

Brussels, 30 November 2020

Ursula von der Leyen
President
European Commission
Rue de la Loi / Wetstraat 200 1049 Brussels

Dear Madame President,

Violence against women is a violation of fundamental human rights and represents the most drastic form of gender-based discrimination. That violence has a structural nature and is one of the principal social mechanisms determining the secondary role which women play in the family and in society. In the 21st century, women and girls across the European Union are, to a disproportionately greater extent than men, exposed to brutal forms of violence, such as: domestic violence, sexual harassment, rape, forced marriage, “honour” crimes, and female genital mutilation, which constitutes a major hurdle on the way to equality. During the COVID-19 pandemic the scale of domestic violence has significantly increased. According to the World Health Organisation¹, data indicate as much as a threefold increase of that kind of cases, which is related, but not limited, to the fact that victims are trapped with the perpetrators of domestic violence at all times.

Meanwhile, equality of women and men is one of the principal goals of the European Union, which, under the provisions of Article 2 of the Treaty on the European Union (TEU), is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, in a society

¹ Information published by the World Health Organisation in March 2020:
<https://www.who.int/reproductivehealth/publications/emergencies/COVID-19-VAW-full-text.pdf>.

where pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. Under Article 8 of the Treaty on the Functioning of the European Union (TFEU), in all its activities, the Union shall aim to eliminate inequalities, and promote equality between men and women. Those fundamental values have also been underscored in the European Union's Charter of Fundamental Rights (CFR), which in Article 23 insists that equality between women and men be ensured in all areas, and in Articles 1-4 lays down the legal protection of human dignity, the right to life and physical and mental integrity, as well as prohibition of torture and inhuman or degrading treatment.

Despite such powerful legal and axiological foundations for preventing and combating violence against women, this drastic form of discrimination affects, on a daily basis, women - European Union citizens as well as women and girls seeking shelter on EU territory.

According to a Fundamental Rights Agency report², **13 million women in the EU experienced physical violence** over the period of 12 months preceding the survey. That is 7% of women aged 18-74 in the EU. During that same period, **3.7 million women in the EU were subject to sexual violence** – that is 2% of women aged 18-74 in the EU. One out of three women (33%) experienced physical or sexual violence after she turned 15. About 8% of women were physically or sexually abused over the period of 12 months preceding the survey. 22% of women aged 15 or older experienced physical or sexual violence from a current or former partner. **One out of three women** (32%) experienced **physical violence** from her current or former partner. **About 5% of women experienced economic violence** in their current relationships, and 13% of women experienced certain forms of economic violence in their previous relationships. Furthermore sexual harassment is, for many women in the European Union, an experience that is prevalent in everyday life and all too common. For example, one out of five women aged 15 or older experienced unwanted touching, hugging or kissing, while 6% of all women were subject to this form of harassment at least six times since turning 15. Depending on various forms of sexual harassment, it is estimated that 83–102 million women, i.e. **45-55% of women in the EU-28 have experienced sexual harassment after the age of 15.**

² Detailed results of the Fundamental Rights Agency's research are available at: <https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>.

Moreover, in a commentary regarding the above-mentioned research, the Fundamental Rights Agency underlines that conversations with other people about experiences with violence against women may be, in the cultures of particular countries, accepted to a lesser or greater extent. In societies where domestic violence is widely considered a personal matter, it is unlikely that cases of violence against women could be discussed with one's family or friends or that they could be reported to the police. Such reticence may cause respondents to hold back in their responses, which may additionally decrease the scale of the actual problem of violence against women across the EU. On the other hand, gender equality may lead to a greater number of cases of violence against women being reported to the police. It is also more likely that in those societies where a greater equality prevails, cases of violence will be tackled and combated more openly.

It is important to mention the fact that according to the estimates of the European Institute for Gender Equality (EIGE) violence against women generates the cost of some 226 billion euro in the European Union annually³.

Ratification of the (Istanbul) Anti-Violence Convention by the European Union Member States

The concept of violence against women relating to the phenomenon of gender-based violence has a firm basis in international human rights acts adopted in all legal systems – global and regional ones. At the United Nations forum, the term “violence against women” was defined in the Declaration on the Elimination of Violence Against Women⁴, adopted on 20 December 1993 by the UN General Assembly. The Declaration signatories agreed that it involved any act of 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. The signatories of the Beijing Declaration and Platform for Action⁵ also referred to “violence against women”, expressing their will to prevent and eradicate all forms of violence against women and girls.

³ For detailed data concerning this subject see the EIGE report at: <https://eige.europa.eu/node/393>.

⁴ See the full text of the Declaration at: <http://www.un-documents.net/a48r104.htm>.

⁵ See the full text of the Declaration at: <https://www.un.org/womenwatch/daw/beijing/platform/declar.htm>.

The Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (Anti-Violence Convention) - was the first binding international agreement to recognise and name the direct link between the lack of equality between women and men and gender-based violence. Its authors emphasised that violence against women reflects historically unequal power relations between women and men, which has led to domination over and discrimination against women by men and to the prevention of women's development. They acknowledged the structural nature of violence against women as gender-based violence and the fact that violence against women constitutes one of the principal social mechanisms leading women to be forced to a position of being subjugated to men.

