as a result, they leave a broad scope for interpretation.¹²²

¹¹⁷ For more details, see [Estimating the costs of gender-based violence in the European Union: Report](#), European Institute for Gender Equality (EIGE), 2014; W. Van Ballegooij and J. Moxom, 2018.

¹¹⁸ I. del Campo and J. Steinert, [The Effect of Female Economic Empowerment Interventions on the Risk of Intimate Partner Violence: A Systematic Review and Meta-Analysis](#), December 2020. These effects can be more complex because GBV can also be used as a 'sanction' on women and girls stepping out of line with social expectations of them (Huhues et al, 2016), and also workplaces can be characterised by inequalities and abusive behaviours. Still, most evidence underlines that economic empowerment is associated with a lower probability of victimisation.

¹¹⁹ L. Heise, A. Kotsadam, ['Cross-national and multilevel correlates of partner violence: an analysis of data from population-based surveys'](#), *The Lancet Global Health*, Vol. 6, Issue 6, June 2015.

¹²⁰ [Special Eurobarometer 449: Gender-based violence](#), European Commission, November 2016

¹²¹ The Polish government has also expressed its intention to withdraw from the convention. See Euronews (2021) [Istanbul Convention: Poland moves a step closer to quitting domestic violence treaty](#)

¹²² Annex 1 to [Combating violence against women](#), EPRS, European Parliament, 2013.

4.1.3. Issue 3: The EU's anti-discrimination framework does not extend to violence

Similarly, the EU legal framework for combating gender-based violence is limited and lacks enforcement mechanisms. First of all, **the EU anti-discrimination framework does not extend to violence**, which can be understood as an extreme form of discrimination.¹²³ Only acts of violence in the form of harassment and sexual harassment within the workplace and in the access to and supply of goods and services are recognised as a form of discrimination as described in Section 3.1.¹²⁴ As noted in Section 3.1, Member States were required to designate equality bodies to support the implementation of the anti-discrimination directives. The mandate of their equality bodies therefore does not include gender-based violence. Nonetheless, the equality bodies of 10 Member States consider that 'addressing violence against women' falls within their mandate.¹²⁵

4.1.4. Issue 4: The EU's criminal law framework is limited

Within its limited competences in substantive and procedural criminal law, the EU has adopted some directives that partially deal with gender-based violence. These are the Victims' Rights Directive, the European Protection Order Directive, the Trafficking Directive and the Child Abuse and Sexual Exploitation and Child Pornography Directive. Their main shortcomings preventing them from tackling gender-based violence effectively are presented in the box below.

The EU has limited competences, as criminal law is a sensitive policy area that has a great impact on the persons involved. That explains, first, why criminal law is a measure of last resort and, second, the remaining differences that still exist across Member States.¹²⁶ The EU has competence in procedural law 'to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension' (Article 82 TFEU). The Victims' Rights Directive and the European Protection Order Directive were adopted on this legal basis. On the other hand, in the field of substantive criminal law, the EU can 'establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension', as stated in Article 83 TFEU.¹²⁷ The Trafficking Directive and the Child Abuse and Sexual Exploitation Directive were adopted under this Article.

¹²³ Annex 1 to [Combating violence against women](#), EPRS, European Parliament, 2013.

¹²⁴ [Directive 2006/54](#), [Directive 2010/41/EU](#) and [Directive 2004/113](#).

¹²⁵ [Mandates](#), European Network of Equality Bodies (EQUINET) website. The 10 Member States are: Belgium, Croatia, Cyprus, Denmark, Ireland, Latvia, the Netherlands, Poland, Portugal and Slovenia.

¹²⁶ Communication from the Commission on Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law, [COM/2011/0573 final](#), 2011.

¹²⁷ '10 Years after Lisbon- How 'Lisbonised' is the Substantive Criminal Law in the EU?', The European Criminal Law Associations' Forum (eucrim) website.

Overview of criminal legislation flaws in combating gender-based violence

The Victims' Rights Directive

It establishes minimum standards concerning the rights, support and protection of victims. It provides a definition (among others) for a victim as 'a natural person who has suffered harm, including physical, mental or emotional harm or economic loss caused directly by a criminal offence' (See Article 2). Similarly, it provides a comprehensive definition of gender-based violence, as mentioned above. In the field of collection of data and statistics, Member States are legally bound to communicate to the Commission, every three years, relevant statistical data 'related to the application of national procedures on victims of crime' (See Recital 64 and Article 28 of the [directive](#)). **Although the directive takes gender considerations into account, this instrument has not been tailored for the special needs of victims of gender-based violence, thus three flaws have been identified: 1. As gender-based violence is not equally treated in the different Member States (see flaw below), a victim may not be recognised as such if the criminal offence that he/she had suffered is not punishable in that State. 2. The directive does not deal with the prevention and the prosecution of crimes, and it does not offer specific provisions related to the support and protection of gender-based violence victims (See [an analysis of the Victims' Rights Directive from a gender perspective](#) by EIGE, 2016). 3. Harmonisation of the definitions at the EU level is not envisaged.** The European Commission has noted these flaws in the [EU Victims' Rights strategy](#), in which it pointed out that special attention must be paid to supporting and protecting victims with special needs, such victims of gender-based or domestic violence.

Trafficking Directive

This directive tries to combat and prevent trafficking in human beings as well as offering support to victims and prosecuting perpetrators. It recognises the 'gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender-specific where appropriate' (See Recital 3). **Despite these provisions, some problems may arise in relation to the fact that the directive does not recognise gender equality or non-discrimination as the human rights principles that it tries to enhance,** 'while (rightly) insisting on the rights of the child'. Similarly, support and protection measures are recognised for child victims of trafficking but not for women (see Annex 1, EAVA, 2013). **A gender perspective in monitoring victims of trafficking is also lacking in the current framework set out by this directive** (see [Gender specific measures in anti-trafficking actions](#), report by EIGE, 2018). The EU can also adopt common rules concerning definitions and sanctions in the context of sexual abuse and sexual exploitation of children. As mentioned above, this is another highly gendered issue addressed at the EU level by **Directive 2011/93**, albeit limited to children and to the areas covered by this directive.

The European Protection Order (EPO) Directive

This directive allows a Member State, called the issuing state, to issue an EPO to protect a national victim in another Member State, called the executing state. This order may be issued if the issuing country has already adopted a protection measure to ensure the situation of the victim. It has not been tailored for the special needs of victims of gender-based violence (**See Recital 9**). **As mentioned in relation to the Victims' Rights Directive, it does not deal with the criminal offences that are not punishable under the Member States' legislation.**

4.1.5. Issue 5: The understanding and treatment of gender-based violence varies across Member States

Member States differ substantially in their definitions of gender-based violence and how the offense is treated. This variation of interpretations is also evident among countries that have ratified the Istanbul Convention. Although there are fewer disparities among those Member States that have ratified the Istanbul Convention in comparison with those that have not, further actions remain necessary even in the former.

The Istanbul Convention recognises the following as forms of gender-based violence: psychological violence, stalking, physical violence, sexual violence, forced marriage, female genital mutilation,

forced abortion and forced sterilisation and sexual harassment, and unacceptable justifications for crimes, including crimes committed in the name of so-called *honour*. These offences apply irrespective of the nature of the relationship between victim and perpetrator. Yet, countries such as Cyprus and Romania – which have ratified the Istanbul Convention – still do not prosecute some of these crimes. In Cyprus, there is no offence akin to stalking and no explicit provision is envisaged for forced sterilisation, although the latter falls under bodily harm and professional misconduct. The situation is similar with respect to female genital mutilation, stalking and forced sterilisation in Romania. More progress needs to be made to combat gender-based violence effectively in countries that have not yet ratified the convention. Stalking is not recognised in Lithuanian criminal law, likewise forced sterilisation is not recognised in Latvia and Bulgaria, where female genital mutilation also falls under other crimes.¹²⁸ Figure 6 presents an overview of the differences among the Member States concerning stalking, female genital mutilation and forced sterilisation, as well as the ratification of the Istanbul Convention.

The Istanbul Convention also deals with domestic violence (see definitions in Section 2.1), which is understood as any act of physical, sexual, psychological and economic harm. These four different types of violence are explicitly recognised in eight countries. While physical violence is covered by all Member States (as it is usually linked with domestic violence), protection and prosecution after an act of economic harm still lag behind across them.¹²⁹ An overview of the types of domestic violence protected throughout the EU is presented in Figure 7.

In the procedural criminal law even more differences across Member States remain in place. Once again, if the criminal treatment varies considerably from one state to another, it could lead to inequality of treatment of victims and perpetrators and to a risk of 'safe havens', putting the area of freedom, security and justice at stake. To counteract this issue, harmonisation of criminal law at EU level might be proposed under the policy options analysed below. At this point, it is worth noting, however, that a certain level of harmonisation could foster citizens' confidence and legal certainty, enhance mutual trust across judicial bodies in the Member States, and prevent serious offences.¹³⁰

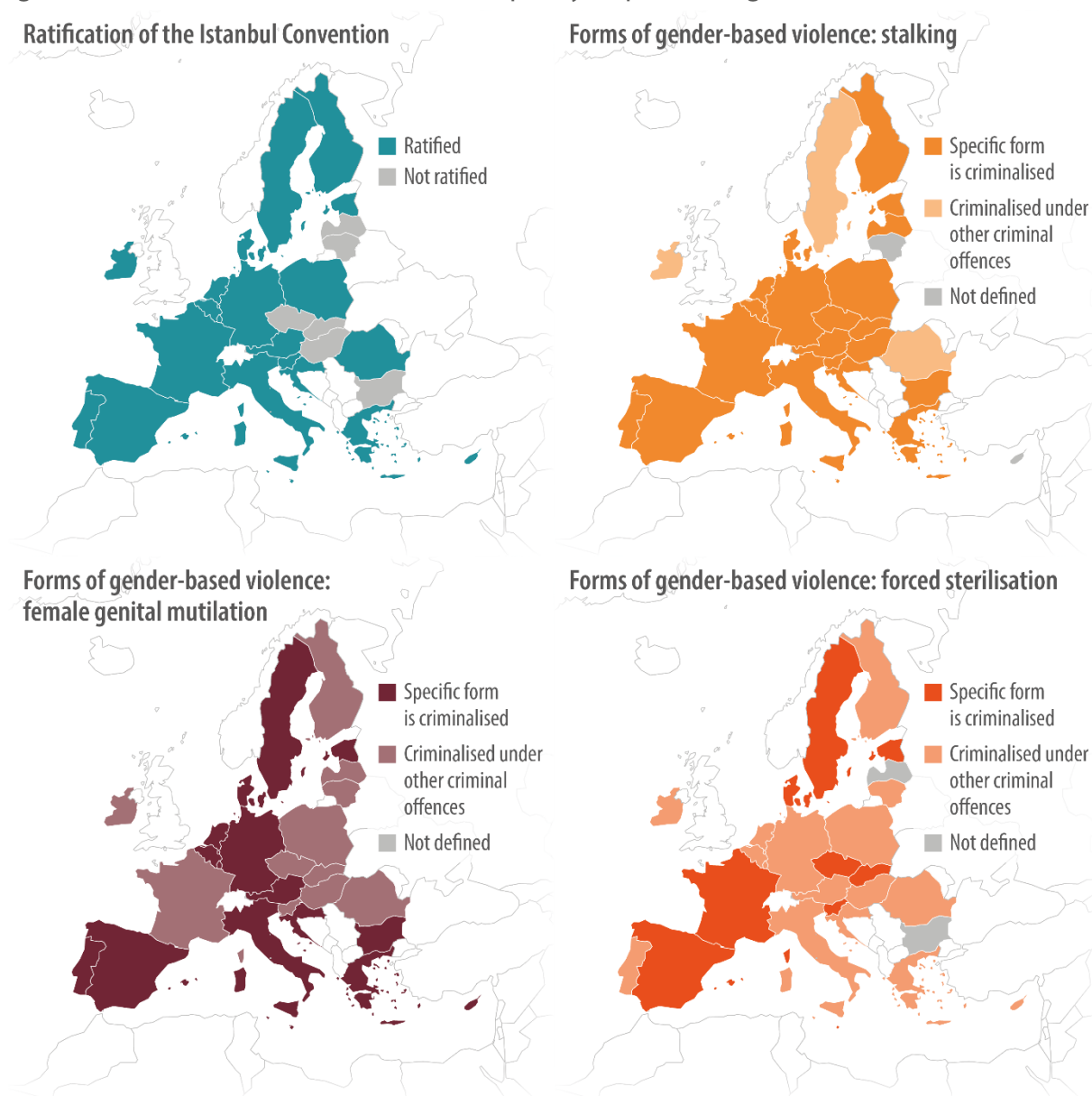
In addition to whether it is criminalised or not, the treatment of gender-based violence also varies in terms of the age of consent, what consent means, the burden of proof, sanctions, including compensation, and the plans and strategies in place.

¹²⁸ [Tackling Violence against Women and Domestic Violence in Europe- The Added Value of the Istanbul Convention and Remaining Challenges](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, October 2020.

¹²⁹ *ibid.*

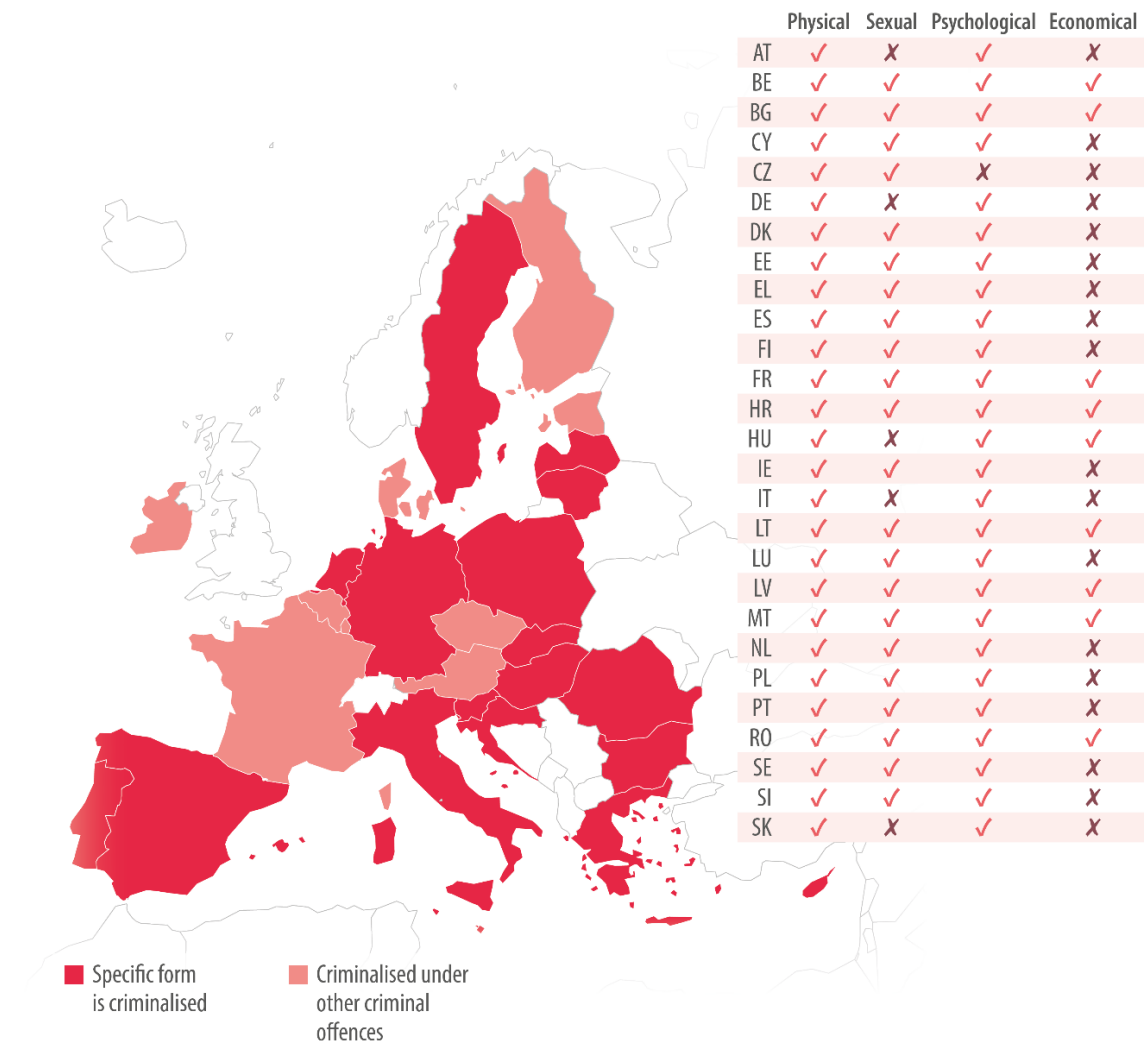
¹³⁰ Communication from the Commission on Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law, [COM/2011/0573 final](#), 2011.

Figure 6 – Overview of the Member States' policy responses to gender-based violence



Data source: Prepared by EPRS based on information about the Member States that have ratified the Istanbul Convention, obtained from the Council of Europe's website, and information about the forms of gender-based violence, obtained from a 2020 EPRS [study](#) on tackling violence against women and domestic violence in

Figure 7 – Protection by Member States against four forms of domestic violence



Data source: Prepared by EPRS based on a 2020 EPRS [study](#) on tackling violence against women and domestic violence in Europe.

