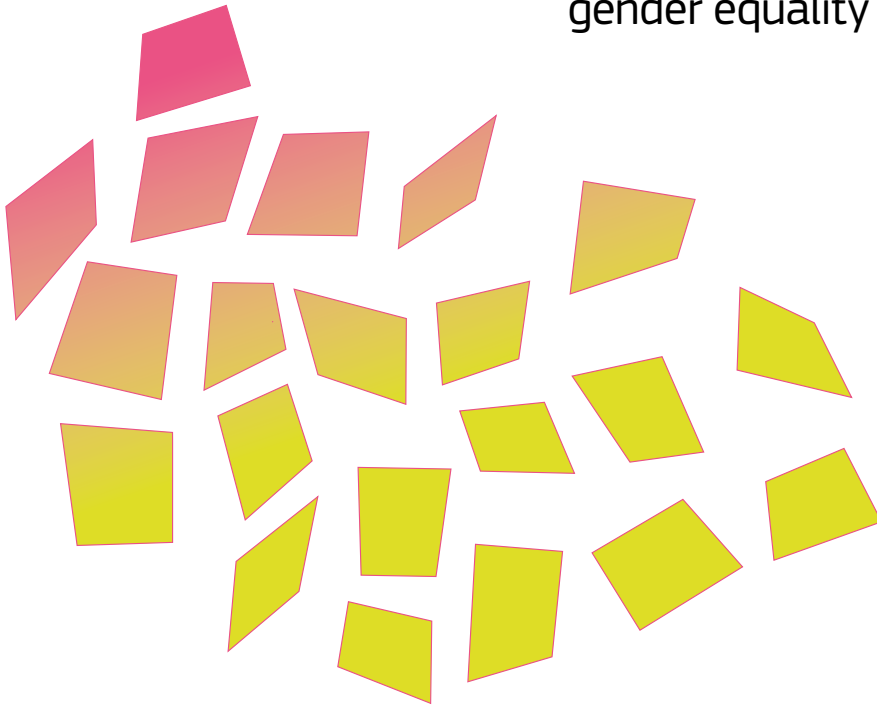


European network of legal experts in  
gender equality and non-discrimination



Including summary

# EU law in light of the Istanbul Convention: legal implications after accession

**EUROPEAN COMMISSION**

Directorate-General for Justice and Consumers  
Directorate D — Equality and Non-Discrimination  
Unit D3: Gender Equality

*European Commission  
B-1049 Brussels*

# **EU law in light of the Istanbul Convention: legal implications after accession**

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2025

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Luxembourg: Publications Office of the European Union, 2025

ISBN 978-92-68-22183-9

doi: 10.2838/5715853

Catalogue number DS-01-24-011-EN-C

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## List of abbreviations

AI	Artificial intelligence
Appl.	Application
CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
Charter	Charter of Fundamental Rights of the EU
CJEU	Court of Justice of the European Union
CSO	civil society organisation
CoC	Code of conduct
CoE	Council of Europe
DV	domestic violence
EAW	European Arrest Warrant
ECA	European Court of Auditors
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEAS	European External Action Service
EIGE	European Institute for Gender Equality
EIO	European investigation order
EP	European Parliament
EPO	European protection order
EU	European Union
FRA	European Union Agency for Fundamental Rights
GBVAW	gender-based violence against women
GBV	gender-based violence
GDPR	General Data Protection Regulation
GR	General Recommendation
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
IC or Istanbul Convention	Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence
MS	Member States
IPV	intimate partner violence
VAW	violence against women
VRD	Victims' Rights Directive

## Executive summary

The first aim of this report is to give a brief explanation of each chapter of the IC and, following the structure of the IC, map the relevant EU *acquis*, examine to what extent it is in line with the Istanbul Convention, and identify potential loopholes that need to be filled with regard to the obligations under the Istanbul Convention within the limits of the Decisions on the EU accession (No. 2023/1075 and No. 2023/1076) and the Declaration contained in the instrument of approval deposited on 28 June 2023. The analysis aims to examine legal instruments specifically linked to the scope of the Convention and EU legislation that applies to specific aspects of gender-based violence although focussing on other areas, e.g. the Digital Service Act. With specific regard to the legal basis of Decision No. 2023/1075, Article 336 TFEU, the analysis also includes selected staff regulations and anti-harassment policies of the seven EU institutions as recognised in the Treaties.

The second aim is to explore the legal implications of the EU's accession to the Istanbul Convention based on the current legal basis and in light of the interpretive judgments of the Court of Justice of the European Union. This is further developed in the chapter related to the use of the IC as a means of interpretation of EU law.

Chapter I Istanbul Convention (IC) contains purposes, definitions, fundamental rights, equality and non-discrimination, general obligations:

- In EU law, equality and non-discrimination are commonly used as interchangeable concepts.
- VAW and DV had no definition in EU founding treaties and secondary law until the new VAW Directive was adopted.
- EU equality law had been impermeable to intersectionality, at least until the adoption of the Pay Transparency Directive, the equality bodies' directives, the VAW Directive, and the proposal for the revision of the Victims' Rights Directive. The fact that the existence of multiple and intersecting grounds of discrimination is acknowledged is a step in the implementation of the IC, which might have a positive impact on EU equality law as well, especially in terms of the interpretation of provisions that are already in force.
- The extent of the due diligence obligations of the EU is measured against the limits of EU accession to the Istanbul Convention. Those matters that fall within the scope of the legal bases of the accession decision (Article 336, Article 82(2), Article 84 and Article 78(2) TFEU) are covered by EU exclusive competence because these legal bases concern areas that are largely covered by internal EU rules and the IC risks affecting them.

Loopholes - Chapter I IC:

- Despite the reference to equality and non-discrimination in the preamble (see for instance recital 10), the definition of VAW in Article 2 of the VAW Directive misses the point of defining violence against women as a violation of human rights and a form of discrimination against women. This confirms that the action on countering VAW and DV is fundamental and well structured, but not adequately framed as an equality and non-discrimination issue. It should be acknowledged that the VAW Directive is a criminal law instrument and not anti-discrimination law based on Article 19 TFEU and subject to unanimity. However the definitions in Article 2 of the VAW Directive should have reproduced the one

enshrined in the IC in order to raise awareness of the root causes of the phenomenon and strengthen the transformative potential of the legal instrument.

- A gender perspective is rarely adopted in policy fields not seen as immediately related to gender equality and countering VAW: to align more closely with the spirit of the Convention, this aspect could be better taken into consideration in the evolution of EU policies and new or amended legislation.
- The notion of gender is mentioned in EU law, including in the VAW Directive. An operative definition of gender that reproduces the one in the IC, pays attention to differences in the translation of the word in the official languages of the EU, and provides some concrete examples (i.e. hate speech), could be very useful in the implementation of the VAW Directive.

Chapter II IC concerns integrated policies and data collection in order to offer a 'holistic response to violence against women'. A key factor of the policies pillar is the multiagency and coordinated approach to tackle gender-based violence against women and domestic violence.

- The VAW Directive is highly compliant with Chapter II of the IC: it requires Member States to adopt and implement state-wide effective, comprehensive and coordinated policies encompassing all relevant measures to prevent and combat all forms of violence against women and domestic violence, designate or establish one or more official bodies responsible for coordinating, implementing, monitoring and evaluating policies and measures to prevent and combat all forms of violence covered under the Directive, adopt an action plan, ensure multiagency cooperation, and cooperate with civil society.
- The VAW Directive also includes a reference to self-regulatory cooperation between relevant intermediary service providers.
- Data collection is a key obligation in the VAW Directive despite the loopholes identified below.
- EIGE's work on reviewing the Gender Equality Index is highly important, even though the indicator is based on existing data, whose limitations percolate to the index, even with the revision.
- With regard to staff regulations and policies, an integrated and non-discriminatory approach to prevent any kind of harassment in the workplace is mentioned in the policies of the majority of the institutions involved in the study.

Loopholes – Chapter II IC:

- Despite data collection being a key provision in the VAW Directive, the obligation it imposes on Member States is limited to a 'minimum', meaning data available at a central level, disaggregated by sex, age group (child/adult) of the victim and the offender, and – only 'where possible and relevant' – the relationship between the victim and the offender and the type of offence. Similarly, the obligation in relation to surveys (like in the IC) is limited to an endeavour to conduct population-based surveys at regular intervals to assess the prevalence of, and trends in, all forms of violence covered by the VAW Directive.
- In respect of staff regulations and policies, there is a need to collect more data through regular surveys and based on the number of reported cases of sexual harassment or harassment in the workplace, which would help in the definition of more specific policies in the field.
- Reference to the IC in relevant staff policies is commonly missing and it is strongly encouraged.

Chapter III IC on prevention is a cornerstone chapter in the IC and a core element of a coordinated and strategic response to end violence against women.

- The main content of the measure to prevent GBV and DV is included in the VAW Directive. Prevention is covered by the scope of the Directive and Chapter V is dedicated to 'Prevention and early intervention'. Chapter V of the VAW Directive is highly compliant with Chapter III IC, with a few loopholes.
- The reference in the VAW Directive to media training activities by organisations of media professionals, media self-regulatory bodies and industry representatives, and to digital literacy is noteworthy.
- Although it lacks a provision harmonising the elements of the crime of rape, the VAW Directive nonetheless contains a provision on consent and education on consent.
- Considering the lack of gender dimension in the applicable codes of conduct (hate speech and disinformation), as announced in the Gender Equality Strategy 2020-2025, the Commission will facilitate a framework for cooperation between internet platforms to tackle online violence against women, in the form of a code of conduct. This code of conduct should be formulated in a way that effectively, and not only formally, endorses a gender perspective.
- With regard to staff regulations and policies, the European Commission has recently approved an action plan that devotes an entire part to prevention, containing very detailed measures. Other institutions, such as the European Parliament and the Council, adopted specific guides on preventing harassment, others, like European Court of Auditors, incorporated detailed preventive measures in a specific policy for ensuring a respectful and harassment-free workplace.

#### Loopholes – Chapter III IC:

- Education is clearly mentioned in Article 34(2) of the VAW Directive on preventive measures and in the specific measures to prevent rape, which are also required to be based on the principles of gender equality and non-discrimination. However, there is no general provision on education on gender equality in the VAW Directive, which can be explained by the limited EU-competence that would have allowed the Directive to go beyond the current provisions.
- In the VAW Directive, training on issues of violence against women and domestic violence is only *recommended* to those responsible for the training of lawyers and therefore it is not compulsory. This is not sufficient to thoroughly implement this part of the IC.
- With regard to intervention programmes, Article 16(3) IC is missing from the VAW Directive: the fact that in intervention programs, the safety of, human rights of and support for the victims must be of primary concern, and that, where appropriate, these programmes should be set up and implemented in close co-ordination with specialist support services for victims.
- With regard to staff regulations and policies, a more direct reference to the gender-sensitiveness of prevention measures, including training, and the attention to intersectional grounds of discrimination would better comply with the IC.
- In terms of prevention, measures in specific institutional policies, action plans, guides, or any other instrument relevant to the institution, are insufficient and should include: the design of communication tools and campaigns on the anti-harassment policy; the organisation of leadership talks to promote respectful and inclusive management practices; facilitated conversations on harassment prevention; harassment prevention at middle management network meetings; new training packages and training initiatives; team coaching; identification and mitigation of psychosocial risks; and promotion of training for managers. The detailed description of preventive measures is important to ensure that the action is effective and comprehensive.

- With regard to staff regulations and policies, the sharing of practices (training programmes, joint training programmes, surveys, meetings with experts on the IC) among institutions could represent added value.

Under Chapter IV IC, states have a positive obligation to build the legal (and policy) framework to protect all victims from 'any further act of violence'.

- In the EU, there is one horizontal instrument on victims' rights – the Victims' Rights Directive (the proposal for its revision is currently under negotiations) and a set of sectorial legislation on victims' rights, such as the Counter-terrorism Directive, the Anti-Trafficking Directive, the Child Sexual Abuse Directive, and the newly adopted VAW Directive.
- A global assessment shows that there is an improvement in the VAW Directive in the protection of victims of VAW and DV. However, some loopholes have been identified that suggest that the VAW Directive is largely but not completely compliant with the IC.
- The VAW Directive is part of the sectorial legislation that supplements the Victims' Rights Directive by providing additional rights to victims of VAW and DV, necessary to protect victims of specific crimes in recognition of the disproportionate impact of these crimes on women and girls.
- In the VAW Directive, reporting of violence against women or domestic violence is very detailed, so are specialist support services for forms of violence other than domestic violence.
- The VAW Directive contains provisions on intersectional discrimination, including with regard to the provision of specialist support services.
- In November 2022, the European Commission announced the EU-wide standard helpline number for victims of violence against women: 116 016 to enable Member States to connect their nation-wide helplines to this harmonised number, so that victims of violence against women or domestic violence are able to call the same number across the EU to get access advice and support.
- With regard to staff regulations and policies, the European Commission endorsed a victim-centred approach and envisaged specific measures of protection for victims of sexual harassment. Of interest is the provision that provides a duty for the unit in charge of medical absences, where it detects a pattern of long-term sick leave in the same entity and a possible link to harassment, to inform the Chief Confidential Counsellor. In the Commission's action plan for the prevention of psychological and sexual harassment in the workplace, there are important measures of support for victims of sexual harassment: best practices towards victims of harassment into the existing return-to-work programme, additional rehabilitation measures, and the option of a structured questionnaire for people returning to work. Measures like working from home or under temporary displacement are also envisaged in the policy of the European Parliament. A specific form of protection in the Council consists in the duty ('shall') on the group of confidential counsellors to refer staff members who feel that they are the target of harassment to a GSC doctor or psychologist or to advise them to consult a doctor or psychologist of their choice if the situation poses a risk to their health.

Loopholes – Chapter IV IC:

- In the VAW Directive, protection is granted to victims of VAW and DV, only when these behaviours are criminalised under the VAW Directive, other Union legal acts or under national law (Article 1(2) VAW Directive). This is an inevitable consequence of the legal basis of the Directive. In contrast, the IC grants protection for all victims of VAW and DV, even when penalties other than criminal ones are applied.

- The involvement of women's support services is acknowledged but could have been stronger in the VAW Directive (for example in Article 25, para. 3).
- Despite a very detailed recital in the preamble (No. 58), the VAW Directive does not provide a clear distinction between general and specialist support services as required by the IC. In line with the VRD which requires Member States to establish specialist support services "in addition to or as an integral part of, general victim support services", the VAW Directive leaves the same discretion to Member States by saying 'where specialist support services as referred to in the first subparagraph are not provided as an integrated part of general victim support services, [...]'. Despite the long list of requirements in Article 25 of what specialist support services must provide and the details offered in Articles 26-28 of the VAW Directive with regard to services responding to three specific forms of violence, which is positive, the opportunity has been missed to further clarify the distinction between the two types of services by requiring MS to pay attention, in relation to funding, to the specificity of specialist support services as well as by recognising in the operative part (and not only in recital 59) that such services are best ensured – to use the language of GREVIO – 'by women's organisations and by support services provided, for example, by local authorities with specialist and experienced staff and with indepth knowledge of gender-based violence against women'.
- The VAW Directive states that 'Member States shall ensure that support services, such as specialist support services, in cooperation with the competent authorities, contact victims to offer support, with due regard for their safety'. MS are allowed to make the initial referral from the competent authorities to the support services subject to the consent of the victim. Without requiring the consent of the victim, this amounts to a mandatory referral, which might be counterproductive. GREVIO has noted that this might prevent some women from coming forward to seek help due to a possible lack of trust in the authorities. GREVIO has accordingly strongly encouraged the authorities to remove mandatory referrals to access domestic violence shelters, including by offering women victims of domestic violence the possibility to self-refer.
- The gendered dimension is commonly missing from staff regulations and policies and such neutrality leads to a lack of understanding of the power dynamics between men and women, especially those at the intersection of different grounds of discrimination. Even though it is crucial to acknowledge the alleged perpetrator's right to defence, the equivalence between the parties that emerges from the policies of the institutions might be dangerous; when there is a reference to reassignment, or a working from home policy, the institutions should guarantee that this measure is informed, gender sensitive and not detrimental to the victim.
- With regard to staff:
  - the establishment of a gender unit or specific training for the counsellors with a clear mandate and necessary resources to promote and support the research of red flags and the provision of support services, which are specific for sexual harassment (counselling, psychological support, referral to external support services, etc.) could support the implementation of the IC among EU officials;
  - the ongoing development of guidelines, manuals, and other tools to support protective and preventive measures is crucial and should continue in the direction of endorsing a trauma, gender, and culturally sensitive approach. The consent of the alleged victim must be always ensured. The sharing of best practice among institutions could be helpful in that respect;

- EU institutions should ensure that their staff are aware of where to find the protection and support mechanisms in the country where they are working.

Chapter V IC on substantive law contains provisions on remedies, custody and visitation rights, criminalisation or identification of non-criminal sanctions for illicit behaviours that fall under the definition of VAW and DV, unacceptability of justifications for crimes, including those committed in the name of 'honour', rules of jurisdiction, aggravating circumstances, and a prohibition of mandatory alternative dispute resolution.

- Several instruments are in force at EU level with regard to civil remedies and criminal sanctions. The rules of the Victims' Rights Directive are complemented by the VAW Directive, to cater for the specific needs of victims of violence against women and domestic violence. In addition to specific measures, victims will continue to benefit from the general provisions of the Victims' Rights Directive. An interesting development concerns Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (Strategic lawsuits against public participation, SLAPPs).
- The VAW Directive is highly compliant with this chapter of the IC:
  - In terms of remedies, it is worth assessing the strength of the VAW Directive provision regarding the removal of certain online material. Combined with criminalisation of the offence, the measure is effective and dissuasive, even though its implementation might be complex, because it requires cooperation with platforms that might be based in non-EU countries. This is why coordination with other EU legal instruments is very important.
  - The articles on criminalisation of FGM and forced marriage are in line with the IC. With regard to cyber violence, the importance of the harmonisation in EU law for the first time of the elements of the crime of cyber stalking, cyber harassment, non-consensual sharing of intimate or manipulated material, and cyber incitement to violence and hatred, is to be acknowledged as a positive step forward, owing to the magnitude of these phenomena.
  - Aggravating circumstances in the VAW Directives not only correspond to the ones mentioned in the IC, but they expand them, by including, among others, that the conduct caused the death of the victim or severe physical or psychological harm to the victim; or that the intention of the offence was to punish the victim for the victim's sexual orientation, gender, colour, religion, social origin or political beliefs. With regard to the latter point, the intersection of different forms of discrimination in the analysis of aggravating circumstances has to be emphasised as a positive outcome of the process of implementation of the IC.
- The definition of sexual harassment provided in the Staff Regulations is in line with the IC, even though it does not refer to the types of conduct – verbal, non-verbal or physical. Decisions, action plans, and guides that have been adopted by EU institutions only work in relation to sexual harassment and not in respect of other forms of violence.
- In terms of compensation, institutions have developed a formal and an informal procedure of redress and have a list of confidential counsellors. These remedies do not exclude the possibility of accessing remedies offered at national level.



## Loopholes – Chapter V IC:

- In the VAW Directive, the element of serious harm in the definition of cybercrimes might seem to jeopardise the protection of victims of those crimes, however, it should be noted that acts that fulfil the requirements of cyber violence covered by the Directive, generally cause serious harm to the victim *per se*. In Recital 18, the Directive explains that ‘when assessing whether the conduct is likely to cause serious harm, the specific circumstances of the case should be taken into account, without prejudice to judicial independence. The likelihood of causing serious harm can be inferred from objective factual circumstances’. A victim-centred interpretation of this provision could mitigate the risks. In concrete terms, this means that, when the judge is assessing whether the act is likely to cause such harm, the focus should be on whether typically, the act, looking at objective factual circumstances, would cause harm to a victim.
- In terms of protection of children, despite the important references in the preamble, Article 32 VAW Directive requires Member States to provide safe places which allow safe contact between a child and a holder of parental responsibility ‘who is an offender or suspect of violence against women or domestic violence, to the extent that the holder of parental responsibility has rights of access. Member States shall ensure supervision, as appropriate, by trained professionals in the best interests of the child’. Given the concerns expressed by GREVIO on the meeting spaces offered by parties to the IC, the supervision of trained professionals should not be simply ‘as appropriate’ but offered in all circumstances. The VAW Directive could have explicitly provided that the safety of the non-violent parent and the children must be taken into account when deciding on the best interests of the child in relation to custody and visitation arrangements.
- A possible point of weakness in the provision on aggravating circumstances in the VAW Directive is the fact that aggravating circumstances must be defined *in accordance with* the domestic law of EU Member States. However, the jurisprudence of the ECtHR and GREVIO reports should be taken into account by Member States in the implementation of these aggravating circumstances.
- In redress procedures under staff regulations and policies, a gendered perspective is generally lacking. For example, the attempt to put the victim and alleged harasser at the same level does not appreciate the power imbalances between the two parties in alleged cases of sexual harassment. When the appointing authority decides to propose solutions to the parties to the conflict and/or take rehabilitation measures to protect and support all the parties, it should be acknowledged that the parties are not at the same level, and that a victim and gender-sensitive approach would require putting the concerns and the interests of the victims at the centre of any decision.

Chapter VI IC contains provisions on investigation, prosecution, procedural law and protective measures.

- Chapter VI IC has been thoroughly implemented in EU secondary legislation, in particular through the Victims’ Rights Directive, the Directive 2011/99/EU on the European Protection Order, the Regulation on protection orders, and the VAW Directive.
- The landmark instrument for the implementation of this chapter of the IC is the VAW Directive, which is largely compliant with the IC. In particular, the VAW Directive complements the Victims’ Rights Directive by adding some requirements to the individual assessment with regard to (at least) victims of sexual violence and victims of domestic violence. Compared to the requirements of the IC, the risk assessment in the VAW Directive does not contemplate the lethality risk, but it is nonetheless well articulated. An innovative aspect is represented by the guidelines for law enforcement and prosecutorial authorities (Article 21 VAW Directive), which Member States *may* issue.

- In the VAW Directive, requirements of emergency barring orders are better detailed than restraining orders, both being incorporated in the same provision. The provision is compliant with the IC, and broadens the scope of emergency barring orders, the issuing of which the VAW Directives extends to all forms of violence covered by the Directive and not only to DV.
- With regard to staff regulations and policies, early intervention and an immediate response to sexual harassment is relevant in most of the documents under analysis in this report. An immediate response can be characterised by the presence of a strict timeline for the formal and informal procedure or by the identification of 'signs' (red flags) of sexual harassment. For example, in the European Commission's action plan, the Chief Confidential Counsellor coordinates proactive outreach to Commission departments to identify factors that might increase the likelihood of personal tensions, conflict and harassment.

Loopholes – Chapter VI IC:

- Article 20 VAW Directive is only partly compliant with Article 54 IC. The IC refers to the evidence on the sexual history and 'conduct' of the victim, which shall be permitted only when it is relevant and necessary, and not to the 'victim's private life related thereto' (the victim's past sexual conduct). The reference in the Directive to 'other aspects of the victim's private life' related to the victim's sexual conduct, even if only where it is relevant and necessary, might seem to jeopardise the victim's right to privacy and risk leading to secondary victimisation.
- It is useful to note, however, that the preamble (recital No. 48) correctly refers to the fact that presenting evidence of past behaviour, the sexual preferences of the victim and the attire or outfit of the victim can lead to repeat or secondary victimisation. The risk of jeopardising the victim's rights that derives from this provision is therefore mitigated by an interpretation of Article 20 of the VAW Directive that takes into consideration the preamble of the Directive, the corresponding article of the IC, and the relevant ECtHR jurisprudence (i.e. *J.L. v. Italy*).
- As a general problem, the lack of a gendered understanding of violence against women is a constant issue, which is partly overcome in the VAW Directive. In terms of risk assessment, the problem lies in the implementation, given the presence of very different models at national level. However, the level of detail reached in the VAW Directive should be welcomed. Coordination and sharing of best practices become pivotal for the implementation of the IC.
- Risk assessment or risk management is not present in staff regulations and policies. Institutions should consider the possibility of preparing a document for an individual assessment in alleged cases of sexual harassment, which should be characterised by the following elements (selected among the relevant ones in Article 16 VAW Directive): the risk of repeated violence, the risk of bodily or psychological harm, mental health issues and stalking behaviour. This assessment can become part of the 'first response' (at the earliest possible stage) by confidential counsellors. Specific rules on how a risk assessment should be done would meet the requirements of the IC.

Chapter VII IC is composed of three articles: Article 59 aims to address the power imbalance created by migration for family reunification purposes; Article 60 requires that GBVAW be considered as a form of persecution within the meaning of the 1951 Refugee Convention, a gender-sensitive interpretation be given to each of the Convention grounds, and the adoption of gender-sensitive reception procedures, guidelines and asylum procedures; and Article 61 enshrines a consolidated principle in international law, namely non-refoulement.

- Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and Directive 2003/86/EC on the right to family reunification partly comply with Article 59 IC. In particular, Article 13 of Directive 2004/38/EC as interpreted by the CJEU responds to the needs of victims of domestic violence whose residence status is dependent on the one of the spouse.
- In 2024, the EU adopted a new Pact on Migration and Asylum, which is relevant for the implementation of the IC. The Qualification Regulation, repealing Directive 2011/95/EU, partly complies with the IC: the reasons of persecution under Article 10 have not changed compared to Directive No. 2011/95. The CJEU, in three recent judgments (C-621/21, C-646/21 and joined cases C-608/22 and 609/22) has filled the gap, by providing an interpretation of the ground 'particular social group' in light of the IC.
- Regulation (EU) 2024/1359 on situations of crisis in the field of migration and Directive (EU) 2024/1346 laying down standards for the reception of applicants for international protection (recast) both define applicants with 'special reception needs', including 'persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, for example victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive'. This definition is very comprehensive. The Reception Conditions Directive that reception conditions need to be adapted to gender specific needs.
- Regulation (EU) 2024/1348 establishing a common procedure for international protection acknowledges the need of special procedural guarantees for asylum applicants with special needs 'due, *inter alia*, to their age, gender, sexual orientation, gender identity, disability, serious physical or mental illness or disorders, including when these are a consequence of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence'. The gender perspective is compliant with Article 60(3) IC.
- In Regulation No. 2024/1347, a serious harm includes one of the following: death penalty or execution, torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.
- Migrant women victims of violence are not expressly, except in a recital in the preamble (No. 71), mentioned in the VAW Directive, which does not include Article 78(2) TFEU as its legal basis.

#### Loopholes – Chapter VII IC:

- Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States is partly compliant with Article 59 IC. The Directive requires the victim to be economically active to acquire the right of permanent residence. Even though it is correct to say that the IC acknowledges that 'the conditions relating to the granting and duration of the autonomous residence permit are established by internal law', the requirements under the Directive are not compliant with the purpose of the Convention – to protect women from all forms of violence, including the often-neglected dimension of economic violence. The financial dependency of a person who is victim of violence *vis-à-vis* the perpetrator of violence often constitutes a component of DV.
- Directive 2003/86/EC on the right to family reunification does not make any reference to cases of forced marriage, which received specific attention in Article 59(4) IC. Under Article 15(3) of the

Directive, 'particular difficult circumstances' should include forced marriages. A reference to forced marriages, especially when they are child marriages, could reinforce the protection of women and girls that are victims of this specific form of violence.

- The definition of applicants with 'special reception needs' in Regulation (EU) 2024/1359 on situations of crisis in the field of migration and Directive (EU) 2024/1346 laying down standards for the reception of applicants for international protection (recast) is very comprehensive, even though an explicit reference to the disproportionate impact of gender-based violence on women and girls, both in the preamble and in Article 24(k), would have been better in compliance with the IC.
- Regulation (EU) 2024/1348 establishing a common procedure for international protection, does not clearly acknowledge the disproportionate impact of experiences of gender-based violence on women and girls.
- In Regulation No. 2024/1347, the protection of women fleeing countries where they are persecuted is granted through the interpretation of 'torture or inhuman or degrading treatment or punishment', thanks to the CJEU jurisprudence (C-621/21). However, an explicit reference to GBVAW as 'a form of serious harm giving rise to complementary / subsidiary protection' (Article 60 IC) would have better complied with the IC.
- The Pact on Migration and Asylum is, overall, compliant with IC. However, although acts of sexual violence and of a gender-specific nature are recognised as acts of persecution under the Qualification Regulation, it does not explicitly include GBVAW as a form of persecution or as a form of serious harm giving rise to complementary or subsidiary protection, as required by the IC.

Chapter VIII IC contains a general principle of international judicial cooperation in criminal and civil matters among parties.

- Numerous legal acts are already in force regarding judicial cooperation in civil and criminal matters having cross-border implications.

Loopholes – Chapter VIII IC:

- Article 81(2) TFEU is not the legal basis for the EU accession, despite the important action undertaken by the EU in the field of judicial cooperation in civil matters. However, it should be acknowledged that when relevant provisions of the IC are covered by the EU law, they generally fall under the exclusive competence of the Union. This can be said for relevant provisions regarding judicial cooperation in civil matters, including in family issues.
- In Council Regulation (EU) 2019/1111 on jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, domestic violence is considered as a reason for non-disclosure of relevant information that could jeopardise the health, safety or liberty of the child or another person. A gender perspective would acknowledge how domestic violence disproportionately affects women, and that risks to the health and safety of the former partner in situations of domestic violence could also be included as an example to justify the non-disclosure of information.
- The main loophole of the acts dealing with criminal matters is their gender neutrality, which does not acknowledge the disproportionate impact of violence on women and girls. Gender neutrality is clearly the consequence of the legal nature of these acts, dealing with cooperation in criminal matters. However, while these instruments, in particular Directive 2011/99 on the European Protection Order,

aim to protect all victims of crime, the protection of victims of gender-based violence may require a more tailored application to reach their full potential.

Chapter IX IC is dedicated to the monitoring mechanism of the Convention, which is composed of an independent body and of an intergovernmental one. The role of the Group of experts on action against violence against women and domestic violence (GREVIO) is to monitor the implementation of the Convention by the parties.

- A Code of Conduct laying down the internal arrangements regarding the exercise of rights and obligations of the Union and the Member States under the Convention was adopted on 9 February 2024 between the Council, the Member States who are parties to the Convention and the Commission.
- The division of competences is the underlying and cross-cutting question when it comes to assessing the implementation of the IC by the EU.
- The EU is bound by the comprehensive gold standard represented by the IC to prevent and combat VAW and DV in the area of judicial cooperation in criminal matters, asylum and non-refoulement, as well as with regard to public administration. The EU thus has competence to follow-up to the extent that the relevant provisions of the Convention fall within the exclusive external competence of the EU and are thus binding on the Member States by virtue of EU law.
- This report argues that, given the characteristics of the IC, the legal bases of the conclusion of the IC and the CJEU's Opinion of 2021, the EU has exclusive competence for what concerns the provisions of the IC that fall within an area already largely covered by Union law. The extent of the Union's competence must be assessed on the basis of a comprehensive and detailed analysis of the relationship between the relevant article of the IC and Union law. The Declaration of competence, which includes a list of relevant acts adopted by the EU, can be a guiding instrument in that respect. This does not mean that there must be an exact correspondence between domestic Union law and the obligations under the international agreement, but the 'area' must be largely covered. This requires a detailed analysis of the relevant field of Union law, including the foreseeable future development of Union law in that area. In EU law, the most relevant EU legislation is the newly adopted VAW Directive. If an article of the IC is reflected in the VAW Directive, it generally falls under the exclusive competence of the Union as the 'area' is largely covered. The same can be said for what concerns the migration and asylum *acquis* and judicial cooperation in civil matters, including in family issues.

Under Chapter X IC, the Istanbul Convention does not affect obligations arising from other international instruments by which parties are bound or shall become parties. In the future, the EU, within the limits of its exclusive competences, can conclude conventions on the matters under the Convention. The synergy between the IC and CEDAW is important, including in light of EU law.

Chapter XI IC contains only one article, which provides for the possibility to amend the Convention. Only parties to the Convention, including the EU, can propose an amendment, which must be notified to the Secretary-General of the Council of Europe.

The provisions of Chapter XII IC do not prejudice internal law and binding international instruments currently in force. Reservations are possible under Articles 78 and 79 of the IC. The EU has appended no reservation to the IC. Articles 80 and 81 IC concern denunciation. Even though the EU acceded to the IC, a Member State that is

also party to the IC can withdraw from it, in light of consolidated principles in international law (consent of the state to be bound by a treaty). However, the state will remain bound by the provisions of the IC that fall under the exclusive competence of the EU. This is the same case for MS which did not ratify the Convention yet. The effect of the EU accession would probably go in the direction of encouraging Member States that have only signed and not ratified the IC to proceed with the ratification, according to their domestic law.

### **The Istanbul Convention as a means of interpretation of EU law**

The mechanism of using international treaties for interpreting EU law is not new. Three examples are given in the report. For example, in the *WS* case (2024), the CJEU referred to the IC and the CEDAW as relevant treaties under Article 78(1) TFEU. The importance of the decision is twofold: on the one hand, it legitimised the use of the IC as a means of interpretation of EU common policy on asylum, even with regard to countries, like the one of the referring country (Bulgaria), that have not ratified the IC yet. On the other hand, it can be argued that the interpretation of relevant EU law consistently with the IC goes beyond the common policy on asylum.

Table 1 below summarises the level of compliance of EU provisions, in particular but not limited to the VAW Directive, with the IC.

Largely compliant means that there are some significant loopholes in the implementation of the IC.

Highly compliant does not mean an implementation without defects (which can be determined by the sensitiveness and complexity of, for example, criminal law), but an implementation that encompasses the main innovative aspects of the IC as interpreted by GREVIO despite some loopholes.

Table 1: the level of compliance of EU provisions

Chapter I	Largely Compliant	The action on countering VAW and DV in the VAW Directive is fundamental and well structured, but not adequately framed as an equality and non-discrimination issue.
Chapter II	Highly Compliant	The VAW Directive has been a turning point for the implementation of this chapter. A few loopholes have been identified.
Chapter III	Highly Compliant	Chapter V of the VAW Directive highly complies with Chapter III IC, with a few loopholes.
Chapter IV	Largely Compliant	There is an improvement in the VAW Directive, in the protection of victims of VAW and DV. However, some identified loopholes show that the VAW Directive is largely, but not completely compliant with the IC.

Chapter V	Highly Compliant	The VAW Directive is compliant with this chapter of the IC, despite a few loopholes.
Chapter VI	Highly Compliant	EU action in the field, including the VAW Directive, is compliant with the IC, but presents a few loopholes.
Chapter VII	Largely Compliant	The Pact on Migration and Asylum is, overall, compliant with the IC.
Chapter VIII	Highly Compliant	EU action in this field is compliant with the IC but presents a few loopholes.

## 1. Introduction: the Istanbul Convention and EU Accession

### 1.1 Background: the Istanbul Convention after 10 years of its entry into force

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention or IC), adopted in 2011 and in force since 2014, establishes a set of comprehensive obligations for addressing violence against women (VAW) and domestic violence (DV) within the legal framework of international human rights law.<sup>1</sup> The Convention recognises in its preamble the structural nature of violence against women ('a manifestation of historically unequal power relations between women and men')<sup>2</sup> and states the purpose of the promotion of substantive equality between women and men, including by empowering women. In Europe, it is the first instrument to set legally binding standards specifically to prevent and combat gender-based violence against women (GBVAW) and girls. The Convention covers a broad range of measures, including data collection, awareness-raising, protection, and the provision of support services and measures to respond to migrant women and women lodging asylum claims that have been victims of violence in their country of origin. It also deals with legal measures on criminalising forms of violence against women and the cross-border dimension of violence against women.

The legal instrument, adopted within the framework of the Council of Europe, must be located within the international and regional legal framework on combating violence against women that has consolidated since the 1970s. As it is well known, the 1979 UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW) does not contain a provision on violence against women. The public/private divide determined the absence of the 'private' dimension from States' obligations in countering discrimination against women. This public/private divide has been gradually eroded since the 1990s, thanks to soft law and hard law acts, along with international quasi-jurisprudence and regional jurisprudence, defining legal obligations of a different nature – obligations of result, due diligence, and progressive realisation – in countering gender-based violence against women. Hence, for example, in 1992, the Committee established by the 1979 Convention brought violence against women within the terms of the CEDAW, defining it as a form of discrimination against women in its General Recommendation No. 19, later replaced by General Recommendation No. 35.<sup>3</sup> In UN General Assembly Resolution No. 58/147 (2003) on domestic violence, it was clearly stated that 'domestic violence is of *public concern* and requires States to take serious action to protect victims and prevent domestic violence.'<sup>4</sup> The European Court of Human Rights (ECtHR) jurisprudence has clearly established that violence against women in the private sphere may amount to a violation of the ECHR and has made a significant contribution in outlining States' positive obligations in respect of domestic violence.<sup>5</sup> In its constantly evolving and expanding case law, the Court has not only relied on Article 8 (right to respect for private and family life), but more and

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<sup>1</sup> Council of Europe, CETS No. 210, adopted 11 May 2011 and entered into force 1 August 2014. De Vido, S., Frulli, M. (eds) (2023), *Preventing and Combating Violence against Women and Domestic Violence. A Commentary on the Istanbul Convention*, Elgar, (Commentary on the IC). See, in particular, Article 1 of the Commentary (De Vido, S., Frulli, M.) from which the analysis in this paragraph is drawn.

<sup>2</sup> Preamble, *Istanbul Convention*.

<sup>3</sup> CEDAW Committee, General Recommendation No. 19: Violence against women (1992) UN Doc. A/47/38; CEDAW Committee, General Recommendation No. 35 (2017) on gender-based violence against women, updating General Recommendation No. 19 (1992) (26 July 2017) UN Doc. CEDAW/C/GC/35.

<sup>4</sup> *UN Doc. A/RES/58/147*, section 1(d), emphasis added.

<sup>5</sup> For an overview of the jurisprudence of the ECtHR on domestic violence, see McQuigg, R. (2017) *The Istanbul Convention, Domestic Violence and Human Rights*, Routledge, pp. 60-7. See, recently ECtHR, *Kurt v Austria*, No. 62903/15, 4 July 2019; *Landi v Italy*, No. 10929/19, 7 April 2022; *De Giorgi v Italy*, No. 23735/19, 16 June 2022. Sosa, L. (2022), '*Kurt t. Oostenrijk* (EHRM, 62903/15) - Accounting for the particular context of domestic violence'. *EHRC Updates*.



more often on Article 3, bringing domestic violence and sexual violence within the scope of the prohibition of torture, inhuman or degrading treatment.

The Istanbul Convention draws on previous legal instruments, jurisprudence of regional human rights courts and quasi jurisprudence of UN treaty bodies and sets a comprehensive standard (seen as the ‘gold standard’ for the protection of women and girls) at the international level through a set of measures that are divided into four pillars. It formally acknowledged in a binding legal text the structural nature of violence against women and domestic violence that is in itself an expression of historically consolidated unequal power relations between men and women. Chinkin has argued that the IC is not ‘simply a classic human rights treaty, but rather a treaty that incorporates the advances in human rights conceptualization that have taken place since the early 1990s’, previously located in soft law instruments.<sup>6</sup> In terms of obligations, for example, the Convention explicitly includes due diligence, but also contemplates in its provisions obligations of result and obligations *à realization progressive*, as well as referring to the action of both States’ agents and non-State actors, codifying the dismantling of the public/private divide.

Compared to other human rights treaties, the Istanbul Convention endorses a gender-sensitive approach, which means that gender must be mainstreamed in all measures adopted to counter gender-based violence against women and domestic violence, considering the specific risks and the differentiated impact on women and girls. The Convention is also open to a gender-transformative approach, which addresses the causes of gender-based inequalities and works to transform harmful gender roles, norms and power relations. The effectiveness of these approaches depends on a strong gender analysis and an understanding of local contexts. The Istanbul Convention ‘codifies and further develops CEDAW standards’.<sup>7</sup> The ‘synergy’<sup>8</sup> between the two emerges from the preamble of the Convention, where reference is made to important human rights instruments, including the CEDAW Convention, and to General Recommendation No. 19. The Istanbul Convention complements and specifies the international legal instrument and works on both a gendered and a gender-neutral approach (with the definition of domestic violence being gender neutral), adding a combination of human rights and criminal law provisions.<sup>9</sup>

It is the first treaty at the international and regional level that provides for the criminalisation of specific behaviours that fall within the concept of violence against women,<sup>10</sup> an umbrella term encompassing

<sup>6</sup> Chinkin, C. (2016) *Regional Approaches to Combating Violence against Women: the Istanbul Convention*, LSE Centre for Women, Peace and Security, pp. 1-3.

<sup>7</sup> Šimonović, D. (2014) ‘Global and regional standards on violence against women: the evolution and synergy of the CEDAW and Istanbul Conventions’, *Human Rights Quarterly*, Vol. 36 No. 3, p. 605.

<sup>8</sup> Šimonović, D. (2014) ‘Global and regional standards on violence against women: the evolution and synergy of the CEDAW and Istanbul Conventions’, *Human Rights Quarterly*, Vol. 36 No. 3.

<sup>9</sup> Chinkin, C. (2016) *Regional Approaches to Combating Violence against Women: the Istanbul Convention*.

<sup>10</sup> The IC defines the following terms in Article 3: “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life; b “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not

different forms of violence that can or cannot amount to an offence. Forced marriage, psychological violence, stalking, physical violence, sexual violence, including rape, female genital mutilation, forced abortion, forced sterilisation and sexual harassment are covered by the Istanbul Convention, demonstrating its wide scope. The Convention is innovative because it also details elements of the prosecution of the offences, including jurisdictional issues.<sup>11</sup>

Another landmark aspect of the Istanbul Convention is its holistic approach, combining different layers of action – prevention, criminal and civil law remedies, prosecution, protection measures, the public and the private sector for example – in countering gender-based violence against women and domestic violence. Criminal law responses alone are not sufficient to respond to violence against women. Preventive and protective measures must be implemented along with criminal law measures to determine the most efficient response to violence. In order to protect women, to promote substantive equality, and to ‘design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence’, the Istanbul Convention is structured around four pillars (4 Ps). Hence, State Parties to the Convention are required to take a wide range of measures in the following areas:

1. Prevention;
2. Protection;
3. Prosecution; and
4. Coordinated Policies.

The ultimate aim of the Istanbul Convention is the prevention (the first P) of all forms of violence covered by its scope.<sup>12</sup> To reach this goal, it is essential to eliminate the root causes of violence against women, which are deeply embedded in all societies and entrenched in the largely prevailing patriarchal culture. State Parties must thus invest in education programmes at all levels that explain the endemic and structural nature of GBVAW, and promote non-violence and gender equality. Investments in education programmes should go hand in hand with measures to challenge gender stereotypes and awareness-raising campaigns on different forms of violence (including psychological and digital violence). It is also crucial to invest in training of professionals in all fields (teachers, police officers, judges and lawyers, medical personnel, journalists and so on) as well as in programmes for perpetrators.

The second pillar is protection, which covers the social aspects of the issue: ensuring that victims are informed of their rights, that they have access both to general services such as legal advice, psychological assistance, financial aid, housing, healthcare, social services and assistance in finding employment, and to specialized women’s support services. Parties must also set up easily accessible shelters for women and children, rape and sexual violence centres, as well as free 24-hour telephone helplines. It is also necessary that victims are informed that they have access to regional and international complaints mechanisms. The Convention not only adopts a holistic approach from the point of view of a variety of measures and approaches, but also aims to

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economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim; c “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men; d “gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately.’

<sup>11</sup> Lavrysen, L., and Mavronicola, N. (2020), *Coercive human rights: positive duties to mobilise the criminal law under the ECHR*, Hart studies in security and justice, Bloomsbury.

<sup>12</sup> Council of Europe (2011) Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, (Explanatory Report), ETS No. 210, 11 May 2011, para 110.

create a synergy with other international and regional treaties devoted to the protection of human rights and women's rights, in order to ensure that victims of GBVAW can have recourse to all possible means to escape from a situation of violence and to access remedies at the supranational level in the event that their State does not fulfil its obligations.

The third P stands for prosecution, and it covers the criminal aspects of violence. It requires Parties to criminalise various forms of violence including physical, psychological and sexual violence, sexual harassment, stalking, female genital mutilation, forced marriage, forced abortion and forced sterilisation. Parties must also take into account aggravating circumstances such as the presence of a child or an intimate relation with the victim, whereas so called 'honour laws' cannot be taken as a valid justification for any kind of violence. Parties are also obliged to investigate any allegation of violence against women, always considering that women are disproportionately affected by violence and that women are likely not to report violence or might even withdraw previously submitted complaints.

In terms of victim's rights, investigations and judicial proceedings must respect victims and refrain from any behaviours that blame victims and cause them additional distress. The right to privacy of victims must be ensured and special measures to protect victims must be adopted at all stages of investigation and proceedings, with specific regard to child victims of abuse.