For these reasons, the following have been recognised as the Convention's main goals: (1) protecting women against all forms of violence, and preventing, prosecuting and eliminating violence against women and domestic violence; (2) contributing to the elimination of all forms of discrimination against women and promoting substantive equality between women and men, including empowering women; (3) designing a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence; as well as – what is particularly important from the European Union's point of view – (4) promoting international co-operation with a view to eliminating violence against women and domestic violence.

The Anti-Violence Convention forms a general legal framework to protect women and girls against all forms of violence, and to prevent, prosecute and eliminate violence against them, including domestic violence. It specifies a wide range of measures, from data collection to raising the awareness, to remedies concerning criminalising various forms of violence against women. It includes measures intended to protect and support victims of violence and raises the issue of gender-based violence in the context of asylum-seeking and migration. The Convention also ensures a special monitoring mechanism intended to provide effective implementation of its provisions by the State-Parties. All of the above constitutes a cohesive and comprehensive system of gender-based violence prevention and combating.

To date, the Anti-Violence Convention has been signed by all European Union Member States, and 21 states have ratified it⁶. But the actual level of implementation of the obligations under this international agreement is highly insufficient. A group of experts involved with prevention of violence against women and domestic violence (GREVIO), responsible for monitoring the implementation of the Convention Anti-Violence Convention by the Parties, has carried out an evaluation of nine reports by EU Member States concerning legislative measures and other measures meant to implement the provisions of the Convention⁷. The recommendations formulated as a result of that evaluation reveal significant gaps in the field of prevention and combating of violence against women and domestic violence in EU Member States. Some recurring oversights directly relate to areas within the European Union's competencies.

One of the most recurrent recommendations in GREVIO reports towards EU Member States is the necessity to ensure that provisions of the Anti-Violence Convention will be applied without discrimination on grounds such as disability, unresolved residence status or seeking of a refugee status⁸. GREVIO underlines – as specified in Article 10 of the Convention – the necessity to establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence⁹. It evaluates critically the extent of support provided to victims of gender-based violence, including access to adequate compensation¹⁰, referring directly to 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 crime¹¹ (victims' rights directive). GREVIO underscores the necessity to more strongly recognise violence against

⁶ To date, the Anti-Violence Convention has not been ratified by Bulgaria, the Czech Republic, Latvia, Slovakia, and Hungary. Detailed data on Anti-Violence Convention ratification are available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>.

⁷ To date, GREVIO has carried out evaluation of the reports submitted by Austria, Belgium, Denmark, Finland, France, Italy, the Netherlands, Portugal, and Sweden. The monitoring procedure is being carried out with regard to Germany, Malta, Poland, Romania, Slovenia, and Spain. For more detailed information see GREVIO website: <https://www.coe.int/en/web/istanbul-convention/country-monitoring-work>.

⁸ For example in GREVIO's report evaluating Austria: <https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>, p. 11; Finland: <https://rm.coe.int/grevio-report-on-finland/168097129d>, p. 10 and the Netherlands: <https://rm.coe.int/grevio-report-on-netherlands/1680997253>, p. 10.

⁹ For example in GREVIO's report evaluating Austria: <https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>, p. 7; Denmark: <https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>, p. 8 and Sweden: <https://rm.coe.int/grevio-inf-2018-15-eng-final/168091e686>, p. 8.

¹⁰ For example in GREVIO's report evaluating Italy: <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>, p. 58 and Portugal: <https://rm.coe.int/grevio-reprt-on-portugal/168091f16f>, p. 45.

¹¹ The 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 (Official Journal of the EU, L 315, 14.11.2012, p. 57).

women as a factor in procedures of granting the refugee status or other forms of international protection¹². It emphasises the significance of an adequate and cohesive system of collecting data on all forms of gender-based violence recognising such features as gender, age, or the victim's relation to the perpetrator¹³. Those gaps in the field of protection of women against violence may and ought to be regulated by the European Union.

However, of particular menace for EU values are measures undertaken by the governments of those European Union Member States that question the validity of ratifying or implementing the provisions of the Anti-Violence Convention, undermining thereby the *de facto* obvious connection between the lack of equality between women and men and gender-based violence, and denying that women and girls are disproportionately more exposed to gender-based violence. Such measures are based on a seeming or actual failure to comprehend the assumptions and objectives of the Anti-Violence Convention and on cynical orchestration of fears and prejudices existing in society.

Situation in Bulgaria

In July 2018, Bulgaria's Constitutional Court declared the Anti-Violence Convention unconstitutional¹⁴ due to, among other things, the way that agreement defined social/cultural sex (*gender*), which – in the Court's opinion – *constitutes a denial of the binary thinking about sex which remains an element of the Bulgarian social tradition*. According to the Bulgarian Court, implementation of the Anti-Violence Convention would blur the differences between the two biological sexes, *and if the society were unable to distinguish the biological sexes, protection of women against violence would only become a formal obligation, impossible to apply in practice*¹⁵. The Court also found that the legal prohibition of discrimination could not include such factors as social/cultural sex and sexual identity because it would be a change “at a scale that was unknown to the Bulgarian society”. The judgment met with strong opposition of many Bulgarian non-governmental organisations dealing with women's rights protection, but the European Union has remained idle on this issue.