Age of Consent: The Directive on combating the sexual abuse and sexual exploitation of children and child pornography was adopted using Articles 83(1) and 82(2) TFEU as its legal basis, thus enabling the EU to set minimum rules concerning definitions and sanctions. It provides, accordingly, a common understanding of 'age of sexual consent' as the 'age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child'.¹³¹ At Council of Europe level, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

¹³¹ [Directive 2011/93](#) of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography. See Article 2 for definitions.

(Lanzarote Convention) also set the obligation for the states parties to adopt a minimum age of sexual consent.¹³² All the Member States have set a minimum age of sexual consent, yet almost half of them have set exceptions when the partner is of a relatively similar age, making intercourse non-criminal. The minimum age is set at its lowest (14 years) in Austria, Bulgaria, Estonia, Germany, Hungary, Italy and Portugal and at its highest in Malta (18 years). The rest of the countries adopted an intermediate position between 15 and 17 years of age.¹³³

Consent: National legal frameworks vary as well when it comes to the treatment of consent. Although lack of consent is in the 27 Member States' definitions of rape,¹³⁴ the element of 'unequivocal and voluntary agreement' varies. The 'element/requirement of consent' is only clearly addressed in the definitions of rape in some countries (e.g. Belgium, Bulgaria, Croatia and Cyprus). Terms like 'against their will' or 'inability to express their will' are recognised in other countries (e.g. Estonia, Lithuania, Romania and Finland).¹³⁵ The Istanbul Convention states, in Article 36 concerning sexual violence, including rape, that 'consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances'. It clearly emphasises the voluntary character of this expression of will.

Burden of proof: It has a different treatment in criminal cases in comparison with civil or administrative ones, with a view to respecting the presumption of innocence. EU law and CJEU case-law have established that the burden of proof is on the defendant. In civil and administrative cases concerning gender discrimination, both the plaintiff and the defendant might provide evidence to support their claims.¹³⁶ Antidiscrimination directives¹³⁷ recognise that Member States might introduce 'rules of evidence which are more favourable to plaintiffs', which could result in divergent treatments across the EU, especially if the violence is outside the family nucleus.

Sanctions: Sanctions can play an important role in combating gender-based violence as they act as a deterrent to perpetrators. As the Fundamental Rights Agency notes, 'sentencing is about conveying a message to offenders that will make them rethink their behaviour' and make them aware of the effects of the harm caused to the victims.¹³⁸ The Union can adopt minimum rules concerning sanctions using Article 83 TFEU as the legal basis. This approximation is limited to what is called 'minimum maximum penalties',¹³⁹ leaving it to the Member States to adopt more restrictive punishments as long as they ensure that the perpetrator 'is subject to effective, proportionate and dissuasive sanctions'.¹⁴⁰ If the EU does not have competence to act, the Member States can then decide whether to use criminal sanctions (instead of administrative or civil measures), which might

¹³² [Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse](#) (Lanzarote Convention), Council of Europe, 2010.

¹³³ [Consent for sexual activity with an adult](#), FRA webpage.

¹³⁴ [Glossary of definitions of rape, femicide and intimate partner violence](#), EIGE, 2017.

¹³⁵ [Analysis of National Definitions of Rape](#), EIGE, 2016.

¹³⁶ [Women's Access to Justice: A Guide for Legal Practitioners](#), Council of Europe, 2018.

¹³⁷ Those cited above: Equal opportunities and treatment in the workplace and in the access to and supply of goods and services. See especially Articles 19 and 9 respectively.

¹³⁸ [Sanctions that do justice. Justice for victims of violence crimes](#), FRA, 2019.

¹³⁹ [The Harmonisation of Criminal Sanctions in the European Union - A New Approach, the European Criminal Law Associations' Forum \(eucrim\) webpage](#).

¹⁴⁰ See Article 6 of [Directive 2011/36/EU](#) of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

result in different levels and even different categories of sanctions from country to country.¹⁴¹ For example, in the Netherlands, the maximum penalty for rape is 12 years of imprisonment (although the average sentence is two years),¹⁴² while in Croatia, 'sexual intercourse without consent' has a penalty of five years, and the sentence given for rape is 10 years.¹⁴³ In Finland, rape is punished by imprisonment of at least one year and at most six years; more than 60 % of the cases, however, are suspended due to the fact that the term of imprisonment is under two years.¹⁴⁴

Along with punishment of perpetrators, **compensation** schemes play an important role in restoring the rights of the victims. The Victims' Rights Directive states that Member States shall take the appropriate measures to ensure adequate compensation to victims in the course of criminal proceedings.¹⁴⁵ An 'effective remedy' is recognised as well in the EU Charter of Fundamental Rights for those victims whose rights and freedoms guaranteed by EU law have been violated.¹⁴⁶ At national level, Member States are in charge of ensuring the rights of their citizens. Therefore, they should ensure that the compensation to the victim is effectively provided by the offender, and ensure the deployment of an effective mechanism if this is not the case.¹⁴⁷ Significant differences in compensation schemes between countries then might arise, especially if the offence is not even a criminal one, as is the case with stalking, female genital mutilation and forced sterilisation in some EU countries (see Figure 6).

Plans and strategies: Lastly, substantial differences remain in the Member States' plans and strategies to address gender-based violence. Although 24 Member States have adopted their own national action plans (NAPs) to combat all kinds of violence,¹⁴⁸ GREVIO has noted that in Austria and Denmark, which have created an inter-ministerial working group on the Protection of Women from Violence and another on Violence against Women and Trafficking, the provisions set up in these plans are not sufficient because of lack of resources and personnel.¹⁴⁹ The situation is not different concerning the victim support services, where differences among Member States remain substantial. The starkest examples of such differences include the kind of service that they provide, the working hours over which that they are accessible and available, and the public resources allocated to them.¹⁵⁰

4.1.6. Issue 6: Lack of comprehensive and comparable data

As noted by the Fundamental Rights Agency, there is a lack of comprehensive and comparable data on gender-based violence, and on the risks and response to gender-based violence for specific risk

¹⁴¹ Communication from the Commission on Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law, [COM/2011/0573 final](#), 2011.

¹⁴² [Criminalization and Prosecution of Rape in the Netherlands](#), Amnesty International, 2020.

¹⁴³ [Right to Be Free From Rape, Overview of Legislation and State of Play in Europe and International Human Rights Standards](#), Amnesty International, 2018.

¹⁴⁴ [Criminalization and Prosecution of Rape in Finland](#), Amnesty International, 2020.

¹⁴⁵ See Article 16 of the Victims' Rights Directive.

¹⁴⁶ See Article 47 of the EU Charter of Fundamental Rights.

¹⁴⁷ [Sanctions that do justice, Justice for victims of violence crimes](#), FRA, 2019.

¹⁴⁸ M. Prpic and R. Shreeves [Violence against women in the EU](#), State of play, EPRS, European Parliament, November 2019.

¹⁴⁹ [First General Report on GREVIO's Activities](#), Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020.

¹⁵⁰ [Tackling Violence against Women and Domestic Violence in Europe – The Added Value of the Istanbul Convention and Remaining Challenges](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, October 2020.

groups, in particular LGBTIQ persons and migrants, taking into consideration the intersectionality of discrimination and violence.¹⁵¹ This stems from the lack of accepted definitions and approaches to standardisation. No specific EU legal instrument on data collection on violence against women is available, with the exception of those foreseen by the Victims' Rights Directive and by specific gender-equality policy initiatives.¹⁵² This explains why Eurostat does not compile data on gender-based violence, although data by age and sex are available for numbers of victims and numbers of perpetrators of intentional homicide. Other Eurostat monitoring reports assess progress towards Sustainable Development Goal 5 on gender equality,¹⁵³ focusing on the following indicators: the gender pay gap, the inactive population due to caring responsibilities by sex, seats held by women in national parliaments, positions held by women in senior management, early leavers from education and training by sex, tertiary educational attainment by sex, and the employment rate of recent graduates.

At the national level, those Member States that have not yet ratified the Istanbul Convention are not legally bound to report to GREVIO, the monitoring mechanism envisaged in it. As for the EU Member States that are legally bound to collect data on all forms of violence covered by the Istanbul Convention (see Article 11 of the convention), GREVIO has highlighted some flaws in their monitoring framework. GREVIO notes that not all the categories of violence are covered by the states - parties' monitoring programs, the collection system is not harmonised even within the same country, and there is no special provision in any of the countries to record the granting of refugee status due to gender-related considerations.¹⁵⁴ Furthermore, the comparison of data among countries is challenging due to the lack of common definitions and different treatments. It is noteworthy that crimes under the Istanbul Convention are not always reported to the officials. According to the communication on [An EU strategy on victims' rights \(2020-2025\)](#) only one out of three women who are physically or sexually abused by their partners contacts the authorities. Similarly, there is still a lack of comparable and standardised data on emergency barring orders, covered likewise by the Istanbul Convention, mainly because they constitute a provisional measure. The effectiveness of their impacts on victims is then underreported.¹⁵⁵

Since 2016, Eurostat has been coordinating the development of an EU survey on gender-based violence against women and other forms of inter-personal violence (EU-GBV survey).¹⁵⁶ The survey gathers information on the various forms of violence presented in the Istanbul Convention and also

¹⁵¹ [Violence against women: an EU-wide survey. Main results](#), European Union Agency for Fundamental Rights Agency (EU FRA), 2014.

¹⁵² The Victims' Rights Directive provides for the obligation of Member States to collect data on the access of the victims to the rights established in the directive, and the types and number of crimes reported. Member States are required to communicate this data to the European Commission once every three years. If possible, the number of victims covered by the directive, their age and gender are included in the report, as stated in the Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA [COM\(2020\) 188 final](#), May 2020.

¹⁵³ [Eurostat: progress made to achieve SDG5](#), Eurostat webpage.

¹⁵⁴ [First General Report on GREVIO'S Activities](#), GREVIO, 2020.

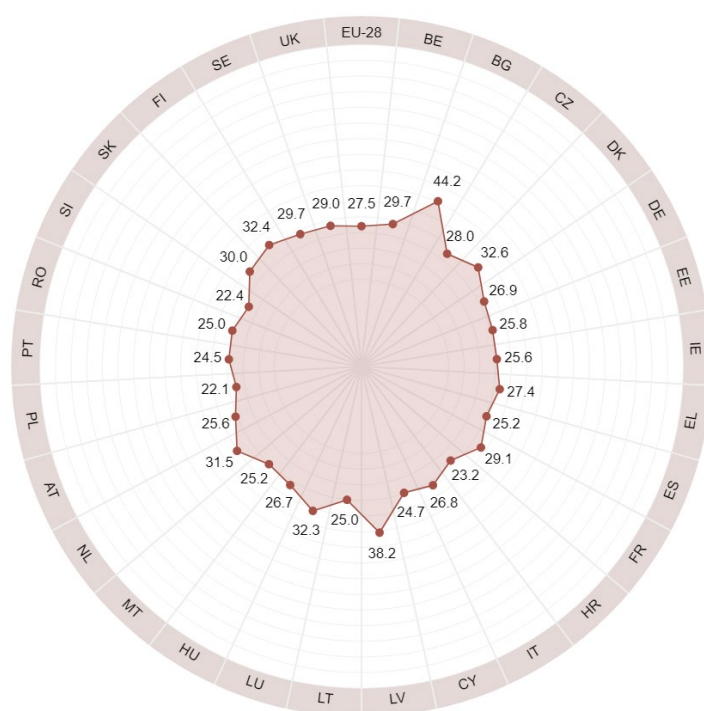
¹⁵⁵ [Emergency Barring Orders](#), Women against Violence Europe (WAVE) Report 2015.

¹⁵⁶ [EU survey on gender-based violence against women and other forms of inter-personal violence](#), Eurostat, 2021. The methodology has been prepared in cooperation with the Member States and EU institutions, including EIGE and FRA.

investigates reasons for not reporting instances of gender-based violence.¹⁵⁷ About two-thirds of Member States will participate in the survey.¹⁵⁸ The first findings from this survey are expected to be released in 2023.

EIGE has constructed a composite score of violence against women by Member State that draws on FRA 2012 data.¹⁵⁹ The score ranges from 0 to 100, where '1' indicates a situation where violence against women is non-existent and '100' means that it is extremely common, very severe and not disclosed.¹⁶⁰

Figure 8 – EIGE composite score of violence against women by Member State



European Institute for Gender Equality, Gender Equality Index 2019

Source: [Gender Equality Index](#), EIGE, 2019

The table below summarises the problems identified in the status quo concerning how gender-based violence is tackled in the EU.

¹⁵⁷ The survey gathers data on psychological violence (including economic violence, and covered only for intimate partners), as well as stalking, physical violence, sexual violence (including rape), and sexual harassment (covered only for situations at work). It does not gather data on female genital mutilation, forced sterilisation and forced marriage.

¹⁵⁸ As the survey implementation is on a voluntary basis, around two thirds of the EU Member States have joined the project. Countries will implement the survey according to the national timetables between December 2019 and April 2023.

¹⁵⁹ [Gender Equality Index 2017: Measurement framework of violence against women, Report](#), EIGE.

¹⁶⁰ It has to be noted that this score is in the reverse order to the score in the main Gender Equality Index, where the higher the score, the closer the country is to achieving gender equality. The data used in 2017 has not been updated and therefore no new scores are given for VAW in the most recent index for 2020.

Table 3 – Overview of issues in tackling gender-based violence and their impacts

Issues	Type	Impacts	Relevant Stakeholders
Structural inequalities	Policy	<ul style="list-style-type: none"> Increased social acceptance of gender-based violence Decreased awareness and reporting of gender-based violence Heightened economic inequalities between women and men 	Equality bodies Education systems Law enforcement Labour market actors (employers, trade unions)
International framework does not impact national regulations as EU binding acts do	Legal Policy	<ul style="list-style-type: none"> Low prosecution level internationally Lack of law enforcement and monitoring mechanism 	European Court of Human Rights European Court of Justice Committee on the Elimination of Discrimination Against Women Committee on the Rights of Persons with Disabilities
EU discrimination framework does not extend to violence which is an extreme form of expression of discrimination	Legal Policy	<ul style="list-style-type: none"> Gender-based violence is not recognised as an extreme form of discrimination Divergent treatment across Member States of gender-based violence 	EU institutions and relevant agencies Equality bodies Law enforcement Victims of discrimination on the grounds of sex including victims of gender-based violence
EU legal framework in criminal law is limited	Legal	<ul style="list-style-type: none"> Divergent stances of Member States on criminal issues Limited support of victims of cross-border criminal offences Low cross-border prosecution level 	Law enforcement EU institutions MS authorities Equality bodies Perpetrators Gender-based violence victims Cross-border victims of gender-based violence Providers of victim support services
Understanding and treatment of gender-based violence varies across Member States	Legal Research Policy	<ul style="list-style-type: none"> Lack of common definitions of gender-based-violence Divergent recognition of forms of gender-based violence and whether they constitute an administrative or criminal offence 	Member States authorities Relevant agencies Equality bodies Victims of gender-based violence Cross-border victims of gender-based violence Perpetrators
Limited comparable, disaggregated and standardised data	Research Technical	<ul style="list-style-type: none"> Limited survey and administrative data concerning the scale and prevalence of gender-based violence Challenges to define a policy and institutional response to gender-based violence Lack of awareness of gender-based violence 	EU institutions and relevant agencies Member State authorities Equality bodies Academic and research institutions

Source: Compiled by the authors.

4.2. Why the EU has grounds to criminalise gender-based violence

From the issues identified in Section 4.1, the assessment identifies five main reasons why the EU should act on gender-based violence including by criminalising it. The reasons are as follows:

- reason 1: gender-based violence is a serious crime;
- reason 2: the nature of gender-based violence has a cross-border dimension;
- reason 3: criminalising GBV would promote a more harmonised, cross-border response to protect victims;
- reason 4: criminalising gender-based violence would enhance the internal and external coherence of EU action in the area of gender equality; and
- reason 5: a majority of citizens believe that gender-based violence should be punishable by law.

The legal basis for EU action is Article 83(1) TFEU, which gives the EU the prerogative to establish minimum rules in 'areas of particularly serious crime'. Reasons 1-3 can support the fulfilment of the conditions set out by Article 83(1) TFEU. Reasons 4-5 provide social grounds for action – tackling gender-based violence is a key objective of the EU's gender equality strategy 2020-2025,¹⁶¹ and a majority of citizens believe that gender-based violence against both women and men is unacceptable and should be punishable by law.¹⁶²

4.2.1. Reason 1: Gender-based violence is a serious crime

As mentioned above, Article 83(1) TFEU enables the EU to set minimum rules in specified areas of 'particularly serious crime', namely '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'.¹⁶³ **The Treaty does not define what 'particularly serious crime' entails nor is there a consistent distinction between serious and non-serious crimes in the legal frameworks of the Member States**, which have adopted criminal rules that reflect 'the basic values, customs and choices of any given society'.¹⁶⁴ During a debate on the future of EU substantive criminal law, launched by the Romanian Presidency in 2019, the Member States saw 'no need to develop a common definition/understanding of certain notions, such as serious crime'.¹⁶⁵ As such, a comparative legal review of Member State practices in criminal law is unlikely to inform the potential development of the EU criminal justice arena.¹⁶⁶

¹⁶¹ Communication from the Commission on a Union of equality: Gender Equality Strategy 2020-2025, [COM/2020/152](#), March 2020.