The last pillar is comprehensive and coordinated policies. The Convention is based on the assumption that no single agency or institution can deal with violence against women and GBVAW violence. An effective response to such violence requires joint and collaborative action by many different actors. This helps to bring a more intersectional approach to VAW, by engaging different actors and connecting different policies.<sup>13</sup> Parties are asked to implement comprehensive and coordinated policies involving governmental agencies, NGOs as well as national, regional and local parliaments and authorities. The aim is for policies to prevent and combat violence against women to be carried out at all levels of government and by all relevant agencies and institutions. States must develop national strategies and plans of action to ensure an effectively coordinated multiagency response. The reports show that results in terms of fighting VAW and DV are improved when law enforcement agencies, the judiciary, NGOs, child protection agencies and other relevant partners work together according to consistent guidelines and protocols, supported by adequate training of all professionals and volunteers involved.<sup>14</sup>

The Istanbul Convention identifies two main areas of cooperation: international or external cooperation (Article 1(1)(d)) and the internal cooperation among domestic actors engaged in countering violence against women (Article 1(1)(e)). First, the Istanbul Convention acknowledges the transnational dimension of violence against women and domestic violence in Article 1 and in more detail in its Chapter VIII. Not only does violence against women no longer represent a mere 'private' matter for which states do not have legal obligations, but

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<sup>13</sup> Sosa, L. and Mestre i Mestre, R. (2023), 'The Istanbul Convention from an Intersectional Perspective' in De Vido, S. and Frulli, M. (eds.), *Preventing and Combating Violence Against Women and Domestic Violence: A Commentary on the Istanbul Convention*, Edward Elgar Publishing, pp. 4-21.

<sup>14</sup> GREVIO (2021), *Mid-term Horizontal Review of GREVIO baseline evaluation reports*, 10 May 2021, Chapter II, 28 ff. ([GREVIO Mid-term Horizontal Review](#)).

it is also no longer limited to national borders. Protection orders issued in one state and implemented in another state and the exchange of evidence to support prosecution are just two examples of the relevance of the international dimension in dealing with cases of violence against women and domestic violence. The international dimension is subject to the rules pertaining to judicial cooperation in civil and criminal matters, which cover jurisdiction, conflict-of-law, recognition and enforcement, and the administrative dialogue between national central authorities. International cooperation is not limited to Chapter VIII, however. Migration issues, to which an entire chapter of the Istanbul Convention is devoted (Chapter VII), present an international dimension, for example, in the assessment of the situation of the country of origin of a woman requiring international protection or evidence concerning ongoing proceedings to which the woman requiring international protection is a party in her country of origin. International cooperation can also be appreciated in respect of the rules on jurisdiction.

Secondly, cooperation plays a key role in terms of dialogue between different actors at domestic level engaged in countering violence against women. In particular, according to Article 7 of the Istanbul Convention, ‘Measures taken pursuant to this article shall involve, where appropriate, all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations’. This dimension, which we describe as ‘internal’ because it is mainly operative at the domestic level, is fundamental because multilevel action to counter violence against women and domestic violence can better grasp the complexity of the situation of many women and girls. The involvement of NGOs is strongly supported by the Convention, which dedicates the entire Article 9 to it. This kind of cooperation also determines gradual and progressive changes in the culture to eradicate patterns of discrimination against women rooted in all societies, which is pursued under Article 12 of the Istanbul Convention and, more generally, Chapter III on prevention, and to endorse gender-sensitive policies, which corresponds to an obligation for contracting parties according to Article 6.

## 1.2 EU accession to the Istanbul Convention

After a process of approximately eight years,<sup>15</sup> the EU acceded to the Istanbul Convention in June 2023, through the adoption of two Council Decisions: Council Decision No. 2023/1075 – based on Article 336 of the Treaty on the Functioning of the EU (TFEU) – 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 with regard to institutions and public administration of the Union;<sup>16</sup> Council Decision No. 2023/1076 – based on Articles 82(2), 84 and 78(2) TFEU – 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 with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement.<sup>17</sup>

<sup>15</sup> Starting with European Commission (2015) *(A possible) EU Accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)*, available at: [http://ec.europa.eu/smart-regulation/roadmaps/docs/2015\\_just\\_010\\_istanbul\\_convention\\_en.pdf](http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_just_010_istanbul_convention_en.pdf). The EU signed the Istanbul Convention in 2017.

<sup>16</sup> Council Decision (EU) 2023/1075 of 1 June 2023 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 with regard to institutions and public administration of the Union, ST/5514/2023/INIT, OJ L 143I, 2.6.2023, pp. 1–3.

<sup>17</sup> Council Decision (EU) 2023/1076 of 1 June 2023 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 with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement, ST/5523/2023/REV/1, OJ L 143I, 2.6.2023, pp. 4–6.

The EU's accession to the Istanbul Convention is only partial, in that the Convention is binding for the EU (as of 1 October 2023) only with regard to those matters covered by the Council decisions mentioned above. With regard to the EU institutions and the public administration of the Union, 'a significant part of the obligations are, in essence, binding on the European Union as regards the staff in its administration and as regards the members of the public visiting the premises and buildings of its institutions, agencies and bodies'.<sup>18</sup> Moreover, with regard to matters related to judicial cooperation in criminal matters and to asylum and *non-refoulement*, the IC applies by virtue of Union law insofar as these matters fall within the exclusive competence of the Union.<sup>19</sup> The EU has exclusive competence for what concerns the provisions of the IC that fall within an area already largely covered by EU law (including 'foreseeable developments').<sup>20</sup> The EU has not expressed any consent to be bound by other aspects of the Convention as it considers these aspects to fall within Member State competence. All EU Member States have signed the Convention, but only 22 out of 27 have ratified it.<sup>21</sup> Those Member States that have not themselves ratified the Convention are thus bound by the Convention only by virtue of and to the extent of the EU's accession.<sup>22</sup>

### 1.2.1 The legislative path

EU accession to the Istanbul Convention is envisaged in Article 75 of the Istanbul Convention. The Commission and the European Parliament have been very active in promoting both EU accession to the Istanbul Convention and the adoption of the first legally binding instrument within the EU on combating violence against women and domestic violence (a directive), which was proposed by the Commission on 8 March 2022.<sup>23</sup> The signing of the Istanbul Convention, back in 2017, was based on two Council Decisions, one regarding matters related to judicial cooperation in criminal matters (No. 2017/865),<sup>24</sup> the other one on asylum and non-refoulement (No. 2017/866).<sup>25</sup> As mentioned, under EU law the ratification can occur within the limits of the competences enshrined in the Treaties.

Article 218 TFEU regulates the negotiation and the conclusion of agreements between the Union and third countries or international organisations. For the accession to the IC, the Council adopted the decisions concluding the agreement after obtaining the consent of the European Parliament (Article 218(6) TFEU).

After years of stasis, in 2021 the Court of Justice of the European Union (CJEU) delivered its opinion, upon request of the EP according to Article 218(11) TFEU, on the compatibility of the IC with the treaties.<sup>26</sup> Aware of

<sup>18</sup> CJEU, Opinion of 6 October 2021, 1/19, ECLI:EU:C:2021:832, para. 305.

<sup>19</sup> Council Decision (EU) 2023/1075, Article 1(1).

<sup>20</sup> For more detail, see section 10.2.2 below, on the division of competences.

<sup>21</sup> Parties to the IC (EU MS): Austria, Belgium, Croatia, Republic of Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden.

<sup>22</sup> Article 216(2) TFEU provides that international agreements to which the EU is a party are binding on the Member States.

<sup>23</sup> Proposal for a Directive of the European Parliament and the Council on combating violence against women and domestic violence, Strasbourg, 8.3.2022 COM(2022) 105 final 2022/0066 (COD).

<sup>24</sup> 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, OJ L 131, 20.5.2017, pp. 11–12.

<sup>25</sup> 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, OJ L 131, 20.5.2017, pp. 13–14.

<sup>26</sup> CJEU, Opinion of 6 October 2021, 1/19, ECLI:EU:C:2021:832.

the high level of gender-based violence against women and girls in Europe,<sup>27</sup> the European Parliament gave the consent to the accession by adopting on 10 May 2023, by 472 votes to 62, with 73 abstentions, a legislative resolution on the draft Council decision on the conclusion, on behalf of the European Union, of the Istanbul Convention with regard to institutions and public administration of the Union;<sup>28</sup> and by 464 votes in favour, 81 against and 45 abstentions, a legislative resolution on the draft Council decision on judicial cooperation in criminal matters, asylum and non-refoulement.<sup>29</sup> The consent of the European Parliament to the conclusion of the Convention was a great success. Both acts were adopted by the Council on 1 June 2023. Compared to the decisions on the signature back in 2017: (i) the legal matters related to judicial cooperation in criminal matters, asylum and non-refoulement were combined in the same decision; and (ii) the legal basis under Article 83(1) TFEU was removed from the decision on accession (the legal basis of Decision 2017/865 was composed of both Articles 82(2) and 83(1) TFEU). The removal of the legal basis regarding the establishment of minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension is a consequence of the 2021 Opinion rendered by the CJEU.<sup>30</sup> The Court, acting under Article 218(11) TFEU, despite affirming that the founding treaties prohibit the Council from adding a further step to the conclusion of an international convention (meaning waiting for the common accord of all Member States), considered that ‘the scope of action open to the European Union under Article 83(1) TFEU is so narrow that it must be concluded that the obligations set out in that part of the convention which fall within that scope of action are “extremely limited” in scope for the European Union and that, accordingly, that provision should not be one of the legal bases of the act concluding the envisaged agreement’.<sup>31</sup> The 2021 Opinion is fundamental to appreciating the division of competence between the EU and the Member States in matters related to preventing and combating VAW and domestic violence and will be quoted in several parts of the report.

In terms of law of the treaties, before delving into the issue of the compliance of the EU *acquis* with the Istanbul Convention, which is the main purpose of this report, it is important to first answer the question of whether the EU can ‘partially’ accede to an international treaty. In light of Article 17 of the 1986 Vienna Convention on the law of treaties between states and international organisations or between international organisations, it seems possible to argue that, even without the ratification by the two relevant organisations of this specific Convention on the law of the treaties, the Council of Europe has agreed to the partial accession of the EU,<sup>32</sup> and the EU made a declaration upon accession to specify the reach of its competences.<sup>33</sup> Moving from the international to the EU level, the complex question refers to the extension of the EU’s exclusive competences. This aspect will be dealt with in chapter 10 of this report on Chapter IX, ‘Monitoring mechanism’, of the Istanbul Convention,

<sup>27</sup> On data, see EIGE, ‘Gender-based violence’, [https://eige.europa.eu/gender-based-violence?language\\_content\\_entity=en](https://eige.europa.eu/gender-based-violence?language_content_entity=en).

<sup>28</sup> European Parliament legislative resolution of 10 May 2023 on the draft 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 with regard to institutions and public administration of the Union (05514/2023 – C9-0037/2023 – 2016/0062A(NLE)).

<sup>29</sup> European Parliament legislative resolution of 10 May 2023 on the draft 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 with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement (05523/2023 – C9-0038/2023 – 2016/0062B(NLE)).

<sup>30</sup> CJEU, Opinion of 6 October 2021, 1/19, ECLI:EU:C:2021:832.

<sup>31</sup> CJEU, Opinion of 6 October 2021, 1/19, ECLI:EU:C:2021:832, para. 301.

<sup>32</sup> See the Declarations made at the time of the deposit of the instrument of accession by the EU <https://www.coe.int/en/web/portal/-/the-european-union-deposited-the-instrument-of-approval-of-the-istanbul-convention->.

<sup>33</sup> The Declaration is mentioned below to assess the division of competences.

because the issue of exclusive competence also affects the relationship with GREVIO and the role of the EU within the Committee of the Parties (Article 67 IC).

### 1.2.2 The developments

Besides accession to the IC, the major development in EU law concerning preventing and combating violence against women and domestic violence, is the adoption of the Directive on combating violence against women and domestic violence, published in the OJ on 24 May 2024 (VAW Directive).<sup>34</sup> The VAW Directive is based on Article 82(2) and Article 83(1) TFEU. Other developments in EU law are relevant for the analysis, even though they do not have as primary purpose preventing and combating violence against women and domestic violence, including the adoption of the equality bodies directives,<sup>35</sup> and the regulations and directives under the new Pact on Migration and Asylum,<sup>36</sup> as well as the proposals for the revision of the Victims' Rights Directive that is under negotiation among the co-legislators,<sup>37</sup> and for the Directive on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast).<sup>38</sup>

## 1.3 Aims of this thematic report

In view of these developments, the purpose of this study is twofold.

The first aim is to give a brief explanation of each chapter of the IC and, following the structure of the IC, map the relevant EU *acquis*, examine to what extent it is in line with the Istanbul Convention, and identify potential loopholes that need to be closed having regard to the obligations under the Istanbul Convention within the limits of the Decisions on the accession and the Declaration contained in the instrument of approval deposited on 28 June 2023.<sup>39</sup> The analysis aims to examine the legal instruments specifically linked to the scope of the Convention (for example, the European Protection Order Directive,<sup>40</sup> the VAW Directive and the Victims' Rights Directive)<sup>41</sup> and the EU legislation that deals with issues of gender-based violence that go beyond the Istanbul Convention (for example the Digital Services Act).<sup>42</sup> With specific regard to the legal basis of Decision

<sup>34</sup> Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, PE/33/2024/REV/1, OJ L, 2024/1385, 24.5.2024 (VAW Directive).

<sup>35</sup> See: European Commission, 'Equality Bodies', [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/tackling-discrimination/equality-bodies\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/tackling-discrimination/equality-bodies_en).

<sup>36</sup> See: European Commission, 'Pact on Migration and Asylum', [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en).

<sup>37</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM/2023/424 final.

<sup>38</sup> Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast), COM (2024) 60.

<sup>39</sup> Declaration contained in the instrument of approval deposited on 28 June 2023 and its annex at <https://rm.coe.int/1680abcccb>.

<sup>40</sup> Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order (European Protection Order Directive), OJ L 338, 21.12.2011, pp. 2–18. Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters complements Directive 2011/99/EU to ensure that there is no legal loophole in the EU framework for the mutual recognition of protection measures for victims of crime.

<sup>41</sup> 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 (Victims' Rights Directive), OJ L 315, 14.11.2012, p. 57.

<sup>42</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), PE/30/2022/REV/1, OJ L 277, 27.10.2022, pp. 1–102.



No. 2023/1075, Article 336 TFEU, the analysis also includes selected staff regulations and anti-harassment policies of the seven EU institutions.<sup>43</sup>

The second aim is to explore the legal implications of the EU's accession to the Istanbul Convention based on the legal basis of EU accession and in the light of interpretation by the CJEU in recent judgments (particularly C-621/21).<sup>44</sup> This is further developed in chapter 14, on the use of the IC as a means of interpretation of EU law.

#### **1.4 Analysis of EU legislation in light of the legal bases in the Council Decisions for accession**

The analysis will follow the structure of the Istanbul Convention. It updates and complements the previous report of the European network of legal experts in gender equality and non-discrimination,<sup>45</sup> including the legal implications of EU accession and recent developments in both EU law and the work of GREVIO. Based on each chapter of the Convention, the report will first look into primary law, then secondary legislation, EU practice (including selected soft EU law, initiatives and best practices at European level), and staff regulations and policies. GREVIO reports, conclusions and recommendations to State Parties by the Committee of the Parties will also be taken into account where relevant.

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<sup>43</sup> The report takes into account documents on internal policies and regulations shared by following institutions: the European Parliament, Council of the EU, the European Commission, the Court of Justice of the EU, the European Court of Auditors and the European Investment Bank.

<sup>44</sup> CJEU, judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Femmes victimes de violences domestiques)*, C-621/21, ECLI:EU:C:2024:47.

<sup>45</sup> Nousiainen, K., Chinkin, C. (2015), *Legal implications of EU accession to the Istanbul Convention*, European Commission, available at: <https://www.equalitylaw.eu/downloads/3794-legal-implications-of-eu-accession-to-the-istanbul-convention>.



## 2. Chapter I IC – Purposes, definitions, equality and non-discrimination provisions, general obligations (Articles 1-6)

### 2.1 Introduction

The preamble to the Istanbul Convention recalls several international human rights conventions, including the European Convention on Human Rights (ECHR), the UN Covenant on Civil and Political Rights (UN CPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Council of Europe Convention on Action against Trafficking in Human Beings and the Council of Europe Convention on the Protection of Children from Sexual Exploitation, as well as soft law instruments, such as General Recommendation No. 19 of the CEDAW Committee (1992) and Recommendations of the Committee of Ministers of the Council of Europe. The core element of the preamble is the recognition of the structural nature of VAW, meaning that violence is rooted in all societies and permeates relationships. The Explanatory Report specifies that violence against women affects not only women adversely, but society as a whole and that urgent action is therefore required.<sup>46</sup> Violence against women and domestic violence is not just a ‘women issue’, it ‘engenders the well-being of the entire society’.<sup>47</sup> The Istanbul Convention refers to and complements the CEDAW, a convention to which all EU Member States are parties, but not the EU *per se*. Between the two conventions there is an important synergy, ‘not only through the approach to violence against women as a form of discrimination and human rights violation, but also through understanding that the more detailed standards of the Istanbul Convention on gender-based violence against women complement and reinforce the more general CEDAW standards’.<sup>48</sup> The reference to the CEDAW is pivotal in the analysis that will follow, both in terms of definitions of discrimination and stereotypes, and in the use of this international treaty as an instrument of interpretation.<sup>49</sup>

Chapter I IC introduces the Convention’s purposes, definitions, scope of equality and non-discrimination, and general obligations. In particular, Article 2 states that the Convention applies to all forms of violence against women, including domestic violence, which affects women disproportionately. In the second paragraph, State Parties are encouraged to apply the Convention to all victims of domestic violence. The Convention is therefore both gender specific and gender neutral with regard to domestic violence, as a result of a compromise reached during negotiations.

It has been argued that, in the context of domestic violence, the Istanbul Convention ‘is ambivalent about gender’, and that

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<sup>46</sup> [Explanatory report](#), para. 26.

<sup>47</sup> Candiottio, L. (2023) ‘Preamble’, in *Commentary on the Istanbul Convention*, p. 82.

<sup>48</sup> Simonovic, D. (2023) ‘Foreword’, in *Commentary on the Istanbul Convention*, p. xxxviii.

<sup>49</sup> See chapter 10 below, Article 71 and the IC as a means of interpretation.

‘violence against women is a human rights concern precisely because of the structural discrimination against, and subordination of, women that is both its cause and consequence. Domestic violence against men indubitably occurs but its incidence is not grounded in such structural discrimination’.<sup>50</sup>

In its baseline evaluation reports, GREVIO expressed concern about the gender neutrality of domestic provisions that do not capture the disproportionate impact GBV has on women, including LGBTI women.<sup>51</sup>

The definitions used in the Convention are given in Article 3, which consolidates the definition of violence against women at the international level. Violence against women is a violation of human rights and a form of discrimination against women, characterised by all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in the private sphere (Article 3(a)). Gender-based violence against women is a form of ‘violence that is directed against a woman because she is a woman or that affects women disproportionately’ (Article 3(d)). Gender-based violence against women is an umbrella term that covers a range of behaviours in a continuum of violence (both offline and online, and from those carried out in times of peace to those carried out in times of war) against women because they are women or that affect women disproportionately, as specified in the Convention. These behaviours can be subject to criminal or other legal measures. Both definitions (violence against women and gender-based violence against women) highlight the gendered nature of the violence, that is, the connection with gender discrimination, and the disproportionate impact on women.<sup>52</sup>

Another fundamental provision of this chapter of the Convention is Article 4 on equality and non-discrimination. Paragraph 1 enshrines a right to live free from violence in public and private life. Paragraph 2 affirms the principle of substantive equality, by condemning discrimination against women and by requiring states to realise equality *de jure* and *de facto*.<sup>53</sup> Paragraph 3 is a non-discrimination clause which is more limited than paragraph 2, according to the Explanatory Report. Paragraph 2 requires parties to refrain from discrimination in the implementation of the provisions of the Istanbul Convention, and paragraph 3 condemns discrimination even beyond the scope of the Convention itself. Paragraph 3 does not expressly refer to intersectional discrimination, but multiple forms of discrimination have been mentioned. Intersectionality is a crucial part in the work of GREVIO. For example, the attempt to ‘culturalise’ violence when it affects migrant, refugee and black women has been criticised for reinforcing stereotypes against the ‘other’.<sup>54</sup> Through paragraph 3, violence against LGBTI women can be properly addressed as an expression of intersectional discrimination, by the provisions of the Istanbul Convention.<sup>55</sup>

<sup>50</sup> Nousiainen, K., Chinkin, C. (2015), *Legal implications of EU accession to the Istanbul Convention*, p. 43. See also Frulli, M. (2023) ‘Scope of the Convention’ in *Commentary on the Istanbul Convention*, p. 98.

<sup>51</sup> For example, in the baseline evaluation report on the Netherlands, GREVIO expressed concerns that the newly used term ‘violence in dependency relationships,’ which was ‘meant to capture the different manifestations of domestic violence which any one individual can experience [...]’, can lead to gaps in the protection and support to women victims of violence because ‘gender neutral policies bear the risk of interventions by professionals that lack gender sensitivity.’ GREVIO (2020), *Baseline evaluation report on the Netherlands*, executive summary.

<sup>52</sup> De Vido, S., Sosa, L. (2021), *Criminalisation of gender-based violence against women in European states, including ICT-facilitated violence. A special report*, EELN, p. 39.

<sup>53</sup> Peroni, L. (2023), ‘Fundamental rights, equality and non-discrimination’ in *Commentary on the Istanbul Convention*, p. 127.

<sup>54</sup> Peroni, L. (2023), ‘Fundamental rights, equality and non-discrimination’ in *Commentary on the Istanbul Convention*, p. 133.

<sup>55</sup> De Vido, S., Mestre i Mestre, R. (2024), *Lesbianising the Istanbul Convention: Research on the implementation of the Convention to protect LGBTI women*, EL\*<sup>C</sup>, 2024, at <https://lesbiangenius.org/elc-launches-its-lesbian-analysis-of-the-istanbul-convention/>.

Article 5 contains state obligations and due diligence. The article is divided into two main provisions: the first paragraph provides an obligation for parties to ‘refrain’ from engaging in any act of violence against women and ensure that state authorities, officials, agents, institutions and others acting on behalf of the state do so in conformity with this obligation. The second paragraph conceptualises positive obligations of due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of the Istanbul Convention. Positive obligations to counter gender-based violence against women and domestic violence have been extensively conceptualised by the European Court of Human Rights (ECtHR).<sup>56</sup> When due diligence is required, it implies a minimum ‘standard of care’ and that a set of ‘legal and factual parameters’ will be taken into account to clarify conduct expected of the state.<sup>57</sup> That means that parties must apply a standard of ‘reasonableness’, for example in the risk assessment (an obligation under Article 51 of the Istanbul Convention). The Istanbul Convention itself, despite incorporating this standard as key paragraph of the article on parties’ obligations, does not exclude the existence of obligations of result – such as the ones requiring parties to incorporate certain behaviours as crimes in their legal system. The jurisprudence of the ECtHR and GREVIO reports have ‘measured’ the reasonableness and the level of due diligence required of parties.<sup>58</sup> Hence, for example, ‘tolerance’ by state authorities of gender-based violence against women, which might be represented by delays in the investigation of reported episodes of violence or by secondary victimisation, is a violation of positive obligations of due diligence.

Article 6, which closes the chapter, conceptualises an obligation for parties to include a gender perspective in the implementation and evaluation of the impact of the provisions of the Convention and to promote the effective implementation of policies of equality between women and men. This article endorses the need to ‘close the gender gap’.<sup>59</sup> In GREVIO’s baseline evaluation reports, the Committee encouraged gender mainstreaming in the formulation and implementation of all laws, regulations and policies.<sup>60</sup> The promotion and implementation of policies to empower women are connected to both Article 4(2) and Article 12(6) of the Istanbul Convention.

## 2.2 Equality and non-discrimination in EU law

Equality and non-discrimination are commonly used as interchangeable concepts in EU law.<sup>61</sup> However, they are not synonymous. Non-discrimination and equality are two aspects of the same principle, with the latter characterised by its positive dimension: equality implies ‘not only a negative obligation not to discriminate but also a duty to recognize differences between people and to take positive action to achieve real equality’.<sup>62</sup>

<sup>56</sup> On domestic violence, see the Council of Europe thematic factsheet: <https://rm.coe.int/thematic-factsheet-domestic-violence-eng/1680a5f249>.

<sup>57</sup> Ollino, A. (2023) ‘State obligations and due diligence’ in *Commentary on the Istanbul Convention*, p. 143.

<sup>58</sup> See the list of relevant judgments here <https://www.coe.int/en/web/istanbul-convention/echr-case-law>, in particular, among others, on domestic violence and the concept of due diligence, *Opuz v. Turkey*; *E. S. and others v. Slovakia*; *Talpis v. Italy*; *Valiuliene v. Lithuania*; *Y and others v. Bulgaria*; *Kurt v. Austria*; *Landi v. Italy*; *De Giorgi v. Italy*; *Buturuga v. Romania* (summaries of the cases here: [https://www.echr.coe.int/documents/d/echr/FS\\_Violence\\_Woman\\_ENG](https://www.echr.coe.int/documents/d/echr/FS_Violence_Woman_ENG)). GREVIO (2021), *Mid-term Horizontal Review of GREVIO baseline evaluation reports*, p. 24 ff.

<sup>59</sup> Peroni, L. (2023), ‘Fundamental rights, equality and non-discrimination’ in *Commentary on the Istanbul Convention*, p. 149.

<sup>60</sup> See, for example, GREVIO (2019) *Baseline evaluation report on Italy*, GREVIO/Inf(2019)18, para. 37.

<sup>61</sup> On the concepts of equality and non-discrimination, see extensively Fredman, S. (2022) *Discrimination Law*, 3<sup>rd</sup> edition, OUP.

<sup>62</sup> Moeckly, D. (2017) ‘Equality and non-discrimination’, in Moeckli D. and others (eds), *International Human Rights Law*, OUP, 3<sup>rd</sup> edition, p. 149.

CEDAW, ratified by all EU Member States but not by the EU, contains a definition of discrimination<sup>63</sup> and recognises the complementarity of the two aspects of the principle of equality and non-discrimination.

With regard to primary law, in EU treaties several provisions refer to equality between women and men. Hence, for example, equality is one of the values on which the EU is founded (Article 2 TEU) and, also, one of the measures to be promoted within the framework of its action to combat social exclusion and discrimination (Article 3 TEU). Article 8 TFEU establishes that in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women. These provisions are in line with the provisions of the Istanbul Convention under Articles 4 and 6. Article 23 of the Charter of Fundamental Rights of the EU (the Charter) also enshrines equality between women and men and conceives the possibility of adopting measures for the underrepresented sex. Fundamental rights enshrined in the Charter apply to MS whenever they are implementing EU law, and to the institutions at all times. In countering VAW and DV, the right to life (Article 2 of the Charter), the right to the integrity of the person (Article 3), the prohibition of torture and inhuman or degrading treatment or punishment (Article 4 of the Charter), the respect for private and family life (Article 7 of the Charter), the protection of personal data (Article 8 of the Charter) are, among other provisions, particularly relevant.<sup>64</sup> The Court of Justice of the European Union has further affirmed that the principle of equality is one of the general principles of European law.<sup>65</sup>

With regard to secondary legislation concerning gender equality, the legal framework initially comprised three directives: one on equal pay,<sup>66</sup> one on equal treatment in other aspects of employment,<sup>67</sup> and one on a limited number of social security matters.<sup>68</sup> During the 1980s and 1990s, several pieces of legislation were adopted, leading to an expansion of EU anti-discrimination law in 2000, covering grounds of discrimination other than gender and contexts beyond employment.<sup>69</sup> In 2006, a new recast directive was adopted to reflect the case law of the Court of Justice and to incorporate many existing provisions of several gender discrimination directives on employment.<sup>70</sup> A 2008 legislative proposal launched by the Commission on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation beyond

<sup>63</sup> CEDAW, Article 1.

<sup>64</sup> There is a solid jurisprudence of the ECtHR on the protection of the fundamental rights of victims of VAW and DV, and the identification of positive obligations that states must abide by in preventing and combating VAW and DV, the complete analysis of which is not the purpose of this report. In this report, a few judgments of the ECtHR will be mentioned when relevant. See, on the jurisprudence of the ECtHR, among others, De Vido, S. and Frulli, M. (2023) *Commentary on the Istanbul Convention*; Brodeală, E., Jelić, I. and Şuteu, S. (eds.) (2024) *Violence against women under European Human Rights Law*, <https://www.e-elgar.com/shop/gbp/violence-against-women-under-european-human-rights-law-9781035346653.html>.

<sup>65</sup> CJEU, judgment of 19 October 1977, *Ruckdeschel*/joined cases 117/76 and 16/77, ECLI:EU:C:1977:160, ECR 1753. See also McCrudden, C., Prechal, S. (2009) *The concepts of equality and non-discrimination in Europe*, EELN, 2009, p. 4.

<sup>66</sup> Council Directive (EEC) 75/117 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women [1975] OJ L45/198.

<sup>67</sup> Council Directive (EEC) 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L39/40.

<sup>68</sup> Council Directive (EEC) 79/7 on the progressive implementation of the principle of equal treatment for men and women in matters of social security [1979] OJ L6/24.

<sup>69</sup> McCrudden, C., Prechal, S. (2009) *The concepts of equality and non-discrimination in Europe*, EELN, 2009, p. 7. See, e.g., Directive 2000/78/EC – Framework Equality Directive (prohibiting discrimination on the basis of religion, age, disability and sexual orientation in employment and occupation), Directive 2004/113/EC Goods and Services Directive (prohibiting gender discrimination in the access to and supply of goods and services). See also Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, [2000] OJ L180/22.

<sup>70</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Recast), [2006] OJ L204/23.

the area of employment and vocational training remains stuck in the Council, which has to adopt the act by unanimity.<sup>71</sup>

Even though the purpose of this report is not to analyse EU anti-discrimination law, the acknowledgment that, despite the number of pieces of legislation on the matter, ‘the landscape of equal treatment remains considerably fragmented’, and that ‘the variety of legal instruments which co-exist in this area often have different scope, status, and effects’,<sup>72</sup> is crucial in the assessment of the conformity of EU law with the Istanbul Convention, which is based on the clear definition of violence against women being a form of discrimination on the basis of gender. The enforcement of existing EU rules on non-discrimination will be improved by the equality bodies Directives that have recently been adopted and that promote equality and reinforce the enforcement of protection against discrimination to achieve a better application and enforcement of EU equality law,<sup>73</sup> and the VAW Directive which, like the IC, requires Member States to ensure that preventive measures aim to challenge harmful stereotypes.

As it will be argued in section 2.3, EU action specifically focused on countering gender-based violence against women could have been more explicitly framed as an equality and non-discrimination issue. Even though there was a clear legal impediment to combining a legal basis such as Article 83 TFEU with Article 19 TFEU, the definitions enshrined in the VAW Directive could have better reflected the ones enshrined in the IC, which correspond to notions already well consolidated at the international level. Framing the phenomenon as an equality and non-discrimination issue raises awareness of the nature of GBVAW and DV, which is rooted in dynamics of power in our societies, and reinforces the legal meaning of provisions such as Article 34(5) VAW Directive, which states that ‘preventive measures shall, in particular, aim to challenge harmful gender stereotypes’. National jurisdictions, like the EU, make the connection between GBVAW and equality and non-discrimination in policy, rather than in legislation.<sup>74</sup>

## 2.3 The definition of gender-based violence against women in EU law

VAW and DV had no definition in binding EU legal instruments until the new VAW Directive was adopted. There is no specific reference to VAW as such in the TEU and the TFEU.<sup>75</sup> However, in the Declaration annexed to the

<sup>71</sup> Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC(2008) 2180} {SEC(2008) 2181}. /\* COM/2008/0426 final - CNS 2008/0140 \*/ [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751414/EPRS\\_BRI\(2023\)751414\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751414/EPRS_BRI(2023)751414_EN.pdf).

<sup>72</sup> Fredman, S. (2022) *Discrimination Law*, p. 389.

<sup>73</sup> Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC, in GU L 29.05.2024, pp. 1-14; Directive (EU) 2024/1500 of the European Parliament and the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU, in GU L 29.05.2024, pp. 1-14.

<sup>74</sup> De Vido, S., Sosa, L. (2021), *Criminalisation of gender-based violence against women in European states, including ICT-facilitated violence*, p. 46.

<sup>75</sup> Möschel, V. M. (forthcoming) *The European Union's Actions in the Domain of Combating Gender-Based Violence*, in Brodeală, E., Jelić, I. Motoc, I. and Șuteu, S. (eds.), *Women's Human Rights under International and European Law*, Springer.

Lisbon Treaty, there is a commitment to adopt policies to combat all forms of DV<sup>76</sup> and the list of EU crimes in Article 83(1) TFEU includes sexual exploitation of women and children.

VAW is commonly mentioned and described in resolutions of the European Parliament, which are non-legally binding. With regard to other legal instruments, the concept of 'violent intentional crime' is included in Council Directive 2004/80/EC,<sup>77</sup> but it does not include any reference to VAW. VAW/GBV is referred to also in the interpretative part of some EU legislative instruments.

With regard to funding, despite not emphasising the gendered nature of VAW, Decision No. 779/2007/EC of the European Parliament and of the Council of 20 June 2007, contains a definition of VAW in its preamble.<sup>78</sup>

There is a definition of GBV in the preamble to Directive No. 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (Victims' Rights Directive, VRD).<sup>79</sup> According to Recital 17 of the Victims' Rights Directive, 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 should be understood as gender-based violence.

The Victims' Rights Directive also uses the concept of violence in close relationships (Recital 18) that is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. This type of violence is a 'serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust', and 'women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or as regards her right to residence'.<sup>80</sup>

Regulation No. 606/2013 on mutual recognition of protection measures in civil matters is meant to protect a person from 'any form of gender-based violence or violence in close relationships such as physical violence, harassment, sexual aggression, stalking, intimidation or other forms of indirect coercion'.<sup>81</sup> Directive 2011/99 on the European Protection Order<sup>82</sup> recognises the relevance of protection orders in cases on gender based violence (recital 9) by underlying that 'this Directive applies to protection measures which aim to protect all victims and not only the victims of gender violence, taking into account the specificities of each type of crime concerned'.

As anticipated, the newly-adopted Directive on combating violence against women and domestic violence (VAW Directive) refers in the preamble to equality between women and men and non-discrimination as core values

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<sup>76</sup> Declarations Annexed to the Final Act of the Intergovernmental Conference which Adopted the Treaty of Lisbon, signed on 13 December 2007, No.19. Declaration on Article 8 of the Treaty on the Functioning of the European Union.

<sup>77</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, pp. 15–18.

<sup>78</sup> Decision No 779/2007/EC of the European Parliament and of the Council of 20 June 2007 establishing for the period 2007–2013 a specific programme to prevent and combat violence against children, young people and women and to protect victims and groups at risk (Daphne III programme) as part of the General Programme Fundamental Rights and Justice, OJ L 173, 3.7.2007, pp. 19–26.

<sup>79</sup> 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 (Victims' Rights Directive), OJ L 315, 14.11.2012, pp. 57–73.

<sup>80</sup> Preamble, Recital No. 18.

<sup>81</sup> Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, OJ L 181, 29.6.2013, pp. 4–12, preamble.

<sup>82</sup> Directive 2011/99/EU, OJ L 338, 21.12.2011, p. 2–18.

of the Union; to violence against women as a violation of fundamental human rights, including the right to non-discrimination, and as a persisting manifestation of structural discrimination; and to intersectionality ('Persons affected by intersectional discrimination are at a heightened risk of experiencing gender-based violence'). The Directive defines VAW as:

'all acts of gender-based violence directed against a woman or a girl because she is a woman or a girl or that affects women or girls disproportionately, that result in, or are likely to result physical, sexual, psychological or economic harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'.<sup>83</sup>

Domestic violence includes 'all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit, irrespective of biological or legal family ties, or between former or current spouses or partners, whether or not the offender shares or has shared a residence with the victim'.

Compared to the definitions in the Istanbul Convention, the definition of violence against women in the VAW Directive has incorporated the elements of both the notions of violence against women and gender-based violence against women of the Council of Europe legal instrument, lacking however two elements: the acknowledgement of VAW as a violation of human rights, and its definition as a form of discrimination against women. Even though it is correct to say that the Directive should be interpreted considering the 'context',<sup>84</sup> meaning including the preamble, this omission, which can be explained by the impossibility of basing the legal act on both legal bases (Article 83 TFEU and Article 19 TFEU), does not allow the adequate framing of gender-based violence against women within anti-discrimination and equality policies. The anti-discrimination and equality dimensions, as this report will show, are indeed present in the chapter of the Directive devoted to prevention, which states: 'Preventive measures shall in particular aim to challenge harmful gender stereotypes, to promote gender equality [...]'.<sup>85</sup> In particular, on measures to prevent rape and the promotion of the central role of consent in sexual relationships, the Directive states that Member States must adopt measures to promote changes in the behavioural patterns rooted in the historically unequal power relations between women and men and that these measures 'shall be based on the principles of gender equality, non-discrimination and fundamental rights'.<sup>86</sup> Therefore, the definitions contained in the VAW Directive could have better reflected the corresponding ones enshrined in the IC.

## 2.4 The concept of gender

Gender is a constitutive element of social relations based on perceived differences between the sexes and a primary form of significant power relations.<sup>87</sup> The IC defines 'gender' as 'the socially constructed roles,

<sup>83</sup> VAW Directive, Article 2.

<sup>84</sup> Vienna Convention on the Law of the Treaties (1969), Article 31.

<sup>85</sup> Article 34: 'Preventive measures shall, in particular, aim to challenge harmful gender stereotypes, to promote gender equality, mutual respect and the right to personal integrity, and to encourage all persons, especially men and boys, to act as positive role models to support corresponding behaviour changes across society as a whole in line with the objectives of this Directive'.

<sup>86</sup> VAW Directive, Article 35.

<sup>87</sup> Scott, J. (1986), 'Gender: A useful category of historical analysis', *American Historical Review* 91 (5), pp. 1053 ss. See also De Vido, S., Mestre i Mestre, R. (2024), *Lesbianising the Istanbul Convention: Research on the implementation of the Convention to protect LGBTI women*.



behaviours, activities and attributes that a given society considers appropriate for women and men' (Article 3(c)).

The social construction of gender is

'the most effective mechanism of socio-political control as the binary division between male and female enables subordinate relations over more than half the world's population. While other mechanisms of social control, such as race, social class, or religion, are capable of partially subordinating important population groups, and while these mechanisms often work intersectionally with gender, gender is of unmatched power'.<sup>88</sup>

As a system of power, it constitutes the source of discrimination on the grounds of sex, gender identity, gender expression and sexual orientation.

The word gender is used in EU law, including in the VAW Directive: the preamble clarifies that GBV, 'inflicted primarily on women and girls by men' is 'rooted in socially constructed roles, behaviour, activities and attributes that a given society considers appropriate for women and men'.<sup>89</sup> This description is in line with the IC, although it is merely included in the preamble and not in the text of the Directive. Despite the concept being commonly used in social sciences, an operative definition of gender that reproduces the one in the IC, but also pays attention to differences in the translation of the word in the official languages of the EU and provides clear examples, could be very useful in the implementation of the VAW Directive. The relevance of a clarification, in compliance with the IC, is self-evident. Can, for example, hate speech targeting men because they are men, or because they are men and homosexuals fall under the scope of the VAW Directive? According to the definition of incitement to violence or hatred in the VAW Directive, it can, but only if hate speech insists on the gender of the person, and not on the individual actions/declarations, e.g., in politics. Violence against female politicians is a major obstacle to women's participation in politics and is commonly driven by 'identity-based explanations' more than for reasons related to their policy making.<sup>90</sup> The criminalisation of gender-based hate speech is therefore expected to serve as a deterrent also to the proliferation of hateful messages addressed to women politicians.

## 2.5 Intersectionality and EU law

Intersectionality requires states 'to be mindful of the structural and dynamic consequences of the interaction between two or more forms of discrimination regarding how women experience violence and their subsequent

<sup>88</sup> Vázquez García R. (2022), 'Making sense of it. Why democracy and (feminism) needs to go beyond the binary', *The Age of Human Rights Journal* 18, pp. 5 ss.

<sup>89</sup> VAW Directive, Recital No. 10.

<sup>90</sup> This is the result of interesting research in Italy, which provides clear causal evidence that women in politics suffer more attacks because of their gender, rather than because of other factors correlated to it. See: Daniele, G., Dipoppa, G., Pulejo, M. (2023) *Attacking Women or their Policies? Understanding Violence against Women in Politics*, Milan, <https://repec.unibocconi.it/baffic/baf/papers/cbafwp23207.pdf>. See also the survey by the International Parliamentary Union of 2016, *Sexism, Harassment and Violence against Women Parliamentarians*, <https://www.ipu.org/resources/publications/issue-briefs/2016-10/sexism-harassment-and-violence-against-women-parliamentarians>.



needs.<sup>91</sup> EU equality law had been impermeable to intersectionality,<sup>92</sup> until the adoption of the Pay Transparency Directive<sup>93</sup> and the equality bodies directives, which at least acknowledge the existence of the phenomenon of intersectional discrimination, one of the main reasons being that different grounds of discrimination are found in different pieces of legislation.<sup>94</sup> Grounds of discrimination in the Treaty and the directives (but not in Article 21 of the EU Charter) are exhaustive, meaning that there is no room for expanding them through hermeneutic techniques.<sup>95</sup> Although intersectionality is acknowledged in the above-mentioned directives, they do not enshrine the protection against specifically intersectional discrimination. To incorporate intersectionality in EU law, one possible way is to interpret existing grounds expansively, also where the list is exhaustive, 'so that intersectional experiences can be addressed by acknowledging that even within a single ground, multiple intersecting power relations can be addressed'.<sup>96</sup> Nonetheless, interpretation is sometimes not sufficient to catch 'individual experiences in a sufficiently nuanced way'.<sup>97</sup> As acknowledged by the CJEU, referring to Directive 2000/78, 'while discrimination may indeed be based on several of the grounds set out in Article 1 of Directive 2000/78, there is, however, no new category of discrimination resulting from the combination of more than one of those grounds, such as sexual orientation and age, that may be found to exist where discrimination on the basis of those grounds taken in isolation has not been established'.<sup>98</sup>

Intersectionality is crucial in preventing and combating VAW and DV, and in protecting victims. Women may face difficulties in accessing protection measures if they experience different situations that make them vulnerable.<sup>99</sup> The response by public authorities, social services and the judiciary must address multiple and intersecting forms of discrimination to avoid secondary victimisation. This aspect falls within the principle of due diligence under Article 5 of the Istanbul Convention.<sup>100</sup> A possible approach is therefore to understand how these grounds of discrimination are constructed socially and institutionally, and the multiple layers of inequality and discrimination. By emphasising discrimination, it is possible to find points of connection between policies, regulations and measures that have a larger transformative effect.<sup>101</sup>

The preamble to the newly adopted VAW Directive refers to 'persons affected by intersectional discrimination' as being 'at a heightened risk of experiencing gender-based violence', with the consequence that this level of risk must be taken into account especially in the individual assessment of the victims' protection needs, specialist support, trainings and information for professionals likely to come into contact with victims of VAW

<sup>91</sup> Sosa L. and Mestre i Mestre, R. (2022), *Ensuring the non-discriminatory implementation of measures against violence against women and domestic violence: Article 4, paragraph 3, of the Istanbul Convention*, COE; Sosa, L. and Mestre i Mestre, R. (2023), 'The Istanbul Convention from an Intersectional Perspective' in *Commentary on the Istanbul Convention*, p. 18.

<sup>92</sup> See also CJEU, judgment of 24 November 2016, *David L. Parris*, C-443/15, ECLI:EU:C:2016:897, para. 80: 'while discrimination may indeed be based on several of the grounds set out in Article 1 of Directive 2000/78, there is, however, no new category of discrimination resulting from the combination of more than one of those grounds, such as sexual orientation and age, that may be found to exist where discrimination on the basis of those grounds taken in isolation has not been established.'

<sup>93</sup> Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, PE/81/2022/REV/1, OJ L 132, 17.5.2023, p. 21–44, Article 3(e) and recitals 25 and 26.

<sup>94</sup> Fredman, S. (2016) *Intersectional discrimination in EU gender equality and non-discrimination law*, EELN, p. 62.

<sup>95</sup> Fredman, S. (2016) *Intersectional discrimination in EU gender equality and non-discrimination law*, p. 64.

<sup>96</sup> Fredman, S. (2016) *Intersectional discrimination in EU gender equality and non-discrimination law*, p. 66.