¹² For example in GREVIO's report evaluating Italy: <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>, p. 79; Denmark: <https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>, p. 9 and Belgium: <https://rm.coe.int/grevio-report-on-belgium/16809f9a2c>, p. 9.

¹³ For example in GREVIO's report evaluating Finland: <https://rm.coe.int/grevio-report-on-finland/168097129d>, p. 7 and Denmark: <https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>, p. 9.

¹⁴ <https://www.euractiv.com/section/future-eu/news/istanbul-convention-unconstitutional-in-bulgaria/>.

¹⁵ <http://www.constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310>.

Situation in Slovakia and Hungary

Both Slovakia and Hungary have signed the Anti-Violence Convention (in 2011 and 2014, respectively), but neither of these countries have decided to ratify it. The Slovak Parliament has twice refused to ratify the agreement (in 2019 and 2020), obligating President Zuzana Čaputová to relay the decision to the Council of Europe and the European Union. On 5 May 2020, the Hungarian Parliament passed a declaration on rejecting the Anti-Violence Convention, which calls on the Hungarian government to desist from any activities aimed at adopting that agreement. In both of these cases the parliamentarians' decision sought justification on ungrounded allegations regarding ways of defining the sexes, threats to traditional values, and protection of the family. Also in this case the European Union abstained from taking any steps to put straight the blatant lies and manipulations directed against our common European values.

Situation in Poland

After its ratification in 2015, the Anti-Violence Convention is a source of applicable law in Poland. Nevertheless, representatives of the Polish government have for years pursued a campaign to discredit the goals and assumptions of that document. In February 2017, Polish President Andrzej Duda publicly called on it not to be implemented¹⁶. In May 2020, the Deputy Minister of Justice announced that the Anti-Violence Convention was to be denounced, as, in his opinion, it *pointed to religion as a cause of violence against women*¹⁷. Consequently, on 30 July 2020, Polish Prime Minister Mateusz Morawiecki lodged a motion with the Constitutional Court to declare some of the provisions of that agreement as unconstitutional. The motion reads, among other things, that *the Convention distinguishes between the biological and social dimensions of the sexes and distorts the view of the binary roles of the human sexes*, and as a result of its implementation, *the society will lose its ability to make the distinction between a*

¹⁶ In February 2017 Polish President Andrzej Duda said in an interview to the Polish State Television that he had always disagreed with the tenets of that document. When asked what prevented the Convention from being denounced, he replied: *Why don't you ask government representatives what stops them? Let me tell you this: first of all, don't use it* <https://wyborcza.pl/7,75968,24327738,przemoc-rzadowa-wobec-przemocy-domowej-tak-dzialaja-szydlo.html>

¹⁷ Deputy Minister Marcin Romanowski's entire statement published on Twitter: *The Istanbul Convention talks about religion as a cause of violence against women. We want to denounce that gender-biased gibberish ratified by the Civic Platform party and the Polish Peasants' Party. The foreign opinion is of no interest to us. The foundation, for us, is a sovereign nation-state*, <https://twitter.com/MarRomanowski/status/1260609735184842752>.

woman and a man¹⁸. The case will be heard by the same Court which on 22 October 2020 – at the request of the governing party – effectively banned abortion in Poland.

If the European Commission, which you lead, Madam President, takes seriously its commitment to have the European Union ratify the Anti-Violence Convention and effectively prevent gender-based violence, it must not remain silent in the light of the cynical manipulations about the contents and tenets of that document.

Ratification of the (Istanbul) Anti-Violence Convention by the European Union

The above-mentioned barriers regarding ratification or appropriate implementation of the provisions of the Anti-Violence Convention at the level of EU Member States prove how indispensable are decisive actions on the part of the European Union and the Commission led by you, Madam President. In the European Parliament we still remember the declaration you made in your inauguration speech. Back then, you promised millions of women who have experienced violence that violence against women would be added to the list of crimes defined in the Treaty and that the EU would accede to the Anti-Violence Convention¹⁹. In your programme you wrote in a direct manner: *EU accession to the Istanbul Convention on fighting domestic violence remains a key priority for the Commission. If the accession remains blocked in the Council, I will consider tabling proposals on minimum standards regarding the definition of certain types of violence and strengthening the Victims' Rights Directive. I will propose to add violence against women to the list of EU crimes defined in the Treaty*²⁰. I was pleased to see your declaration contained in the *Gender Equality Strategy 2020-2025*²¹, under which if EU accession to the Anti-Violence Convention remains blocked, the Commission intends to propose in 2021 measures within the EU's competencies to achieve the same objectives as the Convention's. But saying that alone is definitely too little.