¹⁶² [Special Eurobarometer 449: Gender-based violence](#), European Commission, November 2016.

¹⁶³ Article 83(1) TFEU.

¹⁶⁴ Communication from the Commission on Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law, [COM/2011/0573 final](#), 2011.

¹⁶⁵ [The future of EU substantive criminal law](#), policy debate, Council of the European Union, 2019.

¹⁶⁶ [Developing a Criminal Justice Area in the European Union](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2014.

Some regulations (e.g. Regulation (EU) 2016/794 that establishes Europol¹⁶⁷ and Directive (EU) 2015/849 on money laundering and terrorist financing¹⁶⁸) offer examples of how serious crimes are defined at the EU level. An in-depth review of the EU policy literature and the academic literature identified areas that are most commonly considered to be serious crime.¹⁶⁹ The review of the academic literature established that assault, homicide and murder were the most frequently referenced, but no gender dimension was noted.

At the international level, the UN Convention against Transnational Organized Crime defines serious crime as 'an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty'.¹⁷⁰ The International Criminal Police Organisation, Interpol, has three main crime programmes in the area of terrorism, organised crime and cybercrime.¹⁷¹ In the United States, there is a preference for using the term 'violent crime' in the place of 'serious crime'. The FBI's Uniform Crime Reporting (UCR) Program considers that the following four offences constitute violent crime: murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault.¹⁷² The defining characteristic of these violent offences is the involvement and/or threat of force.

Serious crime can be understood as crime that puts the EU's interests at risk, as it may pose a significant danger to the health and safety of society while also entailing high costs. **Due to the lack of legal clarity, an economic perspective can therefore be adopted to shed light on the distinction between serious and non-serious crime.** EIGE is updating its estimates for the societal costs of gender-based violence in the EU, which it had made in the context of a 2014 study.¹⁷³ As noted in Section 2.3, initial findings suggest that gender-based violence (with a focus on women) entails a societal cost of €290 billion on an annual basis.¹⁷⁴ Figure 9 depicts the proportions of this cost as well as providing estimates for the societal cost of types of crime qualified as 'particularly serious' by Article 83(1) TFEU, and for which quantitative estimates are available. These types of

¹⁶⁷ [Regulation \(EU\) No 2016/794](#) of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol), 2016. Annex 1 defines the following as serious crime: terrorism, organised crime, drug trafficking, money-laundering activities, crime connected with nuclear and radioactive substances, immigrant smuggling, trafficking in human beings, motor vehicle crime, murder and grievous bodily injury, illicit trade in human organs and tissue, kidnapping, illegal restraint and hostage-taking, racism and xenophobia, robbery and aggravated theft, illicit trafficking in cultural goods (including antiquities and works of art), swindling and fraud, crime against the financial interests of the Union, insider dealing and financial market manipulation, racketeering and extortion, counterfeiting and product piracy, forgery of money and means of payment, computer crime, corruption, illicit trafficking in arms, ammunition and explosives, illicit trafficking in endangered animal species, illicit trafficking in endangered plant species and varieties, environmental crime (including ship-source pollution), illicit trafficking in hormonal substances and other growth promoters, sexual abuse and sexual exploitation (including sexual abuse material and solicitation of children for sexual purposes) and genocide, crimes against humanity and war crimes.

¹⁶⁸ [Directive 2015/849](#) of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, 2015. Article 3 defines the following as serious crime: terrorism offences, any offences recognised in the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the activities of criminal organisations, fraud affecting the Union's financial interests, corruption, all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of the Member States, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year.

¹⁶⁹ L. Paoli, A. Adriaenssen, V.A. Greenfield, and M. Conickx, '[Exploring definitions of serious crime in EU policy documents and academic publications: A content analysis and policy implications](#)', *European Journal on Criminal Policy and Research*, 23(3), 2017, pp. 269-285.

¹⁷⁰ [United Nation Convention against Transnational Organized Crime](#), United Nations, 2000. See Article 2(b).

¹⁷¹ [What is Interpol?](#) Interpol webpage.

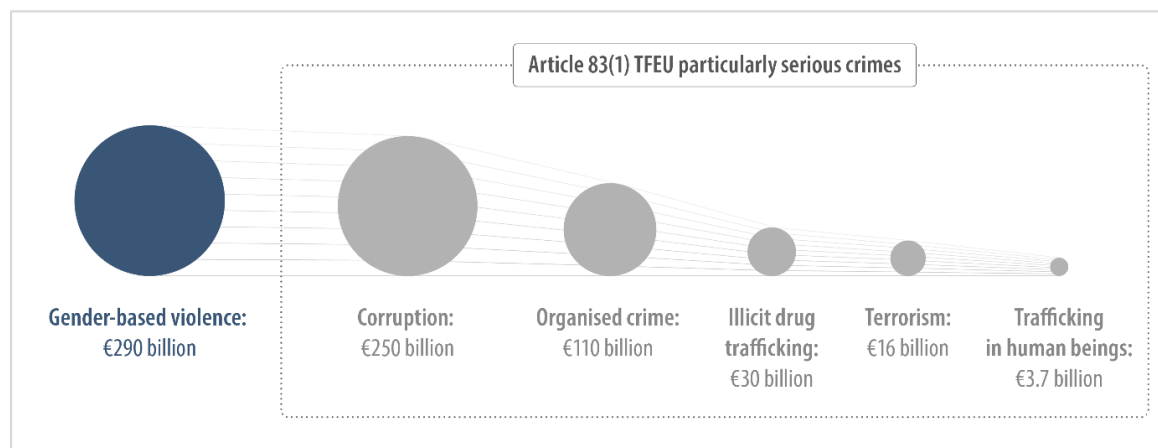
¹⁷² [FBI: Violent Crime](#), US Department of Justice webpage.

¹⁷³ [Estimating the costs of gender-based violence in the European Union](#), European Institute for Gender Equality (EIGE), 2014.

¹⁷⁴ European Institute for Gender Equality (EIGE) forthcoming (2021): The costs of gender-based violence in the EU.

crime include illicit drug trafficking,¹⁷⁵ corruption and organised crime,¹⁷⁶ terrorism¹⁷⁷ and trafficking in human beings.¹⁷⁸ The estimates for several studies draw from Cost of Non-Europe studies carried out by the European Parliamentary Research Service.¹⁷⁹ The figure also notes the date when the estimates were made – EU and national measures taken subsequently may not be reflected in these estimates.¹⁸⁰ Figure 9 shows that **the estimated EU-level costs of gender-based violence greatly exceed the costs of several of crime – such as organised crime and illicit drug trafficking¹⁸¹ – that are understood to be 'particularly serious'.**

Figure 9 – The estimated annual societal costs of GBV exceed the estimated annual costs of particularly serious types of crime listed under Article 83(1) TFEU



Data source: Prepared by EPRS based on findings from a review of studies assessing the societal costs for different types of crime.

Note: The estimate for the costs of GBV was obtained from a forthcoming ELGE study. This figure corresponds to the EU-27, while other figures correspond to the EU-28. The cost estimates are not

4.2.3. Reason 2: The nature of gender-based violence has a cross-border dimension

Article 83(1) TFEU authorises the EU to establish minimum rules in 'areas of particularly serious crime ... with a cross-border dimension resulting from the nature or impact of such offences or from

¹⁷⁵ [EU Drug Markets Report 2019](#), European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 2020. The figure is the minimum estimated retail annual value of the drug market in the EU-28 in 2017.

¹⁷⁶ van Ballegooij W. and Zandstra T., [The Cost of Non-Europe in the area of Organised Crime and Corruption](#), EPRS, European Parliament, 2016. With regard to corruption, the estimate draws from the most feasible scenario of an annual economic cost between €218 billion and €282 billion. The figure shows the midpoint.

¹⁷⁷ van Ballegooij W. and Bakowski P., [The Cost of Non-Europe in the area of Terrorism](#), EPRS, European Parliament, 2018; [Europe's two trillion euro dividend: Mapping the Cost of Non-Europe](#), 2019-2024, EPRS, 2019.

¹⁷⁸ [Study on the economic, social and human costs of trafficking in human beings within the EU](#), European Commission, 2020. The figure is estimated for the EU-28 in 2016.

¹⁷⁹ [Europe's two trillion euro dividend: Mapping the Cost of Non-Europe](#), 2019-24, EPRS, 2019.

¹⁸⁰ EU and national measures may reduce the costs of the specific crime.

¹⁸¹ As mentioned in Section 3, trafficking and sexual exploitation have important overlaps with gender-based violence and are already perceived as serious crime.

a special need to combat them on a common basis'.¹⁸² Gender-based violence has a strong cross-border dimension due to its close linkage with structural factors that promote gender inequality.¹⁸³

As underlined by a vast number of research studies, GBV is a systemic problem with collective impacts;¹⁸⁴ from a social and political perspective, considering it as isolated acts of violence does not allow to properly understand its roots and the ways to address it. It is a phenomenon of a global nature that is not specific to some countries or areas, and its acceptance is favoured by transversal and structural inequalities and power imbalances between men and women; despite this transversal and global nature, there is no coordinated EU action yet to tackle it.

Research has identified **common risk factors for gender-based violence that are evident across the EU Member States**. Thus, the nature of gender-based violence has a cross-border dimension. A cross-country quantitative study found that victims of gender-based violence across the EU are more likely to be young (aged between 18 and 24), less educated, with a lower household income, a non-EU citizen, and to exhibit an inability to perform daily activities.¹⁸⁵ The common nature of gender-based violence across the EU Member States justifies an EU-wide approach to combatting it.

Article 83(1) TFEU notes that 'on the basis of developments in crime, the Council may adopt a decision identifying other areas of crime'. As noted in Section 2.2, violence against women and domestic violence in particular has intensified since the onset of the coronavirus pandemic. Both within the EU and beyond, there has been a high number of reports to the police, emergency calls to hotlines and demands for emergency shelter has been noted.¹⁸⁶ **The uptick in violence against women and children during the pandemic¹⁸⁷ can be understood as a 'development in crime' during the past year.** Eurojust reports that the heads of Justice & Home Affairs agencies discussed 'the impact of the pandemic on the work of the agencies', the 'fundamental rights implications of government COVID-19 measures' and the 'recent surge in drug use, domestic violence and child abuse'.¹⁸⁸

4.2.3. Reason 3: Criminalising GBV would promote a more harmonised, cross-border response to protecting victims

Shortcomings in the current response to gender-based violence in the EU could be addressed to some extent through common action at the EU level. European Protection Orders (EPOs) can potentially provide cross-border protection for victims of gender-based violence.¹⁸⁹ However, the

¹⁸² Article 83(1) TFEU.

¹⁸³ For more information, please refer to Section 4.1.1 (Issue 1).

¹⁸⁴ C. Hughes, C. Marrs, C. Sweetman, [Introduction to Gender, Development and VAWG](#), 2016, pp. 157-169.

¹⁸⁵ B. Sanz-Barbero, C. Corradi, L. Otero-García, A. Ayala, and C. Vives-Cases, '[The effect of macrosocial policies on violence against women: a multilevel study in 28 European countries](#)', *International journal of public health*, 63(8), 2018, pp. 901-911.

¹⁸⁶ [COVID-19 and Ending Violence Against Women and Girls](#), UN Women, 2020.

¹⁸⁷ [COVID-19 and its economic impact on women and women's poverty - Insights from 5 European Countries](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, May 2021

¹⁸⁸ [Eurojust Annual Report 2020 - Criminal justice across borders in the EU](#), European Agency for Criminal Justice Cooperation, 2021.

¹⁸⁹ EPOs are mainly issued in cases of gender-based violence (e.g. domestic violence, harassment, stalking and sexual assault).

use of EPOs is low – between January 2015 and 2017, only seven EPOs were issued.¹⁹⁰ The lack of a common recognition of criminal offences by judicial systems across the Member States is a significant barrier. The protection offered by the Victims' Rights Directive is only for victims of criminal offences as defined by the Member States.¹⁹¹ There is limited availability of statistics on criminal protection orders at the national level and not much is known about the characteristics of these orders.¹⁹² However, the available data suggests that the number of protection or barring orders at the national level is high – in 2010, the Council of the European Union estimated that more than 118 000 women in the EU had such protection.¹⁹³ Data on national protection orders from Member States highlight the cross-border dimension - out of the 9 438 judicial protection measures issued in Spain between January and March 2017, 28 % were for citizens from other countries.¹⁹⁴ A Council of Europe's report (2017) notes that the number of victims and offenders from different nationalities is particularly high in border regions.¹⁹⁵ There is therefore a special need to ensure the equal treatment of cross-border victims in order to support the principle of free movement. Moreover, if criminal offences related to gender-based violence are subject to a certain level of harmonisation, Member States' authorities will recognise judicial measures taken in other Member States, strengthening mutual trust among them and cooperation between judicial and law enforcement bodies. Free movement of citizens, coupled with effective protection of their rights, is a key element that defines the area of freedom, security and justice in the EU.¹⁹⁶

There is also a special need to support a cross-border dimension for service providers supporting victims of gender-based violence. Through the Rights, equality and citizenship (REC) programme and the Justice programme, the EU provides economic support to raise awareness of the problem, support the activity of NGOs and governments, protect victims and effectively implement EPOs.¹⁹⁷

The pandemic and the surge in cases of violence against women and children have underscored the EU-wide challenges for service providers. A study carried out by EIGE has highlighted seven key challenges affecting EU Member States: ensuring continuity of service delivery, finding new ways of providing support, meeting a surge in demand for services, dealing with strain on service provider staff, reaching victims, and identifying the risk level of victims and inadequacy of funding.¹⁹⁸

¹⁹⁰ [European Protection Order Directive 2011/99/EU](#), European Implementation Assessment, EPRS, European Parliament, 2017.

¹⁹¹ [An analysis of the Victims' Rights Directive from a gender perspective](#), EIGE, 2016.

¹⁹² S. van der Aa, J. Niemi, L. Sosa, A. Ferreira, A. Baldry, [Mapping the legislation and assessing the impact of Protection Orders in the European Member States](#), Wolf Legal Publishers, 2015. The study reports the following: 'Only in Finland, Spain, Slovenia and Sweden are statistics on criminal protection orders produced on a regular basis. In Sweden there are approximately 4000 POs (this study is from 2015) and in Finland approximately 1300-1500 issued per year. In Slovenia, the number of criminal POs that were issued by the county and district courts in criminal procedures fluctuated from 385 in 2010, to 120 in 2011, and 274 in 2012'.

¹⁹³ Council of the EU, Initiative for a Directive of the European Parliament and of the Council on the European Protection Order, explanatory memorandum, Brussels, 6 January 2010.

¹⁹⁴ [European Protection Order Directive 2011/99/EU European Implementation Assessment](#), EPRS, European Parliament, 2017.

¹⁹⁵ [Emergency Barring Orders in Situations of Domestic Violence: Article 52 of the Istanbul Convention](#), Council of Europe, 2017.

¹⁹⁶ [Fact Sheets on the European Union: An Area of freedom, security and justice: general aspects](#), European Parliament website.

¹⁹⁷ [Ending gender-based violence](#), European Commission website. See [open calls for grants](#), European Commission website.

¹⁹⁸ [The Covid-19 pandemic and intimate partner violence against women in the EU](#), EIGE, 2021.

4.2.4. Reason 4: Criminalising gender-based violence would enhance the coherence of EU action in the area of gender equality

The EU has taken several important steps in recent years to tackle gender inequalities within the EU. In March 2021, the European Commission presented a proposal that sets out pay transparency measures to help ensure equal pay for equal work and reduce the inequalities that women face in the labour market.¹⁹⁹ In April 2017, the European Commission presented a proposal on Work-Life Balance for Parents and Carers.²⁰⁰ Directive 2019/1158 entered into force in August 2019 – Member States have three years to comply with it.²⁰¹ These initiatives, which recognise and seek to address sex-based pay discrimination and the burden of unpaid care work which largely falls on women, can mitigate structural inequalities (Issue 1) and indirectly contribute towards combating gender-based violence. EU policies that promote gender equality are therefore interlinked and reinforcing. Combating gender-based violence itself is one of the key priorities of the EU's 2020-2025 gender equality strategy, a continuation from the EU's strategic engagement for gender equality for 2016- 2019.²⁰² The target of the violence domain for EIGE's Gender Equality Index is to eliminate gender-based violence.²⁰³ Taking a strong stance on gender-based violence through its criminalisation can increase the likelihood of achieving this target.

Criminalising GBV would also enhance coherence in the areas of crime tackled by the EU. At present, these areas of crime include sexual exploitation of women and children and trafficking in human beings, which may overlap with GBV to a large extent. Trafficking in human beings can be understood as a 'gendered' crime with the most prevalent form being sexual exploitation.²⁰⁴

Taking action on gender-based violence would also promote coherence with the EU's external action.²⁰⁵ The EU plays a major role in the shaping of global development policy through provision of aid and targeting objectives such as the promotion of gender equality through its external action, including through the Sustainable Development Goal (SDG) framework. SDG 5 includes among its targets to eliminate all forms of violence against all women and girls in the public and private spheres. The EU Gender action plan III that was launched in 2020 makes specific reference to tackling violence against women.²⁰⁶ It sets out objectives and action in six key thematic policy areas the first being to 'ensure freedom from all forms of gender-based violence', including through engagement in multilateral contexts. In support of this policy area, the EU has launched the EU-UN Spotlight Initiative that supports the improvement of laws, policies and the quality of support services to victims, the promotion of institutional capacity-building, and the tackling of social norms that

¹⁹⁹ [Proposal for binding pay transparency measures](#), European Commission, 2021.