<sup>97</sup> Fredman, S. (2016) *Intersectional discrimination in EU gender equality and non-discrimination law*, p. 66.

<sup>98</sup> CJEU, judgment of 24 November 2016, *Parris*, C-443/15, ECLI:EU:C:2016:897, para. 80.

<sup>99</sup> See some examples in De Vido, S., Mestre i Mestre, R. (2024), *Lesbianising the Istanbul Convention: Research on the implementation of the Convention to protect LGBTI women*.

<sup>100</sup> Sosa, L. and Mestre i Mestre, R. (2023), 'The Istanbul Convention from an Intersectional Perspective', p. 18.

<sup>101</sup> Sosa, L. and Mestre i Mestre, R. (2023), 'The Istanbul Convention from an Intersectional Perspective', p. 18.

and DV.<sup>102</sup> The (broad) list of grounds of discrimination is not exhaustive, and includes ‘women with disabilities, women with dependant residence status or permit, undocumented migrant women, women applicants for international protection, women fleeing armed conflict, women affected by homelessness, with a minority racial or ethnic background, living in rural areas, women in prostitution, women with low income, detainees, lesbian, gay, bisexual, trans or intersex persons, older women or women with alcohol and drug use disorders’.<sup>103</sup> With regard to the operative part of the VAW Directive, specific support to victims of violence against women and domestic violence with intersectional needs (‘a combination of sex and other ground or grounds of discrimination’ as referred to in Article 21 of the Charter) must be ensured by states.<sup>104</sup> Risk assessment, based on the specific situation of the individual, must include ‘whether the victim experiences discrimination based on a combination of sex and any other ground or grounds of discrimination as referred to in Article 21 of the Charter (“intersectional discrimination”)’.<sup>105</sup> Furthermore, an entire Article is dedicated to ‘targeted support for victims with intersectional needs’ (Article 33) and targeted measures of prevention are required with regard to these groups of victims (Article 34(4)). The fact that the existence of multiple and intersecting grounds of discrimination is acknowledged is a step in the implementation of the IC, which might have a positive impact on EU equality law as well, especially in terms of the interpretation of provisions that are already in force.

In the newly adopted equality bodies directives, intersectionality appears both in the preamble and in the text, in relation to their prevention and promotion of awareness-raising activities, equality bodies ‘can take into consideration specific situations of disadvantage resulting from intersectional discrimination’, but then the definition of the grounds is bounced back to the equality law directives, which they amend.

Intersectionality is also included in the proposal for the revision of the Victims’ Rights Directive when it comes to the personal characteristics of victims that must be taken into account in the individual assessment.<sup>106</sup>

## 2.6 Due diligence obligations in EU law

Due diligence obligations are generally conceived for states. Whilst the notion of due diligence obligations is well established in the law of state responsibility, the concept becomes more complex in respect of international organisations.<sup>107</sup> Article 5 of the Istanbul Convention refers to ‘State obligations’ in its title, but then addresses ‘parties’ in the two paragraphs of which it is composed. Undoubtedly, the role and scope of due diligence is of increasing importance and relevance to institutional contexts.<sup>108</sup> Due diligence is a standard of reasonableness, ‘of reasonable care’, a standard of conduct that must characterise the action of a state (or international organisation). In the 2016 EELN report on the legal implications of EU accession to the Istanbul Convention, it was made clear that ‘a careful consideration of the limits of EU powers is needed in order to decide which state

<sup>102</sup> Preamble, Recital No. 6.

<sup>103</sup> Preamble, Recital No. 71.

<sup>104</sup> VAW Directive, Article 25.

<sup>105</sup> VAW Directive, Article 16.

<sup>106</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM/2023/424 final, Article 10 b (10).

<sup>107</sup> Gasbarri, L. (2018) *Overlapping Responsibility: The Legal Relationship Between the International Organization and the Host State*, in A. de Guttery, M. Frulli, E. Greppi, C. Macchi (eds), *The Duty of Care of International Organizations Towards Their Civilian Personnel Legal Obligations and Implementation Challenges*, Asser, p. 112; International Law Association (2014) *Study Group on Due Diligence in International Law, First Report*. <https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1427&StorageFileGuid=ed229726-4796-47f2-b891-8cfa221685f>.

<sup>108</sup> ILA (2016) *Study Group on Due Diligence in International Law, Second Report*, p. 40.

responsibilities, including the due diligence duty, may be converted to EU responsibilities'.<sup>109</sup> In the EU, due diligence following the EU's accession to the IC is relevant only to those areas in which EU has exclusive competence.

### 2.6.1 The EU duty of care towards its own staff

With regard to Article 336 TFEU, the Union has exclusive competence to accept the obligations set out in the Convention with regard to its own institutions and public administration.<sup>110</sup> Under Article 51(1) of the Charter of Fundamental Rights of the EU, the obligations provided therein apply to EU institutions in relation to any activity that may affect individuals, including those falling within the scope of the employment relationship with their staff. The Staff Regulation adopted in 1962 with subsequent amendments represents the body of rules that governs the relationship between EU institutions on the one hand and their personnel on the other.<sup>111</sup> According to Article 1e(2) of the Staff Regulation, officials in active employment must be accorded working conditions complying with appropriate health and safety standards at least equivalent to the minimum requirements applicable under measures adopted in these areas pursuant to the Treaties. Article 24 of the Staff Regulation reads:

'1. The Union shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties. 2. It shall jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause damage and has been unable to obtain compensation from the person who did cause it.'

Article 1e(2) is the general rule which 'does not contain any substantive standard as regards the concrete implementation of the duty of care, but is limited to incorporating in the SR all the rules adopted by the EU—essentially by means of secondary legislation—in the field of safety and health in workplaces'.<sup>112</sup>

Over the years, several provisions were added to capture the equality and non-discrimination dimensions. Article M112 contains the principle of non-discrimination on different grounds, including sex and sexual orientation;<sup>113</sup> M93, 112, 128 and 131 added a clear objective of *de facto* equality (full equality in practice) and, in line with the CJEU jurisprudence, the possibility of introducing specific advantages for the

<sup>109</sup> Nousiainen, K., Chinkin, C. (2015), *Legal implications of EU accession to the Istanbul Convention*, European Commission, p. 48.

<sup>110</sup> Council Decision (EU) 2023/1075, preamble, No. 8.

<sup>111</sup> Regulation No. 31 (EEC), 11 (EAEC), *laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community*, OJ P 045 14.6.1962, p. 1385. See also Saluzzo, S. (2018) 'Implementation of the Duty of Care by the European Union' in A. de Guttry, M. Frulli, E. Greppi, C. Macchi (eds), *The Duty of Care of International Organizations Towards Their Civilian Personnel Legal Obligations and Implementation Challenges*, p. 211.

<sup>112</sup> Saluzzo, S. (2018) 'Implementation of the Duty of Care by the European Union', p. 211.

<sup>113</sup> Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities, *OJ L 124, 27.4.2004, pp. 1–118*.

underrepresented sex.<sup>114</sup> An article of the Regulation is devoted to sexual harassment, on which this report will focus in the specific section (6.1 below). EU institutions have also adopted internal regulations for the implementation of the duty of care towards their staff.<sup>115</sup> In terms of territorial scope of the obligations deriving from the duty of care, every EU workplace must ensure the health and safety of its staff, but also, as far as it is reasonably possible, it must 'protect the employee wherever he/she carries out his/her duties'.<sup>116</sup> The EU institutions have also adopted several laws dealing with the protection of their staff abroad. These internal instruments usually deal with the deployment of crisis management missions or with the presence of EU delegations in third countries.<sup>117</sup> In terms of personal scope of the obligations stemming from the duty of care, the Staff Regulation applies to all the EU permanent staff, but there are other types of relationship between EU institutions and workers: (1) temporary staff; (2) contract staff; (3) local staff; (4) special advisers; and (5) accredited parliamentary assistants. In the analysis, we will mainly focus on the EU permanent staff, but the provisions regarding the prevention of and the fight against violence against women should extend, *mutatis mutandis*, to the entire personnel, as it emerges from the provision on the scope of the Commission 2023 Decision.<sup>118</sup> The legal framework for the duty of care is vast and complex, and the purpose of the report is to identify which provisions of the Istanbul Convention are already or not yet applied within this framework to prevent violence against women and domestic violence, to suppress violent behaviours and to protect victims. As stated by the CJEU in its 2021 Opinion,

'Articles 7, 8, 10 and 11 in Chapter II, Articles 12 to 16 in Chapter III, Articles 18 to 28 in Chapter IV, Articles 51 to 53 in Chapter VI and Articles 62 and 63 in Chapter VIII of the Istanbul Convention [...] are, in essence, binding on the European Union as regards the staff in its administration and as regards the members of the public visiting the premises and buildings of its institutions, agencies and bodies. Next, the same is true of a number of obligations arising from Articles 49, 50 and 56 in Chapter VI and from Articles 63 to 65 in Chapter VIII of that convention [...] Lastly, it appears that additional obligations, such as those set out in Article 30 of that convention, relating to the payment of adequate compensation to victims of violence, may be binding on the European Union with regard specifically to its public administration.'<sup>119</sup>

The analysis in this report takes into consideration selected policies and rules of the seven institutions (Article 13(1) TEU): the European Parliament, the European Council, the Council of the European Union, the European Commission, the Court of Justice of the European Union, the European Central Bank, and the European Court of Auditors.

<sup>114</sup> Council Regulation (EC, ECSC, Euratom) No 781/98 of 7 April 1998 amending the Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Communities in respect of equal treatment, *OJ L 113, 15.4.1998, pp. 4–5*; Regulation (EU, Euratom) No 1080/2010 of the European Parliament and of the Council of 24 November 2010 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of those Communities, *OJ L 311, 26.11.2010, pp. 1–8*; Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, *OJ L 287, 29.10.2013, pp. 15–62*.

<sup>115</sup> Saluzzo, S. (2018) 'Implementation of the Duty of Care by the European Union', p. 212.

<sup>116</sup> de Guttry, A. (2015) 'Introducing a New Set of Guidelines to Implement the "Duty of Care" of the EU Institutions and Agencies towards their Internationally Mobile Workforce', *European Journal of International Management*, 9, pp. 673–689.

<sup>117</sup> Saluzzo, S. (2018) 'Implementation of the Duty of Care by the European Union', p. 216.

<sup>118</sup> Commission Decision of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3, C(2023) 8630 Final.

<sup>119</sup> CJEU, Opinion of 6 October 2021, 1/19, ECLI:EU:C:2021:832, para. 305.

## 2.6.2 The extent of due diligence and EU accession

As mentioned above, the decision of the Council concerning EU accession to the Istanbul Convention in matters related to judicial cooperation in criminal matters, asylum and non-refoulement was based on Articles 82(2), 84 and 78(2) TFEU. The CJEU in its 2021 Opinion held that Articles 44, 47 and 48 in Chapter V, Articles 49, 50 and 54 to 58 in Chapter VI, and Articles 62 to 65 in Chapter VIII of the Istanbul Convention ‘fall to a large extent within the competence of the European Union referred to in Article 82(2) TFEU, under which the European Union, 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, may establish minimum rules concerning, *inter alia*, admissibility of evidence between Member States, the rights of individuals in criminal proceedings and the rights of victims of crime’.<sup>120</sup> The extent of the due diligence obligations of the EU is measured against the limits of EU accession to the Istanbul Convention. It can be argued that those matters that fall within the scope of the legal bases of the accession decision (Article 82(2), Article 84 and Article 78(2) TFEU) are covered by EU exclusive competence because these concern areas that are largely covered by internal EU rules (including the VAW Directive for Article 82(2) and the entire asylum *acquis* for Article 78(2)), and the IC risks affecting those rules. This is an application of the ERTA principle (Article 3(2) TFEU).<sup>121</sup>

According to the CJEU, Articles 7, 8, 10 and 11 in Chapter II, Articles 12 to 16 in Chapter III, Articles 18 to 28 in Chapter IV, Articles 51 to 53 in Chapter VI and Articles 62 and 63 in Chapter VIII of the Istanbul Convention ‘fall, to a large extent, within the field of crime prevention in respect of which Article 84 TFEU confers on the European Union the power to establish measures to promote and support the action of Member States’.<sup>122</sup> The extent of the due diligence obligations of the EU is measured against the limits of EU competence under Article 84 TFEU. It means that the aforementioned provisions of the IC are considered under the field of crime prevention, for which the EU has competence.

As regards asylum and non-refoulement, referred to in Chapter VII of the Istanbul Convention, ‘those obligations fall within the scope of Article 78(2) TFEU’.<sup>123</sup> The CJEU chose not to modify the argument by using the phrase ‘to a large extent’, thus asserting the extent of EU competence in the field. It must be acknowledged that the CJEU did not consider Article 83 TFEU as legal basis. With regard to the newly adopted Directive, which is based on this provision of the TFEU and on Article 82(2) TFEU, this report argues that if a provision of the IC falls within an area largely covered by the VAW Directive, as development of EU law already envisaged at the moment of the accession, it generally falls under the exclusive external competence of the Union.<sup>124</sup>

Due diligence for the EU means that the organisation must do whatever it can within its power to implement the Istanbul Convention and avoid retrogressive measures. The concept stretches along the lines of EU’s

<sup>120</sup> CJEU, Opinion of 6 October 2021, 1/19, ECLI:EU:C:2021:832, para. 296.

<sup>121</sup> See chapter 10 below, regarding Chapter IX of the Istanbul Convention. CJEU, judgment of 31 March 1970, ECLI:EU:C:1971:32, paras. 16 and 17. The judges argued that there was no need for an express provision in the Treaties granting the EU the competence to conclude international agreements. Such a competence could derive implicitly from a Treaty provision or from secondary law measures. The Court also stressed that, when common rules are adopted through secondary legislation, the Member States have no longer the right to assume obligations which affect those common rules or alter their scope.

<sup>122</sup> CJEU, Opinion of 6 October 2021, 1/19, ECLI:EU:C:2021:832, para. 298.

<sup>123</sup> CJEU, Opinion of 6 October 2021, 1/19, ECLI:EU:C:2021:832, para. 303.

<sup>124</sup> See in Chapter IX, Monitoring Mechanism.

competences. Therefore, the analysis should be based on the legal bases of the accession, and on the EU *acquis*. It should also consider, on the one hand, the Declaration submitted by the EU at the time of the accession to the IC,<sup>125</sup> and, on the other hand, the proposal for a position of the Council in the Committee of the Parties to the IC in matters related to staff administration<sup>126</sup> and the position of the Council in the Committee of the Parties to the IC in matters related to judicial cooperation in criminal matters, asylum and non-refoulement.<sup>127</sup>

Due diligence introduces flexibility to establish what compliance means in relation to a given obligation. This means that steps need to be taken, and no retrogressive measures can be adopted (without showing how every effort is made to meet those obligations).

Another aspect is that a due diligence obligation also consists in the inclusion of a gender perspective in the implementation of the Convention and in the promotion and effective implementation of policies of equality between women and men and the empowerment of women. This is an aspect on which the EU can work in the future. A gender perspective is not straightforward in policy fields that are not immediately related to gender equality – for example artificial intelligence, transport or environmental policies – even though taking into consideration the gender impact in these policies might lead to a more holistic action of prevention of VAW in the EU. As it has been argued, mainstreaming gender into general policies and mainstreaming diversity into gender-based policies is a way to implement the IC from an intersectional perspective.<sup>128</sup> The situation is changing, but the pace is slow. For example, in the Regulation laying down harmonised rules on artificial intelligence, reference to the negative impact of AI on women is scarce and disseminated in just a few provisions.<sup>129</sup> The preamble acknowledges that AI systems might entail risks for fundamental rights, including gender equality, and that ‘when improperly designed and used, such systems may be particularly intrusive and may violate the right to education and training as well as the right not to be discriminated against and perpetuate historical patterns of discrimination, for example against women, certain age groups, persons with disabilities, or persons of certain racial or ethnic origins or sexual orientation’. However, despite the fact that this instrument might have positive implication on combating cyber gender-based violence, there is no explicit recognition that AI systems there is no recognition that AI systems may constitute forms of gender-based violence that disproportionately affect women and girls (e.g. deepfake) and there is no recognition of the connection between the AI act and the VAW Directive.

A gender perspective is also required when dealing with violence against children: in the Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of

<sup>125</sup> Declaration contained in the instrument of approval deposited on 28 June 2023, at <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=210&codeNature=0>.

<sup>126</sup> Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Committee of the Parties of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, on amendments to the Committee’s Rules of Procedure, with regard to matters related to institutions and public administration of the Union, COM/2024/37 final.

<sup>127</sup> Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Committee of the Parties of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, on amendments to the Committee’s Rules of Procedure, with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement, COM/2024/38 final.

<sup>128</sup> Sosa, L. and Mestre i Mestre, R. (2023), ‘The Istanbul Convention from an Intersectional Perspective’.

<sup>129</sup> Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Text with EEA relevance), OJ L 2024/1689, 12.7.2024.

children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast),<sup>130</sup> the explicit acknowledgment of the disproportionate impact of sexual abuse on girls, including in the digital world, would represent an added value.

In order to respect its due diligence obligations, the EU, within the limits of its competences, must put in place laws and assess Member States' compliance with EU secondary legislation implementing the IC through all the means available according to the treaties, including the infringement procedure.

## 2.7 Summary - Chapter I IC

Chapter I IC contains purposes, definitions, equality and non-discrimination provisions and general obligations.

VAW and DV had no definition in binding EU legal instruments until the new VAW Directive was adopted. The definition of violence against women in the Directive has incorporated the elements of the notions of both violence against women and gender-based violence against women of the Council of Europe legal instrument but lacks two elements: the acknowledgement of VAW as a violation of human rights, and its definition as a form of discrimination against women.

EU equality law had been impermeable to intersectionality until the adoption of the Pay Transparency Directive, the equality bodies directive, the VAW Directive and in the proposal for the revision of the Victims' Rights Directive. The fact that the existence of multiple and intersecting grounds of discrimination is acknowledged is a step in the implementation of the IC, which might have a positive impact on EU equality law as well, especially in terms of the interpretation of provisions that are already in force.

The extent of the due diligence obligations of the EU is measured against the limits of EU accession to the Istanbul Convention. Those matters that fall within the scope of the legal bases of the accession decision (Article 336, Article 82(2), Article 84 and Article 78(2) TFEU) are covered by EU exclusive competence because these legal bases concern areas that are largely covered by internal EU rules and the IC risks affecting those rules.

## 2.8 Loopholes - Chapter I IC

Despite the reference to equality and non-discrimination in the preamble, and in the Article on measures to prevent rape and to promote the central role of consent in sexual relationships (Article 35)<sup>131</sup>, the definition of violence against women in Article 2 of the VAW Directive misses the point of defining violence against women as a violation of human rights and a form of discrimination against women. It should be acknowledged that the VAW Directive is a criminal law instrument and not anti-discrimination law, which should be based on Article 19 TFEU and subject to unanimity, however the definitions in Article 2 of the VAW Directive should have

<sup>130</sup> Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast), COM/2024/60 final. See also how the gender perspective is included in Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, OJ L, 2024/1712, 24.6.2024: preamble, recital No. 2, and the amendments to Article 11(2), and to Article 18.

<sup>131</sup> 'Such measures must be based on the principles of gender equality and non-discrimination.'

reproduced the one enshrined in the IC to raise awareness of the root causes of the phenomenon and strengthen the transformative potential of the legal instrument.

The EU has a gender mainstreaming mandate in Art. 8 TFEU and the Union has made quite some efforts to that effect in the last years. However, a gender perspective is rarely adopted in policy fields not seen as immediately related to gender equality and countering VAW and DV: this aspect could be better taken into consideration in the evolution of EU policies and new or amended legislation.

Gender is mentioned in EU law, including in the VAW Directive. Even though the concept is commonly used in social sciences, an operative definition of gender that reproduces the one in the IC, pays attention to differences in the translation of the word in the official languages of the EU, and provides some concrete examples (i.e. hate speech), could be very useful in the implementation of the VAW Directive.



### 3. Chapter II IC – Integrated policies and data collection (Articles 7-11)

#### 3.1 Introduction

Chapter II IC is composed of five articles, beginning with the provision on comprehensive and co-ordinated policies (Article 7). The Explanatory Report highlights the four Ps structure of the Istanbul Convention: Prevention, Protection, Prosecution and Policies, the latter specifically added to the classic tripartite structure of other CoE conventions to provide an effective response to violence against women and domestic violence. Under Article 7, Parties must adopt state-wide effective and comprehensive and coordinated policies and ‘offer a holistic response to violence against women’. When properly adopted, including through cross-mainstreaming strategies, these policies can reveal their potential to address intersectionality. One key factor of the policies pillar is the multiagency and coordinated approach to tackling gender-based violence against women and domestic violence. Article 8 is aimed at ensuring the ‘allocation of appropriate financial and human resources for both activities carried out by public authorities and those of relevant non-governmental and civil society organisations’.<sup>132</sup> Article 9 stresses the important role of NGOs and requires parties to support their work. Article 10 identifies the role of the coordinating body, which can be any entity or institution within the Government entrusted with four tasks: coordinating, implementing, monitoring and evaluating the policies and measures of the respective party to the Convention. Monitoring and evaluation should be independent in order to guarantee the objective evaluation of policies.<sup>133</sup> Data collection is included in Article 11 and it is an essential element of the prevention of and response to violence against women and domestic violence. Disaggregated data and a well-established data collection system is relevant to identify gaps in the implementation of law and policies, to measure the progress in complying with the obligations stemming from the Convention, and to guide policy making.<sup>134</sup>

#### 3.2 EU law

##### 3.2.1 Treaties

As stressed above, there is no reference in the treaties to violence against women, but there are provisions on gender equality and crime prevention that have served as legal basis to adopt measures in the field of integrated policies, funding programmes and data collection.

##### 3.2.2 Secondary legislation

The newly adopted VAW Directive contains an entire chapter relevant to the implementation of these articles of the IC. Under Article 38 of the VAW Directive, Member States are required to ‘adopt and implement state-wide effective, comprehensive and coordinated policies encompassing all relevant measures to prevent and combat all forms of violence against women and domestic violence’, and to designate or establish one or more official body responsible for coordinating, implementing, monitoring and evaluating policies and measures to

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<sup>132</sup> [Explanatory report](#), p. 60.

<sup>133</sup> GREVIO (2023) *Baseline evaluation report on Greece*, paras 44, 47.

<sup>134</sup> Brankovic, B. (2023), ‘Data collection and research’, *Commentary on the Istanbul Convention*, p. 196.

prevent and combat all forms of violence covered under the Directive. The body is also responsible for the collection of data. The adoption of national action plans becomes an obligation under the Directive ('shall'), even though the language of Article 39(2) is softened in the sense that it provides that 'national action plans *may* include priorities and actions for preventing and combatting violence against women and domestic violence, their targets and monitoring mechanisms, the resources necessary to achieve them and how those resources are to be allocated' (emphasis added). Article 40 deals with multiagency coordination and cooperation: the adoption of appropriate mechanisms 'to ensure the effective coordination of and effective cooperation among relevant authorities, agencies and bodies, including ombudsmen, local and regional authorities, law enforcement, the judicial authorities, without prejudice to judicial independence, support services, in particular women's specialist support services, as well as non-governmental organisations, social services, including child protection or welfare authorities, education and healthcare providers, the social partners', becomes an obligation for EU Member States, including for those that have not yet ratified the IC. Multiagency cooperation is considered to be a relevant response for what concerns the individual assessment provided in the Directive and the provision of protection and support measures. The cooperation with civil society organisations, including non-governmental organisations working with victims, is considered to be necessary in order to provide adequate support to victims (Article 41 VAW Directive). There is no explicit reference in this provision to women's rights organisations, which, according to GREVIO reports, are fundamental to addressing the disproportionate impact of gender-based violence on women and girls and to avoid secondary victimisation.<sup>135</sup> Women's specialist support services are, however, included in the list of actors relevant for multiagency cooperation. Unlike the IC, the VAW Directive contains an obligation for Member States to encourage self-regulatory cooperation between relevant intermediary service providers, which demonstrates the scope of the response to the digital dimension of VAW (Article 42). Another level of cooperation among Member States is the exchange of best practice and consultation (Article 43): this article formalises the role of the EU network on preventing gender-based violence and domestic violence, which was established by the European Commission in accordance with the EU's gender equality strategy, and which has met three times between November 2023 and November 2024.<sup>136</sup>

The need for effective cooperation among Member States to improve the access of victims of crime to their rights is highlighted in the Victims' Rights Directive (Article 26, recital 62). The proposal for the revision of the Victims' Rights Directive introduces protocols through national cooperation and coordination to ensure that victims can effectively benefit from their rights to information, support and protection in accordance with their individual needs (Article 26a).

Data collection becomes an obligation for Member States under the VAW Directive, in line with the IC, and some minimum requirements are established by law: data must as a minimum include data available at a central level, disaggregated by sex, age group (child/adult) of the victim and of the offender, and, where possible and relevant, relationship between the victim and the offender and type of offence (Article 44). This is problematic, because the obligation only covers existing data available at central level, meaning that in countries where data are collected by territorial authorities (regional, for example), there is no obligation. Also, with regard to the obligation to collect disaggregated administrative data, Member States are only required to endeavour to

<sup>135</sup> GREVIO Mid-term Horizontal Review, pp. 35 and 39.

<sup>136</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Union of Equality: Gender Equality Strategy 2020-2025*, COM/2020/152 final; see also: <https://preventiongbv.eu/>.

collect it on the basis of common disaggregation approaches developed in cooperation with and according to the standards set out by the European Institute for Gender Equality (EIGE). Until at least the end of the current Multi-Annual Financial Framework 2028, the Commission will support or conduct research on root causes, effects, incidences and conviction rates of the forms of violence covered by this Directive. The ‘softness’ of the language – ‘must endeavour’ – shows the limits of this provision of the VAW Directive. In line with Article 11(2) IC, the VAW Directive also provides that MS ‘shall endeavour to conduct population-based surveys at regular intervals to assess the prevalence of, and trends in, all forms of violence covered by this Directive.’

The collection of data at EU level and according to indicators established by EIGE is crucial. For the purposes of the 2020-2023 EU survey on gender-based violence against women and other forms of inter-personal violence (EU-GBV), Eurostat coordinated the data collection from 18 countries: Austria, Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Greece, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia and Spain. The aim was to measure the prevalence of GBV as defined in the IC, and it focused on different types of violence and on the relationship between the victim and the perpetrator.<sup>137</sup> The data collection for other EU countries – Cyprus, Czechia, Germany, Hungary, Ireland, Luxembourg, Romania and Sweden – was conducted jointly by the European Institute for Gender Equality (EIGE) and the European Union Agency for Fundamental Rights (FRA). These latest sets of data were also released in November 2024 on the Eurostat website<sup>138</sup>.

### 3.2.3 EU practice

This section outlines examples of EU practice that implement Articles 1 to 7 of the IC. First, the Gender Equality Strategy 2020-2025 sets key actions and policy objectives for the period.<sup>139</sup> The relevant measures in the strategy are those on preventing and countering violence against women and domestic violence: the EU accession to the IC was a priority, but, even in the event that accession was not possible, the strategy recommended the adoption of a Directive, which was eventually adopted in May 2024. Other actions concern gender equality and the fight against discrimination, and the creation of an EU network on preventing gender-based violence and domestic violence.

Secondly, the Code of Conduct (CoC) lays down the internal arrangements regarding the exercise of rights and obligations of the European Union and Member States under the IC with the purpose of providing ‘a practical internal tool to enable the Union and the Member States to achieve a coherent, comprehensive and unified external representation with regard to the Convention’.<sup>140</sup> The CoC reflects the code adopted by the EU on the occasion of the accession to the UN Convention on the Rights of Persons with Disabilities.<sup>141</sup> The CoC setting

<sup>137</sup> See: <https://ec.europa.eu/eurostat/web/microdata/gender-based-violence>.

<sup>138</sup> EU Gender-based Violence Survey.

<sup>139</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Union of Equality: Gender Equality Strategy 2020-2025*, COM/2020/152 final.

<sup>140</sup> Code of Conduct laying down the arrangements regarding the exercise of rights and obligations of the European Union and Member States under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 9 February 2023, 1.1; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A42023Y0602%2801%29>. See also below.

<sup>141</sup> Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the European Union relating to the United Nations Convention on the Rights of Persons with Disabilities, (2010/C 340/08).

the internal arrangements for the implementation of the UN Convention on the Rights of Persons with Disabilities stresses the following:

‘13. The Commission will propose in due course an appropriate framework for one or several independent mechanisms in accordance with Article 33.2 of the Convention and on the involvement of civil society, in accordance with Article 33.3 of the Convention, taking into account all relevant Union institutions, bodies, offices or agencies.’

There is nothing similar in the Code of Conduct adopted with regard to the IC, with no reference to the important role of civil society in preventing and combating VAW and DV.

The importance of engaging with women’s rights organisations is key, given some trends that show policies of either cutting funding to women’s NGOs or restructuring in a way that the tasks are carried out by other organisations that do not take a gender perspective. In its *Mid-term Horizontal Review*, GREVIO ‘encouraged the parties to ensure that the evaluation of policies is carried out by way of an open dialogue with all relevant actors, including, in particular, independent women’s organisations involved in preventing and combating violence against women’.<sup>142</sup>

Even though MS have an obligation to work with civil society organisations in the VAW Directive, a multiagency approach could be represented by the work of EU institutions, Member States and civil society in the definition of standards and guidelines to implement the IC. Therefore, the establishment by the Commission of a network of relevant civil society organisations, including women’s rights organisations, focusing on the EU’s implementation of the Istanbul Convention, is to be welcomed. Another positive development is the Commission’s Inter-service group on the implementation of the Istanbul Convention, which aims to support cooperation, the sharing of best practices and the maximisation of synergies between the Commission’s directorates-general and services in the area of VAW and DV, concerning the parts of the Convention that fall under the EU’s accession.

On the collection of data, EIGE has developed 13 indicators on intimate partner violence to guide the data collection efforts of the police and justice sectors. The indicators, published in December 2023, help to assess the progress made at the national level to reduce intimate partner violence (IPV) and domestic violence, and enhance the comparability of data in alignment with the minimum requirements of the EU Victims’ Rights Directive and the Istanbul Convention.<sup>143</sup> This action is in line with the IC. Data collection is, however, mainly characterised by heteronormativity, and intersectionality is rarely taken into account.<sup>144</sup>

Another example of a policy that can be used to eradicate the root causes of violence against women is ‘Gender-responsive budgeting’ (GRB), which is ‘an internationally recognised strategy and tool for integrating gender equality objectives into the budgetary process and, more broadly, contributing to effective, results-

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<sup>142</sup> GREVIO Mid-term Horizontal Review, para. 98.

<sup>143</sup> EIGE (2023), ‘Methodological Guidance: Administrative data collection on violence against women and domestic violence’, 18 December 2023, <https://eige.europa.eu/publications-resources/publications/methodological-guidance-administrative-data-collection-violence-against-women-and-domestic-violence-0>.

<sup>144</sup> See, in that respect, De Vido, S., Mestre i Mestre, R. (2024), *Lesbianising the Istanbul Convention: Research on the implementation of the Convention to protect LGBTI women*.

oriented budgeting, transparency and good governance'.<sup>145</sup> At EU level, 'developing and embedding gender-responsive budgeting can play a fundamental role in demonstrating the extent to which the EU's commitment to gender equality as a principle is followed in budgetary decisions and spending'.<sup>146</sup> The EU has committed to supporting gender mainstreaming in the EU budget in the inter-institutional declaration annexed to the MFF 2014-2020 and 2021-2027. The European Commission developed a methodology to track gender expenditure in the EU budget and its funding programs and has applied it since 2021. Despite the commitment the tracking of gender equality related expenditures revealed, so far, that 69 % of the EU budget does not have a (significant) bearing on the promotion of gender equality (data from 2023).<sup>147</sup>

The recent recast of the EU Financial Regulation established that the next generation of funding instruments (the next MFF 2028-34) will need to be developed considering gender equality and in accordance with an appropriate gender mainstreaming methodology and provide for the collection of gender disaggregated data.

Over the years, the EU has also financed several projects aimed at countering VAW and DV in the EU Member States (e.g. the Citizens, Equality, Rights and Values Programme (CERV) call for proposals to prevent and combat gender-based violence and violence against children (CERV-2024-DAPHNE, Marie Curie scholarships, etc), which are particularly relevant in the field of prevention.

### 3.2.4 Staff regulations and policies

The consolidated text of Regulation No. 31 (EEC), 11 (EAEC), laying down the Staff Regulations of officials and the conditions of employment of other servants of the European Economic Community and the European Atomic Energy Community, contains only one article devoted to sexual harassment, without reference to coordinated policies and holistic responses to gender-based violence in the public administration, data collection or multiagency cooperation. Data, collected through surveys and based on the number of reported cases of sexual harassment or harassment in the workplace, would help in the definition of more specific policies in the field. For example, in 2021, the European Commission launched a staff survey on diversity, inclusion and respect at the workplace, which showed that respondents did not know where to find information on the support available.<sup>148</sup>

However, an integrated and non-discriminatory approach to prevent any kind of harassment in the workplace is mentioned in the policies of institutions. Most institutions have recently adopted new decisions concerning psychological and sexual harassment at work, which show the will to enhance integrated and coordinated policies. However, only the European Commission's recent decision of 12 December 2023 openly and correctly refers to the IC in its preamble, stressing how VAW covers various forms of GBVAW, including sexual

<sup>145</sup> European Parliamentary Research Service (2023), *Gender responsive budgeting: Implications for the budget of the European Parliament*, executive summary, [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/754565/EPRS\\_STU\(2023\)754565\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/754565/EPRS_STU(2023)754565_EN.pdf).

<sup>146</sup> European Parliamentary Research Service (2023), *Gender responsive budgeting: Implications for the budget of the European Parliament*, executive summary.

<sup>147</sup> European Parliamentary Research Service (2023), *Gender responsive budgeting: Implications for the budget of the European Parliament*, executive summary. [Gender equality mainstreaming - European Commission](https://commission.europa.eu/system/files/2023-09/fact-sheet-diversity-inclusion-in-workplace-action-plan-2023-2024_en_0.pdf).

<sup>148</sup> European Commission, *Diversity and inclusion in the workplace Action plan 2023-2024*, [https://commission.europa.eu/system/files/2023-09/fact-sheet-diversity-inclusion-in-workplace-action-plan-2023-2024\\_en\\_0.pdf](https://commission.europa.eu/system/files/2023-09/fact-sheet-diversity-inclusion-in-workplace-action-plan-2023-2024_en_0.pdf).

harassment.<sup>149</sup> The decision also acknowledges that discrimination ‘may manifest itself through harassment. Sexual harassment may be a form of discrimination based on gender’. It also refers to ‘the increased risk of harassment faced by persons exposed to discrimination based on one, or a combination of, different grounds, such as those listed in Article 1d of the Staff Regulations’. The provision of appropriate resources, is granted in the Commission Decision. For example, Article 14 provides that the Directorate-General or service will receive appropriate resources to carry out their tasks, including an appropriate office and IT equipment. Under Article 15, the coordination between the actors and services (the Chief Confidential Counsellor with the assistance of the network of confidential counsellors; the Mediation Service of the European External Action Service and the network of confidential counsellors of the EEAS for staff members serving in Union Delegations; the unit in charge of the formal procedure; IDOC) responsible for the different steps in the course of informal or formal procedures is ensured. The Decision requires the Directorate-General for Human Resources and Security to regularly conduct a staff survey on harassment ‘to assess the prevalence of and trends in sexual and psychological harassment’ (Article 17(2)). A Task Force on Equality was established in 2020 to support the work of the first ever Commissioner for Equality and to promote and ensure equality mainstreaming across all policy areas.

This Task Force is chaired by the Deputy Secretary General for policy coordination and composed of experts from DG JUST, EMPL, equality coordinators from all Directorate Generals and the European External Action Service and a secretariat based in the Secretariat General of the Commission. The Task Force work and leadership show the Commission’s commitment to mainstream equality, including gender, in all policy areas and within the Commission.

In Decision No. 50-2022 on the European Court of Auditors’ policy, an integrated approach is defined as one in which several areas are covered: from human resources to occupational health and safety, legal protection, etc.<sup>150</sup> It is also important to note that, in terms of policies, in the European Parliament, an advisory committee dealing with harassment complaints concerning members of the European Parliament issued a guide for the members of the European Parliament and coordinates the action to prevent and combat it.<sup>151</sup> The Council of the European Union strengthened in a recent decision the group of anti-harassment counsellors – renamed confidential counsellors – and enhanced the coordination between the actors involved within the institution to prevent and combat harassment.<sup>152</sup> Gender-based violence, with a definition that only partly reflects the IC, is included in the Gender-based violence and harassment guidance of the European Investment Bank (September 2022), which, in terms of policies, ensures the coordination between different services that are relevant for preventing and combating violence against women, including but not limited to, sexual harassment: the medical service unit, external occupation psychologists, confidential counsellors, wellbeing coordinators and lawyers. The guide also includes a list of support association and services to survivors of GBVAW in Luxembourg, which should be seen as a best practice.

<sup>149</sup> Commission Decision of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3, C(2023) 8630 Final.

<sup>150</sup> European Court of Auditors, Decision No. 50-2022 on the European Court of Auditors’ policy for ensuring a respectful and harassment-free workplace, 16 December 2022.

<sup>151</sup> European Parliament, *Harassment: Zero Tolerance in the EP*, guide.

<sup>152</sup> Decision No 59/2021 of the Secretary General of the Council of the EU laying down implementing rules concerning the application of Regulation (EU) 2018/1725 of the European Parliament and of the Council and the restriction of data subjects’ rights for the purpose of administrative investigations, disciplinary and court proceedings (2022/C 25/02).

### 3.3 Summary – Chapter II IC

Chapter II IC concerns integrated policies and data collection to offer a ‘holistic response to violence against women’. A key factor of the policies pillar is the multiagency and coordinated approach to tackle gender-based violence against women and domestic violence.

- The VAW Directive is highly compliant with Chapter II of the IC: it requires Member States to adopt and implement state-wide effective, comprehensive and coordinated policies encompassing all relevant measures to prevent and combat all forms of violence against women and domestic violence, designate or establish one or more official body responsible for coordinating, implementing, monitoring and evaluating policies and measures to prevent and combat all forms of violence covered under the Directive, adopt an action plan, ensure multiagency cooperation, and cooperate with civil society.
- The VAW Directive also includes a reference to self-regulatory cooperation between relevant intermediary service providers, which demonstrates the response to the digital dimension of VAW, and the formal recognition of the EU network on preventing GBV and DV.
- Data collection is a key obligation to some extent included in the VAW Directive, which can be fulfilled in cooperation with EIGE.
- With regard to staff regulations and policies, an integrated and non-discriminatory approach to prevent any kind of harassment in the workplace is mentioned in the policies of the majority of the institutions covered by this report.

### 3.4 Loopholes – Chapter II IC

- Despite data collection being a key provision in the VAW Directive, the obligation it imposes on Member States is limited to a ‘minimum’, meaning data available at a central level, disaggregated by sex, age group (child/adult) of the victim and the offender, and – only ‘where possible and relevant’ – the relationship between the victim and the offender and the type of offence. The obligations in respect of surveys are limited to an ‘endeavour’ to conduct population-based surveys at regular intervals to assess the prevalence of, and trends in, all forms of violence covered by the VAW Directive.
- In respect of staff regulations and policies, there is a need to collect more data through regular surveys and based on the number of reported cases of sexual harassment or harassment in the workplace, which would help in the definition of more specific policies in the field.
- Reference to the IC in relevant staff policies is strongly encouraged.

## 4. Chapter III IC - Prevention (Articles 12-17)

### 4.1 Introduction

Prevention is a key chapter in the IC and a core element of a coordinated and strategic response to end violence against women.<sup>153</sup> Article 12 IC contains the general obligation to prevent violence against women, followed by Articles 13 to 16, which outline this obligation more specifically. Prevention measures work best when they are not taken in isolation, but integrated into a wider, holistic response to violence against women.<sup>154</sup> The Istanbul Convention asks Parties to develop 'integrated', and 'State-wide effective, comprehensive and coordinated policies encompassing all relevant measures to prevent and combat all forms of violence'. Prevention of the escalation of violence and early intervention mechanisms involve effective risk assessment, which is enshrined in Article 51 of the Istanbul Convention:<sup>155</sup>

'Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide coordinated safety and support.'

At first sight, prevention would only mean preventing violence from occurring. Known as primary prevention, this requires the development of strategies to prevent violence before it occurs.<sup>156</sup> Secondary prevention (or early intervention) refers to programmes that involve early detection of risk or early manifestations of the problem.<sup>157</sup> Tertiary prevention is the response after violence has occurred with the purpose of reducing the consequences and the impacts of violence and preventing repetition. These three forms of prevention overlap: an effective response by the police to episodes of violence (tertiary prevention) can send a strong message that gender-based violence is not acceptable and influence the implementation of primary prevention policies. This structure is part of a public health model that can be transferred to policies aimed at countering GBV and DV and emphasises prevention: rather than 'simply accepting or reacting to violence, its starting point is the strong conviction that violent behaviour and its causes can be prevented'.<sup>158</sup> Prevention has been pictured as a tree, which shows how primary prevention depends upon robust, well-funded secondary and tertiary interventions.<sup>159</sup>

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<sup>153</sup> Hester, M., Lilley, S.-J. (2016), *Preventing Violence against Women: Article 12 of the Istanbul Convention. A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence*, Strasbourg, CoE.

<sup>154</sup> Hester, M., Lilley, S.-J. (2016), *Preventing Violence against Women: Article 12 of the Istanbul Convention. A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence*.

<sup>155</sup> See further below, section 7.1, on the risk assessment.

<sup>156</sup> Last, J.M., Wallace, R.B. (2022) *Maxcy-Rosenau-Last Public Health & Preventive Medicine* (16th ed.), Appleton & Lange.

<sup>157</sup> Australian Institute of Family Studies (2014), 'Reflecting on primary prevention of violence against women: the public health approach', *ACSSA Issues*, 19, <https://aifs.gov.au/resources/practice-guides/reflecting-primary-prevention-violence-against-women#the-public-health-approach>.

<sup>158</sup> World Health Organization (2002) *World report on Violence and Health*, Geneva.

<sup>159</sup> Salter, M., Gore, A. (2020) 'The Tree of Prevention: Understanding the Relationship Between the Primary, Secondary, and Tertiary Prevention of Violence against Women', in Chung, D. et al., *Improved accountability: The Role of Perpetrator Intervention Systems*, Sydney: ANROWS, pp. 67-91. See also the image below, retrieved from this article and the connected post on what was then known as Twitter (now X) by M. Salter.



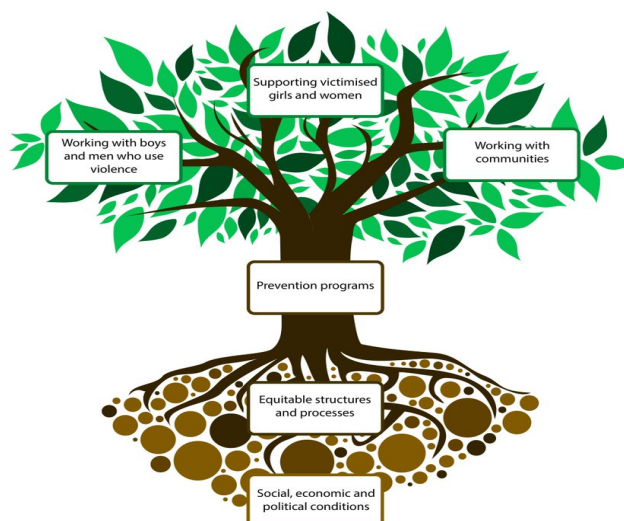


Figure 1: Tree of Prevention, illustration © Michael Salter and Ashlee Gore, 2020

Measures of prevention include awareness-raising campaigns or programmes ‘including in cooperation with national human rights institutions and equality bodies, civil society and non-governmental organisations, where appropriate’ (Article 13), education both in formal curricula at all levels of education and in informal educational facilities (Article 14), training of professionals (Article 15), preventive intervention and treatment programmes (Article 16) and participation in the private sector and the media (Article 17).

Article 12 is an overarching provision, which incorporates several specific measures aimed at the promotion of cultural changes in the social and cultural patterns of behaviours of women and men. GREVIO played a role in the definition of these obligations for parties.