¹⁸ The Prime Minister's motion to the Constitutional Court and other pleadings in this matter are available at: <https://trybunal.gov.pl/sprawy-w-trybunale/art/konwencja-rady-europy-o-zapobieganiu-i-zwalczaniu-przemocy-wobec-kobiet-i-przemocy-domowej>

¹⁹ https://ec.europa.eu/commission/sites/beta-political/files/opening-statement-plenary-session_pl.pdf p. 7.

²⁰ https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf, p. 11.

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *A Union of Equality: Gender Equality Strategy 2020-2025* available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0152> p. 3.

Already in 2014, summarising the above-mentioned survey findings on violence against women in EU Member States, the **Fundamental Rights Agency** recommended that the EU accede to the Council of Europe Convention on preventing and combating violence against women and domestic violence. The report reads, among other things: *the Convention is the most comprehensive regional instrument addressing violence against women. The FRA survey results can also support EU Member States in ratifying the Convention*²³.

22 Information about the proceedings that are underway before the CJ EU:
<http://curia.europa.eu/juris/fiche.jsf?id=C%3B1%3B19%3BAVIS%3B1%3BP%3B1%3BC2019%2F0001%2FP&oqp=&for=&mat=or&lgrc=pl&jge=&td=%3BALL&jur=C%2CT%2CF&num=1%252F19&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=pl&avg=&cid=9984807>

²⁴ Final comments on the European Union's preliminary report on the implementation of the Convention's provisions on the rights of persons with disabilities published on 2 October 2015CRPD/C/EU/CO/1, Point 21, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/226/55/PDF/G1522655.pdf?OpenElement>.

Discrimination against Women issued a joint statement on the need to take decisive action to combat sexual harassment of women and girls with disabilities²⁵. While on the subject, it should be noted that the European Union's accession to the UN Convention on the Rights of Persons with Disabilities is a vivid example of the importance of international agreements in the field of human rights for the development of EU anti-discrimination law.

Also the **European Parliament** has called on the European Union to ratify the Anti-Violence Convention on several occasions. In its resolution in 2019²⁶ it emphasised: *The Istanbul Convention remains the international standard and key tool to eradicate the scourge of gender-based violence by following a holistic, comprehensive and coordinated approach placing the rights of the victim at the centre, by addressing the issues of violence against women and girls and gender-based violence, including domestic violence, from a wide range of perspectives, by providing for measures such as the prevention of violence, the fight against discrimination, through criminal law measures to combat impunity, through victim protection and support, the protection of children, the protection of women asylum seekers and refugees, by the introduction of risk assessment procedures and risk estimation and better data collection, as well as through awareness-raising campaigns or programmes, including in cooperation with national human rights and equality bodies, civil society and NGOs.* For those reasons, the Parliament called on the Council to urgently conclude the EU ratification of the Istanbul Convention on the basis of a broad accession without any limitations, and to advocate its ratification by all the Member States, and called on the Council and the Commission to ensure the full integration of the Convention into the EU legislative and policy framework. At the same time, the Parliament strongly condemned the attempts in some Member States to revoke measures already taken in implementing the Anti-Violence Convention and in combating violence against women.

In the course of my work in the European Parliament, I have called on the Commission multiple times to take real action for the European Union to ratify the Anti-Violence Convention and to raise the standard of protection against gender-based violence at EU level. It was one year ago today – 22 November 2019 – on the occasion of the International Day for the Elimination of

²⁵ <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>.

²⁶ European Parliament resolution of 28 November 2019 on the EU's accession to the Istanbul Convention and other measures to combat gender-based violence (2019/2855(RSP)), available at: https://www.europarl.europa.eu/doceo/document/TA-9-2019-0080_EN.html.

Violence against Women that I wrote to you, Madam President, and to President Donald Tusk, regarding the urgent need to recognise violence against women as a so-called European crime as specified by Article 83 (1) TFEU, as well as regarding the EU's accession to the Anti-Violence Convention²⁷. One year on, those claims remain as valid as ever. During that year, I have enquired the European Commission four times about its schedule of implementation of the above-mentioned goals, asking additional questions about actions aimed at reinforcing the Victims' Rights Directive, legislative initiatives allowing effective isolation of the perpetrator of domestic violence from the victim, as well as about its response to attempts made by some EU Member States to revoke the Anti-Violence Convention²⁸.

In her explanations addressed to me, Commissioner Helena Dalli assured me of the Commission's full commitment to facilitating the process of EU accession to the Convention, but that declaration was not supported by any concrete action. The responses I have received convince me of the lack of sufficient determination on the side of the Commission to implement the promises you made, Madam President, in this regard.

4. Raising the standard of protection against gender-based violence at EU level

EU accession to the Anti-Violence Convention

The European Union ratifying the Anti-Violence Convention as an international agreement related to so-called shared competences requires that consent be given by all those EU Member States that have not ratified the Convention (the so-called *common accord* procedure). It is beyond any doubt that at a time of a crisis of values resulting in the governments of some EU Member States undermining tenets of the Anti-Violence Convention, obtaining consent for EU accession to that international agreement will require a special commitment by the Commission. The political declarations and public debate based on manipulations regarding the actual contents of the Anti-Violence Convention does not relieve the Commission of the duty to make

²⁷ MEP Sylwia Spurek's letter to European Commission President Ursula von der Leyen and European Council President Donald Tusk of 22 November 2019.