²⁰⁰ Communication from the Commission on An initiative to support Work-Life Balance for Working Parents and Carers, [COM/2017/0252 final](#), 2017.

²⁰¹ [Directive \(EU\) 2019/1158](#) of 20 June 2019 on work-life balance for parents and carers.

²⁰² M. Prpic and R. Shreeves, [Violence against women in the EU](#), State of play, EPRS, European Parliament, November 2019.

²⁰³ [Gender Equality Index - Violence](#), EIGE webpage.

²⁰⁴ [Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), European Parliament, 2021.

²⁰⁵ M. Nogaj, [European Added Value Assessment: Combatting Violence against Women](#), EPRS, European Parliament, 2013.

²⁰⁶ Joint Communication from the Commission to the European Parliament and the Council EU of 25 of November 2020 on gender action plan (gap) iii – an ambitious agenda for gender equality and women's empowerment in EU external action, [SWD\(2020\) 284 final](#).

promote gender-based violence.²⁰⁷ The EU has also committed to support tackling gender-based violence in candidate and potential candidate countries through the Regional support to reinforce human rights, rule of law and democracy in the southern Mediterranean programme.²⁰⁸ As noted by the World Bank, at least 155 out of 189 countries worldwide have legislation on domestic violence, yet challenges are evident as regards its enforcement and the prevention of its occurrence.²⁰⁹ The lack of strong EU action against gender-based violence within the EU risks being inconsistent with the EU's actions at the international arena.

4.2.5. Reason 5: A majority of citizens believe that gender-based violence should be punishable by law

The EU also has social grounds to act on gender-based violence against women and men. In a survey carried out before the 2019 European elections, 38 % of respondents noted that the European Parliament should defend equality between men and women as a matter of priority. This issue received the highest support following the protection of human rights worldwide.²¹⁰ A Special Eurobarometer survey from 2016 found that almost all citizens condemn domestic violence against women (98 %) and against men (97 %).²¹¹ The vast majority (88 %) believe that violence against women (84 %) and against men (80 %) is 'unacceptable and should always be punishable by law' (see Figure 10 below). A similar majority (85 %) do not believe that domestic violence is a private matter. A majority of citizens (88 %) do not consider that victims of violence against women are exaggerating claims of abuse or rape. A majority of citizens in countries that have not ratified the Istanbul Convention also believe that domestic violence against both men and women should be a punishable offence (see Figure 11).²¹²

²⁰⁷ The [Spotlight Initiative](#) is a global, multi-year partnership between the EU and the United Nations. It is supported by an initial seed funding commitment of € 500 million.

²⁰⁸ This programme, also known as the South Programme IV 265, is a joint initiative between the EU and the Council of Europe, which was launched in 2020 and will run until 2022. For more information, please see the [2021 Report on gender equality in the EU](#), European Commission, 2021.

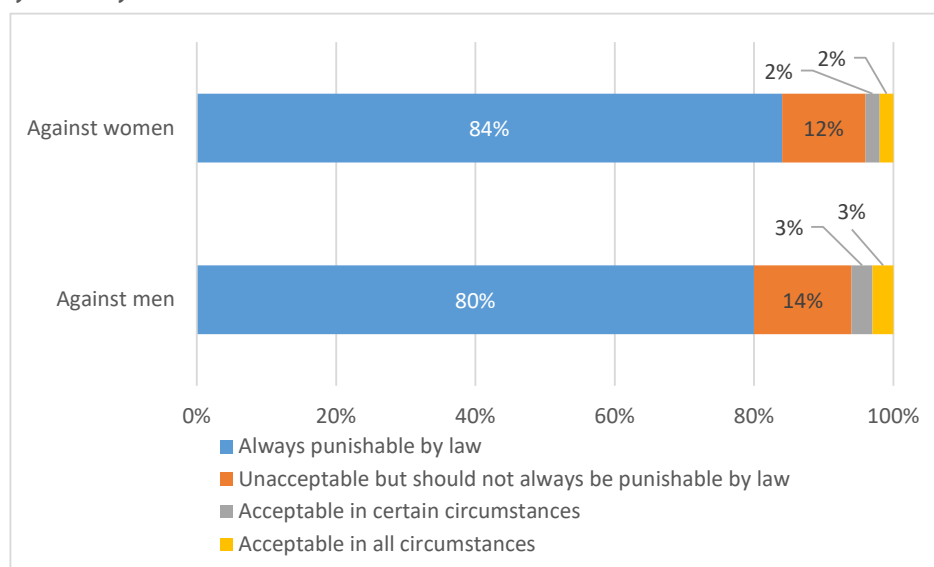
²⁰⁹ [Women, Business and the Law](#), World Bank, 2020.

²¹⁰ P. Schulmeister et al, [Parlemeter 2019. Heeding the call beyond the vote: A stronger Parliament to listen to citizens' voices](#), Eurobarometer survey 92.2 of the European Parliament, p.41.

²¹¹ [Special Eurobarometer 449: Gender-based violence](#), European Commission, November 2016. The EU estimates refer to the EU-28.

²¹² Ibid.

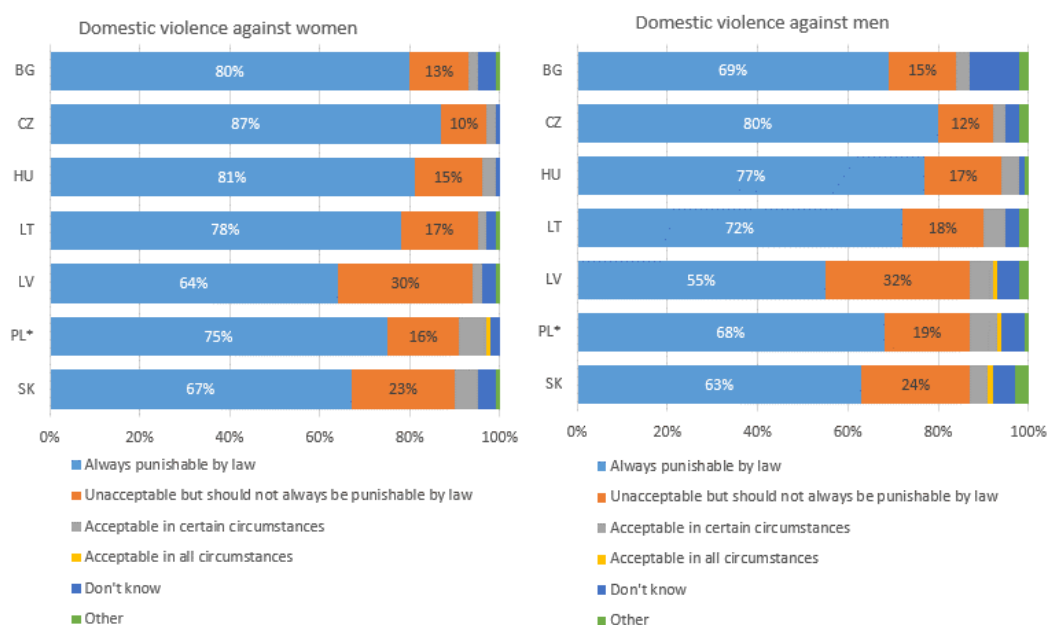
Figure 10 – Citizen views on how domestic violence against women and men should be treated by society



Data source: Prepared by EPRS based on data gathered through the Special Eurobarometer 449: Gender-based violence, European Commission, November 2016.

Note: The sample refers to the EU-28 and is limited to respondents who believe that domestic violence is unacceptable (98 % for women and 97 % for men).

Figure 11 – Citizen views on how domestic violence against women and men should be treated by society in Member States that have not ratified the Istanbul Convention



Data source: Prepared by EPRS based on data gathered through the Special Eurobarometer 449: Gender-based violence, European Commission, November 2016.

Note: Poland has ratified the Istanbul Convention, but is featured in the chart due to concerns that it may withdraw.

5. Possible EU policy options to act on gender-based violence

The assessment of the issues concerning gender-based violence in the EU and the potential legal basis in Article 83(1) TFEU provide support for action at the EU level. The strongest argument used to justify the EU's competence in criminal law derives from the 'spill-over of power' argument, according to which EU actions in criminal law are needed to support the integration of the internal market. As such, 'cooperation in criminal matters can be seen as a natural continual of the integration process and constitutionalisation in the EU framework'.²¹³

From a global perspective, it is clear that progress in the criminalisation of gender-based violence has increased over time, but slowly. Between 2014 and 2019, 15 countries²¹⁴ introduced legislation to criminalise IPV, while five countries introduced legal reforms to prosecute perpetrators of sexual harassment.²¹⁵ However, as noted by the OECD, there is no country in the world whose legal framework comprehensively addresses violence against women.²¹⁶ Canada has the most advanced legal framework and a low prevalence of violence against women (2 %).²¹⁷ The OECD recommends the criminalisation of all forms of violence against women without regards to the place of occurrence (e.g. public spaces and online included) and policy responses that take a 'whole-of-society' approach to shift social norms.

Section 5.1 presents an assessment of the European Parliament's proposal to add gender-based violence as a new area of crime under Article 83(1) TFEU. Section 5.2 highlights other possible legislative and non-legislative options. The quantitative assessment focuses on the potential impact of the main policy options on prevalence and costs of violence against women, to be closer to the scope of the legislative initiative and to acknowledge that this is the most relevant part of gender-based violence that is indeed rooted in gender inequalities. Still, intersectional aspects and costs borne by men are taken into account in the qualitative analysis as much as possible.

²¹³ M. Kettunen, *Legitimizing European Criminal Law, Justifications and Restrictions*, Springer International Publishing Switzerland and G. Giappichelli Editore, 2020.

²¹⁴ Comoros, Former Yugoslav Republic of Macedonia (now the Republic of North Macedonia), Lao People's Democratic Republic, Lebanon, Solomon Islands (2014), Algeria, Antigua and Barbuda, Bahrain, Kenya, the Netherlands, China (2015), Barbados (2016), Moldova, Mongolia and Tunisia (2017).

²¹⁵ Egypt (2014), Afghanistan, Cameroon, Guinea (2016) and Chad (2017).

²¹⁶ [SIGI 2019 Global Report](#), OECD, 2020. The Social Institutions and Gender (SIGI) Index includes four dimensions, one of them being the 'Restricted physical integrity' dimension, whose scope includes violence against women and female genital mutilation.

²¹⁷ The OECD ranks Canada as having the best policy response to violence against women. The legislation offers protection from IPV, rape and sexual harassment, with few exceptions. Several strategies and action plans have been developed to address specific forms of violence. The country has also defined financial support mechanisms to ensure the provision of legal aid and emergency housing to victims. For more information, please see: [SIGI 2019 Global Report](#), OECD, 2020.

5.1. Policy option 1: Defining gender-based violence as a new area of crime under Article 83(1) TFEU

5.1.1. How could the policy option be implemented?

The European Parliament's proposal could be implemented in two steps. In step 1, gender-based violence would be introduced as a new area of crime listed under Article 83(1) TFEU. In step 2, the European Commission would introduce a directive based on Article 83(1) TFEU to criminalise gender-based violence. Each is described further below.

In step 1, the European Council could adopt a decision to recognise gender-based violence as a new area of crime. The European Council would act unanimously with the consent of the European Parliament. Doing so would require gender-based violence to: 1) qualify as a particularly serious crime; and 2) have a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them through a common approach. Similarly, the ratification of the Istanbul Convention could act *de lege ferenda* and allow the Council to activate the *passerelle* clause (See Policy Option 3).²¹⁸ Section 4.2 presents an overview of evidence to suggest that gender-based violence can meet the two criteria due to the common risk factors, which extend across borders, and the common special need to protect victims.

In step 2, and using the legal basis of Article 83(1) TFEU, the European Commission could then adopt a directive that addresses the special needs of victims of gender-based violence in terms of protection, prevention and prosecution. This new directive could follow the example of directives for other types of crimes recognised as 'Euro-crimes' by Article 83(1) TFEU (such as terrorism²¹⁹, trafficking in human beings²²⁰ and sexual exploitation against children²²¹), which complement the Victims' Rights Directive. More specifically, the directive could include provisions to ensure tailored protection for victims of gender-based violence, measures to support the investigation and prosecution of perpetrators and measures to support prevention, such as training for the law enforcement and justice sectors.

The directive can establish minimum rules concerning the definition of gender-based violence and its treatment as a criminal offence.²²² Minimum rules could be established in relation to the forms of gender-based violence (e.g. stalking, female genital mutilation) and the type and level of penalties and sanctions foreseen. The minimum rules would not apply to Member States that already have

²¹⁸ K. Lenaerts, J. C. Bonichot, H. Kanninen, C. Naômé and P. Pohjankoski, *An Ever-Changing Union? Perspectives on the Future of EU Law in Honour of Allan Rosas*, Oxford: Hart Publishing, 2019.

²¹⁹ [Directive 2017/541](#) of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

²²⁰ [Directive 2011/36/EU](#) of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. As to its implementation, please refer to the 'Transposition report' ([COM\(2016\) 722 final](#)); 'Users report' ([COM\(2016\) 719 final](#)) and European Commission's progress reports ([COM\(2016\) 267 final](#)) and ([COM\(2018\) 777 final](#)) and with regard to the victim-centred, gender-specific and child-sensitive actions: https://ec.europa.eu/anti-trafficking/publications/eu-antitrafficking-action-2012-2016-glance_en and https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_antitrafficking_action_2017-2019_at_a_glance.pdf.

²²¹ [Directive 2011/93/EU](#) of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

²²² [10 Years after Lisbon- How 'Lisbonised' is the Substantive Criminal Law in the EU?](#), The European Criminal Law Associations' Forum (eucrim) website.

more restrictive measures in place.²²³ The directive could draw on the Istanbul Convention for the definition of gender-based violence or consider a more narrow definition limited to only some forms of gender-based violence. This assessment assumes that the definition established in the directive would follow the Istanbul Convention and would include a monitoring clause that is aligned with GREVIO's monitoring mechanism.

5.1.2. How could the policy option address the identified issues?

This policy option would extend the reach of the EU's criminal law framework and most directly address Issue 4 of the status quo (see Section 4.1.4). As a consequence, the policy option would also address Issue 5 through its promotion of a common understanding and treatment of gender-based violence in the Member States (see Section 4.1.5). The issue of 'safe havens' and divergent views across Member States on whether a form of gender-based violence constitutes a crime would diminish, while cross-border cooperation in criminal matters would increase and enhance the protection available to victims. Common definitions and sanctions might promote harmonisation at the EU level in how certain offences such as stalking, female genital mutilation and forced sterilisation – which are currently not explicitly recognised under the criminal codes of certain Member States – are treated.²²⁴

Should the directive include a monitoring mechanism clause, Issue 6 may also be addressed to some extent, as the mechanism could increase the availability and comparability of disaggregated and standardised data on gender-based violence (see Section 4.1.6). The policy option would also address Issue 2 by enhancing the implementation of international frameworks concerning gender-based violence. Whether as regards the need for a legally binding instrument that might truly impact national legislations or as regards the provision of a legal basis to adapt international instruments to the European framework, greater momentum would be achieved by EU action, not least since the EU would be a major player in the area of gender equality promotion. The criminalisation of gender-based violence would not directly alleviate the structural inequalities that promote gender-based violence (Issue 1), but may enhance recognition of the problem.

5.1.3. What might the impacts of the policy option be?

The policy option has the potential to generate a wide range of impacts. It can be expected to raise society's awareness of gender-based violence while increasing access to legal recourse. As such, an increase in arrests and legal proceedings can be expected in the short-term, while in the longer term the prevalence of gender-based violence would decrease due to the deterrent effect.

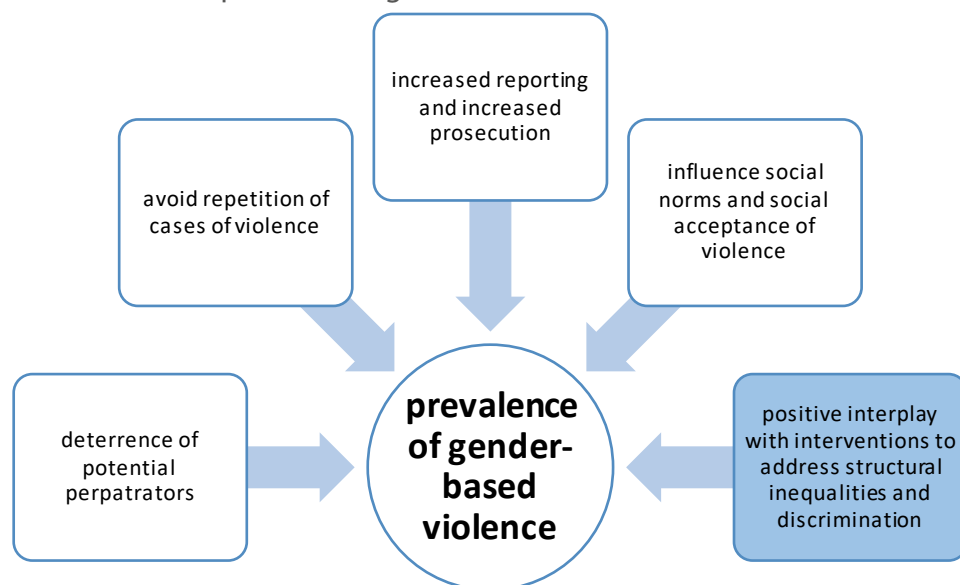
Indeed, research shows that legislation criminalising forms of GBV may decrease its incidence. Evidence mostly derives from research focusing on violence against women and intimate partner violence.