Obligations stemming from Article 13 IC on awareness raising have been specified by GREVIO: parties need to ensure what is specifically requested by this provision, namely the adoption of regular campaigns and programmes that take place at all levels in cooperation with a series of actors, regarding all forms of VAW and having wide dissemination; parties also need to ensure a sufficient budget for the campaigns, an evaluation of their impact, a diversification of targeted groups and a gendered understanding underpinning these campaigns.<sup>160</sup> With regard to education, the Explanatory Report of the Istanbul Convention clarifies that ‘the majority of men and boys are not perpetrators’, and that ‘their contribution can take on many forms in particular as role models, agents of change and advocates for equality between women and men and mutual respect’.<sup>161</sup> Bearing in mind that the primary responsibility for education lies with a child’s parents, the Explanatory Report focuses on educational establishments, for which parties can design ‘teaching material for all levels of education (primary, secondary and tertiary education) that promotes such values and enlightens learners with respect to the various forms of violence covered by the scope of this Convention’.<sup>162</sup> The drafters of the

<sup>160</sup> Möschel, M. (2023) ‘Awareness-raising’, *Commentary on the Istanbul Convention*, pp. 233-234.

<sup>161</sup> *Explanatory Report*, para. 88.

<sup>162</sup> *Explanatory Report*, para. 95.

Convention did not impose a specific model on the parties and this is the meaning that must be attributed to the phrase ‘where appropriate’ in Article 14. States are not free to decide whether they want to include these issues or not, but they maintain flexibility to decide how to include them.<sup>163</sup>

Education regarding gender equality issues can be incorporated in the ‘formal curriculum’, meaning ‘the planned programme of objectives, content, learning experiences, resources and assessment offered by a school where appropriate’. It does not refer to ‘incidental lessons which can be learnt at school because of particular school policies’.<sup>164</sup> As stressed in the Explanatory Report, ‘some states for instance determine the teaching aims in their formal curriculum while leaving it to the schools to decide on the proper working methods and teaching materials to be used to reach these aims’.<sup>165</sup> Education is also crucial for all informal educational facilities – the definition varying quite significantly from state to state – as well as any sports, cultural and leisure facilities as well as the media.<sup>166</sup>

Training for all actors involved in the prevention and prosecution of GBVAW and DV and in the protection of victims must include as a component the recognition of gendered dynamics and the overall impact and consequences of violence on victims. In its baseline evaluation reports, GREVIO has highlighted the need for ‘initial and in-service training for all relevant professions to be systematic and compulsory’, and stressed that ‘training for all professional groups needs to be based on up to date and clear protocols and guidelines based on a gendered understanding of violence against women and domestic violence, that set out the standards staff are expected to follow in their respective field’.<sup>167</sup> GREVIO also pointed out that civil society organisations play a significant role in organising training for various groups of professionals, including psychologists, social workers, lawyers and teachers, in order to provide them with knowledge, resources and tools to support victims of sexual harassment, gender-based violence and cyber violence.<sup>168</sup> Article 16 requires the implementation of treatment programmes for perpetrators, specifically naming two types of perpetrators: perpetrators of domestic violence and sex offenders. Similar to other provisions in the field of prevention, GREVIO contributed to the definition of specific obligations for parties to the Convention. For example, in Italy, GREVIO recommended that more programmes are made available throughout the country.<sup>169</sup> GREVIO strongly posited that programmes where present should not be used as alternative to punitive sanctions and should not replace prosecution, conviction or sentencing.<sup>170</sup> The role of media in the perpetuation of gender stereotypes must be considered when dealing with prevention measures. Media, but also ICT in general, are both empowering for women and girls and can be a cause of GBVAW. Article 17 has been complemented by non-binding standards such as Recommendation (2013) of the Committee of Ministers of the Council of Europe on gender equality and media.<sup>171</sup>

<sup>163</sup> [Explanatory Report](#), para. 95.

<sup>164</sup> [Explanatory Report](#), para. 95.

<sup>165</sup> [Explanatory Report](#), para. 95.

<sup>166</sup> [Explanatory Report](#), para. 96.

<sup>167</sup> GREVIO Mid-term Horizontal Review, p. 59.

<sup>168</sup> GREVIO (2023) *Baseline evaluation report on Greece*, para. 90, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad469d>.

<sup>169</sup> GREVIO (2020) *Baseline evaluation report on Italy*, para. 99, <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>.

<sup>170</sup> Oddone, C. (2023) ‘Preventive intervention and treatment programmes’, *Commentary on the Istanbul Convention*, pp. 262-3.

<sup>171</sup> Online safety is dependent not only on criminal measures (see below for more details) but most importantly on ‘internet literacy and people’s awareness of the need to protect their own personal and sensitive data’; see Faloppa, F. (2023) ‘Participation of the private sector and the media’, *Commentary on the Istanbul Convention*, p. 283.

## 4.2 EU law

### 4.2.1 Treaties

Measures of prevention of VAW and DV are not explicit in primary Union law. However, Article 84 TFEU states that ‘the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States.’ Several behaviours that fall under the umbrella notion of VAW can be (or must be if there is a legal obligation in that respect) criminalised, and therefore crime prevention becomes an aspect of the criminalisation itself. The training of judges falls under Article 82(1) TFEU, according to which, in the field of judicial cooperation in criminal matters, the European Parliament and the Council must adopt measures to ‘support the training of the judiciary and judicial staff’ (Article 82(1)(c)).

Combating discrimination under Article 19 TFEU also entails preventive measures, although appropriate action to eradicate stereotypes, in line with CEDAW (ratified by all EU Member States), has never been strongly established. Article 19(1) TFEU entails a special legislative procedure (unanimity in the Council and the consent of the EP). With regard to education, under Article 6 TFEU, the Union has competence to carry out actions to support, coordinate or supplement the actions of the Member States in the field of education.

### 4.2.2 Secondary legislation

The EU Victims’ Rights Directive (2012/29/ EU)<sup>172</sup> contains a provision on both general and special training of practitioners who ‘come into contact with victims’, to ‘increase awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner’ (Article 25). Article 25(2) and (3) specifically targets the judiciary and the legal profession, stressing how the training of judges and lawyers increases the awareness of the needs of victims. Article 26 refers to awareness-raising campaigns to ‘reduce the risk of victimisation, and minimising the negative impact of crime and the risks of secondary and repeat victimisation, of intimidation and of retaliation, in particular by targeting groups at risk such as children, victims of gender-based violence and violence in close relationships’. Actions include information and awareness-raising campaigns and research and education programmes. Being a horizontal instrument, however, the Victims’ Rights Directive does not specifically acknowledge the disproportionate impact of violence on women and girls and the intersection of different grounds of discrimination (although the latter has been included in the proposal for the revision of the Victims’ Rights Directive).

Preventive measures, including programmes for perpetrators, are incorporated in Directive 2011/92/EU of the European Parliament and the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography. Despite being only partially relevant for the analysis of the compatibility of EU legislation with the IC, it should be stressed that this Directive contains the obligation for EU Member States to ‘take appropriate measures, such as education and training, to discourage and reduce

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<sup>172</sup> Nousiainen, K., Chinkin, C. (2015), *Legal implications of EU accession to the Istanbul Convention*, European Commission, p. 61.

the demand that fosters all forms of sexual exploitation of children' (Article 23(1)), but also to carry out information and awareness-raising campaigns, research and education programmes, 'where appropriate in cooperation with relevant civil society organisations and other stakeholders', in order to reduce the risk of children becoming victims of sexual abuse and exploitation (Article 23(2)). Intervention programmes or measures on a voluntary basis in the course of or after criminal proceedings are among obligations that states must abide by to prevent and minimise the risks of repeated offences of a sexual nature against children (Article 24). Directive 2011/92 is becoming more and more relevant after the proposal for a recast directive, submitted by the European Commission in February 2024. In the memorandum accompanying the proposal, the Commission stressed how it is 'consistent with, and complementary to' the VAW Directive.<sup>173</sup>

The training of professionals is included in the preamble to the European Protection Order Directive.<sup>174</sup>

The Digital Services Act (DSA) specifically speaks of risk assessment in relation to GBV, but does not expressly acknowledge the disproportionate impact of gender-based violence on women and girls, and on women at the intersections of multiple forms of discrimination. Looking at the role of the private sector and the media in preventing VAW and DV, it is worth noting Article 44 DSA on the promotion and development of voluntary standards, which can integrate, amend or reinforce the standards that already exist.<sup>175</sup>

The core content of measures to prevent GBV and DV is included in the VAW Directive. Prevention is covered by the scope of the Directive and Chapter V is dedicated to 'Prevention and early intervention', which follows the chapter on protection instead of preceding it.

Table 2: VAW Directive and IC corresponding provision

VAW Directive	IC corresponding provision and comment
Article 34: prevention measures according to 'a comprehensive multi-layered approach', (para. 1) with the aim 'to challenge harmful gender stereotypes, to promote gender equality, mutual respect and the right to personal integrity, and to encourage all persons, especially men and boys, to act as positive role models to support corresponding behaviour changes across society' (para. 5). Multiagency cooperation is mentioned more than once in the Directive including in Article 34(2).	Article 12 IC. The 'holistic' approach is not mentioned in the Directive, however there is constant reference to a comprehensive approach and to multiagency cooperation.  With regard to digital literacy, the corresponding article is Article 17 IC. Despite digital violence being explicitly absent from the text of the Convention, several GREVIO baseline evaluation reports emphasise the need to 'encourage media, including social media, to develop and monitor the use of self-

<sup>173</sup> Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast), COM/2024/60 final.

<sup>174</sup> Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, *OJ L 338*, 21.12.2011, pp. 2–18, Preamble, para. 31.

<sup>175</sup> See below on EU policies, section 4.2.3.

<p>Specific consideration is dedicated to prevention of sexual exploitation (to target and reduce the demand), female genital mutilation, forced marriage and cybercrimes. Important reference is made to the development of digital literacy skills and to the cooperation with intermediary service providers; to sexual harassment at work, where it constitutes a criminal offence under national law. Article 34(6-9)</p>	<p>regulatory standards and ethical codes in the area of violence against women and gender equality, and in relation to the non-stereotypical and non-sexist portrayal of women'.<sup>176</sup></p>
<p>Article 34(2): targeted awareness-raising campaigns or programmes aimed at persons from an early age (may include research and education programmes to increase awareness and understanding among the general public of the different manifestations and root causes of all forms of violence against women and domestic violence, the need for prevention and, where appropriate, the consequences of such violence, in particular on children). Development of the programme in cooperation, where relevant, with civil society organisations.</p> <p>Information shall be made available taking into account the most widely spoken languages on the territory.</p>	<p>Article 13 IC – With regard to this provision, GREVIO has highlighted several points of weakness in the implementation by parties, including the insufficient involvement of civil society organisations, the insufficient funding, the short-term approach and the lack of funding.</p> <p>In the VAW Directive, there is no reference to funding and to the need to have awareness-raising campaigns as a structural component of all actions to prevent VAW and DV. There is no general provision on education on gender equality, which can be explained by the lack of EU competence; however, it is important to acknowledge that education is clearly mentioned in Article 34(2) VAW Directive on preventive measures and in the specific measures to prevent rape.</p> <p>The provision on information corresponds to Article 13(2) IC.</p>
<p>Article 36: training of actors dealing with VAW and DV. The obligations related to training are 'nuanced' in the VAW Directive according to the category of actors involved.</p> <p>They are 'strong' with regard to police officers, prosecutors and judges, persons with supervisory functions at the workplace, but EU MS only have the obligation to promote or offer this training to</p>	<p>Article 15 IC – Training has been very detailed in Article 36 VAW Directive, covering all the actors also mentioned in the GREVIO baseline evaluation reports, with the exception of immigration and asylum officials (Article 78(2) TFEU being a legal basis for the accession, but not of the Directive).</p> <p>However, legal obligations for MS in the VAW Directive are so nuanced that with regard to training for</p>

<sup>176</sup> GREVIO Mid-term Horizontal Review, para. 214.

<p>healthcare professionals, social services and educational staff and only need to recommend that those responsible for the training of lawyers make available 'both general and specialist training to increase the awareness of lawyers of the needs of victims and to treat victims in a trauma-, gender- and child-sensitive manner.'</p> <p>It is important the reference to media training activities by organisations of media professionals, media self-regulatory bodies and industry representatives.</p> <p>Characteristics of the training: general and specific, attentive to intersectionality, with appropriate follow up, respecting judicial independence and self-regulatory systems in place.</p>	<p>lawyers the requirement for MS is to be 'recommended' that those responsible for the training make them available to lawyers. However, the training for lawyers is as fundamental as all the other training in the judicial system to avoid secondary victimisation: it is not enough to train judges, but also to train lawyers to file gender-sensitive complaints and, when defending the alleged perpetrator, endorsing a gender-sensitive approach. However, as this is a regulated profession, and trainings are only provided by the profession's organisations (and not by the State), the obligation on MS is limited to recommending those organisations to make trainings available to lawyers (similarly to Article 25(3) VRD). This has influenced the elaboration of the provision in this limited (and partly satisfactory) way.</p> <p>GREVIO has stressed the need for initial and in-service training 'for all relevant professions to be systematic and compulsory', and that training should be based on protocols and guidelines.<sup>177</sup> Guidelines at European level could be an example of implementation of the relevant provisions of the IC.</p>
<p>Article 35: specific measures to prevent rape and to promote the central role of consent in sexual relationships. It is stressed 'the central role of consent in sexual relationships, which must be given voluntarily as a result of the person's free will'; measures include distribution of consent education material and provision of information.</p>	<p>Article 14 IC. Absent a provision harmonising the elements of the crime of rape, the VAW Directive contains nonetheless a provision on consent and education on consent.</p> <p>GREVIO has addressed 'the important role of sexuality in the context of the prevention of violence against women,' in particular stressing that education on sexuality should include the right to personal integrity and the notion that sexual violence is based on the absence of freely given consent.<sup>178</sup> With regard to education and information, the provision of the VAW is in line with the IC.</p>
<p>Article 37: intervention programmes. This article of the VAW Directive requires MS to 'ensure that</p>	<p>Article 16 IC – in the VAW Directive Article 16(3) is missing: the fact that in intervention programmes the</p>

<sup>177</sup> GREVIO Mid-term Horizontal Review, para.1 79.

<sup>178</sup> GREVIO Mid-term Horizontal Review, para. 164.

<p>targeted intervention programmes are established to prevent and minimise the risk of committing violence against women or domestic violence or of reoffending.’ These programmes shall be made available to those that committed the offence and <i>may</i> be made available for other persons assessed at risk of committing such offences. A softer language is also used in paragraph 3. ‘Member States shall ensure that a rape offender is <i>encouraged</i> to participate in an intervention programme as referred to in paragraph 1.’</p> <p>In the preamble, there is an important addition: ‘Tertiary prevention should be focused on preventing reoffending and revictimisation and on properly managing the consequences of the violence and could include the promotion of bystander intervention, early intervention centres and intervention programmes.’<sup>179</sup></p>	<p>safety, human rights of and support for the victims must be of primary concern, and that, where appropriate, these programmes are set up and implemented in close co-ordination with specialist support services for victims.</p> <p>The lack of reference to the safety of victims is a major shortcoming identified by GREVIO as well, in its baseline evaluation reports with regard to domestic implementation.<sup>180</sup></p>
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#### 4.2.3 EU practice

EU practice in respect of Chapter III IC is linked to practice related to data collection discussed in chapter 3 above. The recently established EU network on preventing GBV and DV has been working on prevention to map effective measures and approaches for violence prevention; share knowledge and tools for effective risk assessment and detection of vulnerabilities; and exchange existing good practices and lessons learned. The network is a valuable step towards the implementation of the IC.

In the field of education, the European Commission emphasised the centrality of education in the Gender Equality Strategy 2020-2025,<sup>181</sup> and in the Communication on achieving the European Education Area by 2025.<sup>182</sup> In particular, the latter stressed the need to develop ‘better gender sensitivity in education processes and institutions’, and ‘to equip all boys and girls with equal respect and proper conditions to become fulfilling adults in schools and universities’. The document also acknowledges that ‘sexist behaviours and sexual

<sup>179</sup> VAW Directive, recital No. 74.

<sup>180</sup> GREVIO Mid-term Horizontal Review, para. 201.

<sup>181</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Union of Equality: Gender Equality Strategy 2020-2025*, COM/2020/152 final.

<sup>182</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on achieving the European Education Area by 2025, COM/2020/625 final.



harassment affect primarily girls and young women and hamper their educational experience'.<sup>183</sup> With the purpose of creating a European Education Area, the European Commission and the EU Member States are working 'to achieve their collective vision for a European Education Area by focusing their efforts' on, among other things, improving quality and equity in education and training. In that vein, in 2023, the Working Group of the European Commission on Equality and Values in Education and Training published an issue paper on gender equality in and through education, focusing in part on how to address gender-based violence in education.<sup>184</sup>

As mentioned in chapter 3 above, CERV-Daphne programmes are central in the promotion of preventive measures, including through the financing of programmes that target actions with perpetrators.<sup>185</sup>

In the digital dimension, two codes of conduct should be mentioned: the Code of conduct on countering illegal hate speech online of 2016,<sup>186</sup> which defines a benchmark for the participating companies to process valid notifications for removal of illegal hate speech, and the Code of practice on disinformation, which has no reference to the power dynamics that cause violence against women also through disinformation.<sup>187</sup> The seventh evaluation of the Code of conduct on countering illegal hate speech online noted that, among the reported grounds of hate speech, gender-based hate speech accounts for 4.1 % of the reported cases and sexual orientation accounts for 15.5 %.<sup>188</sup> The problem is that these two grounds overlap and so the evaluation is unable to express the disproportionate impact of hate speech on women and girls. The code of conduct needs to be updated to meet the requirements of the IC but also the DSA. It should also be noted that, as announced in the Gender Equality Strategy 2020-2025, the Commission will facilitate a framework for cooperation between internet platforms to tackle online violence against women, in the form of another code of conduct.

#### 4.2.4 Staff regulations and policies

There is no specific provision relevant for the prevention chapter of the IC in the Staff Regulations. However, the decisions and action plans of the EU institutions contain relevant measures.

The Commission Decision of 12 December 2023 provides a comprehensive approach to anti-harassment where early prevention together with wide-ranging support measures, and redress mechanisms for victims of harassment are central elements. The Directorate-General for Human Resources bears the responsibility for the establishment of a set of comprehensive measures for the prevention of harassment 'as part of the general psychosocial risk prevention measures' (Article 17). Measures include information and awareness-raising campaigns, training and learning activities, advice and support where needed, and measures reflecting a systematic monitoring and assessment aimed at identifying and remedying what the principles of work

<sup>183</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on achieving the European Education Area by 2025, COM/2020/625 final, para. 2.2.

<sup>184</sup> Working group on equality and values in education and training (2023) *Issue paper on gender equality in and through education*, <https://op.europa.eu/en/publication-detail/-/publication/d36b1bdf-adae-11ed-8912-01aa75ed71a1/language-en>.

<sup>185</sup> It is one of the priorities of the [Call for proposals to prevent and combat gender-based violence and violence against children \(CERV-2024-DAPHNE\)](#): prevent gender-based violence, in the domestic sphere, in intimate relationships, and online, including through targeted actions with perpetrators.

<sup>186</sup> Commissioner for Justice (2022) '[Countering illegal hate speech online code of conduct, seventh evaluation: Factsheet](#)', November 2022.

<sup>187</sup> See: <https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>.

<sup>188</sup> Commissioner for Justice (2022) '[Countering illegal hate speech online code of conduct, seventh evaluation: Factsheet](#)', November 2022.



organisation and relation between staff members is likely to favour or allow the appearance of harassment. These measures are coordinated by the Chief Confidential Counsellor.<sup>189</sup> Alongside the Commission Decision of 12 December 2023, the Action plan for the prevention of psychological and sexual harassment in the workplace was adopted, which sets out the details of the various actions to be implemented within two years after the Chief Confidential Counsellor has taken up her function. Prevention measures include: the design of communication tools and campaigns on the anti-harassment policy, the sharing of best practices on harassment prevention supported by senior management, the organisation of leadership talks to promote respectful and inclusive management practices, the organisation of facilitated conversations on harassment prevention, the inclusion of harassment prevention at middle management network meetings, new training packages and training initiatives, mandatory training for managers, team coaching, identification and mitigation of psychosocial risks and promotion of training for managers. The detailed description of preventive measures is an effective tool that can be used to implement the IC and to support work on the eradication of stereotypes.

In the European Parliament, a guide on harassment contains prevention measures, which are addressed in particular to members in charge of a team and divided into two phases: recruitment and management.<sup>190</sup> Even though there is a reference to the prohibition of 'rude, vulgar and sexist language' towards the staff, a more gender-sensitive guide in line with the IC would reinforce the action against harassment.

The Council's 2023 'Short guide to preventing harassment in the workplace' mentions the organisation of training courses open to all staff (navigating social interaction) and to managers (preventing harassment).<sup>191</sup> In its Decision of 2021,<sup>192</sup> preventive measures are set out in Article 4: actions to raise awareness amongst staff members and external persons, and to train staff and inform them about the relevant training sessions; specific actions to raise awareness amongst staff members with people-management responsibility and provide them with mandatory training; strengthening of the group of confidential counsellors; and effective conciliation and mediation procedures. Article 17 provides for specific training 'on harassment, non-directive counselling, and the relevant structures and procedures in force at the GSC' (the general secretariat of the Council).

The ECA's policy explicitly refers to preventive measures, including detailed awareness actions (a webpage dedicated to the policy, campaigns on respect, dignity and trust, an event with the different actors), training on a respectful workplace and combating harassment, mandatory training concerning a respectful workplace and combating harassment for newly appointed managers; regular career-long training in topics such as harassment prevention, conflict resolution, non-violent communication, constructive feedback, combating sexist behaviour, ethics, etc. for all staff, to whom it is strongly recommended that they attend at least one such training course every three years; regular, interactive (workshop format) exchange opportunities for line, middle and senior managers on the topics cited; mandatory and specific inception training for newly appointed

<sup>189</sup> Commission Decision of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3, C(2023) 8630 Final, Article 11: 'The chief confidential counsellor shall be responsible for the development and coordination of the implementation of the policy on the prevention of and fight against harassment'.

<sup>190</sup> European Parliament, *Harassment: Zero Tolerance in the EP*, guide, p. 3 ff.

<sup>191</sup> Council of the EU, 'Short guide to preventing harassment in the workplace', p. 10.

<sup>192</sup> Decision No. 23/2021 of the Secretary-General of the Council of the European Union concerning psychological and sexual harassment at work within the General Secretariat of the Council.

confidential counsellors and mediators; and yearly refresher training for confidential counsellors and mediators.<sup>193</sup> The level of detail in the training activities is ground-breaking. Role models are also used as prevention measures.

In the most recent decision of the administrative committee of the CJEU, containing the code of conduct of the staff, there is no reference to prevention, with only one provision on the prohibition of harassment and the obligation to inform the competent authority in the event of knowledge of a situation that can amount to harassment.<sup>194</sup>

In 2018, the European Investment Bank and nine other financial institutions worldwide signed a joint statement on the continuous advancement of standards to prevent sexual harassment, abuse and exploitation.<sup>195</sup>

### 4.3 Summary – Chapter III IC

Prevention is a cornerstone of the IC and a core element of a coordinated and strategic response to end violence against women.

- The primary measure to prevent GBV and DV is found in the VAW Directive. Prevention is covered by the scope of the Directive and its Chapter V is dedicated to 'Prevention and early intervention'. Chapter V of the Directive is compliant with Chapter III IC, with a few loopholes.
- The reference in the VAW Directive to media training activities by organisations of media professionals, media self-regulatory bodies and industry representatives, and to digital literacy is noteworthy: this is an aspect of education that is also emphasised in GREVIO reports.
- Although it lacks a provision harmonising the elements of the crime of rape, the VAW Directive contains nonetheless a provision on consent and education on consent. GREVIO has addressed 'the important role of sexuality in the context of the prevention of violence against women', in particular stressing that education on sexuality should include the right to personal integrity and the notion that sexual violence is based on the absence of freely given consent.
- Given the lack of a gender dimension in the codes of conduct in force, as announced in the Gender Equality Strategy 2020-2025, the Commission will facilitate a framework for cooperation between internet platforms to tackle online violence against women, in the form of a code of conduct. This code of conduct should be formulated in a way that properly endorses a gender perspective.
- With regard to staff regulations and policies, the European Commission has recently adopted an action plan that devotes an entire part to prevention, containing very detailed measures. Other institutions, such as the European Parliament and the Council, adopted specific guides on preventing harassment,

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<sup>193</sup> European Court of Auditors, Decision No. 50-2022 on the European Court of Auditors' policy for ensuring a respectful and harassment-free workplace, 16 December 2022, pp. 9-10.

<sup>194</sup> Article 15(3), *Décision du comité administrative de la Cour de Justice de l'Union européenne du 5 février 2024 relative à l'adoption du code de conduite du personnel de la Cour de justice de l'Union européenne*.

<sup>195</sup> World Bank Group (2018), 'Joint statement', 24 April 2018, <https://www.worldbank.org/en/news/statement/2018/04/24/joint-statement-of-ifis-on-continuous-advancement-of-standards-to-prevent-sexual-harassment-abuse-exploitation>.

while others, like ECA, have incorporated detailed preventive measures in a specific policy for ensuring a respectful and harassment-free workplace.

#### 4.4 Loopholes – Chapter III IC

- Education is clearly mentioned in Article 34(2) of the VAW Directive on preventive measures and in the specific measures to prevent rape, which are also required to be based on the principles of gender equality and non-discrimination. However, there is no general provision on education on gender equality in the VAW Directive, which can be explained by the lack of EU competence that would have allowed the Directive to go beyond the current provisions.
- In the VAW Directive, training on issues of violence against women and domestic violence is only to be recommended to those responsible for the training of lawyers and therefore it is not compulsory. This is understandable in the light of the legal basis of Article 82(1)(c) TFEU – to support the training of the judiciary and judicial staff – but not sufficient to thoroughly implement the relevant part of the IC.
- Article 16(3) IC on the importance of ensuring safety of victims in preventive intervention and treatment programmes is not covered in the VAW Directive.
- For staff regulations and policies to better comply with the IC, a more direct reference to the gender-sensitiveness of preventive measures, including training, and attention to intersectional grounds of discrimination are needed.
- In terms of prevention, measures that could be included in specific institutional policies, action plans, guides, or any other instrument relevant to the institution, are: the design of communication tools and campaigns on the anti-harassment policy; the organisation of leadership talks to promote respectful and inclusive management practices; facilitated conversations on harassment prevention; the inclusion of harassment prevention at middle management network meetings; new training packages and training initiatives; team coaching; identification and mitigation of psychosocial risks; and promotion of training for managers. The detail in the description of the prevention measures can be used as an effective tool to implement the IC and to support work on the eradication of stereotypes.
- With regard to staff regulations and policies, the sharing of practice (training programmes, joint training programmes, surveys, meetings with experts on the IC) among institutions could represent added value.

## 5. Chapter IV IC – Protection and support (Articles 18–28)

### 5.1 Introduction

Chapter IV IC mirrors the structure of Chapter III IC by containing an article on general obligations in matters of protection and support and more specific provisions on support services. Parties have a positive obligation of result to build the legal (and policy) framework to protect all victims from ‘any further act of violence’. In that respect, following the holistic approach encouraged in Article 7 IC, cooperation between the judiciary, prosecutors, law enforcement agencies, local and regional authorities and NGOs, must be ensured by parties,<sup>196</sup> including ‘by referring to general and specialist support services as defined in Articles 20 and 22 IC’. The criteria on which the services should be based are listed in Article 18(3). They must: be based on a gendered understanding of violence against women and domestic violence and an integrated approach (prevention, protection and prosecution);<sup>197</sup> aim to avoid secondary victimisation and instead aim to empower and promote the economic independence of women victims of violence; allow for a range of protection and support services; and address the specific needs of vulnerable persons. Article 18(4) states, in line with a human rights-based approach, that the provision of services must not depend on the willingness of the victim to press charges or testify against the perpetrator.

Article 18(5) refers to the international dimension of GBV and DV and requires parties to take appropriate measures to provide the necessary consular assistance and if appropriate other forms of assistance and protection, including ‘assistance to victims of violent crime, assistance in the event of arrest or detention, relief and repatriation of distressed nationals, issuance of a new identity documentation and other consular support.’<sup>198</sup> With regard to the provision of services, GREVIO stressed the pivotal role played by women’s NGOs in the provision of services to victims of violence and their involvement in formal coordination structures, ‘even where no specific shortcomings had been identified in that respect in the relevant party.’<sup>199</sup>

GREVIO also expressed concern with regard to a gender-neutral approach that is often reflected in the name of such policies, such as ‘persons directly involved’ meaning both the victim and the perpetrator: ‘as a result, many of the programmes and measures implemented to combat domestic violence, including service provision, are gender-neutral and fail to recognise or address the persisting challenges to the safety of women and children who predominantly suffer domestic violence at the hands of male perpetrators’.<sup>200</sup> Women-specific services are required to fulfil the obligation stemming from Article 18. One way to reduce secondary victimisation is by setting up ‘one-stop-shop services’, where victims can access multiple services, including branches of law enforcement, in the same building.<sup>201</sup> However, in countries where this system is in place, GREVIO expressed concern about the lack of recognition of the gendered nature of violence against women and the potential for tending towards alternative dispute resolution, which is counter-productive and goes in the opposite direction.<sup>202</sup>

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<sup>196</sup> [Explanatory Report](#), para 113.

<sup>197</sup> [Explanatory Report](#), para. 116. See also Riccardi, A. (2023) ‘General obligations’, *Commentary on the Istanbul Convention*, p. 285 ff.

<sup>198</sup> [Explanatory Report](#), para. 122.

<sup>199</sup> GREVIO Mid-term Horizontal Review, para. 229.

<sup>200</sup> GREVIO Mid-term Horizontal Review, para. 230.

<sup>201</sup> [Explanatory Report](#), para. 119.

<sup>202</sup> GREVIO Mid-term Horizontal Review, para. 232.

With regard of the obligation to report, more recent reports by GREVIO have endorsed a stricter approach according to which

‘the authorities should review the obligation for professionals to report cases of violence against women and their children, other than in situations in which there are reasonable grounds to believe that a serious act of violence covered by the scope of the convention has been committed and further serious acts are to be expected; and that this may well require making the obligation to report contingent upon the prior consent of the victim, unless the victim is a child or is unable to protect her/himself due to disabilities’.<sup>203</sup>

Protection for victims includes: information on all forms of violence<sup>204</sup> (Article 19), general support services (Article 20), assistance in individual/collective complaints (Article 21), specialist support services (Article 22), shelters (Article 23), telephone helplines (Article 24), support for victims of sexual violence (Article 25), protection and support for child witnesses (Article 26), reporting (Article 27), and reporting by professionals (Article 28). When it comes to providing information to victims of violence (e.g. on the right to a protection order against the abuser, or the progress of a criminal proceeding against an alleged perpetrator) this must be timely, adequate and accessible.

As is clear from a literal interpretation of the text, the Istanbul Convention distinguishes between general support services (Article 20), ‘which are not exclusively designed for victims but serve the public at large’, and specialist support services (Article 21), underlining that they are complementary. General support services refer to public social welfare services such as social services, housing services, (un)employment services, public education and training services, public psychological and legal counselling services, and financial support services, as well as health care services. Such services must address the specific needs of women victims of gender-based violence and ensure that they are treated in a supportive manner.<sup>205</sup> As GREVIO noted,<sup>206</sup> a comparative assessment of compliance with the specific provision of the Convention is ‘challenging’. Some critical aspects emerged: insufficient training of professionals in relation to the gendered dynamics of violence, insufficient funding, lack of tailored support services capable of responding to individual specificities with women in situations of vulnerability.<sup>207</sup>

Specialist support services must be victim centred and based on a gendered understanding of VAW, and they are ‘best ensured by women’s organisations and by support services provided, for example, by local authorities with specialist and experienced staff and with in-depth knowledge of gender-based violence against women’.<sup>208</sup> The ideal number shelters identified by the Explanatory Report is one family place per 10 000 head of population, but very few countries are capable of meeting this threshold. In addition, helplines must be specifically aimed at women victims of VAW and DV and the staff providing information need to be specifically trained.<sup>209</sup> Article 25 requires parties to provide for holistic services to victims of sexual violence. Few countries

<sup>203</sup> GREVIO Mid-term Horizontal Review, para. 234.

<sup>204</sup> GREVIO noted that most parties fail to provide information on support in relation to all forms of violence against women (GREVIO Mid-term Horizontal Review, para. 239).

<sup>205</sup> GREVIO Mid-term Horizontal Review, para. 243.

<sup>206</sup> GREVIO Mid-term Horizontal Review, para. 249.

<sup>207</sup> GREVIO Mid-term Horizontal Review, para. 250-251.

<sup>208</sup> GREVIO Mid-term Horizontal Review, para. 256.

<sup>209</sup> GREVIO Mid-term Horizontal Review, para. 273.

have a sufficient number (one per 200 000 inhabitants) of rape crisis centres or sexual violence referral centres, but ‘in most countries, nevertheless, medical care and forensic examinations are conducted in all parties that have been evaluated, albeit with several limitations.’<sup>210</sup> Access to specialist support services for victims of sexual violence is also jeopardised by limitations to women’s self-determination in the field of sexual and reproductive health.<sup>211</sup>

The IC contains the first recognition in binding provisions of the impact of witnessing violence (Article 26). Specialist support services must be tailored to the specific needs of children who witness violence and the primary measure of safety is to secure protection for the abused parent before exploring other avenues of protection for the child.<sup>212</sup> This is to avoid situations in which, in the name of the best interest of the child, the protection of the abused mother comes second, with the risk of putting the victim in danger.<sup>213</sup> The two final provisions of the chapter, reporting and reporting by professionals (Articles 27 and 28) are aimed at ‘breaking the silence’ around violence. Friends, neighbours, colleagues, teachers or other members of the community play an important role in ‘seeing’ violence and reporting it in good faith. As for professionals, bound by the rules of professional secrecy, there must be rules to ensure that they have the ability to report to the authorities if they have reasonable grounds to believe that a serious act of violence has been committed or that further acts of violence are expected to be committed.

## 5.2 EU law

### 5.2.1 Treaties

The protection of victims falls under Article 82(2) TFEU, which is also the legal basis of one of the decisions for the EU accession to the IC. Article 82(2) states that, with regard to judicial cooperation in criminal matters, and to facilitate the mutual recognition of judgments and judicial decisions, and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council will establish minimum rules which concern (a) mutual admissibility of evidence between Member States; (b) the rights of individuals in criminal procedure; (c) the rights of victims of crime; (d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision. In respect of the due diligence obligations of the EU, the treaty is clear in setting out an obligation to adopt minimum rules, which ‘shall not prevent Member States from maintaining or introducing a higher level of protection for individuals’.

### 5.2.2 Secondary legislation

The legal instrument that is relevant in the analysis of this chapter of the IC is the Victims’ Rights’ Directive (Directive 2012/29/EU), which is based on Article 82(2) TFEU. The Directive establishes minimum standards on the rights, support and protection of victims of crime. Its purpose is to ensure that victims of crime receive appropriate information, support and protection, are able to participate in criminal proceedings, and that they are treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings (Article 1 of the Victims’ Rights Directive). The protection refers to all victims of all crimes, while

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<sup>210</sup> GREVIO Mid-term Horizontal Review, paras. 281-282.

<sup>211</sup> GREVIO Mid-term Horizontal Review, para. 286.

<sup>212</sup> GREVIO Mid-term Horizontal Review, para. 297.

<sup>213</sup> See, for example, the argument of the ECHR in *I.M. v. Italy*, No. 25426/20, judgment of 10 November 2022.

‘the IC provides for protection for all victims of VAW and DV, even when penalties other than criminal ones are applied.’<sup>214</sup> As previously discussed, being a horizontal instrument, the Victims’ Rights Directive contains definitions of GBV and ‘violence committed in a close relationship’ that are gender neutral, and in only one recital of the preamble does the Directive acknowledge that women are disproportionately affected by this type of violence. The VRD must be read in conjunction with the VAW Directive, as the latter builds on several provisions of the former.

The Victims’ Rights Directive is partly in line with the IC in respect of services. On information, Article 3 of the Victims’ Rights Directive requires Member States to take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings. Victims must be offered information without delay, from their first contact with a competent authority, about several aspects, including the type of support they can obtain, protection measures, legal advice and compensation (Article 4). They also have rights when making a complaint, including linguistic assistance (Article 5) and the right to receive information about their case (Article 6). With regard to victims of VAW and DV, one important aspect of this provision is that the victim must receive information related to the complaint the person filed, including any decision not to proceed with or to end an investigation or not to prosecute the offender. Interpretation and translation must be ensured by Member States as a guarantee of the respect of the principle of non-discrimination. On the provision of services, Article 8 provides that victims must be ensured access to confidential victim support services, free of charge, and that family members (including children) have access to victim support services, which must guarantee, as a minimum, information about or direct referral to specialist support services, emotional and psychological support. Specialist support services must, as a minimum, develop and provide:

- (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
- (b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling. (Article 9)

As noted in a previous assessment for the European network of legal experts in gender equality and non-discrimination, the Victims’ Rights Directive contains provisions on the minimum services to victims of sexual and gender-based violence and victims in close relationships:

‘the personal scope of the Directive in this respect coincides largely with the scope of the Convention. However, the Victims’ Directive does not contain standards for these services’.<sup>215</sup>

Article 22 of the Victims’ Rights Directive contains minimum rules on an individual assessment of victims to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, due to their particular vulnerability to secondary and repeat

<sup>214</sup> Nousiainen, K., Chinkin, C. (2015), *Legal implications of EU accession to the Istanbul Convention*, European Commission, p. 63.

<sup>215</sup> Nousiainen, K., Chinkin, C. (2015), *Legal implications of EU accession to the Istanbul Convention*, European Commission, p. 65.

victimisation, intimidation and retaliation. Article 26 of the Victims' Rights Directive contains an obligation for states to take appropriate action to reduce the risks of secondary and repeat victimisation, in line with the relevant provision of the IC. These provisions should be read together with provisions of other chapters of the IC (e.g. Article 56 IC). As a horizontal instrument, the Directive deals with all victims of crime. An assessment of the Directive shows that, despite the important protection granted to victims of crimes, a more targeted approach to the specific needs of women victims of GBV and DV is needed.<sup>216</sup>

The Victims' Rights Directive has received considerable attention in recent years. In 2020, the Commission published the first ever Strategy on Victims' Rights to guide actions in the field in the five years from 2020 to 2025.<sup>217</sup> On 28 June 2022, the European Commission adopted the evaluation of the Victims' Rights Directive, arguing that

'harmonisation could not have been achieved by Member States alone. Instead, it was necessary for the EU to set such rules on the legal basis of Article 82(2) TFEU. It is unlikely that such harmonisation would have happened in the absence of the Directive; criminal law takes shape incrementally and often reflects national circumstances. Without EU intervention, it is highly unlikely that Member States would have taken a harmonised approach to developing their criminal law frameworks'.<sup>218</sup>

These considerations by the Commission are particularly relevant also for the VAW Directive, which is intended to prompt harmonisation and state action. On 12 July 2023, the Commission proposed amendments to the Victims' Rights Directive, aimed at reinforcing its system of protection.<sup>219</sup> In the report on the proposed amendments by the Civil Liberties, Justice and Home Affairs (LIBE) and Women's Rights and Gender Equality (FEMM) committees of the European Parliament, a clear gender, child, trauma and disability approach is endorsed. The VAW Directive should be considered as part of the sectorial legislation that supplements the Victims' Rights Directive by providing additional rights to victims of VAW and DV.

Other sectorial legislation on victims' rights includes the Counter-terrorism Directive, the Anti-Trafficking Directive, the Child Sexual Abuse Directive and the Combating Fraud Directive. In the Anti-Trafficking Directive, for example, Article 11 requires states to provide for assistance and support for victims of trafficking in human beings and to ensure that such support is not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution and trial.<sup>220</sup> Article 11 has been amended by Directive (EU) 2024/1712, so as to include the obligation for MS to take the necessary measures to ensure that 'specialised assistance and support are provided to victims in a victim-centred, gender-, disability- and child-sensitive approach before, during, and for an appropriate period of time after the conclusion of, criminal proceedings'.<sup>221</sup> Even though a

<sup>216</sup> See also EIGE (2016), *An analysis of the Victims' Rights Directive from a gender perspective*, p. 33.

<sup>217</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Strategy on victims' rights (2020-2025), COM/2020/258 final.

<sup>218</sup> Commission staff working document evaluation 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, SWD(2022) 180 final, p. 30.

<sup>219</sup> Proposal for a Directive of the European Parliament and the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM/2023/424 final.

<sup>220</sup> 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, (Anti-Trafficking Directive), OJ L 101, 15.4.2011, pp. 1–11, Article 11 (3).

<sup>221</sup> Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, OJ L 2024/1712, 24.6.2024.



specific risk assessment for the individual is not envisaged,<sup>222</sup> the Anti-Trafficking Directive obliges Member States to attend to victims with special needs.<sup>223</sup> In the Directive on combating sexual abuse and sexual exploitation of children and child pornography (Child Sexual Abuse Directive), the provision on reporting suspicion of sexual abuse or sexual exploitation (Article 16) provides that Member States must take measures to ensure that confidentiality imposed by law on certain professionals does not constitute an obstacle to the possibility of reporting any situation for which they have reasonable grounds for believing that a child is a victim of one of the offences covered in Articles 3 to 7.<sup>224</sup>

In the VAW Directive, several provisions address the protection of victims of GBV and DV in the chapters on 'protection of victims and access to justice' and 'victim support'. It should be stressed that, owing to the legal basis of the Directive, protection is granted to victims of VAW and DV only when these behaviours are criminalised under the VAW Directive, other Union legal acts or under national law (Article 1(2) VAW Directive). In contrast, the IC grants protection for all victims of VAW and DV, even when penalties other than criminal ones are applied. Table 3 below notes the corresponding provision of the IC, and offers a comparison of the two instruments. The analysis of Chapters 3 and 4 of the Directive will continue below in chapter 7 of this report.

Table 3: VAW Directive and IC corresponding provision

VAW Directive	IC corresponding provision and comments
<p>Article 14: Reporting of violence against women or domestic violence</p> <p>In the first paragraph, the Directive openly acknowledges its complementarity with the Victims' Rights Directive and adds that women must be offered the possibility to report acts of violence (not necessarily crimes) to the competent authorities in an accessible way, and to report online at least for the behaviours that have been criminalised from Article 5 to Article 8 of the Directive.</p> <p>The second paragraph allows MS, if domestic law provides so, to extend legal aid to victims reporting</p>	<p>Articles 27, 28, Article 56 and 57 IC</p> <p>Article 14(1) of the VAW Directive is broader than the IC, because it specifically requires MS to adopt accessible measures and to ensure online reporting and submission of evidence for cyber violence.</p> <p>The second paragraph is in line with the application of Article 57 by GREVIO in its baseline evaluation reports. In particular, GREVIO stressed the need to increase access to legal aid at the early stage of proceedings.<sup>225</sup></p> <p>Paragraph 3 corresponds to Article 27 IC.</p>

<sup>222</sup> The risk assessment under the VRD (Article 22) also apply to victims of trafficking.

<sup>223</sup> Anti-Trafficking Directive, para. 7. The Directive will be soon amended. Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing combating trafficking in human beings and protecting its victims - Confirmation of the final compromise text with a view to agreement at first reading, 2022/0426 (COD).

<sup>224</sup> 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, (Child Sexual Abuse Directive) *OJ L 335, 17.12.2011, pp. 1–14*.

<sup>225</sup> GREVIO, Mid-term Horizontal Review, para. 504.