²⁸ Parliamentary question of 29 October 2020 on immediate removal of perpetrators of domestic violence: https://www.europarl.europa.eu/doceo/document/E-9-2019-003526_PL.html, parliamentary question of 6 October 2020 on the state of play of the EU's ratification of the Istanbul Convention: https://www.europarl.europa.eu/doceo/document/E-9-2020-005463_PL.html, parliamentary question of 14 July 2020 on the implementation of the Commission's Declaration on combating violence against women: https://www.europarl.europa.eu/doceo/document/E-9-2020-004173_PL.html, parliamentary question of 14 April 2020 on further steps by the Commission on combating violence against women: https://www.europarl.europa.eu/doceo/document/E-9-2020-002238_PL.html.

efforts to obtain consent of EU Member States for the EU to ratify it. On the contrary, bearing in mind that gender equality is a principal value of the EU, and that the equal treatment and non-discrimination principle is a fundamental right enshrined in EU treaties and the Charter of Fundamental Rights, the Commission is obligated to categorically:

- demand that negotiations be accelerated, and provisions of the Anti-Violence Convention be implemented by all the EU Member States, and in particular call on Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Slovakia to immediately ratify that agreement;
- condemn the attempts made in some EU Member States (in particular in Poland) to revoke the measures already taken in regard to implementing the Anti-Violence Convention and to preventing and combating violence against women and domestic violence;
- oppose attacks on and disinformation campaigns against the Anti-Violence Convention based on deliberately wrong interpretation and false presentation of its contents to the public;
- engage in informational campaigns aiming at eradicating prejudices, customs, traditions and other practices based on the idea of women's inferiority or stereotypical roles of women and men, and at promoting zero tolerance for sexual harassment and gender-based violence.

Adding violence against women to the list of acts deemed by the EU as crimes

Irrespective of the actions undertaken for the European Union to accede to the Anti-Violence Convention, it is necessary to raise the standard of protection against gender-based violence at EU level. To achieve that goal, it is necessary to modify treaties that constitute the basis for the EU, make changes at the level of secondary law, and increase the involvement of EU institutions in regard to prevention and combating of violence against women. One of the indispensable changes in this field will be to recognise violence against women as a crime as specified in Article 83 (1) TFEU.

The aforementioned provision stipulates the competency to harmonise substantive criminal law in the ten areas it enumerates. Under this regulation, the European Parliament and Council, in making laws by means of directives, may, according to a regular legislative procedure, define the minimum norms related to the specifying of offences or penalties in the areas of particularly serious cross-border crime, which would arise from the type or results of those crimes, or from a particular need to combat them together. Those crimes currently include 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. It is beyond any doubt that also gender-based violence fits the category of serious crimes which EU Member States must combat jointly.

Above all, it must be emphasised, which the European Parliament already underscored in its position of 2019²⁹, that gender-based violence – physical and sexual, psychological and economic – is widespread and affects women at all social strata, irrespective of their age, education, income, social position, or the country of origin or residence. Violence against women is both a cause and an effect of structural inequalities experienced by women in multiple aspects of life and exerts a direct impact on such areas as work, access to healthcare, access to education, participation in public life, or financial independence. Meanwhile, owing to the differences in national policies or legislation, women in the European Union are not protected to the same extent against gender-based violence. In many cases, victims of that violence find themselves in a situation of dependence on the perpetrator, and the lack of adequate preparation of law enforcement officers or employees of the judiciary dissuades them from reporting these kinds of crime. Of no mean significance is the fact that over the past years Europe has seen a growing number of attacks on women's rights and the principle of equality. For all these reasons, harmonisation of criminal law in the field of prevention and combating of gender-based violence is indispensable.

I was pleased to hear your declaration that you would introduce an initiative to complement the list of the so-called European crimes by inclusion of violence against women. Such a change would constitute an indispensable legal basis for strengthening the standard of protection against gender-based violence at EU level, and it would enable further development of EU legislation in that field. It seems that this change ought to seek a possibly broad definition of violence against women and domestic violence, following the example of the definition used in the Anti-Violence Convention. Pursuant to Article 3 (a) and (b) of the Convention, violence against women is to be understood as a violation of human rights and a form of discrimination against women, and means any kind of gender-based violence that leads or may lead to physical, sexual, psychological, or economic harm or suffering of women, including threats of such acts, duress or arbitrary deprivation of freedom, both in the public and private lives. Whereas “domestic violence” means any kind of physical, sexual, psychological or economic violence

²⁹ European Parliament resolution of 28 November 2019 on the EU's accession to the Istanbul Convention and other measures to combat gender-based violence (2019/2855(RSP)), letters G, H, J–L.

in the family or in the household, or between former or current spouses or partners, irrespective of whether or not the perpetrator and the victim share or shared their residence.