The channels through which criminalisation may reduce the prevalence of GBV are summarised in Figure 12.

²²³ Communication on Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law, [COM\(2011\) 573 final](#), 2011.

²²⁴ For an overview of how these forms of violence are currently treated in the Member States, please refer to Figure 6 ('Overview of the Member States' policy responses to gender-based violence').

Figure 12 – Potential impact of stronger criminalisation of GBV



Source: Prepared by the authors.

First, training, increased enforcement by police and stronger prosecution may result in deterrence of violent crimes against women.²²⁵ Second, more effective restraining orders (including across borders) can decrease repeated cases of violence, which represent a relevant share of all cases. In a UK case study (EIGE, forthcoming), these represent 34 % of victimisation cases. An aspect of this component, especially relevant in the US debate but also important in the EU context, is the restriction of access to firearms for persons under a restraining order. Another channel may be the increase in the reporting of victimisation cases and in prosecution rates. There is indeed evidence of an increased probability of arrest of perpetrators in cases where stronger laws are passed.²²⁶ The impact of increased arrest on repeat offending is quite strongly debated in the literature, although initial evidence has shown that an increased rate of arrest tends to decrease repeated victimisation.²²⁷ In particular, mandatory arrest appears to have heterogeneous impacts and in some cases even counterproductive effects, by lowering the probability of reporting.²²⁸

²²⁵ R. Boba, & D. Lilley, '[Violence Against Women Act \(VAWA\) funding: A nationwide assessment of effects on rape and assault](#)', *Violence Against Women*, 15(2), 2009, pp. 168-185.

²²⁶ S. Simpson Sally, L. A. Bouffard, J. Garner & L. Hickman (2006), '[The Influence of Legal Reform on the Probability of Arrest in Domestic Violence Cases](#)', *Justice Quarterly*, Vol. 23:3, pp. 297-316.

²²⁷ The Minneapolis Domestic Violence Experiment was a ground-breaking study that showed a significant reduction in repeat domestic violence after an initial arrest. However, later studies building on this research discovered that arrest had different effects in different situations (University of Kentucky [brief](#)); for example, a re-offending reducing effect was found in C. Maxwell, J. Garner, & J. Fagan, '[The effects of arrest on intimate partner violence: New evidence from the spouse assault replication program](#)'. Washington, DC: National Institute of Justice, 2001, while no effect was found in F. A. Sloan, A. C. Platt, L. M. Chepke, & C. E. Blevins, '[Deterring domestic violence: Do criminal sanctions reduce repeat offenses?](#)', *Journal of risk and uncertainty*, 46(1), 2013, pp. 51-80.

²²⁸ Discussion in the US raised the issue that mandatory arrest policies may be disempowering for survivors by discouraging them from calling the police, particularly for minority women who may fear a lack of fairness of the criminal justice system. Moreover, mandatory arrest policies have been shown to result in more women being arrested, often in cases of dual arrest where both offender and survivor are taken into custody (University of

US: The Violence Against Woman Act (1994)

The VAWA was passed in 1994. Its primary goals were to clearly criminalise acquaintance rape, domestic assault, stalking and other acts of violence against women as well as to increase prosecution and penalties for these serious offences. Another purpose was to increase the amount of research.

Two streams of funding were created by the VAWA legislation. The first stream was made up of funds that were given for criminal justice purposes through the US Department of Justice (USDOJ). They included grants for law enforcement and prosecution, grants that encourage arrest policies, and other grants addressing domestic violence, child abuse in rural areas, and child abuse programmes. The second stream of funding was focused on social service support programmes and was administered by the Department of Health and Human Services (HHS). Grants supported, among other things, a national domestic abuse hotline, shelters and other community programmes, rape prevention and education, and initiatives aimed at reducing sexual abuse of street youths. Funding was also allocated for research and data collection.

The VAWA is particularly interesting when seen in parallel with this policy option, because it increased federal powers in prosecuting perpetrators of GBV, including in cases of border-crossing under restraining orders. The VAWA created federal crimes of domestic violence, such as crossing state lines to violate a protective order.

The VAWA, initially sponsored by US President Joe Biden at the time when he was still a senator, was re-authorised in 2000, 2005, in 2013 (after a legislative battle), 2019 (transition solution) and is expected to be re-authorised in 2021. Since 2013, it has had a special provision on LGBTQI people.

Sources: R. Boba, & D. Lilley, '[Violence Against Women Act \(VAWA\) funding: A nationwide assessment of effects on rape and assault](#)', *Violence Against Women*, 15(2), 2009, pp. 168-185.

E. R. Vigdor, & J. A. Mercy, '[Do laws restricting access to firearms by domestic violence offenders prevent intimate partner homicide?](#)', *Evaluation review*, 30(3), 2006, pp. 313-346.

K. A. Clark, A. K. Biddle, & S. L. Martin, '[A cost-benefit analysis of the Violence Against Women Act of 1994](#)', *Violence Against Women*, 8(4), 2002, pp. 417-428.

Increased reporting and prosecution may reinforce the deterrence effect and also play a role in changing social norms in the long run, which is another important potential impact of legislative changes. As indicated by a study on Italian students' perceptions of stalking, legislation can affect beliefs and attitudes ('stalking myths').²²⁹ Indeed, some literature on the relationship between legislation and social norms refers to the law as a 'magnet', a potential source of indirect change in informal social norms and behaviours.²³⁰

The literature underlines that there are differences between the short-run and the long-run effects of legislation, the latter being stronger. A study²³¹ points out that women living in EU Member States that had, prior to 2005, passed a law to fight VAW, have a 40 % lower probability of being victims of violence if compared to women living in Member States having passed the law more recently. A World Bank study²³² shows that each additional year that a country has had domestic violence legislation in place is

associated with a reduced prevalence of about two per cent.

Kentucky [brief](#)). The following paper by R. Iyengar discusses how reduced reporting may result in increased homicide rate: '[Does the certainty of arrest reduce domestic violence? Evidence from mandatory and recommended arrest laws](#)', *Journal of public Economics*, 93(1-2), 2009, pp. 85-98.

²²⁹ L. Fazio, C. Sgarbi, J. Moore & B. H. Spitzberg, '[The Impact of Criminalization of Stalking on Italian Students: Adherence to Stalking Myths](#)', *Journal of Aggression, Maltreatment & Trauma*, 24:10, 2015, pp. 1106-1122.

²³⁰ G. Aldashev, I. Chaara, J.P. Platteau, & Z. Wahhaj, '[Formal law as a magnet to reform custom](#)', *Economic Development and Cultural Change*, 60(4), 2012, pp. 795-828.

²³¹ B. Sanz-Barbero, C. Corradi, L. Otero-García, A. Ayala, and C. Vives-Cases, '[The effect of macrosocial policies on violence against women: a multilevel study in 28 European countries](#)', *International journal of public health*, 63(8), 2018, pp. 901-911.

²³² Klugman et al, '[Voice and Agency: Empowering Women and Girls for Shared Prosperity](#)', The World Bank, 2014.

In 1994, the US passed the Violence Against Women Act (see box), addressing the three dimensions of prevention, prosecution and protection. Several studies note that there has been a significant decline in acts of violence against women when comparing 1993 to subsequent years. Specifically, a 2002 study²³³ found that between 1992/93 and 1996, there was a reduction of VAW on average (across different types of crime) of about 20 %. The Bureau of Justice Statistics found that the rate of intimate partner violence against females declined by 53 % between 1993 and 2008.²³⁴ The same years saw a crime rate decline overall in the US, thus it is difficult to properly assess the impact of the VAWA on this decline. Still, a causal link between the introduction of the VAWA and the drop in domestic violence was identified by a 2009 research,²³⁵ which found that a 1 % increase in VAWA funding was associated with a 0.066 % reduction in rape and a 0.080 % reduction in aggravated assault among the jurisdictions that received this funding.

A summary of the main existing studies that estimate the potential impacts of change in legislation are in the Table on 'Analysis of relevant papers' in the Appendix.

The effectiveness of an EU directive on gender-based violence may be stronger if it covers certain issues, namely consent (including the age of consent), the burden of proof, and sanctions, which were identified in the review of the problem in Section 4.1.5).

The effectiveness of an EU directive on gender-based violence may be limited by the extent to which the Member States put it into practice. This can be inferred from the extent of implementation of the Victims' Rights Directive assessed by the European Parliament in 2018 and the European Commission in 2020. The European Parliament study found that a lack of sustainable financial resources and limited coordination amongst support services, police and the judicial system hindered the potential added value of the Victims' Rights Directive. The variation in the way individual assessments of victims is conducted across Member States was also concerning.²³⁶ The European Commission study found that the rights to understand and to be understood were not well implemented in the Member States and that victims were not ensured clear and appropriate communication about the state of criminal proceedings. Shortcomings with regard to the right to interpretation and translation, which should be provided free of charge and upon request, were identified in most Member States. The study also notes that victims of domestic violence and their family members are not given adequate support and protection in several Member States.²³⁷ Similar challenges may be expected for the adoption of special rules on gender-based violence to complement the Victims' Rights Directive.

The potential economic benefits of the policy option were estimated on the basis of the cost figures produced by EIGE and its cost components. The expected impact is mainly due to its potential to

²³³ K. A. Clark, A. K. Biddle, & S. L. Martin, '[A cost-benefit analysis of the Violence Against Women Act of 1994](#)', *Violence Against Women*, 8(4), 2002, pp. 417-428. See appendix.

²³⁴ [Female Victims of Violence \(unl.edu\)](#) (Bureau of Justice Statistics), cited in M. N. Modi, S. Palmer, & A. Armstrong, '[The role of Violence Against Women Act in addressing intimate partner violence: A public health issue](#)', *Journal of Women's health*, 23(3), 2014, pp. 253-259.

²³⁵ R. Boba, & D. Lilley, '[Violence Against Women Act \(VAWA\) funding: A nationwide assessment of effects on rape and assault](#)', *Violence Against Women*, 15(2), 2009, pp. 168-185.

²³⁶ [Report](#) of 14 May 2018 on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI)), European Parliament.

²³⁷ Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, [COM\(2020\) 188 final](#), May 2020.

reduce the prevalence of gender-based violence. As noted in Section 2.3, the overall cost of gender-based violence against women was estimated at €290 billion.²³⁸ Table 4 below presents an overview of the cost components and their shares of the total cost estimated by EIGE. It is assumed that a policy would decrease gender-based violence by 10 % in the short run (after about five years from the start of implementation) and 20-30 % after about 10 years, and this would, in turn, have a linear impact on cost categories, such as economic output, that are a direct function of prevalence.

To estimate the potential economic impact of a directive based on the definition of GBV as a new category of crime under Article 83(1) TFEU, the following assumptions have been made (see Appendix for detail):

- based on own calculations using the impact assessments done for the Violence Against Women Act, we assume that the prevalence of GBV will decrease by 10 %²³⁹ about five years after the potential EU-wide legislation has been introduced;²⁴⁰
- based on the analysis done by the World Bank in 2014 and on the analysis done on the EU Member States by Sanz-Barbero et al. (2018), we assume that the longer-run effect (about 10 years) of EU-wide legislation on the prevalence of GBV could be between 20 % and 30 %;²⁴¹
- we assume the cost of gender-based violence in the 'status quo' to be as stated in a forthcoming EIGE publication;²⁴²
- we assume that in parallel to the decrease in the prevalence of violence that lowers the costs of justice (fewer acts of violence), there is a cost-increasing effect due to greater reporting and prosecution of perpetrators. Research shows, although not unambiguously, an increase in the probability of arrest, and we consider this as a proxy for criminal justice prosecutions.²⁴³ As regards the cost of the judicial system, there would therefore be two counteracting forces – a decrease in the prevalence of violence and an increase in the use of justice. The present paper applies an approach similar to the one adopted in Fernandes et al. (2021) on cyberviolence (see Appendix).

²³⁸ Forthcoming EIGE publication (2021) on 'Estimating the costs of gender-based violence in the EU'.

²³⁹ This coefficient is derived from the percentage change in GBV that occurred before/after the introduction of the VAWA (see Appendix, based on Clark et al, 2002). The average change, weighted across types of crimes, is by 20.1 % (see Appendix). We assume that 50 % of this decline is due to the VAWA, since there is evidence that overall crime rates have also declined at the same time, so it is likely that other factors have also come into play.

²⁴⁰ This is also consistent with what emerged from the analysis in the EAVA on 'Combating gender-based violence: Cyber violence', where a directive based on Article 83(1) TFEU was expected to reduce the prevalence of cyber violence between 5 % and 15 %.

²⁴¹ The World Bank (2014) found that every year after the legislation was passed, violence against women fell by 2 % (20 % over 10 years). Sanz-Barbero et al (2018) found, using 2012 data, that women living in EU Member States that had, prior to 2005, passed a law to fight VAW, face a 40 % lower probability to be victims of violence if compared to women living in Member States having passed the law more recently. We discount this factor by 10 percentage point (see Appendix).

²⁴² Forthcoming EIGE publication (2021) on 'Estimating the costs of gender-based violence in the EU'.

²⁴³ The literature finds evidence of increased involvement of the police as a consequence of greater criminalisation of gender-based violence (Simpson et al., 2006 and Dugan, 2003). Some authors find that there is a greater likelihood of arrest (Simpson et al., 2006), while others do not (Dugan, 2003), but they observe different legislative changes. A recent thesis at Georgetown University (A. Wyma-Bradley, [The Impact of the 2005 Reauthorization of The Violence Against Women Act on Arrest Likelihood in Rape and Sexual Assault Cases](#), Georgetown University, 2019) analyses the impact of the new 2005 [Violence Against Women Act](#) and finds an increased likelihood of arrest of perpetrators after the re-authorisation of the VAWA. The percentage increase of probability of arrest in the years following 2005 is 25 %.

As shown in Table 4 below, the expected yearly economic **benefits in the short run (about five years) are of about €25.1 billion; they can reach levels between €54.4 and €83.9 billion in the long run (about 10 years).**²⁴⁴

The impact is expected to be different across the Member States and we expect greater benefits in countries with a lower prosecution rate of gender-based violence, but this is an analysis that needs further data collection. Moreover, the extent to which the benefits of this option will be realised is highly dependent on the extent to which complementary action will be taken to ensure effective implementation on the ground (e.g. translate the changes in legislation into institutional and community responses to the problem of GBV).

Indeed, the US Violence Against Women Act of 1994 not only expanded federal powers in the field of GBV but also earmarked a budget to fund both criminal justice and services to support victims and research on violence against women. These funds amounted to US\$1.6 billion for the first five years. From this experience, it is possible to assume that, to obtain comparable results in decreasing the prevalence of violence, the EU should disburse a similar amount of funds. Including a cost of €1.3 billion, i.e. €260 million/year²⁴⁵ in the short run still leaves a substantial potential positive economic impact of the policy option, namely of **€24.8 billion in the short run (over five years) and between €57.4 and €83.6 billion in the long run (10 years).**

This calculation relies on a number of assumptions that should lead to **caution** in using the resulting expected impacts. First of all, the literature usually finds positive impacts of laws criminalising GBV, but estimated impacts differ substantially. Most of the analysis presented here relies on US data and we may expect things to play out differently in the EU. Regarding the EU, the literature does not provide much longitudinal evidence (changes over time) and this study had to rely mostly on comparisons between countries, which give only an imprecise view of what may be the impact of a potential change in legislation over time. Finally, differentiated impact across Member States could not be assessed due to a lack of data. Finally, the estimates based on the US Violence Against Women Act implies an implicit assumption: that there is a holistic approach to GBV, including prevention, prosecution and protection measures. The policy option assumes that funding for several related aspects would be made available at the EU level.

²⁴⁴ As a sensitivity check, we calculate the overall benefits that would accrue to the EU if the benefit per woman was the same as in the US after the implementation of the VAWA. These would be of about €30 billion in the short run (US\$159 per woman in the US). The result is similar to what we get, being a bit higher, indicating that our estimate might be an underestimation of the potential gain.

²⁴⁵ = US\$1.6 billion converted into euros (15th May 2021).