<p>criminal offences, even if they are not party (or at least not yet) to a criminal proceeding.</p> <p>Paragraph 3 obliges MS to take the necessary measures to encourage any person who knows about or suspects that acts of violence against women or domestic violence have occurred, or that acts of violence are to be expected, to report such acts to the competent authorities without fearing negative consequences.</p> <p>A specific provision is devoted to healthcare professionals: they must be able to report, respecting confidentiality obligations, 'where they have reasonable grounds to believe that there is an imminent risk that serious physical harm will be inflicted on a person as a result of violence against women or domestic violence.'</p> <p>Paragraph 5 is devoted to any category of professionals subject to confidentiality obligation and requires MS to ensure they are able to report without being constrained by confidentiality rules where they have reasonable grounds to believe that serious physical harm has been inflicted on children as a result of VAW or domestic violence. Protection should be granted specifically to children reporting violence (paragraph 6): procedures must be safe, confidential, designed and accessible in a child-friendly manner and designed and accessible in child-friendly language, in accordance with the child's age and maturity. The best interests of the child must be protected.</p> <p>Member States shall ensure that, where the holder of parental responsibility is involved in the act of violence, the ability of a child to report the act is not conditional upon the consent of the holder of parental responsibility and that the measures necessary to protect the safety of the child are taken by the competent authorities before that person is informed about the reporting.</p>	<p>Paragraph 4 corresponds to Article 28 IC even though it is limited to healthcare professionals and does not include categories such as teachers or other professionals (they are only covered – in paragraph 5 – where the victim is a child).</p> <p>Paragraph 5 corresponds to Article 28 IC (although only with regard to child-victims) and paragraph 6 corresponds to Article 26 IC.</p>
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<p>Article 18: Referral to support services</p> <p>Article 18(1) requires MS to ensure that support services, ‘such as specialist support services’, when the assessment referred to in the Directive identifies the specific need or where protection is needed or where the victim requests support, contact victims to offer support, with due regard for their safety. Member States <i>may</i> make such contact subject to the consent of the victim.</p> <p>The response to the request must be provided without undue delay and in a coordinated manner.</p> <p>Children can also be referred to support services, where necessary without the prior consent of the holder of parental responsibility.</p> <p>Transmission of relevant personal data must occur in a confidential manner and may be subject to the consent of the victim.</p>	<p>Article 20 and 22 IC</p> <p>Article 65 IC data protection</p> <p>Article 18(1) of the VAW Directive partly implement the relevant provisions of the IC. There is no reference to the need to ensure access to support through the proper geographic distribution (which is only mentioned for specialist support services for victims of sexual violence) or to the consideration of intersectional forms of discrimination.</p> <p>Referrals from competent authorities to support services without the victim’s consent might be counterproductive. GREVIO has noted that mandatory referrals might prevent some women from coming forward to seek help due to a lack of trust in the authorities. GREVIO has accordingly strongly encouraged the authorities to remove mandatory referrals to access domestic violence shelters, including by offering women victims of domestic violence the possibility to self-refer.<sup>226</sup></p>
<p>Several provisions address specialist support services.</p> <p>Article 25: specialist support to victims shall be provided irrespective of whether they have filed a formal complaint. Coordination between general and specialist support services must be granted, when the latter are not integrated in the former.</p> <p>The article lists a series of services, such as the support to victims of cybercrime, information on and where appropriate referral to women’s support services, rape crisis centres, shelters and sexual violence referral centres, and services for</p>	<p>Article 22 IC</p> <p>Articles 25-28 VAW Directive responds to some of the concerns expressed by GREVIO: the need to set up specialist support services for forms of violence other than domestic violence<sup>227</sup> and the availability of specialist support services for women victims of on-line violence for which GREVIO noticed ‘very little dedicated support services that comprehensively address the complex issues involved’.<sup>228</sup></p> <p>The involvement of women’s support services (Article 22(e)), and recital No. 58) is acknowledged,</p>

<sup>226</sup> GREVIO Mid-term Horizontal Review, para. 269.

<sup>227</sup> GREVIO Mid-term Horizontal Review, para. 259.

<sup>228</sup> GREVIO Mid-term Horizontal Review, para. 261.

<p>rehabilitation and socio economic integration after sexual exploitation.</p> <p>Adequate funding must be ensured to NGOs providing specialist support services, taking into account the services provided by State authorities.</p> <p>The protection granted by MS must address the multiple needs of victims by providing the services at the same premises or through one-stop online access.</p> <p>States must also ensure guidelines for health care professionals to provide appropriate support to victims.</p> <p>Specialist support services are then conceived for victims of sexual violence (Article 26), victims of FGM (Article 27), and victims of sexual harassment at work (Article 28). With regard to sexual violence, MS shall grant accessibility, free of charge, geographically distributed and access to healthcare services including sexual and reproductive care in accordance with national law.</p>	<p>but it could have been stronger (see for example in Article 22(3)).</p> <p>However, despite a very detailed recital in the preamble (No.58), the VAW Directive does not provide a clear distinction between general and specialist support services as required by the IC., by saying ‘where specialist support services as referred to in the first subparagraph are not provided as an integrated part of general victim support services, [...]’. This provision reflects Article 8(3) VRD, which states: ‘Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services’. Despite the long list of requirements in Article 25 of what specialist support services must provide and the details offered in Articles 26-28 VAW Directive with regard to services responding to three specific forms of violence, which is positive, the opportunity has been missed to further clarify the distinction between the two types of services by requiring MS to pay attention, in terms of funding, to the specificity of specialist support services and to acknowledge in the operative part that such services are best ensured – to use the language of GREVIO – ‘by women’s organisations and by support services provided, for example, by local authorities with specialist and experienced staff and with in-depth knowledge of gender-based violence against women’.<sup>229</sup></p> <p>The presence of multiple services at the same premise responds to a concern expressed by GREVIO.</p> <p>Article 25 IC</p> <p>Article 25 requires parties to provide ‘a set of holistic services to victims of sexual violence’, including medical care and trauma support combined with</p>
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<sup>229</sup> GREVIO Mid-term Horizontal Review, para. 256.

	forensic examination. <sup>230</sup> The holistic approach is missing in the text of the Directive, even though some of the elements are mentioned in the different paragraphs of Article 26 VAW Directive.
<p><b>Article 33:</b> Targeted support for victims with intersectional needs and groups at risk</p> <p>This article is relevant because it requires States to make support services available for third country nationals who are victims of violence against women, including those in reception centres. Also, under paragraph 4, MS shall ensure that persons can report cases of violence against women or domestic violence in institutions and reception centres to the relevant staff.</p>	<p>GREVIO noticed that intersectional discrimination (women with mental health issues, victims with a history of substance abuse, women with intellectual or physical disabilities, irregular migrant women and women from ethnic minorities, in particular Roma women and Sami women) is not taken into account in most examined countries. The VAW Directive contains provisions on intersectional discrimination, also with regard to the provision of specialist support services.</p> <p>This article also implements Article 60(3) IC, even though Article 78(2) TFEU is not a legal basis of the VAW Directive</p>
<p><b>Article 29:</b> Helplines</p> <p>State-wide telephone helplines must be available, free of charge, 24 hours a day and seven days a week, to provide information and advice to victims. Information shall be provided on a confidential basis or with due regard for the victim's anonymity. Online applications are a possibility, if the State allows so, and helplines must be accessible for end-users with disabilities.</p> <p>In November 2022, the European Commission announced the EU-wide standard helpline number for victims of violence against women. The number is 116 016. MS are encouraged to connect their nation-wide helpline to this number, so that victims of violence against women or domestic violence will</p>	<p><b>Article 24 IC</b></p> <p>The elements present in Article 29 correspond to the requirements under the IC.</p>

<sup>230</sup> GREVIO Mid-term Horizontal Review, para. 277.

<p>be able to call the same number across the EU to access advice and support.</p>	
<p>Article 30: Shelters and other interim accommodation</p> <p>The shelters and other appropriate interim accommodation ‘shall specifically address the needs of victims of domestic violence and sexual violence, including those of victims at an increased risk of violence’.</p> <p>The shelters and other appropriate interim accommodation shall be provided in sufficient numbers and shall be easily accessible and equipped to accommodate the specific needs of women, including by providing women-only shelters with room for children, and ensuring the rights and needs of children, including child victims.</p>	<p>Article 23 IC</p> <p>The provision of the VAW Directive corresponds to Article 23 IC, and to Article 60(3) IC, even though Article 78(2) TFEU is not a legal basis of the VAW Directive.</p> <p>The provision focuses on victims of domestic violence and sexual violence only, however other forms of violence might lead to the request for shelters.<sup>231</sup></p> <p>In the practice of States, according to GREVIO reports, barriers exist in the access to these services by older women or women with disabilities, or women having children with disabilities or male children, hence the reference to these needs and intersectionality in the VAW Directive is an important aspect.</p>
<p>Article 31 – Support for child victims</p> <p>Specific attention is devoted in the VAW Directive to child victims, who shall be provided with age-appropriate medical care and emotional, psychosocial, psychological and educational support. Services must be tailored to the developmental needs and individual situation of the child, and any other appropriate support tailored, in particular, to situations of domestic violence.</p> <p>Priority should be given to children to have a place with other family members, in particular</p>	<p>Article 26 IC</p> <p>The provision in the VAW Directive corresponds to the requirements of the IC.</p> <p>Since in Article 14 (6) VAW Directive, ‘Member States shall ensure that, where the holder of parental responsibility is involved in the act of violence, the ability of a child to report the act is not conditional upon the consent of the holder of parental responsibility and that the measures necessary to protect the safety of the child are taken by the</p>

<sup>231</sup> GREVIO Mid-term Horizontal Review, para. 267.

with a non-violent parent or holder of parental responsibility. The best interests of the child is decisive when it comes to interim accommodation.	competent authorities before that person is informed about the reporting', and considering that GREVIO acknowledged that a good practice is to remove the requirement of both parents' consent for psychological counselling and support for common children, Article 31 VAW Directive could be amended (or interpreted in its application in the light of the IC) in that sense.
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It should also be pointed out that, with regard to Article 18(5) IC, consular assistance and other measures granted to victims of violent crime in the event of arrest or detention, relief or repatriation of distressed nationals is not limited to nationals of a party to the Convention, but extends, in the case of the EU, to nationals of a Member State of the EU that does not itself offer protection through permanent representation.<sup>232</sup>

### 5.2.3 EU practice

In order to reinforce EU policy on the rights of victims of crime, a European Commission Coordinator for victims' rights was set up in 2020 and a Victims' Rights Platform was established to ensure a more horizontal approach to victims' rights. The EU Victims' Rights Platform was inaugurated on 22 September 2020, at a High-level conference on victims' rights co-organised by the European Commission and the German Presidency.

In a recent Recommendation, the European Commission encouraged a culture of zero-tolerance for violence against children, including domestic violence, human trafficking, sexual abuse and gender-based violence, including female genital mutilation and child marriage, as well as all forms of bullying and corporal punishment.<sup>233</sup> The Commission recommended that Member States should raise awareness 'on the importance of protecting all fundamental rights, including privacy and personal data, in the digital sphere, and to disseminate information on the support available to child victims of violence in the digital environment'.<sup>234</sup> Member States should take measures to ensure that 'children are and feel safe in online spaces, including by measures to improve digital literacy and safe use of digital technologies among children using an accessible language tailored to their age, maturity and needs, to ensure that children can thrive in the digital environment'. The disproportionate impact of gender-based violence on girls online could have been included in continuity with the newly approved VAW Directive.

The EU network on preventing GBV and DV is encouraging the sharing of best practices among MS through biannual meetings open to representatives of Member States and NGOs.

<sup>232</sup> This is also mentioned in para. 123 [Explanatory Report](#).

<sup>233</sup> Commission recommendation of 23.4.2024 on developing and strengthening integrated child protection systems in the best interests of the child, SWD(2024) 98 final, recital No. 7.

<sup>234</sup> Commission recommendation of 23.4.2024 on developing and strengthening integrated child protection systems in the best interests of the child, SWD(2024) 98 final, para. 11.

#### 5.2.4 Staff regulations and policies

There is no specific provision relevant for the protection chapter of the IC in the Staff Regulations. It is necessary to turn to the decisions and the action plans of the EU institutions.<sup>235</sup>

Commission Decision of 12 December 2023 endorses a victim-centred approach<sup>236</sup> and sets out specific measures of protection for victims of sexual harassment. Hence, under Articles 19 and 20, the Chief Confidential Counsellor may establish temporary structures to listen to staff, and adopt, on the victim's request interim measures to protect the person (e.g. the transfer of the alleged harasser or the victim to another entity). Accompanying measures are also contemplated when an instance of harassment is established at the end of a formal procedure to mitigate the effects and facilitate reintegration of the victim (Article 21). The Chief Confidential Counsellor may contact the services described in Article 15, to which it may provide relevant information or advice, where necessary for data protection, 'with the explicit consent of the victim'. The explicit consent of the victim is repeatedly mentioned in the provision, and is also needed to allow the Chief Confidential Counsellor to contact the alleged harasser to inform the person of the concerns raised. The reporting by victims and witnesses of situations that might involve harassment is regulated by Article 6 of the Commission Decision: it involves the actors under Article 15, which can provide guidance on the procedure to follow. Of interest is the provision on a duty on the unit in charge of medical absences, if it detects a pattern of long-term sick leave in the same entity and a possible link to harassment, to inform the chief confidential counsellor. This provision should be read in combination with Article 15 and Article 16 on training. In the Commission's action plan for the prevention of psychological and sexual harassment in the workplace, there are important measures that can be considered as specialist support services for victims of sexual harassment: best practices in respect of victims of harassment as part of the existing return-to-work programme, additional rehabilitation measures and the possibility of a structured questionnaire for people returning to work.<sup>237</sup> A gender-sensitive approach should also be mainstreamed in the action plan, for a more effective implementation of the IC.

Provisional protection measures are also set out in the Decision on the Functioning of the Advisory Committee dealing with harassment complaints concerning members of the European Parliament and its procedures for dealing with complaints:<sup>238</sup> under Article 5, measures such as giving permission for the complainant to work at home or under a temporary placement in the European Parliament are suggested. In the guide, 'Harassment: Zero Tolerance in the EP', the recommendation to a member in charge of a team is to 'intervene immediately if you identify any inappropriate behaviour among your staff', and to 'listen to a staff member that lets you know about his/her perception of an inappropriate and offensive behaviour'.<sup>239</sup> Information about available procedures is clear in all the documents issued by the EP.

There is also clear instruction in the Council guide: 'do not be complicit or complacent', which conveys a positive message of a culture of sensitiveness, rather than indifference.<sup>240</sup> A specific form of protection is the duty ('shall') on the group of confidential counsellors to refer staff members who feel that they are the target of

<sup>235</sup> Regulation No. 31 (EEC), 11 (EAEC).

<sup>236</sup> Commission Decision of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3, C(2023) 8630 final, Preamble, No. 17.

<sup>237</sup> Action plan of the European Commission for the prevention of psychological and sexual harassment in the workplace, p. 15.

<sup>238</sup> Decision on the Functioning of the Advisory Committee dealing with harassment complaints concerning members of the European Parliament and its procedures for dealing with complaints (20 November 2023).

<sup>239</sup> European Parliament, *Harassment: Zero Tolerance in the EP*, guide, p. 8.

<sup>240</sup> Council of the EU, 'Short guide to preventing harassment in the workplace', p. 7.



harassment to a GSC doctor or psychologist or advise them to consult a doctor or psychologist of their choice if the situation poses a risk to their health. The group 'shall inform the Director of Human Resources if there is a need to take interim measures' to protect the health and safety of a staff member who feels they are the target of harassment (Article 10(6)).

According to ECA's policy, the counsellors receive, listen to, support, inform and accompany persons seeking their assistance in a situation of perceived and psychological or sexual harassment,<sup>241</sup> and there are accompanying measures for all the parties involved (alleged victim, person accused of harassment, witnesses and bystanders, other people involved such as counsellors, and the legal service), including the immediate separation of the alleged victim and the person accused of harassment and sessions with an occupational psychologist.<sup>242</sup> The policy clearly states that the accompanying measures remain in place and complement the disciplinary and financial measures, if decided under the formal procedure.<sup>243</sup> The EIB has support measures that include, for example, external occupational psychologists, lawyers, and a medical service.

Among the protection measures, a telephone helpline specifically devoted to the EU staff, including persons belonging to EU delegations, is not provided. It is therefore recommended that the EU institutions ensure that their staff are aware of where to find the protection and support mechanisms in the country where they are working.

### 5.3 Summary – Chapter IV IC

Under Chapter IV IC, Parties have a positive obligation to build the legal (and policy) framework to protect all victims from 'any further act of violence'.

- In the EU, there is a horizontal instrument on victims' rights – the Victims' Rights Directive (proposed amendments currently under negotiations), as well as sectorial legislation, such as the Counter-terrorism Directive, the Anti-Trafficking Directive, the Child Sexual Abuse Directive, the Combating Fraud Directive, and the newly adopted VAW Directive.
- A comprehensive assessment shows that the VAW Directive builds upon the Victims' Rights Directive, addressing the specific needs of support and protection to victims of VAW and DV. However, although the VAW Directive is largely compliant with the IC, it is not completely so, and some loopholes have been identified.
- The VAW Directive should be considered as part of the sectorial legislation that supplements the Victims' Rights Directive by providing additional rights to victims of VAW and DV, necessary to protect victims of specific crimes in recognition of their specific needs and the disproportionate impact of these crimes on women and girls. This argument also explains the reasons why both legal instruments are needed – they are complementary and, by building on one another, provide a complete legal framework of protection for victims of VAW and DV.

<sup>241</sup> European Court of Auditors (2022) 'Policy for ensuring a respectful and harassment-free workplace', para. 41.

<sup>242</sup> European Court of Auditors (2022) 'Policy for ensuring a respectful and harassment-free workplace', para. 86.

<sup>243</sup> European Court of Auditors (2022) 'Policy for ensuring a respectful and harassment-free workplace', para. 87.

- In the VAW Directive, reporting of violence against women or domestic violence is very detailed, as are specialist support services for three forms of violence other than domestic violence. The Directive responds to concerns expressed by GREVIO: the need to set up specialist support services for forms of violence other than domestic violence and the availability of specialist support services for women victims of online violence.
- The VAW Directive contains provisions on intersectional discrimination, including with regard to the provision of specialist support services.
- In November 2022, the European Commission announced the EU-wide standard helpline number for victims of violence against women. The number is 116 016. MS are encouraged to connect their nation-wide helpline to this number, so that victims of violence against women or domestic violence will be able to call the same number across the EU to access advice and support.
- With regard to staff regulations and policies, the European Commission has endorsed a victim-centred approach and has set out specific measures of protection for victims of sexual harassment. Of interest is the provision that provides a duty on the unit in charge of medical absences, where it detects a pattern of long-term sick leave in the same entity and a possible link to harassment, to inform the chief confidential counsellor. In the Commission's action plan for the prevention of psychological and sexual harassment in the workplace, there are important measures of support for victims of sexual harassment: best practices for victims of harassment in the existing return-to-work programme, additional rehabilitation measures, and the possibility of a structured questionnaire for people returning to work. Measures such as working from home or on a temporary placement are also proposed in the European Parliament. A specific form of protection in the Council consists in the duty ("shall") on the group of confidential counsellors to refer staff members who feel that they are the target of harassment to a GSC doctor or psychologist or to advise them to consult a doctor or psychologist of their choice if the situation poses a risk to their health.

#### 5.4 Loopholes – Chapter IV IC

- In the VAW Directive, protection is granted to victims of VAW and DV, only when these behaviours are criminalised under the VAW Directive, other Union legal acts or under national law (Article 1(2) VAW Directive). This is an inevitable consequence of the legal basis used. In contrast, the IC grants protection for all victims of VAW and DV, even when penalties other than criminal ones are applied.
- The involvement of women's support services is acknowledged but could have been stronger in the VAW Directive (for example in Article 25, para. 3).
- Despite a very detailed recital in the preamble (No. 58), the VAW Directive does not provide a clear distinction between general and specialist support services as required by the IC. In line with the VRD which requires Member States to establish specialist support services 'in addition to or as an integral part of, general support services,' the VAW Directive leaves the same discretion to Member States by saying 'where specialist support services as referred to in the first subparagraph are not provided as an integrated part of general victim support services, [...]'. Despite the long list of requirements in Article 25 of what specialist support services must provide and the details offered in Articles 26-28 of the VAW Directive with regard to services responding to three specific forms of violence, which is positive, the opportunity has been missed to further clarify the distinction between the two types of services by requiring MS to pay attention, in terms of funding, to the specificity of specialist support services as well as by recognising in the operative part that such services are best ensured – to use the language of GREVIO – 'by women's organisations and by support services provided, for example, by local

authorities with specialist and experienced staff and with in-depth knowledge of gender-based violence against women'. One of the structural shortcomings in the EU system comes from the strict compartmentalisation of EU law, which makes the provisions on victims' rights disconnected from substantive aspects that lead to violence and crimes, such as (in)equality. In this respect, careful consideration of the roots of violence and victims' needs is partially lacking.

- In accordance with the VAW Directive 'Member States shall ensure that support services, such as specialist support services, in cooperation with the competent authorities, contact victims to offer support, with due regard for their safety'. MS are allowed to make such referrals from competent authorities to support services subject to the consent of the victim. Without requiring the consent of the victim, this amounts to a mandatory referral, which might be counterproductive. GREVIO has noted that this might prevent some women from coming forward to seek help due to a lack of trust in the authorities. GREVIO has accordingly strongly encouraged the authorities to remove mandatory referrals to access domestic violence shelters, including by offering women victims of domestic violence the possibility to self-refer.
- In EU staff regulations and policies, the following loopholes have been identified: the gendered dimension is often lacking and gender neutrality leads to a lack of understanding of the power dynamics between men and women, especially those at the intersection of different grounds of discrimination. Although it is crucial to acknowledge the right of the alleged perpetrator to a defence, the equivalence between the parties, which emerges from the policies of the institutions, is dangerous; in particular, when there is a reference to reassignment, or a working from home policy, the institutions should guarantee that this measure is informed, gender-sensitive and not detrimental to the victim.
- With regard to EU staff, the establishment of a gender unit or specific training for counsellors with a clear mandate and the necessary resources to promote and support the research of red flags and the provision of support services, which are specific for sexual harassment (counselling, psychological support, referral to external support services, etc.) could support the implementation of the IC among EU officials.
- With regard to EU staff, the ongoing development of guidelines, manuals and other tools to support protective and preventive measures is crucial, and should continue in the direction of endorsing a trauma, gender, and culturally sensitive approach. The consent of the alleged victim must be always ensured. The sharing of best practice among institutions could be helpful in that respect.
- EU institutions should ensure that their staff are aware of where to find the protection and support mechanisms in the country where they are working.

## 6. Chapter V IC – Substantive law (Articles 29–48)

### 6.1 Introduction

Chapter V IC opens with Article 29, which requires parties to ‘take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrators’. This provision should be read in combination with Article 30 on compensation, and with Chapters III and IV IC. The meaning of ‘adequate civil remedies’ is not immediately clear. However, GREVIO has interpreted remedies not only in terms of monetary compensation, but also as ‘means of redress’ against state authorities, such as having the option to refer the case to a human rights defender.<sup>244</sup> Article 30 deals with compensation from perpetrators as a result of an offence established in accordance with the Convention. Article 30(2) provides for a subsidiary obligation for the state to compensate in situations where the victim has sustained serious bodily injury or impairment of health. The Istanbul Convention does not expressly endorse a gender-sensitive approach with regard to compensation. A gender-sensitive approach can derive however from a contextual interpretation of the IC: examples are free gender-sensitive medical and psychological treatment to the victims.

The following provisions of this chapter of the IC concern criminalisation, or adoption of non-criminal measures, with regard to behaviours that fall under the umbrella term ‘gender-based violence against women’. The IC requires parties to ensure that marriages concluded under force can be voidable, annulled or dissolved without placing an undue financial or administrative burden on the victim (Article 32 IC). The IC also requires parties to criminalise psychological and physical violence (Article 33 and 35), stalking (Article 34), sexual violence, including rape (Article 36), forced marriage (Article 37), female genital mutilation (Article 38), forced abortion and forced sterilisation (Article 39). As for sexual harassment, which is not limited to the world of work (‘any form of unwanted conduct of a sexual nature [...]’), the Convention requires parties to ensure that this behaviour is subject to criminal or other legal sanctions. Aiding or abetting and attempt are classic provisions in criminal law. The IC requires parties to establish as an offence ‘when committed intentionally’ aiding or abetting the commission of the offences set out in Articles 33–39. As for attempt, the obligation stands for the offences enshrined in Articles 35–39. Article 42 provides that parties take the necessary legislative or other measures to ensure that, in criminal proceedings related to any of the acts of violence covered by the Convention, ‘culture, custom, religion, tradition or so-called honour has not been regarded as justification for such acts’. Criminal offences under the Convention shall apply ‘irrespective of the nature of the relationship between victim and perpetrator’ (Article 43). This provision might sound obvious, but it bears a ‘symbolic value’, and it is ‘used by sovereign States to enshrine a content to be implemented by each one separately, but which is carried by a widespread consensus’.<sup>245</sup>

As for rules of jurisdiction, Article 44 contains an obligation to establish jurisdiction over the offences established with this Convention using two grounds of jurisdiction: territoriality as the basic ground (including on board a ship and on an aircraft) and active personality (connecting the exercise of jurisdiction to the offender’s nationality or place of habitual residence). These two principles are uncontentious in international law, despite the difficulties emerging from cross-border offences. This is a possible reason for the principle of passive nationality being encouraged (‘States shall endeavour’). The most innovative aspect of Article 44 is the

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<sup>244</sup> Pichard, M. (2023) ‘Civil lawsuits and remedies’, *Commentary on the Istanbul Convention*, p. 372.

<sup>245</sup> Behring R. and Burghardt, B. (2023) ‘Application of criminal offences’, *Commentary on the Istanbul Convention*, p. 523.

obligation whereby, for the most serious offences (Articles 36, 37, 38 and 39) committed abroad (para. 3), states must not subordinate their jurisdiction to the condition that such offences be punishable under the law of the territorial state (double criminality).<sup>246</sup> The Explanatory Report further clarifies that this paragraph is only applicable to offences committed by nationals of the party concerned, even if the text does not explicitly say so. The *rationale* of this interpretation is linked to the ‘softness’ of the ground of passive personality in paragraph 2. This paragraph is linked to the following one, according to which for the already mentioned offences (Articles 36, 37, 38 and 39) the jurisdiction is not subordinated to the reporting by the victim of the offence or the laying of information by the state of the place where the offence was committed. The principle *aut dedere aut judicare* is present in paragraph 5, whereas paragraph 6 provides guidance to solve cases of concurrent jurisdiction by means of cooperation ‘to find the most appropriate jurisdiction for prosecution’. It should be noted that this article can receive reservations limited to Article 44(1)(e), (3) and (4). The closing paragraph ensures respect for national rules on jurisdiction exercised by a party.

Articles 45 and 46 respectively deal with sanctions and measures, and aggravating circumstances. Sanctions must be effective, proportionate and dissuasive and should include, where appropriate, deprivation of liberty. Sanctions can also include the withdrawal of parental rights if this is in the best interests of the child. This article should be read in combination with Article 48 on the prohibition of alternative dispute resolution processes when these are mandatory. Despite none of the reviewed parties (mentioned in the *Mid-term Horizontal Review*) using mandatory alternative dispute resolution in the context of criminal proceedings, some practices have proved to be ‘problematic’ and ‘in contravention with the Convention’.<sup>247</sup> Victim-offender mediation is offered in some countries as a voluntary mechanism for alternative dispute resolution. However, even if voluntary, it is important to reflect on the nature of violence against women and on the structural situation of inequality that is ‘incompatible with any search for a legal solution that would be based solely on the will of the parties’.<sup>248</sup> This is also true for work relationships, which incorporate power dynamics and inequality. The procedure might also be mandatory *de facto*. The two standards stemming from the Convention are, on the one hand, the prohibition of mandatory dispute resolution processes, and on the other hand, the obligation (due diligence) to do everything possible to ensure that the alternative resolution processes are not used in situations of violence.<sup>249</sup>

A list of nine aggravating circumstances is included in the IC. The aggravating circumstances must be included ‘insofar as they do not already form part of the constituent element of the offence’ and they refer to: the character or specific conditions of the victim, the status of the offender, including his or her relationship with the victim, the nature, the manner and the means of commission of the offence and the degree of prejudice caused.<sup>250</sup> Article 47 provides for the possibility to take into account recidivism for the purposes of sentencing.

<sup>246</sup> Carpanelli, E. (2023) ‘Jurisdiction’, *Commentary on the Istanbul Convention*, p. 531. Stressing that it follows the Lanzarote Convention.

<sup>247</sup> GREVIO, Mid-term Horizontal Review, para 408.

<sup>248</sup> Pichard, M. (2023) ‘Prohibition of mandatory alternative dispute resolution processes or sentencing’, *Commentary on the Istanbul Convention*, p. 569.

<sup>249</sup> Pichard, M. (2023) ‘Prohibition of mandatory alternative dispute resolution processes or sentencing’, *Commentary on the Istanbul Convention*, p. 573.

<sup>250</sup> Poltronieri Rossetti, L. (2023) ‘Aggravating circumstances’, *Commentary on the Istanbul Convention*, p. 548 ff.

## 6.2 EU law

### 6.2.1 Treaties

In the treaties, the relevant provisions are Articles 81, 82<sup>251</sup> and 83 TFEU. Article 81 will be discussed further in chapter 9 on international cooperation, but it is also relevant for the implementation of the provision of the IC on civil remedies.

Article 81(1) of the Treaty on the Functioning of the European Union (TFEU) provides that judicial cooperation in civil matters having cross-border implications is to be based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Article 83(1) TFEU provides that the European Parliament and the Council, by means of directives adopted in accordance with the ordinary legislative procedure, 'establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis'. The areas of crime are: 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. The Council also has the possibility, by unanimity, to identify other areas of crime that meet the criteria specified in this paragraph. The list of crimes that is included in the second sentence of Article 83(1) was meant to be an exhaustive list to which no modification is admitted unless the mechanism provided in the third sentence is triggered. A harmonisation of crimes and penalties leads to 'the development of a common EU legal culture in relation to fighting crime, which adds up to but does not substitute national legal traditions and has a positive impact on mutual trust amongst the legal systems of the Member States'.<sup>252</sup> Several directives have been adopted since the entry into force of the Treaty of Lisbon, such as the Anti-Trafficking Directive,<sup>253</sup> which replaces the pre-Lisbon Framework Decision No. 2002/629, and the Directive on the fight against sexual exploitation of children and child pornography, which replaces Framework Decision 2004/68.<sup>254</sup> At EU level, the latter introduced a minimum of approximation of the EU Member States' legislation to criminalise the most serious forms of child sexual abuse and exploitation, to extend domestic jurisdiction, and to provide for a minimum of assistance to victims.

Article 83(1) TFEU is *not* the legal basis for the *accession*, but it is the legal basis for the VAW Directive. The analysis that follows will be limited only to the crimes covered by the Directive.

### 6.2.2 Secondary legislation

With regard to civil remedies (Article 29 IC) and sanctions and measures (Article 45), Regulation No. 606/2013 of the European Parliament and the Council on mutual recognition of protection measures in civil matters<sup>255</sup> applies 'to protection measures ordered with a view to protecting a person where there exist serious grounds for considering that that person's life, physical or psychological integrity, personal liberty, security or sexual

<sup>251</sup> See Chapter IV on the protection of victims.

<sup>252</sup> European Parliament Resolution of 22 May 2012 on an EU approach to criminal law (2010/2310(INI)), letter G.

<sup>253</sup> Directive 2011/36/EU, Anti-Trafficking Directive.

<sup>254</sup> Directive 2011/93/EU, Child Sexual Abuse Directive.

<sup>255</sup> Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, OJ L 181, 29.6.2013.

integrity is at risk, for example so as to prevent any form of gender-based violence or violence in close relationships such as physical violence, harassment, sexual aggression, stalking, intimidation or other forms of indirect coercion'.<sup>256</sup> The Regulation stresses that it is applicable 'to all victims, regardless of whether they are victims of gender-based violence'. Protection measures can be issued following domestic rules, however, by including a mechanism of mutual recognition, the Regulation extends the protection of victims of cross-border VAW violence and domestic violence. While the Regulation applies to all victims, it should be interpreted taking a gender-sensitive approach as required under the IC to consider the specific nature of VAW and DV. It could also be considered to further clarify the need for such an interpretation by issuing guidelines or in a possible future revision of the Regulation, for example, in the preamble (recital No. 6), to ensure that MS take into consideration specific and intersectional vulnerabilities in the application of the Regulation. However, it should be noted that the certificate in Article 7 of the Regulation already requires Member States to state the facts of the case on which they seek cooperation. This will make it clear that a given case relates to VAW and will illustrate the specific situation of the victim of VAW and DV, thereby ensuring a gender-sensitive approach in practice.

In terms of civil remedies, sanctions and measures, Directive No. 2006/54/EC on the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation<sup>257</sup> affirms that 'harassment and sexual harassment are contrary to the principle of equal treatment between men and women and constitute discrimination on grounds of sex for the purposes of this Directive'.<sup>258</sup> The workplace is a term broad enough to include access to employment, vocational training and promotion. Article 17 of Directive 2006/54 requires Member States to provide for judicial procedures available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them; Article 18 requires real and effective compensation or reparation by Member States 'for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex'. The reversal of the burden of proof should be granted, so that the alleged perpetrator must prove that there has been no breach of the principle of equal treatment. This Directive, as well as the Goods and Services Directive (2004/113/EC) and equality directive in the field of self-employment (2010/41/EU), entrusts equality bodies, to be established at national level, with the defence of human rights and the safeguarding of individual rights. Equality bodies promote equal treatment by providing independent assistance to victims of discrimination, conducting independent surveys, publishing independent reports and making recommendations on matters relating to discrimination. In that respect, the recent adoption of the Council Directive on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation,<sup>259</sup> and the Council Directive on standards for equality bodies in the field of equal treatment between persons in matters of social security and in the access to and supply of goods and services<sup>260</sup> establish the minimum requirements for the

<sup>256</sup> Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, OJ L 181, 29.6.2013, preamble, No. 6.

<sup>257</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), (Recast Directive) OJ L 204, 26.7.2006, pp. 23–36.

<sup>258</sup> Recast Directive, Preamble, No. 6.

<sup>259</sup> Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU, OJ L, 2024/1500, 29.5.2024.

<sup>260</sup> Directive (EU) 2024/1499.



functioning of these bodies. In particular, Article 6 of the Directive on equality bodies in matters of employment and occupation requires Member States to ensure that equality bodies are able to provide assistance to victims irrespective of gender, gender identity, gender expression or sex characteristics, among other characteristics. Equality bodies will be able to receive complaints and provide assistance to the victims. For what concerns the IC, this is relevant for all behaviours that amount to VAW (such as sexual harassment and harassment based on sex). Article 22 of the VAW Directive specifically refers to the role of national bodies, including equality bodies.

Another recent development in the field of sanctions and measures is Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (strategic lawsuits against public participation, SLAPPs),<sup>261</sup> which aims to eliminate obstacles to the functioning of civil proceedings and providing protection for natural and legal persons who engage in public participation in matters of public interest. It covers journalists, politicians, but also human rights defenders, NGOs activists and academics. A matter of public interest in the Directive is defined as covering gender equality, allegations of sexual harassment and gender-based violence. The Directive provides ‘safeguards against manifestly unfounded claims or abusive court proceedings in civil matters with cross-border implications brought against natural and legal persons on account of their engagement in public participation’ (Article 1). Abusive court proceedings against public participation are defined as court proceedings which ‘are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties’ (Article 2). The gender dimension partly emerges from the preamble, even though it could have been better expressed in the provisions of this advanced Directive, which can respond to the numerous cases of defamation (provided that they are cross-border) as a response to a public reporting of sexual harassment or other forms of violence against women. ‘Legal retaliation’ is indeed a common phenomenon – the response of a complaint for defamation by the alleged perpetrators accused of sexual harassment<sup>262</sup> – even if it does not go public, and produces a chilling effect on victims, who might show reluctance in reporting violence to the authorities.

As for criminal sanctions under Article 30 IC, it has been stressed<sup>263</sup> that Article 16(1) of the Victims’ Rights Directive provides that Member States have an obligation to ensure that victims are entitled to obtain a decision on compensation by the offender in the course of criminal proceedings and Article 16(2) obliges Member States to promote measures to encourage offenders to provide adequate compensation to victims. These provisions are in line with the Istanbul Convention, even though the Directive does not recognise the disproportionate impact of violence on women and girls. As argued in a report commissioned by EIGE, ‘in the case of violence in close relationships, for example in marriage, it may be difficult to obtain a decision on compensation from the offender if the spouses have a joint marital property regime. There is a risk that the offender will pay compensation from funds held in common by the two spouses. The Directive therefore does not identify the specificities involved in the exercise of the right to compensation by victims of violence in close relationships’.<sup>264</sup>

<sup>261</sup> Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’), OJ L, 2024/1069, 16.4.2024.

<sup>262</sup> De Vido, S., Sosa, L. (2021), *Criminalisation of gender-based violence against women in European states, including ICT-facilitated violence*, pp. 100-101.

<sup>263</sup> Nousiainen, K., Chinkin, C. (2015), *Legal implications of EU accession to the Istanbul Convention*, European Commission, p. 67.

<sup>264</sup> EIGE (2016), *An analysis of the Victims’ Rights Directive from a gender perspective*, p. 38.



In that respect, the rules of the Victims' Rights Directive are complemented by the VAW Directive, to cater for the specific needs of victims of VAW and domestic violence. In addition to specific measures, victims will continue to benefit from the general provisions of the Victims' Rights Directive. With regard to compensation from the state, Directive 2004/80/EC relating to compensation to crime victims applies. The Directive requires that all Member States ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.

In terms of mandatory alternative dispute resolution mechanisms, Article 12 of the Victims' Rights Directive aims to ensure that if a Member State provides for restorative justice services, the necessary safeguards are in place for victims to avoid further victimisation. In particular, victims 'who choose to participate in restorative justice processes' must have access to 'safe and competent restorative justice services', subject to some minimum conditions, such as being established in the interest of the victim, based on the victim's free and informed consent, and with the acknowledgment by the offender of the basic facts of the case. The Victims' Rights Directive does not oblige Member States to introduce restorative justice services. The VAW Directive does not contain any provision in that respect, except for a reference in the preamble to the training of those who provide restorative justice services.<sup>265</sup>

Table 4 below provides an article-by-article comparison of the VAW Directive and the IC.

Table 4: VAW Directive and IC corresponding provision

VAW Directive	IC corresponding provision and comments
<p>Article 23: Measures to remove certain online material</p> <p>The provision is without prejudice to Regulation No. 2022/2065 and requires MS to ensure that online publicly accessible material that refers to one of the offences in the Directive (non-consensual sharing of intimate or manipulated images, cyber harassment and cyber incitement to violence or hatred) are promptly removed or the access is disabled.<sup>266</sup></p>	<p>Article 29 and 45 IC</p> <p>Despite violence against women in the digital world not expressly included in the IC, it is worth assessing the strength of the EU provision regarding the removal of certain online material. Under the IC, sanctions must be effective, proportionate and dissuasive.</p> <p>Combined with criminalisation of the offence, the measure is effective and dissuasive, even though its implementation might be complex, because it requires the cooperation with platforms that might</p>

<sup>265</sup> VAW Directive, Preamble, recital, No. 77.

<sup>266</sup> An article in the Belgian Judicial Code (Article 584, 7°, amended in 2020) provides that the President of the court can make an order to 'use all appropriate means to immediately remove [images] or make them inaccessible by the broadcaster or any intermediary service provider' within six hours of the order at the latest. The provision further states that the absolute necessity for such action is presumed and that the dissemination is non-consensual 'until proven otherwise'. The provision requires the alleged perpetrator to demonstrate that the victim did not object to the dissemination of the images (reversal of the burden of proof). De Vido, S., Sosa, L. (2021), *Criminalisation of gender-based violence against women in European states, including ICT-facilitated violence*, p. 143.

There are a series of guarantees for the application of this article.	be based on non-EU countries. This is why coordination with other EU legal instruments is very important.
<p>Article 24: Compensation from the offender</p> <p>The Directive provides that MS shall ensure that victims have the right to claim full compensation from offenders for damages resulting from offences of VAW and DV, in accordance with national law.</p>	<p>Article 30 (1) IC – The provision in the VAW Directive corresponds to the provisions in the IC. The Directive also requires ‘full compensation’.</p>
<p>Article 32: Safety of children</p> <p>The VAW Directive requires MS to ensure that the relevant competent authorities have access to information regarding VAW or DV involving children, to take the information into account in civil proceedings concerning such children.</p> <p>The provision also requires the availability of safe places which allow safe contact between a child and a holder of parental responsibility ‘who is an offender or suspect of violence against women or domestic violence, to the extent that the holder of parental responsibility has rights of access. Member States shall ensure supervision, as appropriate, by trained professionals in the best interests of the child.’</p>	<p>Article 31 IC – The provision of the VAW Directive partly takes into consideration some concerns expressed by GREVIO.</p> <p>In particular, GREVIO strongly encouraged/urged the authorities of some states, <i>inter alia</i>, to explicitly recognise the need to take into account incidents of violence covered by the scope of the Istanbul Convention in the determination of custody and visitation rights of children and to amend the law to remedy existing gaps.<sup>267</sup> The VAW Directive is not thus explicit, and states only that the competent authorities have access to information on VAW and DV involving children, ‘in so far as necessary to allow that that information can be taken into account when assessing the best interests of the child in the framework of civil proceedings concerning such children’.</p> <p>The VAW Directive could have also stressed that the safety of the non-violent parent and the children should be a central factor when deciding on</p>

<sup>267</sup> GREVIO ‘strongly encouraged/urged the authorities of [...] states, *inter alia*, to explicitly recognise the need to take into account incidents of violence covered by the scope of the Istanbul Convention in the determination of custody and visitation rights of children’: GREVIO, Mid-term Horizontal Review, para. 327. See also Bergamini, E., Lizzi, L. ‘Article 26’ and ‘Article 31’, in De Vido, S. and Frulli, M. (eds.) (2023) *Commentary on the Istanbul Convention*.

	<p>the best interests of the child in relation to custody and visitation arrangements.<sup>268</sup></p> <p>GREVIO also observed with concern in its reports that ‘meeting spaces were more equipped to deal with conflictual relationships than cases involving violence. It therefore drew the authorities’ attention to the high risks to victims and children posed by maintaining contact between the victim and the perpetrator, without protection and appropriate measures’.<sup>269</sup> Even though the best interests of the child are mentioned in the VAW Directive, the supervision must always be granted by trained professionals ‘as appropriate’, and not in all circumstances, which does not guarantee the best interests of the child. GREVIO considered that ordering unsupervised visits and joint custody without taking sufficient account of the background of domestic violence falls short of the requirements of Article 31 IC<sup>270</sup>.</p> <p>Trained professionals are fundamental to protect the child and the mother, during the contact between a child and a holder of parental responsibility who is an offender or suspect of violence against women or domestic violence.<sup>271</sup></p>
Article 3: Female genital mutilation	Article 38 IC – The provision in the Directive reproduces the article of the IC except for paragraph c). Letter c) is partly reflected in letter b) ‘coercing or procuring a girl’. The part on inciting is missing in

<sup>268</sup> GREVIO (2020) *Baseline evaluation report on Italy*, para. 186. It should also be acknowledged how gender stereotypes and bias against women in judicial settings, including in family courts, are persistent and ‘downplay men’s violence towards women and children in IPV settings’. In particular, GREVIO expressed concerns about ‘theories and concepts of ‘parental alienation’ [...] in use in different forms and under different headings in various jurisdictions’. See in that respect Nelles, J. (2024) ‘Losing sight of the abuse: how and why women’s and children’s rights are violated in child contact decisions after intimate partner violence in Europe’, *International Journal of Human Rights*, Vol. 28, No. 6, pp. 1030–1052, <https://doi.org/10.1080/13642987.2024.2354167>.

<sup>269</sup> GREVIO, Mid-term Horizontal Review, para. 334.

<sup>270</sup> GREVIO (2023) *Baseline evaluation report on Greece*, para. 188, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad469d>.

<sup>271</sup> The jurisprudence of the ECtHR is of support in that respect. See ECtHR, *I.M. and Others v. Italy*, application No. 25426/20, 10.11.2022.

	Article 3 VAW Directive but is included in Article 9 (1) VAW Directive.
Article 4: Forced marriage	Article 37 IC – The provision in the Directive reproduces the article of the IC.
Article 5: Non-consensual sharing of intimate or manipulated material	This crime is not included in the IC, but it is within the scope of GREVIO General Recommendation No. 1 (2021). <sup>272</sup>
Article 6: Cyber stalking  The definition of cyber stalking is the following: the intentional conduct of repeatedly or continuously placing a person under surveillance, without that person's consent or a legal authorisation to do so, by means of ICT, to track or monitor that person's movements and activities, where such conduct is likely to cause serious harm to that person.	Article 34 IC – The definition partly corresponds to the provision of the IC.  What characterises stalking is 'the repetitive or systematic nature of the behaviour, aimed at a specific person, which is unwanted by the targeted person'. <sup>273</sup> In some laws, the legal terminology for stalking is harassment. <sup>274</sup> However, 'while both offenses usually require a course of conduct, harassment is often used as a more general, umbrella concept, one that includes stalking behaviour, but that is not synonymous with stalking. Furthermore, stalking has a more serious connotation than harassment, which can include milder forms of pestering as well'. <sup>275</sup> The cyber dimension of stalking is present in the Explanatory Report to the IC, <sup>276</sup> which also specifies that one element of the offence is to 'instil in the victim a sense of fear'. <sup>277</sup>

<sup>272</sup> GREVIO General Recommendation No. 1 on the digital dimension of violence against women adopted on 20 October 2021, <https://rm.coe.int/grevio-rec-no-on-digital-violence-againstawomen/1680a49147>.