What is important, the provisions of Article 83 (1) (3) TFEU provide for a possibility to expand the list of the so-called European crimes without the necessity to carry out the procedure of Treaty revision as specified in Article 48 TEU (the so-called *passerelle procedure*). That procedure is an important exception from the obligation for EU Member States to enter into reform treaties in order to change the treaties on which the EU is founded. Unlike the Treaty revision procedure, the so-called *passerelle procedure* is considered a ‘modification’ of the Treaties on which the EU is founded, the essence of which involves changing the provisions of the treaties by decision of EU institutions authorised to do that by the Treaties themselves. Said provision stipulates a possibility for the Council to adopt a unanimous decision after obtaining the European Parliament’s consent, in which the Council will specify areas of crime other than the existing ones, which will have the possibility to become the subject of directives adopted in an ordinary legislative procedure, which will define the minimum norms³⁰.

That means that a Commission motion initiating said changes will not have to be examined by revision procedure, but by *passerelle procedure*, which is significantly simpler. Whether a motion in that respect will be urgently lodged, as well as the extent and content of the proposed changes, will be a measure of the European Commission’s determination with regard to prevention of and combating violence against women. Bearing that in mind, it is necessary to:

- prepare, as soon as practicable, a Commission motion initiating changes with regard to Article 83 (1) TFEU, taking into consideration the definition of ‘violence against women’ and ‘domestic violence’, as defined in Article 3 (a) and (b) of the Anti-Violence Convention;
- maintain a permanent dialogue with the EU Member States in order to achieve the necessary unanimity with regard to expanding the list of acts which the EU deems to be crimes by inclusion of violence against women;
- maintain a permanent dialogue about the above-mentioned activities and their effects with the European Parliament, which – under the procedure specified in Article 83 (1) (3) TFEU
- must express its consent to the list of so-called European crimes to be expanded³¹.

³⁰ A. Grzelak [in:] *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz*, t. I, red. D. Miąsik, N. Półtorak, A. Wróbel, comment on Article 82 TFEU, Point 82.7.

³¹ See European Parliament resolution of 28 November 2019 on the EU’s accession to the Istanbul Convention and other measures to combat gender-based violence (2019/2855(RSP)), Point 20.

Minimum norms and protection of victims of violence against women

Also strengthening of the Victims' Rights Directive will be one of the measures intended to raise the standard of protection against gender-based violence at EU level, irrespective of the actions undertaken for the European Union to accede to the Anti-Violence Convention.

The Victims' Rights Directive is a foundation of the EU policy of support for victims, including victims of gender-based violence. Actions intended to fully and adequately implement it have been scheduled in the framework of the first European Union Strategy regarding the rights of victims for 2020–2025³². I was pleased to note that the Strategy concentrates on special needs of victims of gender-based violence.

Evaluation of standards implementation, as stipulated in the directive, by EU Member States has been made several times now. Under Article 29 of the directive, the Commission submits to the European Parliament and Council an evaluation report on the extent to which EU Member States have taken necessary steps to implement it. As shown in the European Commission's first report of 14 May 2018³³, significant shortcomings were recorded in multiple EU Member States concerning the directive implementation. Some implementation problems appear to be particularly disturbing from the point of view of victims of gender-based violence. In its resolution of 30 May 2018 on the implementation of the rights of victims directive³⁴, adopted on the basis of the report prepared by the Commission, the European Parliament regretted that the standard of protection of the victims of gender-based violence as specified in the directive – including women whose genitals have been mutilated – is very limited in comparison to the Anti-Violence Convention (Point 70 of the resolution).

³² <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52020DC0258&from=EN>.

³³ Report on the implementation of directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI)) of 14 May 2018 available at: https://www.europarl.europa.eu/doceo/document/A-8-2018-0168_PL.html.

³⁴ European Parliament resolution of 30 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)) available at: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0229_PL.html.

As demonstrated by the next report, submitted by the Commission to the Parliament on 11 May 2020³⁵, many of the problems indicated in the previous report remain valid. Among the issues being particularly disturbing from the point of view of victims of gender-based violence are:

- failure to adopt the correct definition of the victim and their family member;
- failure to enact regulations requiring that the victim be informed without undue delay about the perpetrator being released or escaping, and about possible protection measures in such cases;
- insufficient support and protection for victims of domestic violence and reduction of assistance by support services for the victim's family members;
- failure to enact regulations ensuring that the victim has the possibility to avoid contact with the perpetrator and that separate waiting rooms are provided for the victims in all new courtrooms;
- failure to introduce the requirement that an evaluation of individual protection needs be carried out and failure to directly indicate in regulations the circumstances which ought to be particularly considered in the evaluation – among such circumstances under Point 56 of the directive preamble is e.g. the evaluation of whether the violence is of a sexual nature or in close relationships.

The above-mentioned problems demonstrate that without implementing the standard of victims protection under the directive, EU Member States fail to fulfil the standards of protection of victims and witnesses of gender-based violence and domestic violence as defined in the Anti-Violence Convention. It is evident from both reports that the potential of the directive has not yet been fully used by EU Member States due to its incomplete, and sometimes inaccurate, implementation in domestic legal systems. At present, there are 21 procedures underway against EU Member States with regard to incomplete transposition of the directive³⁶.