Table 4 – Estimates for the annual economic benefits of the criminalisation of GBV in the EU in the short- and the long run

Cost component	Estimated EU GBV costs ^a	Short-run effects (up to five years)		Long-run effects (10 years and more)	
		Assumed changes	Estimated reduction in costs/ economic benefits	Assumed changes	Estimated reduction in costs/ economic benefits
Lost economic output	€40.4 billion	10 % decrease due to lower prevalence of GBV	€4.1 billion	20 % - 30 % decrease due to lower prevalence of GBV	€8.1 - €12.1 billion
Health services	€12.2 billion		€1.2 billion		€2.5 - 3.7 billion
Criminal justice system	€59.3 billion	3. % decrease due to lower prevalence of GBV and increased reporting to justice	€1.9 billion	14 % - 25 % decrease due to lower prevalence of GBV and increased reporting to justice	€8.3 billion - 14.7 billion
Civil justice system	€1.7 billion		€55.6 million		€240 billion - €424 million
Social welfare	€10.9 billion	10 % decrease due to lower prevalence of GBV	€1.1 billion	20 % - 30 % decrease due to lower prevalence of GBV	€2.2 billion - €3.3 billion
Personal costs	€3.4 billion		€342 million		€679 million - €1.0 billion
Specialised services	€1.0 billion		€102 million		€203 million - €305 million
Physical/emotional impact	161.3 billion		€16.2 billion		€32.2 billion - €48.4 billion
Overall	€290 billion		€25.1 billion		€54.4 billion - €83.9 billion

Source: Prepared by the authors.

Note: ^a Estimation of the costs of gender-based violence in the UK case study and extrapolation to EU Member States (forthcoming EIGE paper, 2021). For a more detailed table, see Appendix.

Research studies also suggest that legislation criminalising forms of GBV is more effective when it is accompanied by measures that address the structural drivers of gender inequality, for example, multi-sectoral programmes that not only challenge the acceptability of violence but also address the underlying risk factors, including discrimination and women's economic dependence on men.²⁴⁶ The greater effectiveness of a broad approach is indicated by the result of a research on EU Member States, which found that women living in Member States that have greater competences to combat violence against women (including prevention/detection and support, protection, sanction and reparation) have a 15 % lower likelihood of being victim of violence.²⁴⁷ The same paper finds that

²⁴⁶ M. Ellsberg, D.J. Arango, M. Morton, F. Gennari, S. Kiplesund, M. Contreras and C. Watts, '[Prevention of violence against women and girls: what does the evidence say?](#)', *The Lancet*, 385(9977), 2015, pp. 1555-1566.

²⁴⁷ B. Sanz-Barbero, C. Corradi, L. Otero-García, A. Ayala, and C. Vives-Cases, '[The effect of macrosocial policies on violence against women: a multilevel study in 28 European countries](#)', *International journal of public health*, 63(8), 2018, pp. 901-911.

living in a country with greater gender equality lowers the probability of suffering violence. Gender equality itself is promoted through a range of policies that may have positive synergies.²⁴⁸

The table below summarises the overall findings of the assessment of the policy option.

Table 5 – Assessment of the EU-level policy option to criminalise gender-based violence

	Assessment
Impacts	Enhanced harmonisation in recognition and treatment of offences related to gender-based violence Enhanced cross-border cooperation concerning incidents of gender-based violence Lower prevalence of gender-based violence (Increased arrests and legal costs in the short-term)
Benefits	Increased coherence with international legal frameworks concerning gender-based violence Greater access to justice for victims of gender-based violence Mitigated social and economic impacts of gender-based violence (due to lower prevalence) Reduced prevalence of gender-based violence and economic benefits over a time horizon of 5 years are of about €25.1 billion; they can reach levels between €54.4 billion and €83.9 billion over a 10-year horizon
Costs	Challenges to reaching an agreement in the European Council Financial resources to promote the implementation of the legislation ^a
European added value	The expected benefits outweigh the costs, and significant European added value could be achieved. A directive that provides a comprehensive definition for and measures related to gender-based violence that are aligned with the international frameworks, could offer the greatest added value.

Source: Prepared by the authors.

Note: ^a In the United States, the costs of implementing the Violence Against Women Act amount to €1.3 billion every five years.

5.2. Other policy options

5.2.1 Policy option 2: EU ratification of the Istanbul Convention and a directive based on Article 83(2) TFEU

The date 11 May 2021 marks 10 years since the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) was opened for signature. As noted in Section 3.1, the Istanbul Convention is the first international treaty that addresses violence from a gender perspective. While the focus is on women and children who are disproportionately affected by domestic violence, the Istanbul Convention also recognises that men can also be victims.

²⁴⁸ Examples from the Global South, such as the interplay between family code reform and land reform (i.e. access to productive resources) in the Ethiopian case, can also be very important. See N. Kumar, & A.R. Quisumbing, 'Policy reform toward gender equality in Ethiopia: Little by little the egg begins to walk', *World Development*, 67, 2015, pp. 406-423.

At present, all EU Member States have signed the Istanbul Convention, while 21 have ratified it.²⁴⁹ Resistance among the remaining Member States (Bulgaria, Czechia, Hungary, Latvia, Lithuania and Slovakia) stems from claims that the Istanbul Convention is opposed to traditional values, from the increasing involvement of religious actors in policy-making, and from reluctance to recognising LGBTIQ rights.²⁵⁰ The rise of socially conservative movements in Europe has also increased the risks of backsliding amongst countries that have already ratified the Istanbul Convention. For example, in 2020, Poland communicated its intention to withdraw from the Istanbul Convention. This intention was first manifested in 2015, when conservative politicians, religious leaders and NGOs launched initiatives linked to promoting traditional family values, opposing LGBTIQ people's rights and scaling back sexuality education in schools.²⁵¹

The EU has also signed the Istanbul Convention,²⁵² but its accession has been blocked due to a lack of agreement in the Council. A key issue is the legal ambiguity regarding the scope of the EU's accession. The European Parliament requested an opinion from the European Court of Justice on the issue in 2019.²⁵³

The European Commission is committed to concluding the EU's accession to the Istanbul Convention as indicated in the priorities of the gender equality strategy 2020-2025 and the Commission work programme 2021. Policy option 2 is aligned with the European Commission's commitment²⁵⁴ (coinciding with the European Parliament's position²⁵⁵) to keeping the scope of the accession broad and without limitations rather than limited to specific areas such as judicial cooperation in criminal matters, asylum and non-*refoulement*.

This policy option would address several of the identified issues in the status quo, the most important being the issue that international frameworks and standards on gender-based violence are not strictly legally binding on the Member States (see Section 4.1.2). By acceding to the Istanbul Convention, the EU would be legally bound by the international treaty with respect to the matters agreed upon that fall under EU competence. Consequently, the understanding and treatment of gender-based violence within this set of matters may become more harmonised in the Member States, which would help address Issue 5 (see Section 4.1.5). Member States that have ratified the Istanbul Convention are more likely to recognise forms of gender-based violence that are defined in the convention. The ratification has prompted some Member States to criminalise specific offences or to enhance existing regulations. For example, Italy has introduced legislation on stalking

²⁴⁹ The following Member States have signed and ratified the Istanbul Convention: Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden.

²⁵⁰ [Tackling Violence against Women and Domestic Violence in Europe- The Added Value of the Istanbul Convention and Remaining Challenges](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, October 2020

²⁵¹ A. Graff and E. Korolczuk, 'Worse than communism and Nazism put together': War on gender in Poland, in: *Anti-gender campaigns in Europe: Mobilizing against Equality*, R. Kuhar & D. Paternotte (eds.), 2017, pp. 175-193.

²⁵² The signing was divided into two different decisions: i) decisions on the signing of the Istanbul Convention on behalf of the EU with regard to [judicial cooperation in criminal matters](#) (2017/865); and ii) decisions on [asylum and non-refoulement](#), (2017/866), 11 May 2017, European Council.

²⁵³ [EU accession to the Istanbul Convention](#), Legislative Train, European Parliament, as of 4 September 2020.

²⁵⁴ [Ending gender-based violence](#), European Commission website.

²⁵⁵ [Resolution](#) of 12 September 2017 on the proposal for a Council decision on the conclusion by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence, European Parliament, 2017.

while Croatia now has a comprehensive regulation on domestic violence. In contrast, FGM is not tackled in those countries that have not yet ratified the convention (as noted in Figure 6).²⁵⁶

Article 11 of the Istanbul Convention requests its states parties to 'collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention'. While not legally binding, the monitoring mechanism can contribute to the increased availability of data (Issue 6) that can shed light on the issue of gender-based violence and inform the design of policy responses to tackle it.

The impacts of this policy option would depend on the scope of the accession: the broader the scope, the broader the potential of this policy option to address the identified problems in the status quo and generate benefits for victims and society. The EU's ratification of the Istanbul Convention would imply that the area of gender-based violence that is within the scope of the accession could then be interpreted as an area that is subject to harmonisation measures. A directive could then be proposed for the purposes of establishing minimum rules on definition of criminal offences and sanctions.²⁵⁷

5.2.2 Policy option 3: A directive based on Articles 19(2) and 82(2) TFEU to address GBV in the anti-discrimination framework

This policy option would propose to extend the EU's anti-discrimination framework to include gender-based violence. In doing so, it would effectively recognise gender-based violence as an extreme form of discrimination in line with the Istanbul Convention (policy option 2) and enhance the coherence between EU commitments in the field of gender equality and in that of anti-discrimination law.²⁵⁸

This policy option could be achieved as follows. Article 19(2) TFEU allows the EU to act, in accordance with the ordinary legislative procedure, to adopt the basic principles of Union incentive measures to support non-discrimination actions taken by the Member States, as long as the measures do not imply harmonisation measures. The EU can act to combat discrimination based on sex, race or ethnic origin, religion or belief, disability, and age or sexual orientation. With this legal basis, the EU can adopt a directive to combat discrimination beyond the areas already covered, namely the workplace and the supply and offer of goods and services.²⁵⁹ This directive would empower the EU to adopt measures to support, coordinate or supplement the actions deployed by the Member States.

²⁵⁶ [Tackling Violence against Women and Domestic Violence in Europe- The Added Value of the Istanbul Convention and Remaining Challenges](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, October 2020.

²⁵⁷ K. Lenaerts, J. C. Bonichot, H. Kanninen, C. Naômé and P. Pohjankoski, *An Ever-Changing Union? Perspectives on the Future of EU Law in Honour of Allan Rosas*, Oxford: Hart Publishing, 2019.

²⁵⁸ Annex 1, [European Added Value of an EU Law of Administrative Procedure](#), EPRS, European Parliament, 2013.

²⁵⁹ The following directives seek to combat discrimination on the grounds of sex in the workplace and in the access to goods and services:

- [Directive 2006/54](#) of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment;
- [Directive 2010/41/EU](#) of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity;
- [Directive 2004/113](#) of 13 December 2004 on implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

The implementation of this policy option could entail one of the two following approaches: A directive, such as the proposed equal treatment directive,²⁶⁰ that would extend the anti-discrimination framework beyond the workplace, could be envisaged under this policy option. The proposed directive should adopt a horizontal approach in order to strengthen the areas already covered by the Directives on Equal Opportunities and Equal Treatment of Men and Women and the Directive on Access to and Supply of Goods and Services, and to expand the equality between men and women principle in social areas, such as access to education, which is covered in the former but not in the latter.²⁶¹ On the other hand, a second option could be to take the proposed equal treatment directive forward and enhance the gender sensitivity of its anti-discrimination provisions, since some of the provisions set out in the proposal may lead to gender-discrimination.²⁶²

With Article 82(2) TFEU as a legal basis, the EU could then adopt harmonisation measures in criminal matters. Article 82(2) TFEU would allow the EU to establish, by means of directives, minimum rules concerning mutual admissibility of evidence between Member States and the rights of individuals and victims in criminal procedures. These minimum rules would aim to facilitate the recognition of judgments and judicial decisions on the one hand, and police and judicial cooperation in criminal matters with a cross-border dimension, on the other hand.

The potential impacts of policy option 3 are weaker than those of policy options 1 and 2, as it does not introduce a common definition of gender-based violence or EU-wide legal recognition of its forms. Nonetheless, it could generate benefits by raising awareness of gender-based violence and facilitating its prosecution.

5.2.3. Policy option 4: Expand the mandate of the equality bodies

This policy option would support the implementation of the main legislative policy option by expanding the mandate of the equality bodies to cover gender-based violence. As noted in Section 3.1, the mandate of equality bodies is currently defined by the EU's anti-discrimination framework.²⁶³ While this framework covers sexual harassment in the workplace and in relation to goods and services, it neither covers sexual harassment in other contexts nor gender-based violence. Many equality bodies, however, have gone beyond the requirements set by the equality directives to cover other areas. **In at least 10 Member States, equality bodies already address violence against women as part of their mandate.**²⁶⁴ Activities that equality bodies currently conduct to combat gender-based violence include providing assistance to victims, issuing recommendations to policy-makers, increasing social awareness of gender-based violence, acting as *amicus curiae*, requiring information from and cooperation of respondents, and carrying out monitoring activities such as femicide watch initiatives.²⁶⁵ In response to a survey administrated by Equinet (the European Network of Equality Bodies) in collaboration with EPRS for the purpose of this EAVA, respondents

²⁶⁰ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, [2008/0140 \(CNS\)](#), European Commission, July 2008.

²⁶¹ Access to education, social protection, including social security, social assistance, social housing and healthcare are covered by the proposed equal treatment directive (for an in-depth analysis: Ballegooij and Moxom, *Equality and the Fight against Racism and Xenophobia*, EPRS, 2018).

²⁶² See, for example, Article 3(2): 'This Directive is without prejudice to national laws on marital or family status and reproductive rights'. Differences could arise between the Member States on these concepts, which could lead to discriminative practices on the grounds of gender.

²⁶³ Recommendation from the Commission on standards for equality bodies, [COM\(2018\) 3850 final](#), June 2018.

²⁶⁴ [Equinet website](#). The 10 Member States are: Belgium, Croatia, Cyprus, Denmark, Ireland, Latvia, the Netherlands, Poland, Portugal and Slovenia.

²⁶⁵ Findings from an EPRS survey of the Working Group on Gender Equality coordinated by Equinet.

from equality bodies noted that greater clarity is needed on the scope of their mandate as relates to sex-based discrimination (for instance, cases of sexual harassment in the workplace could also be understood as cases of GBV). Respondents also requested more attention to the growing incidence of gender-based cyber violence and the importance of addressing intersectionality in cases of gender-based violence.²⁶⁶

The extent to which equality bodies can support victims of GBV also depends on their powers and legal standing, which vary significantly across Member States. These powers include support and litigation powers as well as decision-making powers. Support and litigation powers include offering legal advice, providing support to a victim to file a complaint, and representing victims in cases. Decision-making powers include carrying out investigations and issuing adequate, effective and proportionate sanctions and administrative penalties. Sanctions, when applied in cases of discrimination, have been found to be low or too narrowly defined and therefore not sufficiently dissuasive.²⁶⁷

Equinet defines three general types of equality bodies. Predominantly tribunal-type equality bodies focus their resources on investigating and deciding on cases of discrimination. Predominantly promotion-type equality bodies focus on raising awareness, developing a knowledge base and providing legal advice. A third type of equality body has a mixture of predominantly tribunal-type and promotion-type functions. Table 6 presents an overview of the types of equality bodies in the Member States.

Table 6 – Types of equality bodies by Member State

Equality body type	Member States
Predominantly tribunal	AT (Disability Ombudsman), BG, CY, FI, EL, LT, RO
Predominantly promotional	AT (Ombudsman for equal treatment), BE (Institute for the Equality of Women and Men), HR, CZ, DK, FI, FR, DE, IE, IT, LU, PL, PT, SK, ES, SE
Combination of tribunal and promotional	BE (Unia), HR, EE, HU, MT, NL, SI

Source: Equinet website - [Comparative data on functions](#).

Note: Some Member States (AT and BE) have more than one equality body, and these equality bodies differ in function.

The European Commission notes that equality bodies play an instrumental role in tackling discrimination, but the high variation in their mandate, functions and structure implies an uneven protection. It finds that the effectiveness of equality bodies may be restrained by limited legal standing, insufficient data collection, inadequate resources and a lack of independence.²⁶⁸ The European Commission is assessing if new legislation should be proposed in 2022 to bolster the standing of the national equality bodies.

²⁶⁶ For example, in reply to the survey, an equality body in Belgium (UNIA) reported six complaints in 2019 from women wearing headscarves who were the victims of verbal and physical aggression in the public space.

²⁶⁷ N. Crowley, 'A perspective from the work of equality bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies', European Network of Equality Bodies (Equinet), 2020.

²⁶⁸ Recommendation from the Commission on standards for equality bodies, [COM\(2018\) 3850 final](#), June 2018. Accompanying the Report from the Commission to the European Parliament and Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Racial Equality Directive) and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (the Employment Equality Directive). European Commission Staff Working Document (2021) 63 final, 2021.

Although many Member States have enabled their equality bodies to play a meaningful role, it shows that most equality bodies are still facing various challenges to their effectiveness, in particular because of inadequate resources, limited legal standing, concerns about independence, little awareness by the public of the equality bodies' existence and insufficient data collection. This leads to different and sometimes insufficient levels of protection against discrimination across the EU.

This policy option would seek a modification of the standards of equality bodies to explicitly include GBV in their mandate. The forms of GBV that would be included in this extension should be clearly aligned with the legislative option it accompanies and be consistent with the current powers and mandate of equality bodies to offer protection against sex-based discrimination in the workplace and in goods and services.

The implementation of this policy option should take into account the national set-up of equality bodies, in particular their differing mandates and activities. Among the 10 Member States that already address violence against women, some have a legal basis for their action in civil/administrative law (for example, Cyprus) while others have a legal basis in criminal law (for example, Denmark). Some equality bodies consider that it would be important to be able to bring cases to court and to have a right to information requests to effectively support victims of GBV, but their equality body currently does not have these tribunal powers.