<sup>273</sup> Van der Aa, S. (2018) 'New Trends in the Criminalization of Stalking in the EU Member States', in *Eur J Crim Policy Res*, 2018, 24, pp. 315-333.

<sup>274</sup> De Vido, S., Sosa, L. (2021), *Criminalisation of gender-based violence against women in European states, including ICT-facilitated violence*, p. 126 ff.

<sup>275</sup> Van der Aa, S. (2018) 'New Trends in the Criminalization of Stalking in the EU Member States', in *Eur J Crim Policy Res*, 2018, 24, p. 323.

<sup>276</sup> *Explanatory Report*, para. 183.

<sup>277</sup> *Explanatory Report*, para. 184. According to the EELN report of 2021, an explicit reference to fear was included in the legislation of only 14 countries: Bulgaria, Croatia (or state of anxiety), Czechia, Finland, Hungary (or interfering with private life), Italy (or state of anxiety), Latvia, Malta, the Netherlands (or compelling another person to do something, not to do something, or tolerate something), Norway (or anxiety), Portugal (or limiting one's liberty or self-determination), Romania, Slovakia ('reasonable fear'),

	<p>In the VAW Directive, the element of serious harm might seem to jeopardise the protection of victims of those crimes, however, it should be noted that acts that fulfil the requirements of cyber violence covered by the Directive, generally cause serious harm to the victim <i>per se</i>. In Recital 18, the Directive explains that ‘when assessing whether the conduct is likely to cause serious harm, the specific circumstances of the case should be taken into account, without prejudice to judicial independence. The likelihood of causing serious harm can be inferred from objective factual circumstances’. A victim-centred interpretation of this provision means that, when the judge is assessing whether the act is likely to cause such harm, the focus should be in whether the act typically, looking at objective factual circumstances, would cause harm to a victim.</p>
<p>Article 7: Cyber harassment</p> <p>The definition of cyber harassment is the following: an intentional conduct consisting in: (a) repeatedly or continuously engaging in threatening conduct directed at a person, at least where such conduct involves threats to commit criminal offences, by means of ICT, where such conduct is likely to cause that person to seriously fear for their own safety or the safety of dependants; (b) engaging, together with other persons, by means of ICT, in publicly accessible threatening or insulting conduct directed at a person, where such conduct is likely to cause serious psychological harm to that person; (c) the unsolicited sending, by means of ICT, of an image, video or other similar material depicting genitals to a person, where such conduct is likely to cause serious psychological harm to that person;</p>	<p>Article 40 IC</p> <p>The Istanbul Convention does not require parties to criminalise harassment. The VAW Directive only requires criminalisation of the digital dimension of behaviours falling under the notion of harassment. The element of fear which pertains to stalking is here present.</p> <p>The definition reflects GREVIO General Recommendation No.1 which considered the following behaviours online or through digital means to come under the definition of Article 40 IC, sexual harassment: 1) non-consensual image or video sharing; 2) non-consensual taking, producing or procuring of intimate images or videos; 3)</p>

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United Kingdom (Section 4A of the Protection from Harassment Act, or causes another serious alarm or distress which has a substantial adverse effect on his or her usual day-to-day activities). Other legislation refers to effects on peace of mind (Belgium, France, Luxembourg), effects of humiliating or intimidating the other person or disturbing him/her (Estonia), to terror or anxiety (Greece), to the interference with another person's privacy or causing alarm, distress or harm (Ireland), to the unacceptable interference in the person's life (Liechtenstein), to danger, humiliation or torment (Poland), to intimidation or threat (Slovenia), to a significant alteration of the person's life (Spain), and to a violation of the person's integrity (Sweden).

<p>(d) making accessible to the public, by means of ICT, material containing the personal data of a person, without that person's consent, for the purpose of inciting other persons to cause physical or serious psychological harm to that person.</p>	<p>exploitation, coercion and threats 4) sexualised bullying; and 5) cyber-flashing.</p> <p>In the VAW Directive, there is no reference to the behaviour being 'unwanted', and the serious harm remains a constant feature as for the crime of stalking, despite never being associated with harassment in State practice.<sup>278</sup></p> <p>It is also different from the definition in Directive 2006/54/EC.</p> <p>For the purposes of the digital dimension of violence, the inclusion of cyber flashing and doxing represents an added value.</p> <p>In the VAW Directive, the element of serious harm might seem to jeopardise the protection of victims of those crimes, however, it should be noted that acts that fulfil the requirements of cyber violence covered by the Directive, generally cause serious harm to the victim <i>per se</i>. In Recital 18, the Directive explains that 'when assessing whether the conduct is likely to cause serious harm, the specific circumstances of the case should be taken into account, without prejudice to judicial independence. The likelihood of causing serious harm can be inferred from objective factual circumstances'. A victim-centred interpretation of this provision means that, when the judge is assessing whether the act is likely to cause such harm, the focus should be in whether the act typically, looking at objective factual circumstances, would cause harm to a victim.</p>
<p>Article 8: Cyber incitement to violence and hatred</p>	<p>This crime is not included in the IC, but it is within the scope of General Recommendation No. 1. This provision should be coordinated in future, whether and when the crime of incitement to violence or hatred will be included in the list of euro-crimes under Article 83(1) TFEU.</p>

<sup>278</sup> De Vido, S., Sosa, L. (2021), *Criminalisation of gender-based violence against women in European states, including ICT-facilitated violence*.

<p>Article 9: Inciting, aiding and abetting and attempt</p>	<p>Article 41 IC</p> <p>The provision in the VAW is in line with the IC with the addition of incitement.</p>
<p>Article 10: Penalties</p> <p>Penalties must be effective, proportionate and dissuasive. For each crime, a maximum term of imprisonment has been added.</p>	<p>Article 45 IC</p> <p>The provision is in line with 45 (1) IC, with the addition of the maximum term of imprisonment.</p> <p>No reference is made to 45(2) IC: monitoring or supervision of convicted persons and withdrawal of parental rights if the best interests of the child cannot be guaranteed in any other way. The reason is the lack of legal basis under EU law.</p>
<p>Article 11: Aggravating circumstances</p> <p>The list of aggravating circumstances, with regard to the offences established in the VAW Directive, is very long. Aggravating circumstances must be defined in accordance with the domestic law of EU MS.</p>	<p>Article 46 IC</p> <p>The circumstances present in the VAW Directive correspond to the one in Article 46 IC with the addition of the following:</p> <ul style="list-style-type: none"> <li>- the offence was committed with the use of force or threats to use force, or by means of coercion;</li> <li>- the conduct caused the death of the victim or severe physical or psychological harm to the victim;</li> <li>- the offence was committed against a person because that person was a public representative, a journalist or a human rights defender;</li> <li>- the intention of the offence was to preserve or restore the so-called 'honour' of a person, a family, a community or another similar group;</li> <li>- the intention of the offence was to punish the victim for the victim's sexual orientation, gender, colour, religion, social origin or political beliefs.</li> </ul> <p>With regard to the latter point, the intersection of different forms of discrimination in the analysis of aggravating circumstances has to be emphasised as</p>

	<p>a positive outcome of the process of ‘gendering’ the implementation of the IC.</p> <p>A possible point of weakness is the fact that aggravating circumstances must be defined in accordance with the domestic law of EU MS: this is understandable, considering the sensitiveness of criminal law as a matter of national sovereignty. It should be noted that for the interpretation of these aggravating circumstances the jurisprudence of the ECtHR and GREVIO reports might be of support.</p>
<p>Article 12: Jurisdiction</p> <p>MS have an obligation to establish jurisdiction over the offences under the VAW Directive following the grounds of:</p> <ul style="list-style-type: none"> <li>- territoriality</li> <li>- active personality (connecting the exercise of jurisdiction to the offender’s nationality)</li> </ul> <p>A Member State can decide to extend its jurisdiction where: (a) the offence is committed against one of its nationals or against a habitual resident in its territory; or (b) the offender is a habitual resident in its territory.</p> <p>One paragraph is devoted to offences committed by means of ICT. Jurisdiction shall be established ‘whether or not the intermediary service provider is based on their territory’.</p>	<p>Article 44 IC</p> <p>The provision is in line with the IC, except for the limitation of the active personality ground (only limited to nationals and not to residents).</p>

With regard to sexual harassment, Directives 2004/113/EC and 2006/54/EC should be mentioned. They both require that harassment and sexual harassment ‘shall be deemed to be discrimination on the grounds of sex and therefore prohibited’:

“harassment”: where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

“sexual harassment”: where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.’



As reported by the European network of legal experts in gender equality and non-discrimination (EELN), in cases of harassment on the ground of a person's sex, 'the person is ill-treated because he or she is a man or a woman (or, presumably, because they identify as non-binary)'.<sup>279</sup> In the case of sexual harassment, a person is subject to unwelcome sexual advances or other forms of conduct having a sexual nature, although in real-life situations, 'the distinction between the two may be unclear'.<sup>280</sup> The aforementioned directives call for the prohibition of harassment as a form of discrimination and the imposition of sanctions, but they do not establish obligations that are sufficiently precise, allowing for adequate monitoring and enforcement in the Member State or at the EU level. In that respect, the ratification of the 2019 ILO Violence and Harassment Convention (ILO Convention No. 190) by all EU Member States would enhance the protection in the EU. The Council has recently adopted a decision to 'invite' Member States to ratify the ILO Convention,<sup>281</sup> and this would be an interesting step forward in the implementation of measures to prevent and protect victims from harassment in the world of work. If all Member States ratified the ILO Convention, this would have an impact on the EU as well, as the 2024 judgment of the CJEU in the *WS* case has demonstrated.<sup>282</sup> Article 1 of the 2019 ILO Violence and Harassment Convention (ILO Convention), reads as follows:

'the term "violence and harassment" in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment; the term "gender-based violence and harassment" means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment'.<sup>283</sup>

The ILO Convention considers sexual harassment to be present after a single occurrence, irrespective of the contractual status of the victim/survivor. It also acknowledges that harassment can occur in public and private sectors, in the formal and informal economy, and in urban as well as in rural areas. It encompasses behaviour in public and private spaces where they are a place of work; in places where the worker gets paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities; during work-related trips, travel, training, events or social activities; through work-related communications, including those enabled by information and communication technologies; in employer-provided accommodation; and when commuting to and from work.

### 6.2.3 EU practice

Several resolutions of the European Parliament have been adopted with regard to the issues under Chapter V of the Istanbul Convention. For example, with regard to female genital mutilation, the European Parliament has

<sup>279</sup> Burri, S., Sender, L., Timmer, A. (2019) *A Comparative Analysis of Gender Equality Law in Europe*, EELN, <https://www.equalitylaw.eu/downloads/5119-a-comparative-analysis-of-gender-equalitylaw-in-europe-2019-1-35-mb>.

<sup>280</sup> Burri, S., Sender, L., Timmer, A. (2019) *A Comparative Analysis of Gender Equality Law in Europe*, EELN, <https://www.equalitylaw.eu/downloads/5119-a-comparative-analysis-of-gender-equalitylaw-in-europe-2019-1-35-mb>. See also De Vido, S., Sosa, L. (2021), *Criminalisation of gender-based violence against women in European states, including ICT-facilitated violence*.

<sup>281</sup> Council Decision (EU) 2024/1018 of 25 March 2024 inviting Member States to ratify the Violence and Harassment Convention, 2019 (No 190) of the International Labour Organization, *OJL*, 2024/1018, 2.4.2024.

<sup>282</sup> See below, section 14, on the IC as a means of interpretation.

<sup>283</sup> ILO Violence and Harassment Convention, 2019 (No. 190) [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1210:0:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1210:0:0::NO::P12100_ILO_CODE:C190).

demonstrated a strong commitment to help to eliminate the practice of FGM worldwide and expressed its concerns about the increasingly widespread phenomenon of the ‘medicalisation’ of FGM. In respect of online violence, in a 2021 resolution, the European Parliament underlined that ‘gender-based cyber violence is a continuation of offline gender-based violence and that no policy alternative will be effective unless it takes that reality into consideration’.<sup>284, 285</sup> To supplement the EU framework on the topic, the Commission will issue a recommendation on preventing and combating FGM and other harmful practices, which is expected in near future.

The protection of children (including LGBTIQ children) from gender-based violence, both offline and in the digital world, is at the core of the new Recommendation of the Commission on developing and strengthening integrated child protection systems in the best interests of the child of 23 April 2024.<sup>286</sup> However, this landmark soft law document lacks a gendered perspective. Children are all affected by violence, but because of their gender, they can suffer from multiple and intersecting grounds of discrimination. A reference is made to LGBTI children aged 15 to 17, but only concerning data (recital 11). In the reference to female genital mutilation and forced marriage, but also with regard to some aspects of digital violence, the Commission could have stressed the disproportionate impact of these forms of violence on girls. In the preamble, data on the disproportionate impact of female genital mutilation, forced marriage and digital violence, could have been provided.

Two examples of how to incorporate a gender-sensitive approach are provided below:

Original text	‘Member States are invited to foster a safe and inclusive environment in education, including early childhood education and care, and in training, while fighting discrimination and responding to specific vulnerabilities. Member States should, amongst others, raise children’s awareness of their rights and support services, train professionals on early signs of violence and protocols, monitor and support the mental health and well-being of children and teachers, ensure that relevant child protection safeguards and protocols are in place; and coordinate effort between education and other sectors in order to provide full support to families and children affected by out-of-school circumstances.’
Amended text	‘Member States are invited to foster a safe and inclusive environment in education, including early childhood education and care, and in training, while fighting discrimination and responding to specific vulnerabilities, <i>including vulnerabilities based on the gender, gender identity, sexual orientation and sex characteristics of the children</i> . Member States should, amongst others, raise children’s awareness of their rights and support services, train professionals on early signs of violence and protocols, <i>train professionals to understand that some forms of violence disproportionately affect girls</i> , monitor and support the mental health and well-being of children and teachers, ensure that relevant child

<sup>284</sup> European Parliament resolution of 14 December 2021 with recommendations to the Commission on combating gender-based violence: cyberviolence (2020/2035(INI)).

<sup>285</sup> *An EU strategy to put an end to female genital mutilation around the world*, European Parliament resolution of 12 February 2020 on an EU strategy to put an end to female genital mutilation around the world (2019/2988(RSP)).

<sup>286</sup> Commission Recommendation of 23.4.2024 on developing and strengthening integrated child protection systems in the best interests of the child, SWD(2024) 98 final.

	protection safeguards and protocols are in place; and coordinate effort between education and other sectors in order to provide full support to families and children affected by out-of-school circumstances.'
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It has indeed been confirmed that girls are the ones who are most often excluded from education.<sup>287</sup>

Original text	'In the implementation of the Pact on Migration and Asylum and associated reforms to their reception systems, Member States should ensure the centrality of child protection and ongoing consideration of the best interests of the child. This includes clear and early procedures for individual best interests assessments and ensuring that all relevant proceedings and reception systems are adapted to take into account children's age, needs and vulnerabilities as a priority, in accordance with Union and international law.'
Amended text	'In the implementation of the Pact on Migration and Asylum and associated reforms to their reception systems, Member States should ensure the centrality of child protection and ongoing consideration of the best interests of the child. This includes clear and early procedures for individual best interests assessments and ensuring that all relevant proceedings and reception systems are adapted to take into account children's age, needs and vulnerabilities, <i>including vulnerabilities based on the gender, gender identity, sexual orientation and sex characteristics of the children</i> , as a priority, in accordance with Union and international law.'

Procedures must respond to the challenges girls face, for example while escaping from countries where they are at risk of female genital mutilation or forced marriages.

#### 6.2.4 Staff regulations and staff

Even though the CJEU 2021 Opinion does not refer to this chapter of the IC – except for Article 30 – when dealing with public administration,<sup>288</sup> a point should be made with regard to the definition of sexual harassment. Sexual harassment is defined in the Staff Regulations as:

'Conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment. Sexual harassment shall be treated as discrimination based on gender.'

<sup>287</sup> See: Unicef, 'Girls Education': Around the world, 129 million girls are out of school, including 32 million of primary school age, 30 million of lower-secondary school age, and 67 million of upper-secondary school age. In countries affected by conflict, girls are more than twice as likely to be out of school than girls living in non-affected countries.

<sup>288</sup> CJEU, Opinion of 6 October 2021, 1/19, ECLI:EU:C:2021:832, para. 305.

Focusing on sexual harassment only, the definition is in line with the IC, even though it does not refer to the types of conduct – verbal, non-verbal or physical. Decisions, action plans, and guides that have been adopted by EU institutions work only in respect of sexual harassment and not in relation to other forms of violence. This in line with the equality directives, even though the workplace can be the place where other forms of violence, covered by both the VAW Directive and the IC, can take place.

In terms of compensation and Article 30 IC as interpreted by GREVIO, the Commission Decision refers to informal and formal means of redress, the latter leading to the decision of the disciplinary and/or financial measures.<sup>289</sup> Under Article 24 (2) of the Staff Regulations, the Union will ‘jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause damage and has been unable to obtain compensation from the person who did cause it.’

Institutions have developed a formal and an informal procedure of redress, and have a list of confidential counsellors, who are colleagues offering specialised assistance in cases of harassment. These remedies do not exclude the possibility of access to remedies offered at national level (even though the latter are not mentioned in all the documents to which this report has had access).

- a) The informal procedure: characterised by voluntary anonymous mediation the purpose of which is to find an amicable solution and not to award financial compensation or compensation in kind,<sup>290</sup> in the Commission Decision, the informal procedure, which is very well detailed, will be available with the Chief Confidential Counsellor, who has an active role in informing victims of their rights and available procedures, and conferring a mandate to the confidential counsellors, as well as making recommendations and providing support, including interim protective measures. There is also the possibility that the case is transferred to the Mediation Service.<sup>291</sup> In the description of the procedure, in all institutions examined, there is never reference to the power dynamics that can determine a position of vulnerability for the victim and to the need for a gender and trauma sensitive approach.<sup>292</sup>
- b) The formal procedure: can be initiated immediately and directly, through a written request for assistance. The appointing authority decides to propose solutions to the parties to the conflict; take rehabilitation measures to protect and support all the parties in cooperation with the medical officer, line managers and/or the mediator; compensate the complainant for the harm suffered; and initiate disciplinary

<sup>289</sup> Commission Decision of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3, C(2023) 8630 final, Article 23 ff. See also European Court of Auditors (2022) ‘Policy for ensuring a respectful and harassment-free workplace’, para. 87.

<sup>290</sup> European Court of Auditors (2022) ‘Policy for ensuring a respectful and harassment-free workplace’, para. 46 ff. In the Council, there is a difference between conciliation, run by the team of GSC’s organisational psychologist, mediation after the decision of the appointing authority, and the support of a group of confidential counsellors for not only to staff who feel they have been the target of harassment but also to staff who have witnessed what they perceive as harassment. Decision No. 23/2021 of the Secretary-General of the Council of the European Union concerning psychological and sexual harassment at work within the General Secretariat of the Council, Article 11 ff.

<sup>291</sup> Commission Decision of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3, C(2023) 8630 final, Article 32.

<sup>292</sup> In Article 3 of the Mediation Service in the European Parliament, Bureau Decision of 20 November 2023, it is stated that ‘any other person involved in the relationship is strongly encouraged to participate and should at least attend a first individual meeting with the Mediator’. This is problematic from a gender perspective. If mediation is requested by the alleged harasser, the victim can feel to be obliged to attend a first meeting, which might reduce the possibility to proceed further.

proceedings against the person accused of harassment.<sup>293</sup> In the Commission Decision, there is a strong emphasis on the protection of the victim, without depriving the alleged harasser of rights, including the right of the victim to be heard and the protection of victims and of witnesses called to testify. In the European Parliament, an advisory committee dealing with harassment complaints concerning members of the European Parliament has been established.

- c) The procedure in front of national authorities: a right under Article 47 of the EU Charter. A case can be brought in front of national authorities only upon authorisation by the appointing authority and can be refused only on the basis of the interest of the Union being at stake.<sup>294</sup> Assistance to staff members will be ensured (e.g. payment of legal fees).

### 6.3 Summary – Chapter V IC

Chapter V IC contains provisions on remedies, custody and visitation rights, criminalisation or identification of non-criminal sanctions for illicit behaviours that fall under the definition of VAW and DV, unacceptability of justifications for crimes, including those committed in the name of 'honour', rules of jurisdiction, aggravating circumstances and the prohibition of mandatory alternative dispute resolution.

- Several instruments are in force at EU level with regard to civil remedies and criminal sanctions. The rules of the Victims' Rights Directive are complemented by the VAW Directive, to cater for the specific needs of victims of violence against women and domestic violence. In addition to specific measures, victims will continue to benefit from the general provisions of the Victims' Rights Directive. An interesting development concerns Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (Strategic lawsuits against public participation, SLAPPs), which can respond to the numerous cases of defamation as a reaction to a public reporting of sexual harassment or other forms of violence against women (provided that they are cross-border).
- The VAW Directive is highly compliant with this chapter of the IC.
- The VAW Directive harmonises the elements of gender-based crimes in the digital world for the first time in EU law.
- In terms of remedies, it is worth assessing the strength of the VAW Directive's provision regarding the removal of certain online material. Under the IC, sanctions must be effective, proportionate and dissuasive. Combined with criminalisation of the offence, the measure is effective and dissuasive, even though its implementation might be complex, because it requires the cooperation with platforms that

<sup>293</sup> European Court of Auditors (2022) 'Policy for ensuring a respectful and harassment-free workplace', para. 60 ff.

<sup>294</sup> Commission Decision of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3, C(2023) 8630 final, Article 47.

might be based in non-EU countries. This is why coordination with other EU legal instruments is very important.

- The articles on criminalisation of FGM and forced marriage are in line with the IC. With regard to cyber violence, the importance of the harmonisation of the elements of the crime of cyber stalking, cyber harassment, non-consensual sharing of intimate or manipulated material and cyber incitement to violence and hatred, is to be acknowledged as a positive step forward, owing to the magnitude of these phenomena. In particular, the definitions of cyber violence reflect GREVIO General Recommendation No. 1.
- Aggravating circumstances in the VAW Directives not only correspond to the ones mentioned in the IC, but they expand them, by including, among other things, that the conduct caused the death of the victim or severe physical or psychological harm to the victim; or that the intention of the offence was to punish the victim for the victim's sexual orientation, gender, colour, religion, social origin or political beliefs. With regard to the latter point, the intersection of different forms of discrimination in the analysis of aggravating circumstances has to be emphasised as a positive outcome of the process of 'gendering' the implementation of the IC.
- With regard to staff regulations and policies, the definition of sexual harassment provided in the Staff Regulations is in line with the IC, even though it does not refer to the types of conduct – verbal, non-verbal or physical. Decisions, action plans and guides that have been adopted by EU institutions work only in relation to sexual harassment and not to other forms of violence. This in line with the equality directives, even though the workplace can be the place where other forms of violence, covered by both the VAW Directive and the IC, can take place.
- In terms of compensation, under Article 24 (2) of the Staff Regulations, the Union will 'jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause damage and has been unable to obtain compensation from the person who did cause it'. Institutions have developed formal and informal procedures of redress, and have a list of confidential counsellors, who are colleagues offering specialised assistance in cases of harassment. These remedies do not exclude the possibility of accessing remedies offered at national level (even though the latter are not mentioned in all documents that this report has had access to).

## 6.4 Loopholes – Chapter V IC

- In the VAW Directive, the element of serious harm in the definition of cybercrimes might seem to jeopardise the protection of victims of those crimes, however, it should be noted that acts that fulfil the requirements of cyber violence covered by the Directive, generally cause serious harm to the victim *per se*. In Recital 18, the Directive explains that 'when assessing whether the conduct is likely to cause serious harm, the specific circumstances of the case should be taken into account, without prejudice to judicial independence. The likelihood of causing serious harm can be inferred from objective factual circumstances'. A victim-centred interpretation of this provision means that, when the judge is assessing

whether the act is likely to cause such harm, the focus should be on whether the act typically, looking at objective factual circumstances, would cause harm to a victim.

- In terms of protection of children, Article 32 VAW Directive requires Member States to provide safe places which allow safe contact between a child and a holder of parental responsibility 'who is an offender or suspect of violence against women or domestic violence, to the extent that the holder of parental responsibility has rights of access. Member States shall ensure supervision, as appropriate, by trained professionals in the best interests of the child'. Considering the concerns expressed by GREVIO on the meeting spaces offered in parties to the IC, the supervision of trained professionals should not be simply 'as appropriate', but offered in all circumstances. The VAW Directive could have explicitly stressed that the safety of the non-violent parent and the children must be a central factor when deciding on the best interests of the child in relation to custody and visitation arrangements.<sup>295</sup>
- A possible point of weakness in the provision on aggravating circumstances in the VAW Directive is the fact that aggravating circumstances must be defined in accordance with the domestic law of EU Member States: this is understandable, considering the sensitiveness of criminal law as a matter of national sovereignty. It should be noted that for the interpretation of these aggravating circumstances, the jurisprudence of the ECtHR and GREVIO reports might provide supporting material.
- With regard to staff regulations and policies, in terms of procedures of redress, a gendered perspective is generally lacking. For example, the attempt to put at the same level the victim and the alleged harasser does not grasp the power imbalances between the two parties in alleged cases of sexual harassment. It means that, when the appointing authority decides to propose solutions to the parties to the conflict and/or take rehabilitation measures to protect and support all the parties, it should be acknowledged that the parties are not at the same level, and that a victim and gender-sensitive approach would require putting the concerns and the interests of the victims at the center of any decision.

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<sup>295</sup> GREVIO (2020) *Baseline evaluation report on Italy*, para. 186.

## 7. Chapter VI IC - Investigation, prosecution, procedural law and protective measures (Articles 49-58)

### 7.1 Introduction

Chapter VI IC contains provisions on investigation, prosecution, procedural law and protective measures. Article 49 sets out a general obligation to investigate and guarantee proceedings in relation to all forms of violence covered by the scope of the Convention. Paragraph 2 stresses that the procedures should be guided by a gendered understanding of violence. In the implementation of this article, GREVIO acknowledged the setting of national guidelines for police and prosecutors as a positive development. Article 50 specifies the general obligation under Article 49, referring to the first stage of the criminal procedure: prompt response to violence, immediate protection of the victim and efficient collection of evidence.<sup>296</sup> Article 51 is crucial in the evaluation of the escalation of violence. A risk assessment consists of a 'decision-making process through which we determine the best course of action by estimating, identifying, qualifying and quantifying risk'.<sup>297</sup> Its purpose, as reported in a 2019 EIGE report, is to 'reduce harm to female victims of intimate partner violence and their children,' by identifying 'all levels of risk, namely standard, medium and high, as well as victims' specific needs'.<sup>298</sup> At first sight, it seems that only the criminal justice system is requested to use the risk assessment in the decision for, e.g., protection and/or barring orders. However, as GREVIO stressed in its *Midterm Horizontal Review*: 'All relevant professionals, not only law enforcement, are obliged to assess and take steps to manage the safety risks to a particular victim on a case-by-case basis, including the risk of repeated and lethal violence and, if necessary, to provide co-ordinated support'.<sup>299</sup> The *European Manual for Risk Assessment*<sup>300</sup> defines risk assessment as: a tool that can only be made with the victims'/survivors' collaboration; where victims/survivors' own assessment of their safety and risk levels must be considered; where victims/survivors must be listened to, including children, without the presence of the perpetrator, family and/or their community members; where professionals have the responsibility to assess, manage, monitor the perpetrators risk, and, in case of significant harm to children, must consider and agree on the best procedure that safeguards and protects them; a tool whose limits must be clarified and through which no improbable or unrealistic promises should be made. The ECtHR has used Article 51 as an instrument of interpretation of the positive obligations states must abide by in responding to VAW and DV.<sup>301</sup>

Articles 52 and 53 IC provides for special judicial orders to protect victims of VAW and DV: emergency barring orders and restraining or protection orders. The former measure is characterised by immediate protection and the possibility of the removal of the perpetrator from the home of the victim. Protection orders are any decision, provisional or final, adopted as part of a civil, criminal, administrative or other procedure, imposing rules of conduct (prohibitions, obligations or limitations) on an adult person with the aim of protecting another person

<sup>296</sup> Niemi, J. (2023) 'Immediate response, prevention and protection', *Commentary on the Istanbul Convention*, p. 585 ff.

<sup>297</sup> Nicholls, T.L., Desmarais, S.L., Douglas, K.S., Randall Kropp, P. (2017) *Violence Risk Assessment with Perpetrators of Intimate Partner Abuse*, in J. Hamel, T.L. Nicholls, *Family Interventions in Domestic Violence: A Handbook of Gender-Inclusive Theory and Treatment*, New York.

<sup>298</sup> EIGE (2019) *Risk Assessment and Management of Intimate Partner Violence in the EU*, p. 19.

<sup>299</sup> GREVIO, Mid-term Horizontal Review, <https://rm.coe.int/prems-010522-gbr-grevio-mid-term-horizontal-review-rev-february-2022/1680a58499>, para. 451.

<sup>300</sup> European Commission (2013) *European Manual for Risk Assessment*, <https://e-maria.eu/wp-content/uploads/2011/10/Manual-latest-version-light-colours.pdf>.

<sup>301</sup> See, in that respect, *Landi v. Italy* No. 10929/19, judgment of 7 April 2022; *De Giorgi v Italy* No. 23735/19, judgment of 16 June 2022; and *Kurt v. Austria* No. 62903/15, judgment of 15 June 2021; where the ECtHR elaborated a test of due diligence.



against an act that may endanger his/her life, physical or psychological integrity, dignity, personal liberty or sexual integrity.<sup>302</sup> The issuing and the application of protection orders fall under the duty of due diligence in preventing the escalation of violence (early prevention). The ECtHR affirmed that the lack of effective protection orders is important in assessing the failure of the state party to respond to violence.<sup>303</sup> Protection orders can be issued by a court, prosecutor, police, or administrative body, they can be both of civil and criminal nature: ideally having both forms of protection would better respond to the needs of the victims of violence.<sup>304</sup>

Article 54 IC deals with the judicial practice of discrediting the victim of VAW and DV by presenting evidence in court related to the sexual history and conduct of the victim. Such evidence is permitted 'only when it is relevant and necessary'. The Explanatory Report specifies that when judges admit previous sexual history evidence, 'it should only be presented in a way that does not lead to secondary victimization'.<sup>305</sup> Even though it seems insufficient as protection, it should be acknowledged that it is the only rule at the international level that establishes a limit to judicial discretion in the field. The jurisprudence of the ECtHR might be helpful in that respect, because, in assessing alleged violations of human rights emerging from judicial proceedings, the Court can address secondary victimization and limit the scope of the expression 'only when it is relevant and necessary', as happened in *J.L. v. Italy*. In the judgment, the Court found that Italy violated Article 8 ECHR for failing in the positive obligations to protect the victim's image, dignity and private life, including through the non-disclosure of personal information and data that were unrelated to the facts.<sup>306</sup>

Article 55 contains procedural measures: *ex officio* prosecution, which is aimed at ensuring that investigation into or prosecution of listed offences (Articles 35-39 IC) 'shall not be wholly dependent upon a report or complaint filed by a victim if the offence was committed in whole or in part in its territory', and proceedings 'may' continue even in the event that the victim withdraws. Article 55(2) guarantees that assistance to victims – if they so wish – is provided by governmental and non-governmental organisations and domestic violence counsellors. The phrasing of the provision is deliberately general to accommodate national differences. As for other articles in this chapter, the obligation under Article 55 can be 'measured' using the due diligence standard. Even with weak cooperation by the victim, the state can be found in violation of its obligations under the ECHR if it does not provide procedural guarantees to the victim.

Article 56 contains a (non-exhaustive) list of measures with the purpose of safeguarding the rights of victims 'at all stages of investigation and judicial proceedings', including protection from intimidation, retaliation and repeated victimisation, right to be informed of the perpetrator's release, appropriate support services, protection of privacy, etc. The second paragraph looks at the specific situation of child victims of or witnesses to violence. Legal assistance and free legal aid (Article 57) must be ensured to victims of GBVAW and DV, under the conditions provided by their internal law. Article 58 concerns statute of limitations. The period of statute of limitations normally starts counting the very moment when the offence is committed, or in relation to

<sup>302</sup> See: Van der Aa, S., Niemi, J., Sosa, L., Ferreira, A., Baldry A. (2015), *Mapping the legislation and assessing the impact of protection orders in the European Member States, Final report of the POEMS Project funded by the DAPHNE Programme of the EU*, p. 36.

<sup>303</sup> In *Mudric v Moldova* No. 74839/10, 16 July 2013, for example, the lack of enforcement of the protection order was an element to prove the violation of Article 3 of the ECHR by the state.

<sup>304</sup> Niemi, J. (2023) 'Emergency barring orders', *Commentary on the Istanbul Convention*, p. 609. Sosa, L. (2019) 'Protection against violence: the challenges of incorporating human rights' standards to procedural law', *Human Rights Quarterly*, 2019, 41.

<sup>305</sup> *Explanatory Report*, p. 278.

<sup>306</sup> ECtHR, *J.L. v. Italy*, No. 5671/16, 27 May 2021.

continuous crimes, the moment when the violent act stops or the effects of the offence have ceased. Domestic violence, stalking, violence in digital world can be considered as continuous crimes with long-standing effects, hence the statute of limitations should be postponed as long as the damaging information or images remain accessible online.<sup>307</sup> Statutes of limitations must not be conceived in a way as to make it impossible for a child victim of sexual abuse to start a proceeding against the alleged perpetrator when the person turns 18.

## 7.2 EU law

### 7.2.1 Treaties

Reference articles in the founding treaties for this chapter are Article 81(2) TFEU and Article 82 TFEU. According to Article 81(1) TFEU, the Union deals with judicial cooperation in civil matters that have cross-border implications. Emphasis has been put on the mutual recognition of decisions, which should lead to the direct enforceability of decisions of a Member State in another Member State without any intermediate procedure in the latter state. Paragraph 2 contains a list of measures necessary for the proper functioning of the internal market. As discussed further in chapter 10 of this report, under Chapter VIII IC, Article 81(2) TFEU has not been identified as legal basis in either the decisions for accession or in the VAW Directive.

### 7.2.2 Secondary legislation

In terms of secondary legislation, the Victims' Rights Directive stands out as an important legal instrument. Chapters 3 and 4 of the Victims' Rights Directive contain provisions that fall under Chapter VI IC. For example:

- the right to be heard (Article 10), Article 56(d) IC;
- the right to information of a decision not to prosecute (Article 11), Article 56(c) IC even though the latter is broader and includes all information related to the complaint and the charges;
- legal aid Article 13, Article 57 IC;
- the right to protection (Article 18), Article 56(a), b);
- the right to avoid contact between victim and offender (Article 19), Article 56(i);
- the right to protection of victims during criminal investigations (Article 20), Article 50 IC but only partly, Article 56(d) IC;
- the right to protection of privacy (Article 21), Article 56(f);
- Article 22 on individual assessment of victims to identify specific protection needs; and
- Article 23 on the right to protection of victims with specific protection needs during criminal proceedings.

Despite the correlation between the articles of the Directive and the articles of the IC, as a horizontal instrument, the Victims' Rights Directive does not deal in particular with the specificity of GBVAW and DV.

Article 18 of the Victims' Rights Directive is very broad and general in terms of victim protection. Only the purpose of these measures is directly stated and specific legal obligations for states are not provided. Moreover, under Recital 52, 'measures should be available to protect the safety and dignity of victims and their family members from secondary and repeat victimisation'. These measures can consist in the physical isolation of the offender from the victim and the application of temporary protection measures such as a ban on contact: the

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<sup>307</sup> De Vido, S., Sosa, L. (2021), *Criminalisation of gender-based violence against women in European states, including ICT-facilitated violence*, p. 170.

Victims' Rights Directive does not indicate what specific measures should be available.<sup>308</sup> The Proposal for the revision of the Victims' Rights Directive aims to strengthen victims' right to protection by adding physical protection measures to the list of specialised protection measures if the need for such measures is identified during victims' individual assessment.

The risk assessment deserves special attention. A 'timely and individual assessment' is specified in the Victims' Rights Directive to identify 'specific protection needs' and whether victims would 'benefit from special measures in the course of criminal proceedings' because they are in a position of vulnerability (Article 22). Particular attention should be paid to victims 'that have suffered considerable harm due to the severity of the crime', such as victims of 'gender-based violence, violence in a close relationship, sexual violence'. The missing point is the understanding of the structural nature of GBVAW, which determines the condition of vulnerability, at the intersection of different grounds of discrimination. In the proposal for amendments submitted by the European Commission on 12 July 2023, Article 22 of the Victims' Rights Directive has been changed stressing in more detail how the individual assessment should be conducted, what the individual assessment must take into consideration, and when particular attention should be paid. Intersectionality appears in the sentence 'particular attention shall be paid to victims who fall under more than one of [...] categories.'<sup>309</sup> The individual assessment is also crucial in the VAW Directive.<sup>310</sup>

Despite referring to secondary victimisation and retaliation that must be avoided, the Victims' Rights Directive does not address the entrenched stereotypes in the domestic criminal justice systems that are the very basis of secondary victimisation. For example, the training of judges, lawyers and enforcement authorities (Article 25 VDR Directive) should include, as general training for everyone working with victims of any crimes, issues related to gender equality, and how to avoid gender-based assumptions and the risk of perpetuation of damaging stereotypes during proceedings. This could be done by issuing guidelines.

With regard to protection orders, EU law requires that protection orders issued in one Member State must be recognised and enforced in another, in respect of the principle of mutual recognition. If part of a criminal proceedings, protection orders are covered by Directive 2011/99/EU on the European protection order (EPO); if adopted in the context of a civil and administrative procedure, Regulation 606/2013 on Mutual Recognition of Protection Measures in Civil Matters is applicable.<sup>311</sup> Both instruments are applicable to all victims who received a similar form of protection at domestic level.

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<sup>308</sup> EIGE (2019), *An analysis of the Victims' Rights Directive from a gender perspective*, pp. 39-40.

<sup>309</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM/2023/424 final.

<sup>310</sup> Draft European Parliament Legislative Resolution, COM(2022)0105 – C9-0058/2022-2022/066(COD), Amendment 40. See table 5.

<sup>311</sup> For a detailed discussion of the implementation of these directives, see the Committee on Civil Liberties, Justice and Home Affairs and Committee on Women's Rights and Gender Equality (2018) *Implementation Report*. [https://www.europarl.europa.eu/doceo/document/A-8-2018-0065\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/A-8-2018-0065_EN.pdf).

As for legal aid, in order to facilitate access to legal aid in civil and commercial matters, the Directive on legal aid in cross-border issues was adopted.<sup>312</sup> The Directive does not specifically refer to GBV. There is no similar document for cross-border cases in criminal matters.

Table 5 below contains other relevant provisions of the VAW Directive.

Table 5: VAW Directive and IC corresponding provision

VAW Directive	IC corresponding provision and comments
<p>Article 13: Limitation periods</p> <p>Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and adjudication of criminal offences as referred to in Articles 3 to 9 for a sufficient period of time after the commission of those criminal offences in order for those criminal offences to be tackled effectively. The limitation period shall be commensurate with the gravity of the criminal offence concerned. 2. Where the victim is a child, the limitation period for criminal offences as referred to in Article 3 shall commence at the earliest once the victim has reached 18 years of age.</p>	<p>Article 58 IC</p> <p>The provision of the VAW Directive is in conformity with the IC. The age limit in the VAW Directive is 18, whereas in the IC ‘the age of majority’, which can change from State to State.<sup>313</sup></p>
<p>Article 14 (2) – Legal aid</p> <p>Member States shall ensure that victims have access to legal aid in accordance with Article 13 of Directive 2012/29/EU. Member States may extend legal aid to victims reporting criminal offences, where provided for under national law.</p>	<p>Article 57 IC</p> <p>The provision of the VAW Directive expands the one in the Victims’ Rights Directive by adding legal aid to victims reporting criminal offences.</p>

<sup>312</sup> Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes ELI: <http://data.europa.eu/eli/dir/2003/8/2003-01-31>.

<sup>313</sup> The age of majority is 18 years in all EU Member States. See: European Agency for Fundamental Rights (FRA), ‘[Age of Majority](#)’.

<p>Article 16 – Individual assessment</p> <p>The VAW Directive complements the Victims’ Rights Directive by adding some requirements to the individual assessment with regard to victims of sexual violence and victims of domestic violence. The assessment must be conducted as soon as possible after the first coming into contact with the victim and consider elements such as the risk of repeated violence, the risk of bodily or psychological harm, the sharing of the residence with the victim, the use of weapons, the misuse of drugs or alcohol, child abuse, stalking behaviours, mental health behaviours. The individual assessment leads to the adoption of protection measures, including protection orders.</p>	<p>Article 51 IC</p> <p>Compared to the requirements of the IC, the risk assessment in the VAW Directive does not explicitly mention the lethality risk – which can be considered as included in the risk of bodily or psychological harm – but it is nonetheless well articulated.<sup>314</sup></p>
<p>Article 19 – Emergency barring orders, restraining orders and protection orders</p> <p>For the first time, the VAW Directive establishes minimum rules for the issuance of emergency barring orders, restraining orders and protection orders. In situations of immediate danger, authorities must be granted the power to issue orders addressed to the perpetrator or alleged perpetrator of violence, ordering the offender or suspect to vacate the residence of the victim. MS must also ensure that breaches of these orders entail effective, proportionate and dissuasive criminal or non-criminal penalties.</p>	<p>Articles 52 and 53 IC</p> <p>In the VAW Directive, requirements of emergency barring orders are better detailed than restraining orders, both being incorporated in the same provision.</p> <p>The provision is compliant with the IC, and broadens the scope of emergency barring orders, whose issuance the VAW Directives extends to all forms of violence covered by the Directive and not only to DV.</p> <p>The VAW Directive stresses that restraining orders or protection orders to provide protection must be issued ‘for as long as necessary’ (the IC states: ‘for a specified period or until discharged or modified’).</p>
<p>Article 20 – Protection of victims’ private life</p> <p>Under this provision, MS shall ensure that, ‘in criminal proceedings, evidence concerning the past sexual</p>	<p>Article 54 IC</p>

<sup>314</sup> See also below, section 7.2.3, on EU practice.

<p>conduct of the victim or other aspects of the victim's private life related thereto is permitted only where it is relevant and necessary.'</p> <p>In the preamble, it is written that 'presenting evidence of past sexual behaviour, the sexual preferences of the victim and the attire or outfit of the victim to challenge the credibility and lack of consent of victims in sexual violence cases, especially rape cases, can reinforce the perpetuation of damaging stereotypes of victims and lead to repeat or secondary victimisation' (recital No. 48).</p>	<p>Article 20 VAW Directive is only partly compliant with Article 54 IC. The IC refers to evidence on the sexual history and 'conduct' of the victim, which shall be permitted only when it is relevant and necessary, and not to the 'victim's private life related thereto' (the victim's past sexual conduct). The reference in the Directive to 'other aspects of the victim's private life' related to the victim's sexual conduct, even if only where it is relevant and necessary, might seem to jeopardise the victim's right to privacy and risk leading to secondary victimisation.</p> <p>It is useful to note, however, that the preamble (recital No. 48) correctly refers to the fact that presenting evidence of past behaviour, the sexual preferences of the victim and the attire or outfit of the victim can lead to repeat or secondary victimisation. The risk of jeopardising the victim's rights which derives from this provision is therefore mitigated by an interpretation of Article 20 VAW Directive that takes into consideration the preamble of the Directive, the corresponding article of the IC, and the relevant ECtHR jurisprudence (i.e. <i>J.L. v. Italy</i>).</p>
<p>Article 21 – Guidelines for law enforcement and prosecutorial authorities</p> <p>The Directive recommends States ('may issue') guidelines for cases concerning violence against women or domestic violence for the competent authorities acting in criminal proceedings, including prosecutorial guidelines.<sup>315</sup> The adoption of guidelines is not a strict obligation under the VAW Directive. Those guidelines shall be gender sensitive and advisory in nature and may include guidance on how to conduct the individual assessment, treat victims in a trauma-, gender-, disability- and child-sensitive manner. Particularly relevant is the</p>	<p>There is not a specific corresponding article, however GREVIO acknowledged the setting up of national guidelines for police and prosecutors as a positive development, and an implementation of Article 49. Article 21 VAW Directive is in line with the interpretation of Article 49 IC by GREVIO.</p>

<sup>315</sup> On the importance of prosecutorial guidelines, see 'State practice' in De Vido, S., Sosa, L. (2021), *Criminalisation of gender-based violence against women in European states, including ICT-facilitated violence*.

reference to the treatment of victims in a trauma, gender, disability and child-sensitive manner, to intersectional discrimination, and to the need to avoid gender stereotypes.	
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### 7.2.3 EU practice

An EU-funded project called IMPRODOVA was specifically designed to provide solutions for an integrated response to DV, based on comprehensive empirical research on how police and other frontline responders (e.g. medical and social work professionals) respond to DV in European countries. A map for the training was produced and recommendations adopted.<sup>316</sup> It now continues as HORIZON project, IMPROVE.<sup>317</sup>

The EU network on preventing GBV and DV has collected several best practices with regard to the risk assessment, referring to law enforcement, the health sector, and social services. It is clear that there is no uniformity among risk assessment tools in the Member States, and that risk assessment should be considered along with (and linked) to risk management in order to be in line with the IC. Multiagency cooperation is particularly important in ensuring the effectiveness of the measures.