Irrespective of the necessity that monitoring of the implementation of the directive on the rights of victims by EU Member States should be maintained, the directive itself requires a separate analysis – as the European Parliament indicated in the aforementioned resolution of 30 May

³⁵ Commission report for the European Parliament and Council on the implementation of directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and superseding the Council Framework Decision 2001/220/JHA of 11 May 2002 is available at: <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52020DC0188&from=EN>

³⁶ The Commission's Report of 11 May 2020 indicates procedures initiated against Belgium, Bulgaria, the Czech Republic, Germany, Estonia, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, and Sweden.

2018, the standard of protection stipulated in the directive is more limited than the standard stipulated in the Anti-Violence Convention. On the one hand, the Anti-Violence Convention refers multiple times to victims of ‘violence against women’, the definition of which is very broad – not every form of violence against women specified in the Anti-Violence Convention is, however, a crime in EU Member States, and protection measures stipulated in the directive on the rights of victims will not be available to all victims of gender-based violence who, in turn, would be eligible to receive protection measures as indicated in the Convention. On the other hand, the directive contains many references to persons harmed by gender-based violence, including domestic violence. In many cases, however, it does not take into account the specifics of that kind of violence and the protection measures it provides for will remain inadequate.

I have evaluated the provisions of the directive from that angle in my analysis for the European Institute for Gender Equality (‘An analysis of the Victims’ Rights Directive from a gender perspective’, European Institute for Gender Equality³⁷), also referring to the provisions of the Anti-Violence Convention. The analysis contains many examples of the directive provisions failing to recognise the specifics of gender-based violence, e.g.:

- the directive introduces rights for the victim’s family members; in the case of gender-based violence those rights may be used by the perpetrator who very often is a family member – the victim’s partner or husband;
- in the event the perpetrator of violence against women is released or escapes, the risk of secondary victimisation, intimidation of the victim or revenge is greater than in the case of ordinary crimes – after being released or escaping, the perpetrator often returns home where he lives with the victim; for this reason victims ought to receive information that the perpetrator has been released or has escaped by operation of law, rather than at the victim’s request, so that she is able to demand additional protection, according to the standard stipulated in the Anti-Violence Convention;
- the directive does not impose the obligation that the victim be informed that other protection measures have changed, such as forbidding the perpetrator from communicating with or coming near the victim, or an order for the perpetrator to leave the residence they jointly inhabit with the victim – while information about such a change of protection measures is key to victims of violence in close relationships and of sexual violence because the victim is all the more exposed to secondary victimisation;

³⁷ <https://eige.europa.eu/publications/analysis-victims-rights-directive-gender-perspective>.

- the directive imposes the obligation that access be ensured to services providing support for victims but does not impose any obligation on EU Member States to ensure adequate geographic distribution of such services or provide access for persons with disabilities – for that reason victims of gender-based violence from rural areas and those with disabilities may have hindered access to support services.

The directive on the rights of victims is complemented by directives related to specific needs of persons aggrieved by particular kinds of crime – the directive on victims of terrorism³⁸, human trafficking³⁹, and children being victims of sexual abuse⁴⁰. Bearing in mind the above-mentioned shortcomings of the directive on the rights of victims of crime, it appears viable to:

- take decisive action in order to fully and effectively implement the directive on the rights of victims of violence in all the EU Member States;
- complement the directive with regulations arising from the Anti-Violence Convention in order to better protect the rights of victims of gender-based violence;
- consider designing a directive related to providing support for the rights of victims of gender-based violence and domestic violence so that specific needs of that group of victims could be taken into account.

Other possible remedies

As mentioned above, the Anti-Violence Convention provides for protection against gender-based violence which is defined so broadly that not all of its forms are crimes, and therefore not all protection measures specified in the directive on the rights of victims are available for the victims of that type of violence. While protection against other forms of gender-based violence – in particular discrimination against women, as referred to in Article 4 (2) of the Anti-Violence Convention, and sexual harassment, as referred to in Article 40 of the Anti-Violence Convention – may be ensured by other EU remedies.

³⁸ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6)

³⁹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1)

⁴⁰ Directive 2011/93/EU of the European Parliament and of the Council 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 (OJ L 335, 17.12.2011, p. 1; amended directive number: OJ L 18, 21.1.2012, p. 7)

The extension of protection against discrimination against women and sexual harassment in other areas than employment and access to services appears to be particularly valid, as these forms of discrimination are forbidden under EU law pursuant to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation⁴¹, Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood⁴², and Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services⁴³. Extension of the protection against discrimination against women and sexual harassment through additional means of prevention and combating of sexual harassment is stipulated by the document *Gender Equality Strategy 2020-2025*. Pursuant to the Anti-Violence Convention, protection against discrimination against women and sexual harassment ought to be significantly broader. Bearing in mind the EU legislation enacted to date, it is viable to at least extend it by inclusion of healthcare and education.