The policy option should also consider how civil and criminal laws concerning the prevention, protection and prosecution of GBV are currently implemented in the country and what institutional architecture to combat GBV is in place. For example, in Malta the remit of the National Commission for the Promotion of Equality only covers sexual harassment at the workplace, while GBV is handled by the Commission on Gender-Based Violence and Domestic Violence.

In the survey, equality bodies expressed the opinion that a limited mandate and powers (first), coupled with limited financial and/or human resources (second) curb equality bodies' effectiveness in addressing GBV. At present, only one of the equality bodies that responded to the survey has dedicated staff or resources to address violence against women; others use their general resources.²⁶⁹ Many develop trainings and carry out awareness-raising campaigns related to sex-based discrimination and GBV, whenever funding is available.

Despite the potential challenges, equality bodies noted the potential benefits of this policy option. The policy option could explicitly reinforce the link between GBV and gender-based discrimination, as underlined by the CEDAW Committee²⁷⁰ and the Istanbul Convention.²⁷¹ It could also solidify the role and scope of action of the equality bodies as regards gender-based violence. Respondents to the survey noted that the policy option could also offer value in clarifying how offences, such as gender-based cyber-violence, should be treated by equality bodies.

This policy option would also call for appropriate human, technical and financial resources to support equality bodies in carrying out a broader mandate, particularly with regard to tribunal functions. The policy option would support coordination and cooperation across the Member States and between equality bodies when there are several bodies in one Member State, in particular to tackle intersectional GBV. Collaboration and cooperation with other institutions addressing GBV, such as commissions and committees on gender-based violence, would also be essential.

It is to be noted that expanding the mandate of equality bodies to cover all forms of GBV (in particular, aspects falling under criminal law) may be deemed difficult or unlikely in some Member

²⁶⁹ In the survey, the Institute for the Equality of Women and Men in Belgium reports three full-time members and one advisor. The equality body addresses many forms of GBV, including sexual violence, domestic violence, stalking, forced abortion and sterilisation, female genital mutilation and revenge porn.

²⁷⁰ General Recommendation No 19 (1992) was updated by means of General Recommendation No 35 in 2017 (CEDAW/C/GC/35).

²⁷¹ Article 3 (a) of the Istanbul Convention.

States, owing to the status of equality bodies as public administration authorities. This is particularly true with respect to the equality bodies' powers to take legal action in criminal matters. Expanding their powers to conduct communication and awareness-raising activities, promote good practices, carry out research or provide policy advice in all forms of GBV may be easier to implement.

5.2.4 Policy option 5: Support harmonised data collection on gender-based violence in the EU

As noted in Section 4.1.6, a considerable challenge in identifying a policy response to gender-based violence is the lack of comparable, disaggregated and standardised data on its incidence in the EU. Only two-thirds of Member States are currently responding to a Eurostat survey on gender-based violence and, within the respondents, not all are collecting data on gender-based violence directed towards men. This policy option would support the collection of standardised data from all Member States on gender-based violence that could also generate insights into the risks of intersectional violence and groups that are more at risk, including ethnic and religious minorities, LGBTIQ people and migrants. This position is aligned with a previous European added value assessment on combatting violence against women.²⁷²

The inclusion of a monitoring clause in legislation (policy options 1-3) or enhanced cooperation agreements (alternative action) could increase the number of Member States that provide data and enhance its quality and comparability. There is evidence that data collection on GBV has improved in countries that are parties to the Istanbul Convention.²⁷³ The monitoring clause could call for regular surveys in line with the provisions of the Istanbul Convention,²⁷⁴ which could be coordinated by Eurostat. This clause would also reinforce EIGE's efforts to improve the availability and quality of administrative data generated by the national authorities. The definition and collection of statistical data should be aligned with the International Classification of Crime for Statistical Purposes (ICCS).²⁷⁵

5.2.5. Policy option 6 (non-legislative): Support school programmes and training for civil servants on GBV

As noted in Section 4.1.1, gender-based violence is rooted in inequalities and gender stereotypes and social norms that favour the emergence and the social acceptability of violence and abusive behaviours. Complementary to legal action, 'soft' tools can support social change in a direction of greater equality and freedom from constrictive social norms. At the same time, it is important to acknowledge that gender-based violence is a social phenomenon and that it would be inappropriate and misleading to treat these cases of violence as single unrelated episodes without common social determinants (see Section 4.2). These are factors to be taken into account in both protection of victims and crime prevention.

Community interventions, awareness raising, training and school programmes can support change in prevailing social norms and a more thorough effort to protect victims. The EU can support, fund

²⁷² M. Nogaj, [European Added Value Assessment: Combating Violence against Women](#), EPRS, European Parliament, 2013.

²⁷³ [First General Report on GREVIO's Activities](#), Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020.

²⁷⁴ The Istanbul Convention says: 'For the purpose of implementation of this Convention, parties shall undertake to collect disaggregated relevant statistical data ... (and) shall endeavour to conduct population-based surveys at regular intervals to assess the prevalence of and trends in all forms of violence covered by the scope of this Convention'.

²⁷⁵ [International Classification of Crime for Statistical Purposes \(ICCS\). Version 1.0](#), United Nations Office on Drugs and Crime (UNODC), 2015.

and streamline such activities and favour their implementation at the Member State- and local level. Such initiatives have already been implemented with EU financial support. For instance, the Daphne Initiative, launched in 1997, became a specific objective within the Rights, equality and citizenship (REC) programme 2014-2020. An estimated €17 million was dedicated to fighting violence against women, children and young people through this specific objective in 2017. According to a study done for the European Parliament, the level of funds dedicated to the Daphne Initiative are small relative to the need for EU action to tackle violence against women and girls.²⁷⁶

As indicated by the FRA²⁷⁷ in its study on intimate partner violence, all state officials and others who are in contact with women who are victims of partner violence need to have access to comprehensive training programmes. These should focus on addressing any lack of effective protection for victims that can stem from inadequate responsiveness of the police, shortcomings in the referral of victims to support services, an incomplete network of support organisations and insufficient implementation of court protection orders. Greater training and cooperation between all the institutions involved to acknowledge the specific needs of victims could substantially improve their protection.

Equality bodies could be supported to deliver community-based interventions. Indeed, equality bodies have strong networks with local NGOs and community organisations, and many of them already engage in activities aimed at increasing social awareness of gender-based violence and preventing crime.

²⁷⁶ [Implementation of the Daphne programme and other funds aimed at fighting violence against women and girls](#). Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, October 2020.

²⁷⁷ [Women as victims of partner violence – Justice for victims of violent crime, Part IV](#), FRA, 2019.

According to the survey results, the expansion of the mandate of equality bodies could allow them to provide more training to the relevant stakeholders, to conduct more public awareness campaigns, and would give them a greater capacity to programme activities on crime prevention and awareness-raising. Equality bodies are already preparing training materials for the police, the health care system, the judicial system, specialist support organisations, social workers and the school system, including teachers and students. For example, in **Austria** the Ombudsman for Equal Treatment offers lectures, talks, and workshops at support organisations, enterprises and public institutions. It also publishes brochures, info cards and recommendations and is currently producing webinars in various areas of anti-discrimination law, including the one related to the prohibition of sexual harassment. In **Lithuania**, the Office of the Equal Opportunities Ombudsperson has organised three national awareness campaigns about gender-based violence - 'Perfect Family', 'Support' and 'Women to Women'. The campaigns contained many different communication tools: video ads on TV, social media and cinemas; radio ads; outdoor posters in the biggest Lithuanian cities; ads in the social media, public transport and news portals; articles in the media and magazines; posters in public spaces (hospitals, medical centres, bars, WCs in shopping malls), and public discussions. In **Malta**, the National Commission for the Promotion of Equality offers lectures, talks and workshops at support organisations, enterprises and public institutions. In **Belgium**, judges must undergo basic or in-depth training on the issue of sexual and domestic violence. Their aim is to provide theoretical and practical reference points as well as analytical tools for participants to better understand situations of domestic violence and sexual violence. The Institute for the Equality of Women and Men (an equality body) is responsible for providing the introductory module of these courses.

Prevention can also be conducted by addressing the gender stereotypes and prevailing social norms that allow for social acceptance of violence. School programmes can be an important tool in this direction and could be supported at the EU level, at the crossroads of EU education and anti-discrimination policies. Examples exist for instance in the UK Relationship and Sex Education programme that became compulsory in 2020²⁷⁸. For example, such programmes with a focus on

Examples of best practice to combat gender-based violence

Prosecution of crimes: The Commission for the Abolition of Sexual Mutilations is a French organisation that can take the role of a 'civil party' in the French courts. It has played an important role in prosecuting FGM. (See, Pursuing FGM through the court, EIGE).

Protection of victims: The 'Worries hotline' in Austria was deployed to provide support and counselling to victims along with free psychological help. (See, Coronavirus hotline, Austrian government).

Raising awareness campaign: 'We are with you, together we will stop gender violence' is a Spanish campaign aimed at raising awareness and providing support to victims of violence during the coronavirus crisis. (See, Government Office against Gender-based Violence, Spanish government).

Training: Future members of police forces in Luxemburg receive a special training course on domestic violence, including guidance on writing reports to the Public Prosecutor's Office and on how to handle victims and perpetrators, and an exchange of cooperation and best practices with the German Länder. (See Training the police to handle domestic violence, EIGE).

Collection of data: The Rape Crisis Network Ireland database provides an online and anonymised data source on sexual violence. The data collected allows Irish services to offer annual statistics. (See Rape Crisis Network, EIGE).

²⁷⁸ [Relationships and sex education \(RSE\) and health education](#), UK government website.

relationships and sex education exist in Spain. Nevertheless, research²⁷⁹ points to the need to invest more in these kind of educational tools, since 'equality is still far from being the principle that structures relationships between young women and young men' (p. 580). Moreover, there is now a growing awareness that models of 'toxic masculinity', that contribute to fuelling gender-based violence, are also detrimental to men (the WHO²⁸⁰ identifies the health consequences of some constructed models of masculinity) and there is a growing discussion within the education community on the need to tackle these models in order to improve the health outcomes of both boys and girls.²⁸¹ Support for such programmes can contribute to reducing the long-term factors that favour gender-based violence.

This option, which is complementary to the inclusion of gender-based violence as a new category of crimes under Article 83(1) TFEU, could be specifically effective in addressing Issue 1 (see Section 4.1.1) and the prevailing social norms that reinforce gender inequalities, e.g. men's control over women's behaviours, social norms regarding women participation in the labour market, and ultimately, the social norms that may condone violence.

5.2.6 Other action: Enhanced cooperation as a 'second best'

A drawback of policy options 1, 2 and 3 is their feasibility, specifically the required unanimity among the Members of the European Council. In particular, the European Parliament has been advocating for the realisation of policy option 2 since 2010.²⁸² A 'second best' alternative could be for a subset of Member States to advance cooperation and harmonisation in criminal matters. Following the enhanced cooperation provisions granted by Article 82(3) and 83(3) TFEU, at least nine Member States can seek agreement on areas of cooperation that do 'not undermine the internal market or economic, social and territorial cohesion' among Member States.²⁸³ The agreed upon changes would be limited to the Member States that are parties to the agreement. The Member States that seek enhanced cooperation should notify the European Parliament, the European Council and the European Commission. The European Council would accept the cooperation if an action at EU level is not feasible in a reasonable timeframe. All of the Member States may take part in the deliberations in the Council, but only those seeking enhanced cooperation would vote.²⁸⁴ Enhanced cooperation has been pursued in several instances, including for the introduction of the European Public Prosecutor's Office.²⁸⁵ Legal scholars note that the use of enhanced cooperation is limited in relation to its potential.²⁸⁶

In this action, a subset of Member States could seek to cooperate further in the criminalisation of gender-based violence. To advance this action, a subset of Member States would need to agree on the forms of gender-based violence that should be criminalised. As highlighted in Section 4.1.5, there is a wide variation in the understanding and treatment of gender-based violence. With respect

²⁷⁹ M. Venegas, '[Sex and relationships education and gender equality: recent experiences from Andalusia \(Spain\)](#)', *Sexuality, Society and Learning*, Vol. 13(5), 2013, pp. 573-584.

²⁸⁰ P. Baker, S. Dworkin, S. Tong, I. Banks, T. Shand, & G. Yamey, 'The men's health gap: Men must be included in the global health equity agenda', *Bulletin of the World Health Organization*, 2014, pp. 618-620.

²⁸¹ '[Combating Toxic Masculinity In Our Schools – Un-Teaching Gender Stereotypes For Boys](#)', Teachwire website.

²⁸² [Resolution](#) of 10 February 2010 on equality between women and men in the European Union, European Parliament.

²⁸³ [The implementation of Enhanced Cooperation in the European Union](#), Policy Department for Citizens' Rights and Constitutional Affairs, 2018.

²⁸⁴ See Articles 20 TEU and 326-334 TFEU.

²⁸⁵ [20 member states confirm the creation of a European Public Prosecutor's Office](#), European Council, 2017.

²⁸⁶ [The implementation of Enhanced Cooperation in the European Union](#), Policy Department for Citizens' Rights and Constitutional Affairs, 2018.

to domestic violence for example, 18 Member States criminalise domestic violence as a specific offence. Of these, 14 Member States include²⁸⁷ physical, sexual, psychological dimensions of domestic violence in the specific offence,²⁸⁸ and six Member States include all the dimensions defined in the Istanbul Convention, including the economic dimension in the specific offence (eight if we take into account that in Belgium and France, although there is no an explicit offence called domestic violence, victims of it are covered under other offences²⁸⁹). Enhanced cooperation on the criminalisation of domestic violence thus appears to be possible for the first two subsets (where the subset of Member States exceeds nine).

In addition, a number of Member States that have ratified the Istanbul Convention could proceed to define minimum standards on the i) prevention and prosecution of gender-based violence and on the ii) protection of victims; these standards would be consistent with the Istanbul Convention and would apply to these selected Member States only.²⁹⁰ Along this line, a subset of Member States could agree to introduce the horizontal directive.

The issues addressed by this action and its impacts are the same as noted for policy options 1, 2 and 3, but would only apply to the subset of Member States that have signed up for enhanced cooperation.

²⁸⁷ Bulgaria, Cyprus, Denmark, Germany, Greece, Spain, Croatia, Italy, Lithuania, Latvia, Malta, the Netherlands, Poland, Portugal Romania, Sweden, Slovenia and Slovakia.

²⁸⁸ Bulgaria, Cyprus, Greece, Spain, Croatia, Lithuania, Latvia, Malta, Netherlands, Poland, Portugal, Romania, Sweden, and Slovenia.

²⁸⁹ Bulgaria, Croatia, Lithuania, Latvia, Malta, Romania.

²⁹⁰ Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden.

6. European added value – Summary

Defining gender-based violence as a new area of crime under Article 83(1) TFEU is supported by legal and economic considerations regarding the fulfilment of the two criteria set out in Article 83(1):

- GBV is a particularly serious crime (its social and economic costs are very big even as compared to other crimes already defined under Article 83(1);
- the nature of gender-based violence has a cross-border dimension;
- there is a special need for a cross-border response to GBV (there is greater need for cross-border action; moreover, gender-based violence is structural and transversal by nature, and has common determinants across Member States).

This legislative option proposed by the Parliament has a high European added value that would accrue mainly from efficiency and effectiveness considerations. Its implementation would be likely to generate greater harmonisation in the understanding and treatment of gender-based violence (efficiency) and greater prosecution of perpetrators and protection of victims in the short-term and more prevention in the longer-term (effectiveness), ultimately leading to lower prevalence of gender-based violence. The feasibility of the option is considered moderate because of the unanimity required in the Council. The economic assessment found that this policy option could potentially generate **substantial benefits in the order of €25.1 billion in the short term and between €54.4 and €83.9 billion in the longer term, far outweighing the costs of criminal justice and the possible costs of implementation.**

Overall, the policy options are not mutually exclusive. Policy options 2 to 6 indeed show complementarities with the identification of gender-based violence as a new area of crime. The three non-legislative policy options (Policy option 4-6), in particular, are assessed as complementary to legislative action. They are expected to contribute to the criminalisation of GBV and to tackling the underlying drivers of GBV. The extent to which the actions linked to achieving these two goals will complement each other is an important factor in determining the extent to which the prevalence of GBV can be reduced (and therefore also the extent to which the potential economic benefits can be realised).

Policy options 2 and 3 would offer a moderate level of efficiency, and their effectiveness potential would be focused on prevention (and protection). **Policy option 3** could offer a high level of coherence with the EU's framework on gender equality and anti-discrimination. So would **policy option 4**, but it would also add clarity regarding the equality bodies' scope of work, which at present covers violence against women in a partial manner (in relation to sexual harassment at the workplace). Synergies are also evident between **policy options 4 and 6**, thanks to the networks that equality bodies share with community organisations and institutions tackling discrimination and their existing activities in this area, which include awareness-raising and training. **Policy option 5** could enhance awareness of gender-based violence and support a more effective policy response.