### 7.2.4 Staff regulations and policies

The analysis of staff regulations and policies will be limited to the articles mentioned in paragraph 305 of the 2021 CJEU Opinion, namely Articles 49–53, and 56. For the purposes of the analysis, it seems that emergency barring orders and restraining or protection orders are not relevant. Restraining orders could be, if needed, requested in a domestic court, according to domestic law. With regard to the procedures in place for the assessment of potential cases of sexual harassment in the public administration, one key aspect that already emerged in the analysis is also relevant here: a general lack of gendered understanding of violence, except for a reference in the definition of sexual harassment, being a form of discrimination based on gender. The Commission Decision of 12 December 2023 innovatively added the human rights perspective, with emphasis on the ‘increased risk of harassment faced by victims experiencing discrimination based on a combination of sex and other grounds of discrimination’, on the risk of intimidation, retaliation, secondary and repeated victimisation, as well as on the presumption of innocence of the alleged harasser.<sup>318</sup> With regard to the immediate response, the Commission Decision provides a system of ‘early intervention’, meaning that persons who feel that they are target of harassment may raise the matter directly with the alleged harasser or may inform the line manager, or, in the event that the direct manager is the alleged harasser, may inform the line manager’s hierarchy.<sup>319</sup> The timeline of the informal and the formal procedures is well defined, and therefore it meets the requirements of the IC. A risk assessment or risk management plan is not present. There are two positive elements. According to the action plan, the Chief Confidential Counsellor coordinates proactive outreach

<sup>316</sup> See: [https://training.improdova.eu/wp-content/uploads/2020/08/Improdova\\_Risk\\_Assessment\\_Checklist\\_Module\\_5\\_Final.pdf](https://training.improdova.eu/wp-content/uploads/2020/08/Improdova_Risk_Assessment_Checklist_Module_5_Final.pdf).

<sup>317</sup> See: <https://www.improve-horizon.eu/>.

<sup>318</sup> Commission Decision of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3, C(2023) 8630 final, Article 9.

<sup>319</sup> Commission Decision of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3, C(2023) 8630 final, Article 18.

to Commission departments to identify factors that might increase the likelihood of personal tensions, conflict and harassment;<sup>320</sup> also, a toolkit for managers is available to guide them to detect signs of harassment and react early, effectively and with confidence.<sup>321</sup> Among protection measures, the Commission Decision names interim protective measures and accompanying measures to mitigate the effects of harassment and facilitate the integration into the world of work.<sup>322</sup>

An immediate response is also ensured in the Decision on the functioning of the advisory committee dealing with harassment complaints at the European Parliament: when the complainant submits a request for assistance, the appointing authority entrusts the complaint 'without delay' to the responsible person or service, and the person entrusted with carrying out the preliminary study must contact the complainant as soon as possible, within 5 working days, and the preliminary study must be available within 30 days.<sup>323</sup> The European Parliament guide on harassment lists some signs a person in charge needs to be aware of, such as increased absenteeism, petty criticism, and systematic absence from social events.<sup>324</sup> An analysis of the signs is crucial to early intervention and an immediate response to sexual harassment. Early warning and detection are also present in ECA's policy, which includes a strict timeline for the formal and informal procedures.<sup>325</sup>

### 7.3 Summary – Chapter VI IC

Chapter VI IC contains provisions on investigation, prosecution, procedural law and protective measures.

- Chapter VI IC has been thoroughly implemented in EU secondary legislation, in particular through the Victims' Rights Directive, the Regulation on protection orders, and the VAW Directive. The gendered understanding of violence against women is strengthened in the VAW Directive.
- The landmark instrument for the implementation of this chapter IC is the VAW Directive, which is largely compliant with the IC. In particular, with regard to the individual assessment, the VAW Directive complements the Victims' Rights Directive by adding some requirements to the individual assessment with regard to victims of sexual violence and victims of domestic violence. Compared to the requirements of the IC, the risk assessment in the VAW Directive does not expressly mention the lethality risk, but it is nonetheless well articulated. An innovative aspect is represented by the guidelines for law enforcement and prosecutorial authorities (Article 21 VAW Directive) which Member States *may* issue. There is no specific corresponding article in the IC, however GREVIO acknowledged the setting up of national guidelines for police and prosecutors as a positive development, and an implementation of Article 49 IC.
- In the VAW Directive, requirements of emergency barring orders are better detailed than restraining orders, both being incorporated in the same provision. The provision is compliant with the IC, and broadens the scope of emergency barring orders, the issuing of which the VAW Directive extends to all

<sup>320</sup> Action plan of the European Commission, p. 10.

<sup>321</sup> Action plan of the European Commission, p. 12.

<sup>322</sup> Commission Decision of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3, C(2023) 8630 final, Articles 20 and 21.

<sup>323</sup> Decision on the functioning of the advisory committee dealing with harassment complaints, PE 422.616/BUR, Article 4.

<sup>324</sup> European Parliament, *Harassment: Zero Tolerance in the EP*, guide, p. 11.

<sup>325</sup> European Court of Auditors (2022) 'Policy for ensuring a respectful and harassment-free workplace', para 28 ff.



forms of violence covered by the Directive and not only to DV. The VAW Directive stresses that restraining orders or protection orders to provide protection must be issued ‘for as long as necessary’ (the IC states: ‘for a specified period or until discharged or modified’).

- With regard to staff regulations and policies, early intervention and immediate response to sexual harassment is relevant in most of the documents under analysis in this report. An immediate response can be characterised by the presence of a strict timeline for the formal and informal procedure or by the identification of ‘signs’ (red flags) of sexual harassment. For example, in the European Commission’s action plan, the chief confidential counsellor coordinates proactive outreach to Commission departments to identify factors that might increase the likelihood of personal tensions, conflict and harassment.

#### 7.4 Loopholes – Chapter VI IC

- Article 20 VAW Directive is only partly compliant with Article 54 IC. The IC refers to evidence of the sexual history and ‘conduct’ of the victim, which shall be permitted only when it is relevant and necessary, and not to the ‘victim’s private life related thereto’ (the victim’s past sexual conduct). The reference in the Directive to ‘other aspects of the victim’s private life’ related to the victim’s sexual conduct, even if only where it is relevant and necessary, might seem to jeopardise the victim’s right to privacy and risk leading to secondary victimisation. It is useful to note, however, that the preamble (recital No. 48) correctly refers to the fact that presenting evidence of past behaviour, the sexual preferences of the victim and the attire or outfit of the victim can lead to repeat or secondary victimisation. The risk of jeopardising the victim’s rights that derives from this provision is therefore mitigated by an interpretation of Article 20 VAW Directive that takes into consideration the preamble of the Directive, the corresponding article of the IC, and the relevant ECtHR jurisprudence (i.e. *J.L. v. Italy*).
- In terms of risk assessment, the problem lies in the implementation, given the presence of very different models at national level, although the level of detail reached in the VAW Directive should be welcomed. Coordination and sharing of best practices become therefore pivotal for the effectiveness of the IC.
- With regard to staff regulations and policies, a risk assessment or risk management approach is not present. Institutions should consider the possibility of preparing a document for an individual assessment in alleged cases of sexual harassment, which should be characterised by the following elements (selected from the relevant ones in Article 16 VAW Directive): the risk of repeated violence, the risk of bodily or psychological harm, mental health issues and stalking behaviour. This assessment can become part of the ‘first response’ (at the earliest possible stage) by confidential counsellors. Specific rules on how a risk assessment should be done would meet the requirements of the IC.

## 8. Chapter VII IC- Migration and asylum (Articles 59-61)

### 8.1 Introduction

The chapter on migration in the IC is composed of three articles. Article 59 aims to address the power imbalance created by migration for family reunification purposes. States usually require spouses to remain married for a probation period before the dependant spouse is capable of obtaining an autonomous residence permit.<sup>326</sup> The IC does not require the state to remove the probation period, but it offers a remedy 'by creating possibilities for the abused spouse to gain immigration relief after and on the basis of the abuses that have already materialised'.<sup>327</sup> Prior to the expiration of the probation period, a woman must be able to receive an autonomous residence permit upon request 'irrespective of the duration of the marriage or the relationship', in the event of the dissolution of the marriage or the relationship and in 'particularly difficult circumstances' (Article 59(1)). Under Article 59(2), parties must ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependant on that of the spouse or partner as recognised by internal law. A renewable resident permit should be granted to victims where the authority considers that the stay is necessary owing to the personal situation, or/and where the authority considers that the stay is necessary for the purposes of cooperation with the competent authorities in investigation or criminal proceedings (Article 59(3)). Victims of forced marriage would have the possibility to regain their residence status in the country where they habitually reside, when this status was lost because of the forced marriage.

Article 60 contains three elements: first GBVAW is to be considered as a form of persecution within the meaning of the 1951 Refugee Convention; secondly, a gender-sensitive interpretation of each of the Convention grounds is required; thirdly, gender-sensitive reception procedures, guidelines and asylum procedures must be adopted, including the determination of refugee status and the application of international protection.

Article 61 enshrines a consolidated principle in international law, namely non-refoulement. The Explanatory Report clarifies the content of the provisions, pointing out, for example, that asylum law has long ignored differences in the way women and men experience persecution. Such gender 'blindness' has led to the failure to recognise gender-based violence against women as grounds for refugee status.<sup>328</sup> The Explanatory Report notes that, in the practice of states, some forms of gender-based violence against women, such as rape, female genital mutilation, dowry violence, severe forms of domestic violence or trafficking, have been recognised as forms of persecution, whether committed by states or non-state actors. The Explanatory Report notes that not all forms of violence on the basis of gender can automatically be considered to generate 'serious harm' capable of giving rise to protection under international migration law.<sup>329</sup> The particular circumstances of the individual case will therefore determine whether or not refugee status should be recognised.

A positive element of the Explanatory Report is that it goes beyond merely considering women victims of gender-based violence as a 'particular social group'. Indeed, it mentions examples of grounds such as ethnicity and nationality (sexual violence and reproductive control as a means of ethnic cleansing); religion (not

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<sup>326</sup> Stoyanova, V. (2023) 'Residence status', *Commentary on the Istanbul Convention*, p. 663.

<sup>327</sup> Stoyanova, V. (2023) 'Residence status', *Commentary on the Istanbul Convention*, p. 663.

<sup>328</sup> *Explanatory Report*, para. 310.

<sup>329</sup> *Explanatory Report*, para. 311.

conforming to religious norms or customs – even cases of honour-based violence); membership of a particular social group (FGM); and political opinion (gender roles, women may be persecuted for not conforming to societies' imposed roles or for speaking out against traditional gender roles).<sup>330</sup> Using the category of membership of a particular social group only leads to the trivialisation of the political, social and religious dimensions of GBVAW, rather than allowing a more comprehensive understanding of the phenomenon. Article 60(3) covers measures to be taken for a gender-sensitive approach to migration, which fall into three distinct categories.<sup>331</sup> The first consists of gender-sensitive reception that take into account differences between men and women in experience and specific protection needs, such as: prompt identification of victims of violence; separate housing and toilets for men and women; lighting; female staff; trained staff; codes of conduct in the case of private service provision; and counselling and psychological support services. The second category is for practitioners to receive guidelines from the state to raise awareness of the specific protection needs of women asylum seekers who have been victims or are at risk of gender-based violence. The guidelines must be culturally sensitive, trauma sensitive, and gender sensitive. The third category consists of gender-sensitive procedures for granting refugee status, such as: interviews with authorities without male family members; the possibility for women to raise specific protection needs that may lead to separate pathways to international protection; gender-sensitive interviews with an interpreter; and respect for confidentiality.

Despite some best practices identified by GREVIO, there are several issues to be addressed in asylum and migration procedures, which tend to be gender insensitive and lacking a holistic understanding of GBVAW as a form of persecution.<sup>332</sup> GREVIO noted that there are restrictions that prevent access to state borders, thus resulting in 'indirect' refoulement, and that there is a lack of practices that allows for the proper identification of victims of violence against women who are seeking protection against refoulement.<sup>333</sup> For example, the *Mid-term Horizontal Review* highlights that two countries implement deterrence policies based on abandonment at sea and close ports to ships bringing migrants to safety. Such policies, in violation of migrants' human rights, have effects on women fleeing domestic and sexual violence.<sup>334</sup>

## 8.2 EU law

### 8.2.1 Treaties

Article 78 TFEU is the legal basis relevant for the implementation of Chapter VII IC, and Article 78(2) TFEU was one of the legal bases for EU accession to the IC. It should also be noted that the Charter on Fundamental

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<sup>330</sup> [Explanatory Report](#), para. 313. See also CJEU, judgment of 11 June 2024, *K and L v Staatssecretaris van Justitie en Veiligheid*, C-646/21, ECLI:EU:C:2024:487. The Court replied to a request for a preliminary ruling in a case concerning K and L, two sisters born of Iraqi nationality. They lodged applications for asylum in the Netherlands, which were rejected. The Court, interpreting Directive 2011/95, argued that: 'It follows that women, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men during their stay in a Member State may, depending on the circumstances in the country of origin, be regarded as belonging to a 'particular social group', within the meaning of Article 10(1)(d) of Directive 2011/95'.

<sup>331</sup> [Explanatory Report](#), para. 314.

<sup>332</sup> GREVIO, *Mid-term Horizontal Review*, par. 535.

<sup>333</sup> GREVIO, *Mid-term Horizontal Review*, para. 571.

<sup>334</sup> GREVIO, *Mid-term Horizontal Review*, para. 575.

Rights of the EU enshrines the right to asylum (Article 18) and the non-refoulement principle (Article 19). The entire corpus of human rights as enshrined in the Charter is relevant when dealing with migration issues.

## 8.2.2 Legislation on migration and asylum

In terms of secondary legislation, two directives are relevant with regard to Article 59 IC.

First, Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States provides at Article 13 that: 'divorce, annulment of the Union citizen's marriage or termination of his/her registered partnership [...] shall not affect the right of residence of his/her family members who are *nationals* of a Member State' and that 'divorce, annulment of marriage or termination of the registered partnership [...] shall not entail loss of the right of residence of a Union citizen's family members who are *not nationals* of a Member State' where 'this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting'.

In *X v. Belgium*, the CJEU acknowledged that divorce proceedings may be initiated after the departure of the EU citizen from the host Member State but must be filed within 'a reasonable period following such departure'.<sup>335</sup> Despite this positive outcome – a victim of GBVAW does not lose the right of residence when the perpetrator leaves the country before the beginning of the divorce proceedings – it should be noted that EU law explicitly only refers to domestic violence, and not to other forms of violence as provided in the IC. In terms of interpretation, given the text of Article 13 of Directive 2004/38 – '*such as* having been a victim of domestic violence' – it is possible to argue that being a victim of DV is an example only and that other forms of violence enshrined in the IC should be included, being the legal language typical of a non-exhaustive rather than that of an exhaustive list. Also, the Directive, under Article 13(2), provides that before acquiring the right of permanent residence, 'the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements'. Even though it is correct to say that the IC acknowledges that 'the conditions relating to the granting and duration of the autonomous residence permit are established by internal law', the requirements under the Directive are not compliant with the purpose of the Convention – to protect women from all forms of violence, including the often neglected dimension of economic violence. The financial dependency of a victim of violence *vis-à-vis* the perpetrator of violence often constitutes a component of DV.<sup>336</sup>

<sup>335</sup> CJEU, 2 September 2021, *X v. Belgium*, C-930/19, ECLI:EU:C:2021:657, para. 43. The legal argument was different from the one in *Secretary of State for the Home Department v N.A.*, C-115/15 [2016]. Stoyanova, V. (2019) 'On the Bride's side? Victims of domestic violence and their residence rights under EU and Council of Europe Law', *Netherlands Quarterly of Human Rights*, 37(4), pp. 311-335.

<sup>336</sup> Matteoli, A. (2023) 'Les aides à dimension économique dans le cadre des violences économiques', *AJ Famille*, p. 629; Porcheron, D. (2024) 'L'adhésion de l'Union européenne à la Convention d'Istanbul: une avancée majeure dans la lutte contre les violences de genre', *Revue trimestrielle de droit européen*, 2024. Stoyanova, V. 'Residence status', *Commentary on the Istanbul Convention*, p. 325.

Secondly, Directive 2003/86/EC on the right to family reunification<sup>337</sup> provides under Article 15 that the spouse can be granted a residence permit, independent of that of the sponsor, 'not later than after five years of residence', and that 'in the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances' (Article 15(3)). The wording used in this provision is identical to the one in Directive 2004/38/EC. These 'particularly difficult circumstances' should include forced marriage. A reference to forced marriages, especially when they are child marriages, could reinforce the protection of women and girls who are victims of this specific form of violence. Under Article 59(4) IC, if a victim of forced marriage is in possession of a residence permit for a Party to the Convention and is brought into another country, this might result in a loss of residence status in the country where he or she habitually resides. The IC obliges its Parties to provide for the possibility for such victims to regain their residence status on account of them being forced to leave the country where they habitually reside, in particular in the event of the dissolution or annulment of the marriage.<sup>338</sup>

As for Articles 60 and 61, this report focuses on the recently adopted Pact on Migration and Asylum, which replaces previous legal instruments. The purpose of this section is to provide examples of how Chapter VII IC has (or has not or could have) been implemented in the 10 new regulations and recast directives, rather than to analyse any single provision in full detail.<sup>339</sup> The Pact on Migration and Asylum defines a set of rules 'managing migration and establishing a common asylum system' at EU level. The policy area groupings are the following: secure external borders, fast and efficient procedures, effective system of solidarity and responsibility, embedding migration in international partnerships.<sup>340</sup>

<sup>337</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, *OJ L 251*, 3.10.2003, pp. 12–18.

<sup>338</sup> This example is taken from the [Explanatory Report](#), para. 308.

<sup>339</sup> All published here <https://eur-lex.europa.eu/oj/daily-view/L-series/default.html?&ojDate=22052024>: Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (Qualification Regulation); Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU; Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148; Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147; Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013; Regulation (EU) 2024/1352 of the European Parliament and of the Council of 14 May 2024 amending Regulations (EU) 2019/816 and (EU) 2019/818 for the purpose of introducing the screening of third-country nationals at the external borders; Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817; Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council; Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147.

<sup>340</sup> See: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en).

The Qualification Regulation is particularly relevant given the recent interpretation by the CJEU of the previous Qualification Directive.<sup>341</sup> The preamble explains that acts of persecution ‘of a gender-specific’ nature might include ‘under-age recruitment, genital mutilation, forced marriage, child trafficking and child labour, and trafficking for sexual exploitation’.<sup>342</sup> The Regulation attempts to introduce a ‘common concept of the persecution ground “membership of a particular social group”’: ‘issues arising from an applicant’s sexual orientation or gender, including gender identity and gender expression, which could be related to certain legal traditions and customs, resulting in, for example, genital mutilation,<sup>343</sup> forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant’s well-founded fear of being persecuted’. Also, the Regulation acknowledges that the existence and the application of criminal laws that specifically target lesbian, gay, bisexual, transgender and intersex persons can mean that those persons are to be regarded as forming a particular social group.<sup>344</sup> This is in conformity with the IC. It should be noted that ‘genital mutilation’ does not specifically refer to a procedure only women and girls are subjected to. This could be read in light of the IC, hence meaning ‘female genital mutilation’, however the reading of the Regulation suggests a broader understanding of the procedure. It should also be emphasised that the preamble specifies that, as regards sexual orientation and gender identity, ‘applicants should not be submitted to detailed questioning or tests as to their sexual practices’.<sup>345</sup> This is particularly crucial for women at the intersection of different grounds of discrimination, who might be victims of persecution, for example, because they are women and because of their sexual orientation.

Article 8 determines the conditions for internal protection alternative, in cases where the State or agents of the State are not the actors of persecution. The determining authorities must determine whether an applicant is not in need of international protection because the applicant can ‘safely and legally travel to and [have] admittance to a part of the country of origin without fear of persecution’. Travel to and settling in another part of the country of origin – was also suggested in some judgments on female genital mutilation by the European Court of Human Rights, but it seems problematic for victims of GBVAW, in particular FGM:<sup>346</sup> in these situations, the law might not constitute in itself a source of fear of persecution, but the society or the community of origin, with its entrenched myths and stereotypes of the role of women in the society, creates the conditions for the ineffectiveness of the law and the perpetration of GBVAW. The provision of the Qualification Regulation mitigates that risk by requesting the determining authority to take into account: ‘the personal circumstances of the applicant in relation to factors such as health, age, gender, including gender identity, sexual orientation, ethnic origin and membership of a national minority’ (Article 8, para. 5). Acts of persecution under Article 9 include ‘acts of physical or mental violence, including acts of sexual violence’ (Article 9(2)(a)) and ‘acts of a gender-specific or child-specific nature’ (Article 9(2)(f)).<sup>347</sup> This provision explicitly includes sexual violence and acts of a gender-specific nature, which should ensure a gender-sensitive application of these provisions,

<sup>341</sup> See below, section 14, on the IC as a means of interpretation.

<sup>342</sup> Preamble, No. 37 ff.

<sup>343</sup> The Regulation refers to ‘genital mutilation’ and not ‘female genital mutilation’, which paves the way for considerations of other forms of genital mutilation that are related to traditions and customs.

<sup>344</sup> Preamble, No. 41.

<sup>345</sup> Preamble, No. 42.

<sup>346</sup> See, for example, ECtHR, *Collins and Akaziebie v. Svezia*, No. 23944/05, decision on admissibility 8 March 2007; *Izevbekhai and others v. Ireland*, No. 43408/08, decision on admissibility of 17 May 2011.

<sup>347</sup> See in that respect, the two judgments CJEU, judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Femmes victimes de violences domestiques)*, C-621/21, ECLI:EU:C:2024:47, and judgment of 11 June 2024, *K and L v Staatssecretaris van Justitie en Veiligheid*, C-646/21, ECLI:EU:C:2024:487. A reflection in the chapter on the IC as a means of interpretation, section 14.

even though the Regulation fails to specifically acknowledge the fact that women and girls are disproportionately affected by sexual violence and acts of a gender-specific nature.

The reasons of persecution under Article 10 have not been changed from those in Directive 2011/95. This was a missed opportunity as an expansion of the basis of persecution could have better captured the understanding of persecution on the basis of gender. Even though Article 10 already explicitly includes gender-related aspects to be given consideration for the purposes of determining membership of a particular social group, this might not be enough in some cases, in particular after a careful reading of the Explanatory Report to the IC. For example, women persecuted in a given society because they are women or because a form of violence affects women disproportionately do not necessarily fall *sic et simpliciter* in a ‘particular social group’, as well clarified in the Explanatory Report to the IC. They can be persecuted, for example, for their political opinion, or because they oppose the subordination and the oppression of women in their society. In that respect, the hermeneutic function of law can help.

The interpretation of ‘particular social group’ provided by the CJEU in three recent judgments of 2024<sup>348</sup> will guide the future application of Directive 2011/95 and the new Qualification Regulation. The *WS*<sup>349</sup> case considered the interpretation of Directive 2011/95/EU<sup>350</sup> (the Qualification Directive or QD) against the backdrop of potentially relevant international treaties, including the IC. Essentially, the question was whether women who have been victims or fear becoming victims of gender-based violence in their country of origin qualify as a ‘particular social group’ under the QD and the 1951 UN Convention Relating to the Status of Refugees (1951 Refugee Convention)<sup>351</sup> and its 1967 Protocol,<sup>352</sup> because if they do, then they ought also to be eligible for refugee status or subsidiary protection on the basis of their sex or gender in such circumstances. The CJEU provided a clear answer, by stating that under certain circumstances, this international protection must be granted. Article 10(1)(d) of the Qualification Directive must be read to stipulate that women in general and/or more restricted groups of women who share an additional common characteristic may, under specific circumstances and if they hail from certain countries of origin, qualify as belonging to a particular at-risk social group for the purposes of obtaining refugee status.<sup>353</sup> As to the determination of which specific circumstances and which countries of origin make such a designation appropriate, the CJEU refers to the UNHCR Guidelines on International Protection No. 1, which details a series of pertinent considerations for the assessment of women’s applications for refugee status, including their position before the law, their rights, the prevalence of

<sup>348</sup> See the chapter on the IC as a means of interpretation, section 14. CJEU, judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Femmes victimes de violences domestiques)*, C-621/21, ECLI:EU:C:2024:47; judgment of 11 June 2024, *K. L. v. Staatssecretaris van Justitie en Veiligheid*, C-646/21, ECLI:EU:C:2024:487; judgment of 4 October 2024, *Bundesamt für Fremdenwesen und Asyl and Others (Afghan women)*, Joined cases C-608/22 and C-609/22, ECLI:EU:C:2024:828.

<sup>349</sup> Judgment of 16 January 2024, *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet*, C-621/21, EU:C:2024:47. See Möschel, M. De Vido, S. ‘Case C-621/21, *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet*, Judgment of the Court of Justice (Grand Chamber) of 16 January 2024, EU:C:2024:47, forthcoming in *Common Market Law Review*.

<sup>350</sup> Directive 2011/95/EU of the European Parliament and of the Council 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 (recast) OJ L 337, 9–26.

<sup>351</sup> UN Convention Relating to the Status of Refugees adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950.

<sup>352</sup> Protocol relating to the Status of Refugees adopted by the General Assembly on 16 December 1966 in resolution 2198 (XXI).

<sup>353</sup> Protocol relating to the Status of Refugees adopted by the General Assembly on 16 December 1966 in resolution 2198 (XXI), paras 49–62.



harmful traditional practices, and other incidents and forms of reported violence against women. More recently, the CJEU, in *K.L.*<sup>354</sup> argued that ‘women, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men during their stay in a Member State may, depending on the circumstances in the country of origin, be regarded as belonging to a “particular social group”, within the meaning of Article 10(1)(d) of Directive 2011/95’. The Court also added that ‘depending on the circumstances’, the identification with the fundamental value of equality of women and men ‘may also be regarded as reason for persecution based on religion or political opinion’. The assessment on the specific case was then referred to the referring judge. In the judgment of 4 October 2024, with regard to the cases of two Afghan women claiming to be persecuted as women under the new Taliban regime, the Court decided that it is unnecessary to establish that there is a risk that the applicant will actually and specifically be subject to acts of persecution if she returns to her country of origin. It is sufficient to take into account her nationality and gender alone.<sup>355</sup>

In Regulation (EU) 2024/1359 on situations of crisis in the field of migration,<sup>356</sup> applicants that are ‘more likely to have special reception needs’ include minors, unaccompanied minors, pregnant women, lesbian, gay, bisexual, trans and intersex persons, single parents with minor children, victims of trafficking in human beings, persons with mental disorders including post-traumatic stress disorder and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive. This definition is very comprehensive, even though a reference to the disproportionate impact of gender-based violence on women and girls would have been in greater compliance with the IC.

In applying Directive (EU) 2024/1346 laying down standards for the reception of applicants for international protection (recast), ‘Member States should seek to ensure full respect for the principles of the best interests of the child and of family unity, in accordance with the Charter, the 1989 United Nations Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms and, where applicable, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.’<sup>357</sup> The explicit reference in the preamble of the IC is an important aspect of the Directive. Under the Directive, applicants with special reception needs who are more likely to have special reception needs include ‘persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, for example victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive’ (Article 24). Article 20 also requires Member States to take into consideration ‘gender and age-specific concerns and the situation of applicants with special reception needs when providing material reception conditions’, and when providing housing, to ‘ensure, as far as possible, the prevention of assault and violence, including violence committed with a sexual, gender, racist or religious motive’. Where female applicants are placed in accommodation centres, ‘Member States shall provide separate sanitary facilities and a safe place in those centres for them and their

<sup>354</sup> CJEU, judgment of 11 June 2024, *K and L v Staatssecretaris van Justitie en Veiligheid*, C-646/21, ECLI:EU:C:2024:487.

<sup>355</sup> CJEU, judgment of 4 October 2024, *AH and FN v Bundesamt für Fremdenwesen und Asyl*, joined cases C-608/22 and C-609/22, ECLI:EU:C:2024:828.

<sup>356</sup> Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147, OJ L, 2024/1359, 22.5.2024.

<sup>357</sup> Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection, OJ L 2024/1346, 22.05.2024, recital 38.



minor children' (Article 20(5)). According to Article 13(5), Member States 'shall ensure that detained male and female applicants are accommodated separately, unless those detained applicants are family members and all individuals concerned consent to be accommodated together.' In interpreting this provision, attention should be paid to the gender-sensitiveness of the procedures that are requested by the IC, including, for example, ensuring that the consent of a woman is freely expressed, and not 'coerced' because it is given in the presence of a male member of the family. Also, victims of acts of psychological, physical or sexual violence, including violence committed with a sexual, gender, racist or religious motive, must receive 'necessary medical and psychological treatment and care, including rehabilitation services and counselling where necessary, for the damage caused by such acts. Those persons shall be provided, where needed, with an oral translation' (Article 28<sup>358</sup>). These provisions comply with the requirements laid down in Article 60 IC, in particular Article 60(3).

The preamble to Regulation (EU) 2024/1348 establishing a common procedure for international protection<sup>359</sup> acknowledges the need for special procedural guarantees, analysed case-by-case, for individuals 'due, *inter alia*, to their age, gender, sexual orientation, gender identity, disability, serious physical or mental illness or disorders, including when these are a consequence of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence'.<sup>360</sup> The preamble emphasises that the competent national staff as well as medical practitioners and psychologists in charge of the assessment of the needs for special procedural guarantees must be trained to identify signs of vulnerability of applicants. This recital should be read in combination with another recital that stresses, in compliance with the IC, that examination procedures should be gender sensitive.<sup>361</sup> Under Article 20(4), the competent authority can refer the applicant, upon consent, to a medical practitioner or psychologist or to another professional 'prioritising cases where there are indications that applicants might have been victims of torture, rape or another serious form of psychological, physical, sexual or gender-based violence and that that could adversely affect their ability to participate effectively in the procedure'. The individual position of the applicant has relevance, including in respect of applications on behalf of minors or dependent adults, where an individual assessment might be fundamental in particular in cases involving gender-based violence, trafficking in human beings, and persecution based on gender, sexual orientation, gender identity or age.<sup>362</sup> The concept of a safe third country (Article 59) deserves closer attention. In order for a country to be defined as such, in that country non-nationals' life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; non-nationals face no real risk of serious harm as defined in Article 15 of Regulation (EU) 2024/1347; non-nationals are protected against *refoulement* in accordance with the Geneva Convention and against removal in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law; the possibility exists to request and, where conditions are fulfilled, receive, effective

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<sup>358</sup> See also Article 25.

<sup>359</sup> Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, OJ L, 2024/1348, 22.5.2024.

<sup>360</sup> Preamble, No. 17.

<sup>361</sup> Recitals Nos 18 and 21.

<sup>362</sup> Article 36(5).

protection as defined in Article 57.<sup>363</sup> The applicant, who bears the burden of proof, can provide elements ‘justifying why the concept of safe third country is not applicable to him or her, in the framework of an individual assessment’ (Article 59(5)a). As has previously been argued and as discussed by GREVIO, a risk may exist in states that have qualified as safe countries. However, the individual assessment and the provision of the future *Asylum Procedure Regulation, which allows the possibility of exceptions for parts of the territory or categories of persons, should, in principle, overcome this limit.*

In Regulation No. 2024/1347, a serious harm includes one of the following: death penalty or execution, torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; a serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict. It is possible to argue that the protection of women fleeing countries where they are persecuted is granted through the interpretation of ‘torture or inhuman or degrading treatment or punishment’, however, an explicit reference to GBVAW as ‘a form of serious harm giving rise to complementary/subsidiary protection’ (Article 60 IC) would have better complied with the IC. Using the IC as a means of interpretation might overcome the inherent limits of these regulations, which, despite providing effective mechanisms, do not acknowledge that women are disproportionately affected from GBVAW, and maintain the burden of proof on the applicant, who, especially when at the intersection of different forms of discrimination, might face unsurmountable difficulties in showing the specific circumstances that make a safe country not specifically safe for her.

Women and girls ‘at risk’ appear in Regulation (EU) 2024/1350 on a Union Resettlement and Humanitarian Admission Framework (Article 5(3)).<sup>364</sup> Vulnerable persons include women and girls ‘at risk’, minors, survivors of violence or torture, including on the basis of gender or sexual orientation; persons with legal and/or physical protection needs, including as regards protection from refoulement; persons with medical needs, including where life-saving treatment is unavailable in the country to which they have been forcibly displaced; persons with disabilities; and persons who lack a foreseeable alternative durable solution, in particular those in a protracted refugee situation. Who ‘women and girls at risk’ are, but also ‘persons with medical needs’, will be a matter of interpretation.<sup>365</sup>

Migrant women victims of violence are not expressly mentioned in the executive part of the VAW Directive, which does not include Article 78(2) TFEU in the legal basis.

### 8.2.3 EU Practice

The legal instruments of the Pact on Migration and Asylum can also be interpreted and implemented through soft law acts and the policies of, for example, the European Union Agency on Asylum, which could improve the

<sup>363</sup> The third country shall be considered to ensure effective protection when the following requirements are met: the persons who fall outside of the scope of the Geneva Convention are allowed to remain on the territory of the third country in question; they have access to means of subsistence sufficient to maintain an adequate standard of living with regard to the overall situation of that hosting third country; they have access to healthcare and essential treatment for illnesses under the conditions generally provided for in that third country; they have access to education under the conditions generally provided for in that third country; effective protection remains available until a durable solution can be found.

<sup>364</sup> Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147

<sup>365</sup> See section 14 below.

existing tools and guidance, and develop new ones, to deal with cases of GBVAW as a form of persecution in line with the IC and the recent jurisprudence of the CJEU.

Among other examples of soft law, it is possible to mention the Resolution of 2022 of the European Parliament on the situation of the impact of the war against Ukraine on women, where the EU institution stressed the risks of violence for all women, and in particular those that are at the intersection of different forms of discrimination.<sup>366</sup> The Parliament encouraged Member States 'to make use of assistance offered by EU agencies with regard to hosting women refugees; emphasises the need for an EU-wide registration platform for people applying for temporary protection, as proposed by the Commission, which is especially needed to support tracing and reunification efforts of unaccompanied minors, but also with regard to those at risk of trafficking, such as women and girls', and to hosting Member States to 'provide support to the millions of refugees fleeing Ukraine, particularly women and children, impacting on their social, healthcare, childcare and education services'.<sup>367</sup>

#### 8.2.4 Staff regulations and policies

Not applicable.

### 8.3 Summary – Chapter VII IC

Chapter VII IC is composed of three articles: Article 59 aims to address the power imbalance created by migration for family reunification purposes; Article 60 requires that GBVAW be considered as a form of persecution within the meaning of the 1951 Refugee Convention, that there should be a gender-sensitive interpretation of each of the Convention grounds and an adoption of gender-sensitive reception procedures, guidelines and asylum procedures; Article 61 enshrines a consolidated principle in international law, namely non-refoulement.

- Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and Directive 2003/86/EC on the right to family reunification partly comply with Article 59 IC. In particular, Article 13 Directive 2004/38/EC as interpreted by the CJEU responds to the needs of victims of domestic violence whose residence status is dependent on the one of the spouse: the Court acknowledged that divorce proceedings may be initiated after the departure of the EU citizen from the host Member State but must be filed within 'a reasonable period following such departure'.
- The EU adopted in 2024 a new Pact on Migration and Asylum, which is relevant for the implementation of the IC. The Qualification Regulation, repealing Directive 2011/95/EU, partly complies with the IC: the reasons of persecution under Article 10 have not changed compared to Directive No. 2011/95. The CJEU, in three recent judgments (C-621/21, C-646/21, joined cases C-608/22 and 609/22) has however filled the gap, by providing an interpretation of the ground 'particular social group' in light of the IC.

<sup>366</sup> European Parliament resolution of 5 May 2022 on the impact of the war against Ukraine on women (2022/2633(RSP)).

<sup>367</sup> European Parliament resolution of 5 May 2022 on the impact of the war against Ukraine on women (2022/2633(RSP)), 17 and 20.

- Regulation (EU) 2024/1359 on situations of crisis in the field of migration and Directive (EU) 2024/1346 laying down standards for the reception of applicants for international protection (recast) both define applicants with 'special reception needs', including 'persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, for example victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive'. The Reception Conditions Directive also refers to the need to provide gender-sensitive reception conditions.
- Regulation (EU) 2024/1348 establishing a common procedure for international protection acknowledges the need for special procedural guarantees for individuals 'due, *inter alia*, to their age, gender, sexual orientation, gender identity, disability, serious physical or mental illness or disorders, including when these are a consequence of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence'. The gender perspective is compliant with the IC.
- In Regulation No. 2024/1347, a serious harm includes one of the following: death penalty or execution, torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.
- Migrant women victims of violence are not specifically addressed in the VAW Directive, which, being a criminal law instrument, does not present as its legal basis Article 78(2) TFEU.

#### 8.4 Loopholes – Chapter VI IC

- Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States is partly compliant with Article 59 IC. The Directive, under Article 13(2), provides that before acquiring the right of permanent residence, 'the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements.' Even though it is correct to say that the IC acknowledges that 'the conditions relating to the granting and duration of the autonomous residence permit are established by internal law', the requirements under the Directive are not compliant with the purpose of the Convention – to protect women from all forms of violence, including the often neglected dimension of economic violence. The financial dependency of a victim of violence *vis-à-vis* the perpetrator of violence often constitutes a component of DV.
- Directive 2003/86/EC on the right to family reunification does not make any reference to cases of forced marriage, which received specific attention in Article 59(4) IC. Under Article 15(3) of the Directive, 'particularly difficult circumstances' should include forced marriages. A reference to forced marriages, especially when they are child marriages, could reinforce the protection of women and girls who are victims of this specific form of violence.

- The definition of applicants with 'special reception needs' in Regulation (EU) 2024/1359 on situations of crisis in the field of migration and Directive (EU) 2024/1346 laying down standards for the reception of applicants for international protection (recast) is very comprehensive, even though a reference to the disproportionate impact of gender-based violence on women and girls would have been in greater compliance with the IC.
- In Regulation (EU) 2024/1348 establishing a common procedure for international protection, the disproportionate impact of experiences of gender-based violence on women and girls is not clearly acknowledged.
- In Regulation No. 2024/1347, the protection of women fleeing countries where they are persecuted is granted through the interpretation of 'torture or inhuman or degrading treatment or punishment', and this also thanks to the CJEU jurisprudence (C-621/21), however, an explicit reference to GBVAW as 'a form of serious harm giving rise to complementary/subsidiary protection' (Article 60 IC) would have been in greater compliance with the IC.
- The Pact on Migration and Asylum is, overall, compliant with IC. However, although acts of sexual violence and of a gender-specific nature are recognised as acts of persecution under the Qualification Regulation, it does not explicitly include GBVAW as a form of persecution and as a form of serious harm giving rise to complementary or subsidiary protection, as required by the IC.

## 9. Chapter VIII IC – International cooperation

### 9.1 Introduction

Chapter VIII IC contains a general principle of international judicial cooperation in criminal and civil matters among parties. No specific mechanism is created for such cooperation, which is brought within the terms of ‘relevant international and regional instruments’ to which ratifying states are parties.<sup>368</sup> This chapter is based on the presumption that many cases that fall under the forms of violence covered by the Convention present a transnational element, and therefore it is necessary to cooperate to transmit pieces of evidence (in criminal matters) and to solve potential conflicts of law or of jurisdiction. The Explanatory Report underlines that states are obliged to cooperate to reduce ‘as far as possible’ obstacles to the circulation of information and evidence. International cooperation entails the enforcement of civil and criminal judgments issued by the judicial authorities of the parties, including protection orders (Article 62(1)(d)), but also mutual legal assistance in criminal matters, extradition or enforcement of civil or criminal judgments (Article 62(3)), and ‘assistance programmes for development provided for the benefit of third States’. Under Article 63, parties are encouraged to transmit the information they have when there are reasonable grounds to believe that a person is at immediate risk of being subjected to any of the acts of violence under Articles 36, 37, 38 and 39 IC in the territory of another party. Article 64 focuses on the circulation of information. Article 65 refers to the Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data for data protection. The supranational level – the EU – is crucial in the implementation of this chapter, because EU legislation has identified rules for such cooperation in cases with a transnational dimension.

### 9.2 EU law

#### 9.2.1 Treaties

Legal bases relevant for the analysis are the articles in Chapters 3 and 4 TFEU, namely judicial cooperation in civil and criminal matters. In particular, beyond the aforementioned Article 82, Articles 81 and 85 TFEU are relevant here. With regard to the former, on judicial cooperation in civil matters having cross-border implications, it refers to, among other things, the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases, as discussed in Chapter VI; cooperation in the taking of evidence; effective access to justice; the development of alternative methods of dispute settlement; and support for the training of the judiciary and judicial staff. Article 85 TFEU refers to the role of Eurojust (the EU Agency for Criminal Justice Cooperation).

Concerning data protection, Article 16 TFEU and Article 8 of the EU Charter of Fundamental Rights matter, the former granting all individuals the right to protection of their personal data, the latter requiring that personal data be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by EU law.

As discussed previously, only Article 82 TFEU was mentioned as a legal basis for the EU accession to the IC.

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<sup>368</sup> Di Napoli E. and Maoli, F. (2023) ‘International Cooperation’, *Commentary on the Istanbul Convention*, p. 698 ff.

### 9.2.2 Secondary legislation

Secondary legislation with regard to Chapter VIII IC is composed of numerous acts, which cannot be entirely analysed in this report. Considering the legal basis for the accession, the purpose of this part is a) to identify the relevant pieces of legislation, including when they refer to legal bases other than the ones chosen for the decision on the EU accession; b) to consider some of their provisions in light of the IC as example of direct and indirect implementation of the IC; and c) to anticipate the discussion on the IC as a means of interpretation of EU secondary law.

With regard to criminal matters, several legal instruments are relevant for the purposes of the analysis:

- Council Framework Decision 2002/584/JHA on the European arrest warrant (EAW);<sup>369</sup>
- Directive 2004/80/EC relating to compensation to crime victims;
- Directive 2011/99/EU instituting a European protection order (EPO)
- the Victims' Rights Directive;
- Directive 2014/41 on the European investigation order (EIO);<sup>370</sup> and
- the VAW Directive.

In terms of cooperation, Directive 2004/80 promotes cooperation among Member States through the dialogue between assisting and deciding authorities: the one of the habitual residence of the victim and the one of whose territory the crime was committed.<sup>371</sup> Directive 2011/99 on the European protection order (EPO) allows states to appoint a central authority to assist judges and other judicial professionals in the adoption, transmission and reception of EPOs: in the protection of victims, especially of GBV, an adequate and prompt exchange is crucial. In the Directive 2012/29, Article 17 provides for the rights of victims resident in another Member State; Article 25 concerns the training of practitioners, which must be independent, impartial, respectful and professional, especially on the topic of support to victims and provision of restorative justice services; Article 26 requires cooperation between Member States on the exchange of best practices and assistance to European networks working on matters directly relevant to victims' rights. The VAW Directive only provides for Union-level cooperation: Member States are asked to consult each other in individual cases, including through Eurojust and the European judicial network in criminal matters, within their respective mandates (Article 43).

The main loophole of the acts dealing with criminal matters is their gender neutrality, which does not acknowledge the disproportionate impact of violence on women and girls. Gender neutrality is clearly the consequence of the nature of these acts, dealing with cooperation in criminal matters in general. However, while the EPO Directive aims to protect all victims of crime, the protection of victims of gender-based violence may require a more tailored application of the Directive to reach its full potential. Hence, certain provisions of Directive 2011/99/EU should be interpreted in light of the IC and the VAW Directive (and this could be clarified

<sup>369</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, *OJ L 190*, 18/07/2002, pp. 1–20.

<sup>370</sup> Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European investigation order in criminal matters, *OJ L 130*, 01/05/2014, pp. 1–36.

<sup>371</sup> Di Napoli, E. and Maoli, F. (2023) 'International Cooperation', *Commentary on the Istanbul Convention*, p. 710.

through guidelines or in a possible future revision of the Directive, in the preamble). For example, Article 6(1) of Directive 2011/99/EU states the following: ‘when deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, inter alia, the length of the period or periods that the protected person intends to stay in the executing State and the seriousness of the need for protection.’ The seriousness of the need for protection should be interpreted in light of the IC and the VAW Directive, by acknowledging that the ‘seriousness’ of VAW and DV is not only related to the gravity of bodily injury and that VAW and DV require a ‘*diligence particulière*’ by states as clearly stated by the ECtHR. This does not mean that protection orders should be exclusively available to female victims or that they should be imposed on male offenders only, but that, in evaluating the seriousness of the need of protection, the dynamics of power underlying VAW and DV should be taken into account.