The protection of victims of discrimination in EU law is also safeguarded by the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. It imposes on EU Member States the obligation to ensure that the criminal offender's racist or xenophobic motivation to be considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties. The framework decision does not, however, impose such an obligation in regard to other offences motivated by prejudices, in particular gender-based offences. Meanwhile, many EU Member States in their national legislation define as hate crime gender-based crime or penalises gender-based discrimination or gender-based hate speech⁴⁴. Extension of the obligations arising from the

⁴¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16; OJ special Polish edition, Chapter 05, Volume 004, p. 79-85).

⁴² Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (OJ L 359, 19.12.1986, p 56; OJ special Polish edition, Chapter 5, Volume 1, p. 330).

⁴³ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37).

⁴⁴ See Fundamental Rights Agency, *Hate crime recording and data collection practice across the EU*, 2018, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-hate-crime-recording_en.pdf.

framework decision by inclusion of gender-based crimes would encourage other EU Member States to define such a form of crimes as hate crimes.

Other possible non-legal measures

To effectively prevent and combat domestic violence, the Commission may and should undertake also non-legal measures. They include such measures as:

- ensuring the availability of up-to-date, credible and verifiable data and in-depth research into violence against women, including domestic violence – pursuant to the standards defined in Article 11 of the Istanbul Convention, through appropriate cooperation of the Fundamental Rights Agency, the European Institute for Gender Equality and Eurostat. This is all the more important because the last and only, to date, comprehensive report on violence against women at European Union level was prepared in 2014 and has not been updated;
- providing for appropriate training, procedures and guidelines to raise the awareness of specialists working with victims of gender-based violence to avoid discrimination, traumatisation and secondary victimisation during medical, police, prosecution or court procedures, e.g. through increasing the funding of that type of projects;
- providing for appropriate funding – e.g. in the framework of the Rights and Values programme to support the operations of non-governmental organisations conducting educational activities and raising the awareness about prevention of gender-based violence and providing support to victims of that violence;
- promoting education of boys and girls, with proper regard to their development, about gender equality, non-stereotypical social and cultural roles, mutual respect, and resolution of conflicts in personal relationships without resorting to violence, e.g. through urgent launch of and providing active support for the EU's network for prevention of gender-based violence and domestic violence, as described in the Gender Equality Strategy 2020-2025⁴⁵.

...

To sum up, in order to raise the standard of protection against gender-based violence at EU level, it is necessary to undertake legislative steps and non-legal measures, including steps towards EU accession to the Anti-Violence Convention. The crucial activities in that field should include the European Commission's decisive position condemning attacks on the Anti-

⁴⁵ Gender Equality Strategy 2020-2025, p. 5.

Violence Convention and disinformation campaigns conducted against it, and opposing the attempts made by certain EU Member States to withdraw from their obligations in the field of prevention of violence against women. The resistance mounted by some of the governments does not exempt the Commission from its obligation to continue negotiations to obtain the necessary consent of the EU Member States for the EU to ratify the Anti-Violence Convention. It is necessary to add violence against women to the list of acts deemed by the EU as crimes and significantly strengthen the guarantees provided for in the Victims' Rights Directive. Worth considering is adoption of a new directive related to providing support for the rights of victims of gender-based violence and domestic violence so that specific needs of that group of victims could be taken into account. Moreover, the EU should pay greater attention to guaranteeing the availability of up-to-date, credible and verifiable data and in-depth research into the subject of violence against women, providing for training and guidelines for specialists working with victims of gender-based violence, ensuring adequate funding for non-governmental organisations, and promoting anti-discriminatory education and zero-tolerance for violence.

The Anti-Violence Convention remains a key international agreement intended to prevent and combat violence against women, as it is based on a global and coordinated approach, in which the rights of victims constitute a focal point. The European Commission may and should take decisive action for the European Union to accede to that international agreement, and to raise the standard of protection against violence against women. That obligation is of even greater importance now in the era of the pandemic, when the number of victims of domestic violence is rising faster than ever before. The proposals for action I have enumerated do not solely depend on political decisions taken often with disregard for victims' interest and without their involvement. They depend also, or perhaps above all, on your personal determination, Madam President, and the determination of the Commission which you head. It is my belief that you will stand with millions of women for whom violence is a ubiquitous experience.

Yours sincerely,

Spurek Sylwia, Member of the European Parliament

The co-signatories:

Andresen Rasmus, Member of the European Parliament

Andrews Barry, Member of the European Parliament

Ara-Kovács Attila, Member of the European Parliament

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Barrena Pernando, Member of the European Parliament

Bischoff Gabriele, Member of the European Parliament

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Kokalari Arba, Member of the European Parliament
Kopacz Ewa, Member of the European Parliament
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Matias Marisa, Member of the European Parliament
Matthieu Sara, Member of the European Parliament
Maxová Radka, Member of the European Parliament
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Modig Silvia, Member of the European Parliament
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O'Sullivan Grace, Member of the European Parliament
Paulus Jutta, Member of the European Parliament
Peter-Hansen Kira, Member of the European Parliament
Picierno Pina, Member of the European Parliament
Regimenti Luisa, Member of the European Parliament
Regner Evelyn, Member of the European Parliament
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