The authors of the present EAVA believe that the EU should consider the great individual, economic and social costs brought about by gender-based violence. It should acknowledge the multiple dimensions of this form of violence and the relevant role of intimate partner violence in episodes of victimisation of women. It should furthermore acknowledge that violence against women is the most relevant subset of gender-based violence, and has a strong intersectional dimension, particularly as regards other groups at risk of discrimination (e.g. racial/ethnic and religious minorities); it should also acknowledge the risks faced by LGBTIQ people, including homophobic and transphobic crimes. Last but not least, it should also acknowledge that boys and men may also

bear the costs of gender-based violence and of gender stereotypes, especially in the form of the diffusion of models of masculinity that are detrimental also to men.

The EAVA also identified several key elements to take into consideration in the definition of Policy option 1, which could boost its effectiveness.

- Key element 1: The legislation should present a **clear and broad definition of gender-based violence**. The definition should be clear in indicating the forms of gender-based violence that fall within its scope and should be aligned with a monitoring mechanism that has well-defined indicators (policy option 5). Following the recommendations of the OECD, the definition should also cover both in-person and online violence;
- Key element 2: The legislation should **draw on good practices from other countries that criminalise gender-based violence**. For example, the legislation could include indications on the statute of limitations for prosecuting specific incidents, the requirements for presenting proof and witnesses, and measures to protect victims during the prosecution.
- Key element 3: The legislation to criminalise gender-based violence should be **complemented by measures that support its enforcement** (training and funding), victims' protection, and that try to **tackle the drivers of gender-based violence** (for example, through education), including those patriarchal social norms that favour the social acceptance of violence (policy option 6). The implementation of these measures could be facilitated by the national equality bodies (policy option 4). It should create synergies with measures aimed at addressing economic inequalities.
- Key element 4: The legislation should support the collection of **data and research** on the phenomenon and greater understanding of its drivers.

Table 7 – Overview of the European added value assessment of the EU-level policy options/actions to tackle gender-based violence

Policy option / action		European added value					
		<i>Coherence</i>	<i>Efficiency</i>	<i>Effectiveness</i>			<i>Feasibility</i>
		Coherence of EU gender equality and anti-discrimination legislation	Harmonisation in the understanding and treatment of GBV across Member States	Protection of GBV victims	Prevention of GBV	Prosecution of GBV perpetrators	
Main legislative option:							
1	Define gender-based violence as a new area of crime	Moderate/High	High	High	Moderate/High ^a	High	Moderate
Other policy options:							
2	EU ratification of the Istanbul Convention	Moderate	Moderate/High	High	Moderate/High	Moderate	Moderate
3	Extending the EU's legislative framework on discrimination	High	Low/Moderate	Moderate	High	Low	Moderate
4	Expanding the mandate of equality bodies	High	Low	Moderate/High	Moderate	Moderate/High	High
5	Support harmonised data collection	n.a.	Moderate	n.a.	Moderate	Low	High
6	Support school programmes and civil servant training	n.a.		Moderate	Moderate/High	Low/Moderate	High
Alternative action:							
	Enhanced cooperation	Only for participating Member States. The same direction, but more muted as policy options 1, 2 or 3					High

Note: Summary of the assessment. n.a. not applicable. ^a = short run (five years) /long run (10 years)

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Appendix

Table 8 – Analysis of relevant papers

Paper	Legislative change observed	Context/data	Impact
Klugman et al, Voice and Agency: Empowering Women and Girls for Shared Prosperity , The World Bank, 2014	Having a law criminalising VAW vs. not having such a law	Sample of countries from the Global South	7 % lower prevalence of VAW where the law exists Each additional year that a country has had domestic violence legislation in place is associated with a reduced prevalence of about 2 percent.
B. Sanz-Barbero, C. Corradi, L. Otero-García, A. Ayala, and C. Vives-Cases, The effect of macrosocial policies on violence against women: a multilevel study in 28 European countries . <i>International journal of public health</i> , 63(8), 2018, pp.901-911.	States having greater competences to combat VAW (prevention/detection and support, protection, sanction and reparation)	Fundamental Rights Agency data for 2014	Women who live in countries where three or more sectors are covered by legislation related to state responsibility for GBV response, have a 15 % lower likelihood of suffering IPV than those who live in countries where only one sector is covered
ibid.	Having long lasting laws against VAW	EU, Fundamental Rights Agency data 2014	Women who live in countries where the most recent law or policy plan approved by the national government to address IPV was passed before 2005, have a 40 % lower likelihood of suffering IPV than women who live in countries whose policy plan was passed after 2005
Boba, R., & Lilley, D. (2009). 'Violence Against Women Act (VAWA) funding: A nationwide assessment of effects on rape and assault' , <i>Violence Against Women</i> , 15(2), pp. 168-185.	Greater federal criminalisation powers and funding, US, Violence Against Women Act (first in 1994)	US, 1996-2002	Having 1 % more funding lowers incidence of violence by 0.06 % - 0.08 %

Modi, M. N., Palmer, S., & Armstrong, A. (2014). The role of Violence Against Women Act in addressing intimate partner violence: A public health issue . <i>Journal of women's health</i> , 23(3), 253-259	US, Violence Against Women Act (first in 1994)	Cites Bureau of Justice Statistics	The rate of intimate partner violence against women declined 53 % between 1993 and 2008. VAWA likely had an impact on this, but not detailed how big.
Clark, K. A., Biddle, A. K., & Martin, S. L. (2002), 'A cost-benefit analysis of the Violence Against Women Act of 1994' ; <i>Violence Against Women</i> , 8(4), pp. 417-428.	US, Violence Against Women Act (first in 1994)	US, comparison between the two-year period before VAWA-I (1992 to 1993) and the one-year period after it was adopted (1996)	Reduction of fatal incidents by 20 %, of non-fatal rapes by 13 %, of non-fatal other crimes by 23.5 %. VAWA likely had an impact on this, but not detailed how big (study assumes between 10 % and 100 %)
Dugan, L. (2003). 'Domestic violence legislation: Exploring its impact on the likelihood of domestic violence, police involvement and arrest' , <i>Criminology & Public Policy</i> , 2(2), pp. 283-312.	Analysis of a number of legal provisions that changed across US states: especially an index describing the type of sanction available to the judge in cases of protection order violation, 1 misdemeanour, 2 civil or criminal contempt, 3 both misdemeanour and contempt; an indicator identifying states that classify protection order violation as a felony	US, 1992-1998	Greater judge discretion in crime status decreases incidence of family violence (odds ratio = 0.926); felony statutes decrease incidence of family violence and non-married IPV between (odds ratio 0.620 and 0.653)
Bridges, F. S., Tatum, K. M., & Kunselman, J. C. (2008), 'Domestic violence statutes and rates of intimate partner and family homicide: A research note' <i>Criminal Justice Policy Review</i> , 19(1), pp. 117-130.	Analysis of a number of legal provisions that changed across the US	US	State laws on domestic violence were not related to intimate partner and family homicide rates by state Exception: states prohibiting firearm possession during a restraining order

Source: Compiled by the authors.

Calculations of the economic impact of the main policy option.

Impact of the policy option on the prevalence of gender-based violence:

First, a distinction is made between the short-run (about five years) and the long-run effect (about 10 years).

In the short run, the potential impact is based on the assessment of the US Violence Against Women Act. Clark et al. (2002) provide data on violence against women episodes before and after the introduction of the VAWA in 1994 (Table 9 below). The weighted average of the change between the two periods is then calculated (a reduction of about 20 %). The paper does not say how much of this change is attributable to the introduction of the VAWA. Still, the causal impact of the introduction of the VAWA and the reduction of episodes of violence against women has been identified in other works.²⁹¹ Here the assumption is made that 50 % of the impact is due to the VAWA; this results in an expected 10 % reduction in the prevalence of gender-based violence.

Table 9 – Annual rates of criminal victimisation among women aged 12 and older (per 100 000 women)

	1992-1993	1996	% change
fatal	2.5	2	-0.2
non-fatal rape	460	400	-0.13043
non-fatal other	980	750	-0.23469
Weighted average change from before VAWA to after VAWA			-0.20138

Source: Prepared by the authors based on Clark, K. A., Biddle, A. K., & Martin, S. L. (2002), '[A cost-benefit analysis of the Violence Against Women Act of 1994](#)', *Violence Against Women*, 8(4), pp. 417-428.

²⁹¹ R. Boba, & D. Lilley, '[Violence Against Women Act \(VAWA\) funding: A nationwide assessment of effects on rape and assault](#)', *Violence Against Women*, 15(2), 2009, pp. 168-185.

In the long run, two different sources are used:

1. Klugman et al, (2014)²⁹² who analyse the correlation between legislation criminalising gender-based violence and actual prevalence of gender-based violence; they find that the prevalence decreases by 2 % each additional year after the law was passed; we therefore assume that there will be a decrease of approximately 20 % in 10 years.
2. Sanz-Barbero et al. (2018),²⁹³ who find (using 2012 FRA data on the EU) that women living in EU Member States that passed a law to fight gender-based violence before 2005 face a 40 % lower probability of being victims of violence if compared to women living in Member States that have passed the law more recently. This result indicates the presence of a long-run impact that is greater than a short-run impact. We discount this factor by 10 percentage points to take into account that:
 - a) the coefficient is extrapolated by a cross-section comparison between countries instead of a comparison overtime;
 - b) we have to consider only the potential effect of EU action and not individual Member States' action.

Short- and long-run impact of policy option on cost categories:

It is then assumed that these reductions in the prevalence of gender-based violence translate linearly into cost reductions. This will result in a final cost change for the following cost categories:

Lost economic output:

- health services;
- social welfare;
- personal costs;
- specialised services;
- physical/emotional impact.

Legal (criminal and civil justice) costs have a more complex effect since it is also expected that there will be an increased share of incidents reported to the justice system (see below).

The resulting expected impacts on the abovementioned cost categories are as follows:

Table 10 – Expected impacts of the policy option on cost categories

	Short term	Long term (lower bound)	Long term (upper bound)
Impact on all cost categories excl. legal costs	-10 %	-20 %	-30 %

Source: Prepared by the authors based on cited sources.

²⁹² Klugman et al, [Voice and Agency: Empowering Women and Girls for Shared Prosperity](#), The World Bank, 2014.

²⁹³ Sanz-Barbero B., Corradi C., Otero-García L., Ayala A., and Vives-Cases C., '[The effect of macrosocial policies on violence against women: a multilevel study in 28 European countries](#)', *International journal of public health*, 63(8), 2018, pp. 901-911.

Legal costs.

The approach follows the one taken in the EAVA on Cyberviolence.²⁹⁴ For this study, the estimation of the legal costs depend on the unit costs of legal services, the number of victims, and the share of victims who report to the justice system.

$$\mathbf{LegCost} = \mathbf{UnitLegCost} * \mathbf{NrVict} * \mathbf{ShareRep}$$

Since the unit costs of legal services are not expected to change, the change from before the legal change (subscript B) to after the legal change (subscript A), only depends on the change in the number of victims and on the change in the share of victims reporting the crime.

$$\Delta \mathbf{LegCost} = \frac{\mathbf{LegCost}_A}{\mathbf{LegCost}_B} - 1 = \frac{\mathbf{NrVict}_A}{\mathbf{NrVict}_B} * \frac{\mathbf{ShareRep}_A}{\mathbf{ShareRep}_B} - 1$$

In terms of percentage, this change is expressed as:

$$\Delta \mathbf{LegCost} = (1 + \% \Delta \mathbf{NrVict}) * (1 + \% \Delta \mathbf{ShareRep}) - 1$$

Where:

$\% \Delta \mathbf{NrVict}$ is the same change that is applied to the other cost categories:

- 50 % of the impact from Clark et al (2002)²⁹⁵ in the short run = - 10 %
- impact from Klugman et al (2014)²⁹⁶ in the long run (lower bound) = -20 %
- impact from Sanz-Barbero et al (2018)²⁹⁷ discounted by 10 percentage points (upper bound) = -30%

$\% \Delta \mathbf{ShareRep}$ is derived from Fernandes et al (2021),²⁹⁸ where it is considered that a EU directive to combat gender-based cyberviolence could increase the rate of victims who seek legal recourse by 5 % and 10 %. Here the mid-point between these two estimates, i.e. 7.5 %, is considered. Both criminal and civil justice costs are therefore affected by this increase in reporting; this is assumed to linearly affect the costs. The resulting change in legal costs is summarised in Table 11 below.

Table 11 – Expected changes in legal costs

	Short term	Long term (lower bound)	Long term (upper bound)
Criminal and civil justice legal costs	-3.25 %	-14 %	-24.75 %

Source: Prepared by the authors.

The full table of impacts is shown below.

²⁹⁴ N. Lomba, C. Navarra, M. Fernandes, [Combating Gender-based Violence: Cyber Violence](#), briefing, EPRS, European Parliament, 2021.

²⁹⁵ *ibid.*

²⁹⁶ Klugman et al, [Voice and Agency : Empowering Women and Girls for Shared Prosperity](#), The World Bank, 2014

²⁹⁷ Sanz-Barbero B., Corradi C., Otero-García L., Ayala A., and Vives-Cases C., 'The effect of macrosocial policies on violence against women: a multilevel study in 28 European countries', *International journal of public health*, 63(8), 2018, pp. 901-911.

²⁹⁸ Fernandes M., Lomba N., Navarra C., [Combating Gender-based Violence: Cyber Violence](#), EPRS, European Parliament, March 2021. Annex II.

Table 12 – Estimates for the annual economic benefits of the criminalisation of GBV in the EU in the short - and long run

Cost component	Share of economic costs ^a	Estimated EU GBV costs ^a	Short-run effects (up to five years)		Long-run effects (10 years and more)	
			Assumed changes	Estimated reduction in costs/ economic benefits	Assumed changes	Estimated reduction in costs/ economic benefits
Lost economic output	13.93 %	€290 billion * 13.93 % = €40.4 billion	10 % less due to lower prevalence of gender-based violence	€4.1 billion	20 % - 30 % less due to lower prevalence of gender-based violence	€8.1 - €12.1 billion
Health services	4.22 %	€290 billion * 4.22 % = €12.2 billion	10 % less due to lower prevalence of gender-based violence	€1.2 billion	20 % - 30 % less due to lower prevalence of gender-based violence	€2.5 - 3.7 billion
Criminal justice system	20.43 %	€290 billion * 20.43 % = €59.3 billion	10 % less due to lower prevalence of gender-based violence but 7,5 % increase due to increased reporting to justice = 3,25 % decrease	€1,9 billion	20 % - 30 % less due to lower prevalence of gender-based violence, violence but 7,5 % increase due to increased reporting to justice = 14 % - 24,75 % decrease	€8.3 - 14.7 billion
Civil justice system	0.59 %	€290 billion * 0.59 % = €1.7 billion	10 % less due to lower prevalence of gender-based violence but 7,5 % increase due to increased reporting to justice = 3,25 % decrease	€55,6 million	20 % - 30 % less due to lower prevalence of gender-based violence, violence but 7,5 % increase due to increased reporting to justice = 14 % - 24,75 % decrease	€240 million - €424 million
Social welfare	3.75 %	€290 billion * 3.75 % = €10.9 billion	10 % less due to lower prevalence of gender-based violence	€1.1 billion	20 % - 30 % less due to lower prevalence of gender-based violence	€2.2 billion - €3.3 billion
Personal costs	1.17 %	€290 billion * 1.17 % = €3.4 billion	10 % less due to lower prevalence of gender-based violence	€342 million	20 % - 30 % less due to lower prevalence of gender-based violence	€679 million - €1.0 billion

Cost component	Share of economic costs ^a	Estimated EU GBV costs ^a	Short-run effects (up to five years)		Long-run effects (10 years and more)	
			Assumed changes	Estimated reduction in costs/ economic benefits	Assumed changes	Estimated reduction in costs/ economic benefits
Specialised services	0.35 %	€290 billion * 0.35 % * €1.0 billion	10 % less due to lower prevalence of gender-based violence	€102 million	20 % - 30 % less due to lower prevalence of gender-based violence	€203 million - €305 million
Physical/emotional impact	55.57 %	€290 billion * 55.57 % = 161.3 billion	10 % less due to lower prevalence of gender-based violence	€16.2 billion	20 % - 30 % less due to lower prevalence of gender-based violence	€32.2 billion - €48.4 billion
Overall	100 %	€290 billion		€25.1 billion		€54.4 billion - €83.9 billion

Source: Prepared by the authors.

Note: ^a Estimation of the costs of gender-based violence UK case study and extrapolation to EU Member States. European Institute for Gender Equality (EIGE) forthcoming (2021): The costs of gender-based violence in the EU.

This European added value assessment (EAVA) supports the European Parliament's legislative-initiative report on a 'Proposal for a Council decision to identify gender-based violence as a new area of crime listed in Article 83(1) TFEU', 2021/2035(INL). The assessment reviews the significant harm generated by gender-based violence in the EU and presents evidence supporting the classification of gender-based violence as a particularly serious crime with a cross-border dimension. Through improving prevention, prosecution and protection, EU action could generate significant benefits to victims and society; considering only the economic dimension, by decreasing the incidence of gender-based violence, it could generate benefits in the order of €25.1 billion in the short term and between €54.4 billion and €83.9 billion in the longer term. Moreover, the EAVA identifies complementary EU action that could enhance the European added value of this policy option, such as expanding the mandate of the equality bodies, promoting the quality of survey and administrative data and supporting education activities and training.

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