In civil matters, one can mention the Service Regulation, which is aimed at simplifying the procedures under which a judicial or extrajudicial document is transmitted to the designated authority of another Member State and brought to the knowledge of the addressee,<sup>372</sup> and the Regulation on mutual recognition of protection measures in civil matters.<sup>373</sup> These two regulations also implement Chapter VIII IC. Domestic violence is considered as a reason for non-disclosure of relevant information that could jeopardise the health, safety or liberty of the child or another person (e.g. the new address of the child) in Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility, and on international child abduction.<sup>374</sup> The regulation deals with transnational cases and possible conflicts of jurisdiction that might emerge. The main loopholes of the acts dealing with civil matters is their gender neutrality, which does not acknowledge the disproportionate impact of violence on women and girls. In Council Regulation (EU) 2019/1111, domestic violence is considered as a reason for non-disclosure of relevant information that could jeopardise the health, safety or liberty of the child or ‘another person’ (preamble, recital No. 88; Article 89(1)). A gender perspective would acknowledge how domestic violence disproportionately affects women. Also, in a possible revision of the Regulation, ‘another person’ could be better specified, by adding for example ‘another person, in particular women victims of domestic violence as defined under the VAW Directive’.

Finally, Article 65 IC refers to data protection, which in the EU is granted by the GDPR,<sup>375</sup> and, for personal data used by law enforcement authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, by Directive (EU) 2016/680.<sup>376</sup>

<sup>372</sup> Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast), *OJ L 405*, 2.12.2020, pp. 40–78.

<sup>373</sup> On which see above, section 6.2.2.

<sup>374</sup> Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), *OJ L 178*, 2.7.2019, pp. 1–115.

<sup>375</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), *OJ L 119*, 4.5.2016, pp. 1–88.

<sup>376</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, *OJ L 119*, 4.5.2016, pp. 89–131.



### 9.2.3 EU Practice

The EU *Guidelines on VAW and girls and combating all forms of discrimination against them* (2018) clearly state that the ‘strategies of the Member States and of the EU in its external action must in particular focus on legislation and public policies which discriminate against women and girls, and the lack of diligence in combating discrimination practised in the private sphere and gender-stereotyping’.<sup>377</sup> The guidelines also establish a framework for EU dialogues, stating that the EU will ‘repeatedly raise the subject of violence against women and the discrimination from which such violence originates in its specific dialogues on human rights, and in other EU policy dialogues if necessary’.<sup>378</sup>

The EU has made a commitment to follow up on any recommendations and conclusions of international and regional mechanisms for the protection of women's rights and combating violence against women, in particular those formulated by the UN Special Rapporteur on Violence against Women, the conclusions and recommendations of the CEDAW Committee and those put forward by the regional protection mechanisms.<sup>379</sup> For example, in 2017, the joint European Union-United Nations Spotlight Initiative to end violence against women and girls launched a partnership bringing together the EU, the United Nations, civil society and government partners with the thematic focus of ending gender-based violence and harmful practices. In that respect, provided that the programmes are gender and culturally sensitive, the EU is implementing Article 62(4) IC. Another best practice was the EU statement on 21 March 2024, at the 68th Session of the United Nations Commission on the Status of Women Interactive, on the topic of artificial intelligence to advance gender equality, stressing the role of the new VAW Directive in addressing a specific offence produced by AI: the non-consensual production of AI-generated or manipulated material depicting a person engaged in sexually explicit activities (more commonly known as ‘deepfakes’).<sup>380</sup>

### 9.2.4 Staff regulations and policies

Under the Commission Decision of December 2023, staff members serving in Union delegations may directly contact the EEAS mediation service. The EEAS Mediation Service shall be the preferred procedure for staff members serving in Union delegations in relation to individual situations or individual decisions pertaining to the day-to-day working relationship at their place of employment or relating to their rights and obligations resulting from their posting in Union delegations where the Commission has delegated powers to the EEAS. The Chief Confidential Counsellor and the EEAS mediator will establish a memorandum of understanding setting out the details of their cooperation.<sup>381</sup> When a staff member is working in a Union delegation, the sharing of information and evidence between authorities of the state(s) of nationality of the persons involved

<sup>377</sup> EU (2018) *Guidelines on VAW and girls and combating all forms of discrimination against them*, [https://www.eeas.europa.eu/sites/default/files/03\\_hr\\_guidelines\\_discrimination\\_en\\_0.pdf](https://www.eeas.europa.eu/sites/default/files/03_hr_guidelines_discrimination_en_0.pdf), p. 4.

<sup>378</sup> EU (2018) *Guidelines on VAW and girls and combating all forms of discrimination against them*, p. 7.

<sup>379</sup> See information on the EU action programme to end violence against women: [https://international-partnerships.ec.europa.eu/policies/programming/programmes/act-end-violence-against-women\\_en](https://international-partnerships.ec.europa.eu/policies/programming/programmes/act-end-violence-against-women_en), [https://www.eeas.europa.eu/sites/default/files/03\\_hr\\_guidelines\\_discrimination\\_en\\_0.pdf](https://www.eeas.europa.eu/sites/default/files/03_hr_guidelines_discrimination_en_0.pdf).

<sup>380</sup> Delegation of the EU to the UN (2024) ‘Interactive dialogue on AI to achieve gender equality’, statement, 21 March 2024, [https://www.eeas.europa.eu/delegations/un-new-york/eu-statement-%E2%80%93-68th-un-commission-status-women-interactive-dialogue-ai-achieve-gender-equality\\_en?s=63](https://www.eeas.europa.eu/delegations/un-new-york/eu-statement-%E2%80%93-68th-un-commission-status-women-interactive-dialogue-ai-achieve-gender-equality_en?s=63).

<sup>381</sup> Commission Decision of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3, C(2023) 8630 final, Article 32.

is crucial, in light of the principle of sincere cooperation enshrined in the treaties, especially when the outcome could be a criminal proceeding. The right to privacy of the persons involved in a formal or informal procedure for alleged harassment or sexual harassment is granted by all institutions, in line with the IC.

### 9.3 Summary – Chapter VIII IC

Chapter VIII IC contains a general principle of international judicial cooperation in criminal and civil matters among parties.

- Numerous legal acts are already in force regarding judicial cooperation in civil matters having cross-border implications.

### 9.4 Loopholes – Chapter VIII IC

- Article 81(2) TFEU is not the legal basis for the EU accession, despite the important action undertaken by the EU in the field of international judicial cooperation in civil matters. However, this does not impact the implementation of the IC as when relevant provisions of the IC are covered by the EU law, they generally fall under the external exclusive competence of the Union. This can be said for relevant provisions regarding judicial cooperation in civil matters, including in family issues.
- In Council Regulation (EU) 2019/1111 on jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, domestic violence is explicitly mentioned as a reason for non-disclosure of relevant information that could jeopardise the health, safety or liberty of the child or another person. A gender perspective would acknowledge how domestic violence disproportionately affects women. Also, in a possible revision of the Regulation, ‘another person’ could be better specified, by adding for example ‘another person, in particular women victims of gender-based violence as defined under the VAW Directive’.
- The main loophole of the acts dealing with criminal matters is their gender neutrality, which does not acknowledge the disproportionate impact of violence on women and girls. Gender neutrality is clearly the consequence of the legal nature of these acts, dealing with cooperation in criminal matters, however, an interpretative and transformative action can be taken. However, while these instruments, in particular Directive 2011/99 on the European Protection Order, aim to protect all victims of crime, the protection of victims of gender-based violence may require a more tailored application to reach their full potential.

## 10. Chapter IX IC – Monitoring mechanism (Articles 66–70)

### 10.1 Introduction

Chapter IX is dedicated to the monitoring mechanism of the Convention, which is composed of an independent body and an intergovernmental body. The role of the Group of experts on action against violence against women and domestic violence (GREVIO) is to monitor the implementation of the Convention by the parties. At present, it is composed of 15 experts, each elected on a four-year mandate, renewable once, taking into consideration a gender and geographical balance, as well as multidisciplinary expertise. Compared to other treaty bodies, such as the ones established at UN level, GREVIO has a smaller number of members and does not have the competence to receive individual communications against ratifying parties to be examined under the provisions of the Convention. Members of GREVIO can carry out country visits according to Article 68 and enjoy privileges and immunities set out in the Convention's appendix. GREVIO concluded the baseline evaluation procedure for nearly all parties to the Convention. The procedure was based on a baseline questionnaire adopted by GREVIO on 11 March 2016.<sup>382</sup> GREVIO's first thematic evaluation procedure dedicated to the theme 'Building trust by providing support, protection and justice' was launched in October 2022 following the adoption of its questionnaire. It refers to a limited number of provisions of the Istanbul Convention: Articles 7, 8, 11, 12, 14, 15, 16, 18, 20, 22, 25, 31, 48, 49, 50, 51, 52, 53 and 56.<sup>383</sup>

The intergovernmental monitoring body is the Committee of the Parties, which ensures 'equal participation of all the Parties alike in the decision-making process and in the monitoring procedure of the Convention'.<sup>384</sup>

### 10.2 EU law

This section of the report does not follow the structure of previous sections (analysis of primary law, secondary legislation, EU practice, staff regulations and policies). The implementation of Chapter IX IC into EU law requires a reflection on EU competences and on the principle of sincere cooperation, which is enshrined in the treaties. Given that, this section of the report will focus first on the Code of Conduct that guides coordination between EU and Member States that are parties to the IC and secondly, on the division of competences and the compelling need to apply the principle of sincere cooperation.

#### 10.2.1 The Code of Conduct

The Code of Conduct (CoC) laying down the internal arrangements regarding the exercise of rights and obligations of the Union and the Member States under the Convention was adopted on 9 February 2024

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<sup>382</sup> Questionnaire on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Adopted by GREVIO on 11 March 2016 GREVIO/Inf(2016)1, *Questionnaire*.

<sup>383</sup> Council of Europe (2022) '[GREVIO adopts its 1st thematic questionnaire on the theme "Building trust by delivering support, protection and justice"](#)', press release, 18 November 2022.

<sup>384</sup> [Explanatory Report](#), para. 347.

between the Council, the Member States who are parties to the Convention and the Commission.<sup>385</sup> It is meant to be a practical internal tool to enable the Union and the Member States to achieve ‘coherent, comprehensive and unified external representation with regard to the Convention’.<sup>386</sup> The general duty of mutual sincere cooperation is invoked and will guide the implementation of the Istanbul Convention. Article 3 of the CoC refers to the following types of positions: Union positions on matters falling within the Union’s exclusive competence, including in particular, as mentioned in Council Decision (EU) 2023/5514 and Council Decision (EU) 2023/5523, certain provisions of the Convention relating to judicial cooperation in criminal matters, asylum and non-refoulement, as well as the Union’s institutions and public administration; common positions, where certain elements fall under the Union’s exclusive competence and certain elements fall under the Member States’ competence; and coordinated positions on matters falling within the competence of the Member States. The extent of the scope of ‘certain provisions’ is not an easy matter, especially for the part on judicial cooperation in criminal matters. The voting procedure follows the division of competences between the EU and Member States, with the Commission exercising the Union’s voting rights on the basis of Union positions. The European Commission also plays the role of coordinating body ‘for matters of the Convention falling under exclusive Union competence, without prejudice to the respective competences of the Member States’.<sup>387</sup> The division of competence will also play a role in the reporting obligations to GREVIO of the Union and the Member States parties to the Istanbul Convention, as the reports will cover the respective competences and require coordination. As stated in the Code of Conduct, ‘the Union and the Member States shall fulfil the reporting obligations as laid down by the Convention and exercise their reporting obligations in a coherent and complementary manner’.<sup>388</sup> Cross-references are needed to avoid double-reporting. The reports of the EU will necessarily need to include the extent to which the EU has exclusive competence for the implementation of the provision of the Convention. This is a matter of ‘internal’ EU matters and will help GREVIO to perform its duty of monitoring.

After the entry into force of the IC for the EU, the EU became a member of the Committee of the Parties (Article 67(1) of the Convention). GREVIO’s reports and its conclusions are submitted to the Committee of the Parties, which can adopt (under Article 68(12) of the Convention) recommendations addressed to the Party under assessment on the implementation of the Convention and a deadline for submitting further information. Under EU law, when the acts are capable of influencing the content of Union law, because they may affect the interpretation of the relevant provisions of the Istanbul Convention in the future, the Council must adopt a position on the Union’s behalf (Article 218(9) TFEU). This should be assessed each time, looking at the legal bases that have been used for the accession and the content of the recommendations to be adopted by the Committee of Parties.

### 10.2.2 The division of competences

The division of competences is the underlying and cross-cutting question when it comes to assess the implementation by the EU of the IC: to what extent does the EU have exclusive competence in matters covered

<sup>385</sup> Code of Conduct laying down the arrangements regarding the exercise of rights and obligations of the European Union and Member States under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). 6087/23, [C\\_2023194EN.01000701.xml \(europa.eu\)](#).

<sup>386</sup> Code of Conduct IC, Article 1(1).

<sup>387</sup> Code of Conduct IC, Article 7(1).

<sup>388</sup> Code of Conduct IC, Article 8(1).

by the IC? And, as a consequence, to what extent will the EU be asked to respond to the loopholes in the implementation of the IC?

The EU is bound by the comprehensive gold standard represented by the IC to prevent and combat VAW and DV in the area of judicial cooperation in criminal matters, asylum and non-refoulement, as well as with regard to its institutions and public administration. Within these areas, the EU thus has competence to follow-up, through infringements or in other ways, if a Member States does not implement the Convention.<sup>389</sup>

In the EU Declaration contained in the instrument of approval of the IC, deposited on 28 June 2023 (the Declaration), there was an attempt to clarify the division of competence between the EU and its Member States.<sup>390</sup> The issue of competence is an evolving one, as the exclusive competences receive more and more attention thanks to the activism of the EU in external relations.

Under Article 3(2) TFEU, the Union is ‘also’ exclusively competent to conclude an international agreement in three situations: i) ‘when its conclusion is provided for in a legislative act of the Union’; ii) when its conclusion ‘is necessary to enable the Union to exercise its internal competence’; and iii) ‘in so far as its conclusion may affect common rules or alter their scope.’

As has been argued, the CJEU ‘rightly sees Article 3(2) TFEU as a dynamic and forward-looking safeguard rule to reduce the likelihood that unilateral international agreements and other commitments of Member States may limit the development of the *acquis* in the future’.<sup>391</sup> The Declaration explains that, in some matters, the Union has exclusive competence and in others the competence is shared between the Union and its Member States (paragraph 2). There is no doubt that the Union has exclusive competence ‘to accept the obligations set out in the Convention with regard to its own institutions and public administration’ (corresponding to Article 336 TFEU). For other matters, ‘for which EU rules have been adopted, the Union has exclusive competence to conclude the Convention only to the extent that provisions of the Convention may affect common rules or alter their scope within the meaning of Article 3(2) TFEU’ (paragraph 4).

The Declaration states that EU rules have been adopted in the field of non-discrimination, in the coordination of diplomatic or consular protection of citizens of a non-represented EU Member State in a third country, in matters of asylum, subsidiary protection, temporary protection, and immigration, judicial cooperation in civil and criminal matters and police cooperation, and in the field of equality between women and men in the world of work. This list (and the detailed list of EU *acquis* attached to the Declaration<sup>392</sup>) does not automatically mean that the EU has exclusive competence in all these fields, however. The following sentence states:

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<sup>389</sup> This is always the case for lack of transposition and implementation of EU law.

<sup>390</sup> Declaration contained in the instrument of approval deposited on 28 June 2023, at <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=210&codeNature=0>.

<sup>391</sup> Erlbacher, F. (2017), *Recent Case Law on External Competences of the European Union: How Member States Can Embrace Their Own Treaty*, Asser, p. 27.

<sup>392</sup> Annex to the Declaration concerning the competence of the European Union with regard to matters governed by the Council of Europe Convention on preventing and combating violence against women and domestic violence.

‘Where Union rules exist but there is no risk that they will be affected, in particular as may be the case where Union law establishes minimum standards, the Member States have competence, without prejudice to the competence of the Union to act in that area’.<sup>393</sup>

What are the rules that ‘may be affected or altered by international commitments’ where ‘the latter fall within an area already largely covered by such rules’? The answer can also be found in the Declaration:

‘When assessing whether an area is already largely covered by Union rules, account must be taken, in particular, not only of Union law as it now stands in the sphere concerned, but also of its future development, insofar as that is foreseeable at the time of that analysis. The extent of the Union’s competence must be assessed on the basis of a comprehensive and detailed analysis of the relationship between the Convention and the precise provisions of each measure of Union law’.

Does this strict analysis – the ‘precise provisions’ – correspond to the jurisprudence of the CJEU? As Advocate General Wahl states in the Opinion delivered on 8 September 2016,<sup>394</sup>

‘the Court has already rejected an approach under which an international agreement would be examined, provision by provision, in order to determine whether each of those provisions corresponds to an analogous provision of EU law. The Court has stated that the nature of the competence must be determined on the basis of a comprehensive and detailed analysis of the relationship between the international agreement envisaged and the EU law in force.’

Furthermore, the definition of the policy area concerned is necessary to examine whether those areas are covered by Union common rules (existing or foreseeable) ‘in a way that the competence of the Union must be considered to be exclusive’.<sup>395</sup>

This argument should guide the implementation of the IC as well. In CJEU Opinion 3/15, the Court acknowledged that the relevant provisions of Directive No. 2001/29 do ‘not set a minimum level of protection of copyright and related rights while leaving untouched the MS’s competence to provide for greater protection’, but rather they introduce a ‘derogation from the rights harmonised by the EU legislature’.<sup>396</sup> *Mutatis mutandis*, could it be argued that the Victims’ Rights Directive and the VAW Directive do set minimum standards and therefore there is no full harmonisation? However, ‘minimum standards’ does not exactly mean minimum rules. As argued by the Court in the 1991 Opinion No. 2, the ILO Convention No. 170 was already covered to a *large extent* by ‘Community rules progressively adopted since 1967 with a view to achieving an ever greater degree of harmonization and designed, on the one hand, to remove barriers to trade resulting from differences in legislation from one Member State to another and, on the other hand, to provide, at the same time, protection for human health and the environment’.<sup>397</sup> It means that the pre-emption of external competences is a process whose rhythm is determined by the exercise of the Union’s internal competence, giving rise to the *progressive*

<sup>393</sup> Declaration contained in the instrument of approval deposited on 28 June 2023, para. 4.

<sup>394</sup> CJEU, Opinion 3/15 initiated following a request made by the European Commission, 14 February 2017. ECLI:EU:C:2017:114.

<sup>395</sup> Erlbacher, F. (2017), *Recent Case Law on External Competences of the European Union*, p. 31.

<sup>396</sup> Erlbacher, F. (2017), *Recent Case Law on External Competences of the European Union*, p. 33: the author however argues that ‘While there is no doubt that the Court has recognised this case law in recent cases by referring to the most relevant judgments, it appears questionable to what extent the Court would still come to the same conclusion in specific cases’.

<sup>397</sup> Opinion delivered pursuant to the second subparagraph of Article 228 (1) of the EEC Treaty - Convention No. 170 of the International Labour Organization concerning safety in the use of chemicals at work. Opinion 2/91. ECLI:EU:C:1993:106, para. 25.

adoption of common rules.<sup>398</sup> However, even though minimum rules leave a margin of action to Member States, they do so within the boundaries of international commitments (the IC) which therefore inevitably affect the common rules – existing and forthcoming – or alter their scope. This is fundamental for the protection of the rights of victims of GBVAW and DV. If there is exclusive competence, the Member States cannot conclude agreements that jeopardise such protection, but they are free to do better than EU legislation and better than the IC itself. Also, the CJEU already decided that Article 82(2) TFEU, which is the legal basis of one of the minimum standards' directives, is the correct legal basis for the conclusion of the IC, covering the provisions of the latter that fall under judicial cooperation in criminal matters. This report argues that, considering the characteristics of the IC, the legal bases of the conclusion of the IC and the CJEU's Opinion of 2021, the EU has exclusive competence at least for what concerns the provisions of the IC that fall under the legal bases of the Decisions for the accession to the IC insofar as they fall within the exclusive competence of the Union.

Other areas of the IC, which are largely covered by EU law, but do not correspond to the relevant legal basis in the decisions for accession, are a bit more problematic. The lack of reference to the legal basis offered by Article 81 TFEU is surprising given the steps taken by the EU in relation to judicial cooperation in civil matters. With regard to Article 83 TFEU, the CJEU stated, in its 2021 Opinion, that 'the overlap between, on the one hand, the obligations laid down in the IC [and] the scope of action open to the European Union under Article 83(1) TFEU is so narrow that it must be concluded that the obligations set out in that part of the Convention which fall within the scope of action are "extremely limited" in scope for the European Union'.<sup>399</sup> A detailed analysis of the relevant field of Union law, including the potential future development of Union law in areas not covered by the accession decisions, such as the proposed introduction of the euro-crime of hate speech, is necessary. Provisions of the IC fall under the exclusive competence of the EU when the relevant provisions of the Convention fall within an area already largely covered by Union internal rules. In EU law, the most relevant EU legislation is the newly adopted VAW Directive. If the matter is covered by the VAW Directive, it generally falls under the exclusive competence of the Union. The same can be said for what concerns judicial cooperation in civil matters, including judicial cooperation in family matters, which are largely covered by the EU's acquis.

It should be noted that Decision 2023/1076 contains a recital recognising the evolving nature of the legal bases for the accession:

'The Union should accede to the Convention only as regards the matters falling within the exclusive competence of the Union, namely insofar as the relevant provisions of the Convention may affect common rules or alter their scope. As things stand at present, this applies, in particular, to certain provisions of the Convention relating to judicial cooperation in criminal matters and to the provisions of the Convention relating to asylum and non-refoulement'.<sup>400</sup>

<sup>398</sup> Delile, J.F. (2023) 'La coopération loyale et les compétences externes de l'Union', in Fartunova-Michel M. and Delile J-F. (eds), *La coopération loyale dans le droit des relations extérieures de l'Union européenne*, Bruylant, p. 49.

<sup>399</sup> CJEU, Opinion of 6 October 2021, 1/19, ECLI:EU:C:2021:832, para. 301.

<sup>400</sup> Council Decision (EU) 2023/1076 of 1 June 2023, recital No. 6.

A 'soft' solution, already envisaged by the CJEU, of using the IC as a means of interpretation of EU law,<sup>401</sup> might help in addressing the concerns of victims of violence against women and domestic violence in the EU. The implementation of the IC will be necessarily guided by the principle of sincere cooperation (Article 4 TEU), meaning that EU institutions and Member States must cooperate to ensure that the agreement produces its legal effect.<sup>402</sup>

### 10.3 Summary – Chapter IX IC

Chapter IX is dedicated to the monitoring mechanism of the Convention, which is composed of an independent body and of an intergovernmental one. The purpose of the Group of experts on action against violence against women and domestic violence (GREVIO) is to monitor the implementation of the Convention by the parties.

- A Code of Conduct laying down the internal arrangements regarding the exercise of rights and obligations of the Union and the Member States under the Convention was adopted on 9 February 2024 between the Council, the Member States who are parties to the Convention and the Commission.
- The division of competences is the underlying and cross-cutting question when it comes to assessing the implementation of the IC by the EU.
- The EU is bound by the comprehensive gold standard represented by the IC to prevent and combat VAW and DV in the area of judicial cooperation in criminal matters, asylum and non-refoulement, as well as with regard to public administration. The EU thus has competence to follow-up to the extent that the relevant provisions of the Convention fall within the exclusive external competence of the Union and are thus binding on the Member States by virtue of Union law.
- This report argues that, given the characteristics of the IC, the legal bases of the conclusion of the IC and the CJEU's Opinion of 2021, the EU has exclusive competence for what concerns the provisions of the IC that fall within an area already largely covered by Union law. The extent of the Union's competence must be assessed on the basis of a comprehensive and detailed analysis of the relationship between the relevant article of the Convention and Union law. The Declaration of competence, which includes a list of relevant acts adopted by the EU, can be a guiding instrument in that respect. This does not mean that there must be an exact correspondence between domestic Union law and the obligations under the international agreement, but the 'area' must be largely covered. This requires a detailed analysis of the relevant field of Union law, including the foreseeable future development of Union law in that area. In EU law, the most relevant EU legislation is the newly adopted VAW Directive. If the article of the IC is reflected in the VAW Directive, it generally falls under the exclusive competence of the Union as the 'area' is largely covered. The same can be said for what concerns judicial cooperation in civil matters, including judicial cooperation in family matters, which are largely covered by the EU's *acquis*.

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<sup>401</sup> See chapter 14 below on the IC as a means of interpretation.

<sup>402</sup> Rapoport, C. (2023) 'Coopération loyale et mise en oeuvre des accords internationaux liant l'Union', in Fartunova-Michel M. and Delille J-F. (eds), *La coopération loyale dans le droit des relations extérieures de l'Union européenne*.



## 11. Chapter X IC – Relationship with other international instruments (Article 71)

The Istanbul Convention does not affect obligations arising from other international instruments by which parties are bound or shall become parties. The parties may conclude bilateral or multilateral agreements on the matters under the Convention, for the purpose of supplementing, strengthening or facilitating the principles embodied in it. The EU, within the limits of its exclusive competences, can in the future conclude conventions on the matters under the Convention. The synergy between the IC and CEDAW is important, also in the light of EU law. On the one hand, it is foundational, because the IC was drawn up by looking at the CEDAW framework (which comprises the quasi jurisprudence and general recommendations of the CEDAW Committee). On the other hand, it is expansive, because the IC establishes a more detailed list of legally binding obligations to prevent and suppress violence against women. The EU cannot become party to the CEDAW, because the latter is only open to ratification by states. However, the synergy between the two legal instruments in the context of the EU *acquis* has already been explored by the CJEU.<sup>403</sup> The ILO Convention No. 190 is and will become more and more an important legal instrument to take into consideration, especially when ratified by all EU MS, in its relationship with the IC.

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<sup>403</sup> CJEU, judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Femmes victimes de violences domestiques)*, C-621/21, ECLI:EU:C:2024:47.

## 12. Chapter XI IC – Amendments to the Convention (Article 72)

Chapter IX IC contains only one article, which provides for the possibility to amend the Convention. Only parties to the Convention, including the EU, can propose an amendment, which must be notified to the Secretary-General of the Council of Europe. The proposal is then considered and may eventually be adopted by the Committee of Ministers. The EU could propose amendments alone if the matter falls within the Union's exclusive competence, or in a common position with Member States if the matter partly falls under the Union's exclusive competence. Hence, for example, the EU could propose an amendment to the chapter on migration, as this falls under its exclusive competence.

### 13. Final Clauses of the Convention (Articles 73-81)

The Istanbul Convention provisions do not prejudice internal law and binding international instruments currently in force. Parties must resolve disputes concerning the application and/or the interpretation of the Convention by means of negotiation, conciliation, arbitration or by any other peaceful method mutually accepted by the parties. The Committee of Ministers may establish procedures to be made available to the parties. Under EU law, the CJEU has exclusive jurisdiction to resolve disputes concerning the interpretation and application of provisions of EU law. Therefore, when the interpretation or the application of the IC concern the interpretation or the application of EU law, the CJEU is solely responsible for the decision.<sup>404</sup>

Articles 75 and 76 concern signature, entry into force of and accession to the Convention. The EU used Article 75(1) TFEU for accession, in conformity with its internal rules of procedure. In terms of territorial application, the EU specified that the Convention is to apply, with regard to the competence of the Union, to the territories in which the EU Treaties are applied pursuant to Article 52 TEU and under the conditions laid down in, *inter alia*, Article 355 TFEU.<sup>405</sup>

Reservations are possible under Articles 78 and 79 of the IC. Reservations are regulated in international law by the Vienna Convention on the law of the treaties. In the IC, reservations are prohibited except for the following provisions: Articles 30(2), 44(1)(e), 44(3), 44(4), 55(1) regarding minor offences, and 58 in respect of Articles 37, 38 and 39 and 59. A party can declare that it will provide for non-criminal sanctions for the behaviours under Articles 33 and 34. The EU has appended no reservation to the IC. It presented a declaration, which can be said to be a unilateral statement, because it concerns the division of competences between the EU and Member States, and hence is a pure matter of internal EU law. The declaration cannot in itself constitute a form of justification for the non-compliance or partial compliance with the provisions of the IC.

Articles 80 and 81 concern denunciation. Even though the EU acceded to the IC, a Member State that is also party to the IC can withdraw from the latter, in light of consolidated principles in international law (consent of the state to be bound by a treaty). However, in that case, the state will remain bound by the provisions of the IC that fall under the exclusive competence of the EU. The effect of the EU accession would probably (and hopefully) go in the direction of encouraging Member States that have only signed and not ratified the IC to proceed with the ratification, according to their domestic law.

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<sup>404</sup> For comparison, see, with regard to the Convention on the Law of the Sea and the competence of its tribunal, CJEU, judgment of the Court (Grand Chamber) of 30 May 2006, *Commission of the European Communities v Ireland*, ECLI:EU:C:2006:345.

<sup>405</sup> Declaration contained in the instrument of approval deposited on 28 June 2023, at <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=210&codeNature=0>.

## 14. The Istanbul Convention as a means of interpretation of EU law

The mechanism of using international treaties for interpreting EU law is not new. For example, the definition of disability included in Directive 2000/78 on equal treatment in employment and occupation,<sup>406</sup> was interpreted in light of the UN Convention on the Rights of Persons with Disabilities. This report provides three (of the possible) examples of what is meant by using the IC as a means of interpretation of EU law. The CJEU and national courts of EU MS, but also lawyers in making their case in front of a court, can benefit from this mechanism.

### 14.1.1 Example No. 1 – the Qualification Directive

In 2024, the Grand Chamber of the CJEU issued a landmark decision, in the *WS* case, where it referred to the IC and the CEDAW as relevant treaties under Article 78(1) TFEU.<sup>407</sup> The question was whether women who have been victims or fear of becoming victims of gender-based violence in their country of origin qualify as a ‘particular social group’ under Directive 2011/95/EU<sup>408</sup> (the Qualification Directive) and the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol.<sup>409</sup>

In a recent judgment, in joined cases *AH* and *FN*, the CJEU confirmed that Directive 2011/95 must be interpreted not only in the light of its general scheme and purpose, but also ‘in a manner consistent with the Geneva Convention’ and ‘the other relevant treaties referred to in Article 78(1) TFEU’, including the Istanbul Convention and the CEDAW.<sup>410</sup> In particular, reference was made to Articles 1, 3, 4(2) and 60(1) IC. In these cases, two women of Afghan nationality challenged the refusal by the Austrian authorities to recognise their refugee status before the Austrian Supreme Administrative Court. They claimed that the situation of women under the new Taliban regime alone justified being granted that status. In its important decision, the CJEU argued that, in situations like Afghanistan, ‘regarding applications for international protection lodged by women who are Afghan nationals, the competent national authorities are entitled to consider that it is currently unnecessary to establish, in the individual assessment of the situation of an application for international protection, that there is a risk that she will actually and specifically be subject to acts of persecution if she returns to her country of origin, where the factors relating to her individual status, such as her nationality or gender, are established’.<sup>411</sup>

The importance of the recent decisions is twofold: on the one hand, it legitimised the use of the IC as a means of interpretation of EU common policy on asylum, even with regard to countries, like the one of the referring judge in *WS* (Bulgaria), that have not ratified the IC yet. It means, for example, that with regard to the new Pact

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<sup>406</sup> 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, pp. 16–22. Case C-335/11 and C-337/11 *HK Danmark v Dansk almennyttigt Boligselskab, and HK Danmark v Dansk Arbejdsgiverforening* [2013] paras 35–38. See, in detail, De Vido, S. (2020), ‘The Istanbul Convention as an interpretative tool at the European and national levels’, in Niemi, J. Peroni, L. and Stoyanova, V. (eds), *Violence against Women and International Law*, Routledge, p. 68.

<sup>407</sup> CJEU, judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Femmes victimes de violences domestiques)*, C-621/21, ECLI:EU:C:2024:47. See also C-646/21.

<sup>408</sup> Directive 2011/95/EU of the European Parliament and of the Council 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 (recast) OJ L 337.

<sup>409</sup> A detailed analysis of the case in Common Market Law Review, forthcoming in December 2024 (S. De Vido, M. Möschel).

<sup>410</sup> CJEU, judgment of 4 October 2024, *AH and FN v Bundesamt für Fremdenwesen und Asyl*, joined cases C-608/22 and C-609/22, ECLI:EU:C:2024:828, para. 33.

<sup>411</sup> CJEU, judgment of 4 October 2024, *AH and FN v Bundesamt für Fremdenwesen und Asyl*, joined cases C-608/22 and C-609/22, ECLI:EU:C:2024:828, para. 57.

on Migration and Asylum, the IC becomes one of the relevant treaties for the interpretation of the new pieces of legislation, overcoming some of the limits identified above. On the other hand, it can be argued that the interpretation of relevant EU law consistently with the IC goes beyond the common policy on asylum. The reason is that the hermeneutic technique, where it is not *contra legem*, is a possibility that courts normally use to comply with EU law or international treaties. It goes without saying that the interpretation does not replace the loopholes in the implementation of the IC, which must be addressed through appropriate legal instruments, but it surely lets the potential of the IC emerge.

#### 14.1.2 Example No. 2 – the Qualification Regulation

As discussed above, regarding Chapter VII IC, in Regulation No. 2024/1347, a serious harm includes one of the following: death penalty or execution, torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; and a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. It is possible to argue that 'serious harm' giving rise to complementary/subsidiary protection must be interpreted in light of the IC, so as to overcome its inherent textual limit, to include gender-based violence against women in the country of origin.

#### 14.1.3 Example No. 3 – the Council Decision on restrictive measures against serious human rights violations and abuses

The Council Decision on restrictive measures against serious human rights violations and abuses, adopted in 2020, establishes a framework for targeted restrictive measures to address serious human rights violations and abuses worldwide, including sexual and gender-based violence (Article 1).<sup>412</sup> According to the same Article, for the application of the provision 'regard should be had to customary international law and widely accepted instruments of international law'. The Decision provides a non-exhaustive list of these legal instruments. An important future amendment, provided that this is approved by unanimity, could be represented by the addition of the IC, which is applicable both in times of peace and in times of war, as well as in times of emergency.

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<sup>412</sup> Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, OJ L 410I 7.12.2020, p. 13, Article 1(1)(d).

## 15. Recommendations

General recommendations to EU agencies and bodies on the implementation of the Istanbul Convention.

- Incorporate a gender dimension in EU policies and legislation. Despite the fact that gender mainstreaming in EU policy making has increased, a gender perspective is rarely adopted in fields not seen as immediately related to gender equality and countering VAW: this aspect could be better taken into consideration in the evolution of EU policies and new or amended legislation. The action on countering VAW and DV is also not adequately framed as an equality and non-discrimination issue but should be framed as such in order to tailor the response to GBVAW and DV in the most effective way. Despite the fact that criminal law and non-discrimination provisions cannot be combined in a legal instrument, which explains the limitations in the VAW Directive, highlighting the discriminatory nature of VAW also in the definition would have raised awareness of the phenomenon and strengthens the transformative potential of the Directive itself.
- Acknowledge the power dynamics underlying the phenomenon of GBV and DV. It is fundamental to recognise in binding legal instruments, policies and soft law acts the disproportionate impact of GBV and DV on women and girls, especially those at the intersection of different grounds of discrimination.
- Ensure that the collection of data at EU level respects the requirements of the IC and support MS in their action at domestic level. Despite data collection being a key provision in the VAW Directive, the obligation for Member States under the Directive is limited to a 'minimum', meaning data available at a central level, disaggregated by sex, age group (child/adult) of the victim and the offender, and – only 'where possible and relevant' – the relationship between the victim and the offender and the type of offence.
- Clarify the definition of gender in a recommendation or guideline. The word gender is used in the VAW Directive, but only described in the preamble. The definition should consider translations of the word gender in the official languages of the EU, which might differ from one state to another. The relevance of a clarification, in compliance with the IC, is self-evident. Can, for example, online hate speech targeting men because they are men, or because they are men and homosexuals fall under the scope of Article 8 of the VAW Directive? According to the definition of incitement to violence or hatred, it can, but only if hate speech insists on the gender of the person, and not on the individual actions, e.g., in politics. It is also important to recognise how women, especially in politics and in positions of power, are generally and disproportionately targeted because they are women, and not for what they do.
- Encourage Member States, which have not ratified the IC yet, to continue or to start the internal procedure for the ratification of the Convention. With the utmost respect for the freedom of Member States to ratify or not to ratify an international treaty, EU institutions can support Member States in understanding the importance of the IC and dismantle prejudices and misinformation surrounding it.
- Support the ratification by EU Member States of the ILO Convention No. 190 on violence and harassment. The Council has recently adopted a decision to invite Member States to ratify the Violence and Harassment Convention, and this would determine an interesting step forward in the implementation of measures to prevent and protect victims from harassment in the world of work.

- Support the transposition in EU Member States of the VAW Directive, which, except for some loopholes, is compliant with the IC. Despite being compliant with the IC, a few provisions of the Directive are matters of concern (see specific recommendations below). It should be noted that the Directive establishes minimum standards only and that Member States can set higher standards at national level.
- Ensure that the VAW Directive, as part of sectorial legislation, is correctly implemented in conjunction with relevant secondary legislation, such as the VRD. This approach allows an understanding of the rationale underlying the VAW Directive, which is to respond to the specific needs of victims of gender-based violence against women and domestic violence.
- Recognise and enhance the role of civil society organisations, specifically women's rights organisations. This is crucial in several areas, especially in the protection of victims of violence against women and domestic violence and in the implementation of preventive measures.
- Continue the work of sharing best practices in the prevention of GBV and DV. Collecting and sharing best practice among Member States via EU bodies and institutions is an important way to ensure the best possible implementation of the IC. In that respect, the role of the EU network on preventing GBV and DV could be strengthened.
- With specific regard to the judiciary, continue to use the IC to interpret EU secondary legislation. This approach is not new and means that the IC can be used as a means of interpretation of EU secondary legislation in force to ensure compliance with the IC. The interpretation can never contradict the law in force and does not replace proper implementation of the IC within the EU legal system. The CJEU has used the IC in three recent judgments (C-621/21, 646/21 and joined cases C-608/22 and 609/22).
- Support Member States in understanding the potential of the IC as a means of interpretation. Member States' authorities can benefit from an adequate reading of the IC and the potential of its use in the adoption and application of domestic and EU policies and legislation. This can be done, for example, through the sharing of practices among Member States.

Specific recommendations to the EU on judicial cooperation in criminal matters on the implementation of the Istanbul Convention:

- Enhance judicial cooperation in criminal matters. Judicial cooperation is an essential tool in countering VAW and DV and should be encouraged and strengthened at EU level, for example through a process of sharing of practices, and the development of EU guidelines. This action would also contribute to eradicating persistent gender stereotypes against women in judicial settings, including in family courts.
- Reinforce the understanding of and action against secondary victimisation. In the implementation of the VAW Directive, attention should be paid to and support provided in the understanding of the meaning of secondary victimisation and in the training of the judiciary, valorising the cross-border dimension and the sharing of best practice.

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- Ensure consistency and coherence in the implementation of the VAW Directive with acts of secondary legislation, such as the horizontal Victims' Rights Directive and other instruments that are even not directly related to violence against women and DV. The application and the implementation of the VAW Directive need to be coordinated with legal instruments that are in force (like the Digital Services Act), almost in force (the AI act) and forthcoming (such as a possible directive on countering hate speech and hate crime).

Specific recommendations to the EU on asylum and non-refoulement on the implementation of the Istanbul Convention:

- Clearly acknowledge gender-based violence against women and domestic violence as a form of persecution. Although acts of sexual violence and of a gender-specific nature are recognised as acts of persecution under the Qualification Regulation, it does not explicitly include GBVAW as a form of persecution and as a form of serious harm giving rise to complementary or subsidiary protection, as provided by the IC.

Specific recommendations to EU institutions on staff regulations and policies on the implementation of the Istanbul Convention:

- Revise the internal guidelines and adopt new internal instruments on the prevention of and fight against psychological and sexual harassment. Most institutions have recently adopted decisions concerning psychological and sexual harassment at work, which show the will to enhance integrated and coordinated policies. In particular, the European Commission adopted a new decision on its anti-harassment policy on 12 December 2023, which refers to the IC in its recital number 5 and recognizes that VAW as a violation of human rights and a form of discrimination against women. Other institutions should get inspiration from the European Commission's policy.
- Training of the actors, in particular the counsellors, dealing with the prevention of and the fight against psychological and sexual harassment among EU staff. Before starting and during their mandate, it is required that confidential counsellors receive appropriate training including on active listening, holding an impartial and objective stance, the impact of harassment on victims' health and capacity to work, equality, gender equality, diversity, inclusion, protection of personal data, and different dispute settlement mechanisms available in the Commission. Gender and trauma-sensitive action to prevent and combat psychological and sexual harassment, and knowledge of the IC are required in addition.
- Further develop measures of prevention in staff regulations and policies. Preventive measures that should be included in specific institutional policies, action plans, guides, or any other instrument could include: information and awareness-raising campaigns, training and learning activities, advice and support, where needed, and measures reflecting a systemic monitoring and assessment aimed at identifying and remedying what in the principles of work organisation and relations between staff members is likely to favour or allow the appearance of harassment. More specifically they could include: the design of communication tools and campaigns on the anti-harassment policy, leadership talks to promote respectful and inclusive management practices, guidance on how to facilitate conversations on harassment prevention, the inclusion of harassment prevention at middle management network meetings, team coaching, identification and mitigation of psychosocial risks and dedicated training for managers. Institutions should regularly conduct a staff survey on harassment to assess the prevalence



of and trends in sexual and psychosocial harassment. The prevention and response measures shall be revised accordingly, where appropriate, on the basis of the results of the survey.

- Emphasise the need to tackle the digital dimension of harassment. The form of harassment can be very diverse. It is fundamental, in light of the new VAW Directive, to take into consideration the digital dimension of sexual harassment, which is more and more widespread.
- Consider other forms of violence in staff regulations and policies. All the measures adopted by institutions only address harassment as defined in the staff regulations, and do not address other forms of violence, such as cyber stalking or incitement to hatred or violence, and only two institutions refer to gender-based violence in the preamble or in the part of their documents setting out definitions. It could be useful to assess whether some measures of prevention and protection applicable to harassment could be extended to other forms of gender-based violence in the workplace.
- Guarantee the removal of publicly accessible material that refers to cyber harassment. EU institutions should guarantee the prompt removal or the disabling of access to material publicly (or in any case accessible by EU staff) available online – EU internal intranet – that falls under the definition of the offences in the VAW Directive.
- Strengthen a gender sensitive approach in HR policies and in the activities of the institutions. Despite progress in some documents of EU institutions, direct reference to the gender-sensitiveness of prevention measures, including training, and attention to intersectional grounds of discrimination is commonly lacking and should be strengthened.
- Prepare ‘red flags’ to identify signs of sexual harassment in working activity. The presence in some of the institutional documents of the identification of ‘signs’ of sexual harassment is positive and should become standard practice for all institutions.
- Produce a specific risk assessment in compliance with the IC. In the documents of EU institutions examined for the purposes of the report, proper instructions for a risk assessment are generally lacking, despite some of the elements being present in the formal and informal procedures. A risk assessment would help to identify all levels of risk, namely standard, medium and high, as well as victims’ specific needs. For staff regulations and policies, it is important to assess, for example, the context of the alleged behaviour, possible situations of vulnerability, repetition of the behaviour, and use of digital tools. Since there are numerous tools for the risk assessment at domestic level, an examination of a possible tool to be created at EU institutional level would be interesting.
- Ensure that EU staff know how to access relevant helplines, and where to find specialist support services including shelters in the country where they are working.
- Consider the specific situation of EU Member States representatives, where present in the institution. The EU Parliament has already addressed this issue in its documents, which can be further reinforced in line with the IC. In the development of policies on countering sexual harassment and protecting the

victims, it is important to stress the disproportionate impact of sexual harassment (but also non-consensual sharing of intimate or manipulated material and incitement to hatred or violence) on women in politics.

- Guarantee that decisions on reassignment or working from home, when they are a possibility according to the policies of the institution, are informed, gender-sensitive and non-detrimental to the victim. Even though it is important to acknowledge the alleged perpetrator's right to defence, the equivalence between the parties (victim and alleged perpetrator) in some EU documents might be detrimental to the victim.

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