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# Violence against women – a critical assessment of the EU proposal

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## Structure of the presentation

The background: EU law and violence against women and girls.

The signature by the EU of the Council of Europe Istanbul Convention in 2017.

The CJEU opinion on the ratification by the EU.

The European Commission Gender Equality Strategy

The EU proposal:

- Legal bases
- Definitions
- The partial implementation of the Istanbul Convention
- ICT-Facilitated violence

Conclusions.

## The background

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The absence of violence against women in founding treaties.

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The focus on equality between men and women.

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Starting points in the treaties.

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The Declaration annexed to the Lisbon treaty.

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The EU action on countering violence against women: the role of soft law.

## And the Istanbul Convention

Some insights on the Istanbul Convention: ratifications, reservations, prejudices.



Structure of the Convention and definitions.



Legal obligations.



The 4 pillars of the Convention.



The monitoring mechanism: GREVIO

## The signature of the Convention in 2017

Two decisions adopted in 2017 on the signature:

One on migration issues: Decision (EU) No. 2017/866 asylum and non-refoulement

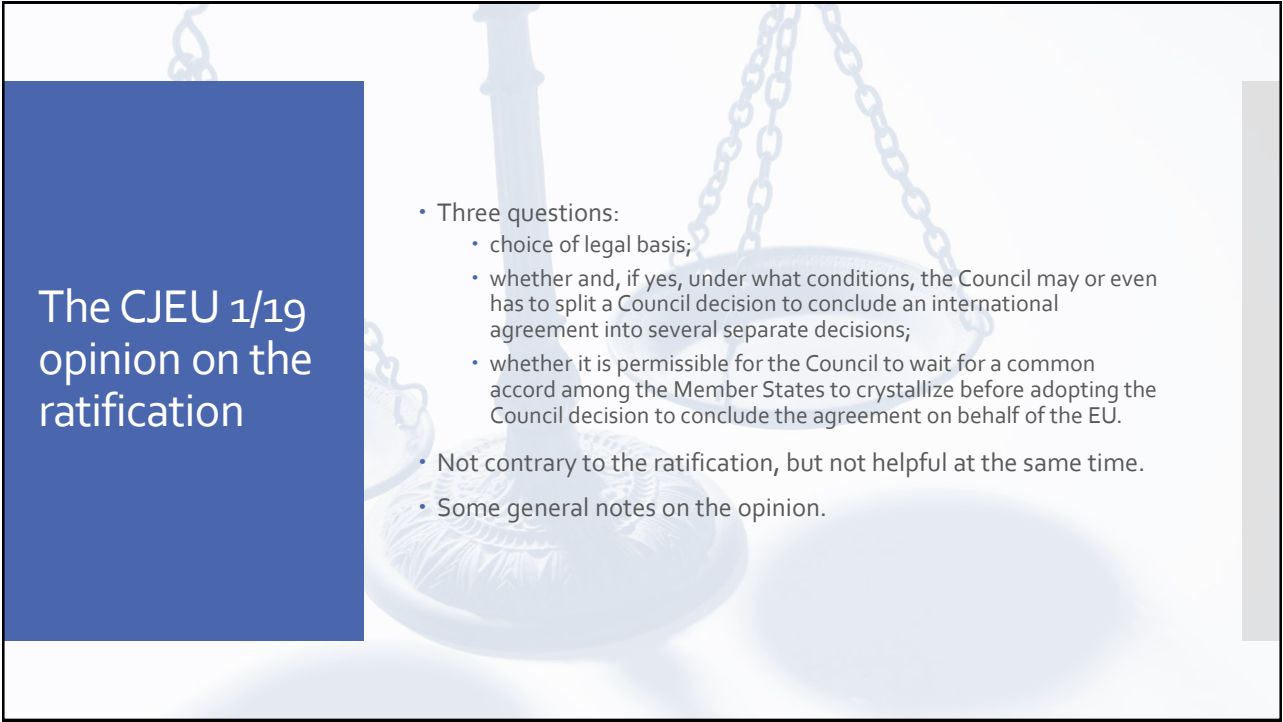
One on criminal law issues: Decision (EU) No. 2017/867 on cooperation in criminal justice.

The issue of the legal basis.

The options at that time: a comprehensive directive or directives on different forms of violence?

## The role of the EU Parliament

- Dozens of resolutions on the topic (soft law). Examples:
  - EP Resolution of 12 September 2017 on the proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence.
  - EP Resolution of 28 November 2019 on the EU's accession to the Istanbul Convention and other measures to combat gender-based violence.
  - EP Resolution of 16 September 2021 with recommendations to the Commission on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU (2021/2035(INL)).



## The CJEU 1/19 opinion on the ratification

- Three questions:
  - choice of legal basis;
  - whether and, if yes, under what conditions, the Council may or even has to split a Council decision to conclude an international agreement into several separate decisions;
  - whether it is permissible for the Council to wait for a common accord among the Member States to crystallize before adopting the Council decision to conclude the agreement on behalf of the EU.
- Not contrary to the ratification, but not helpful at the same time.
- Some general notes on the opinion.

## The European Commission Gender Equality Strategy

- Gender equality strategy 2020-2025
- Key **objectives**:
  - ending gender-based violence;
  - challenging gender stereotypes;
  - closing gender gaps in the labour market;
  - achieving equal participation across different sectors of the economy;
  - addressing the gender pay and pension gaps;
  - closing the gender care gap and achieving gender balance in decision-making and in politics.
- Gender mainstreaming combined with targeted actions, and intersectionality.

## The EU proposal

- Research on the topic:

A report on the criminalisation of VAW in 31 European States (S. De Vido & L. Sosa).

A report on hate speech.

- The adoption of the proposal: legal bases: Article 82(2) and Article 83(1) TFEU.

## The reason behind the legal basis

Why Article 83(1) and 82(2) TFEU?

Other options: Article 19 TFEU and/or Article 83(2) TFEU.

The definition of sexual exploitation and computer crime.

## Scope of the Directive

(a) Criminal offences referred to in the directive itself;

(b) acts of violence against women or domestic violence as criminalised under other instruments of Union law;

(c) any other acts of violence against women or domestic violence as criminalised under national law.

## Structure of the Directive

OFFENCES CONCERNING  
SEXUAL EXPLOITATION OF  
WOMEN AND CHILDREN AND  
COMPUTER CRIME

- Which offences? Rape, FGM, Cyber stalking, Cyber harassment, Non-consensual sharing of intimate or manipulated material, Cyber incitement to violence or hatred, incitement, aiding and abetting and contempt.

PROTECTION OF VICTIMS AND  
ACCESS TO JUSTICE

- Individual assessment of victims' needs.

VICTIMS' SUPPORT

- Specialist support and protection of children witnessing violence.

TRAINING

COORDINATION AND  
COOPERATION

## What is in the proposal for a directive

- Criminalisation of some (not all) behaviours contemplated by the Istanbul Convention.
- Protection and the importance of risk assessment.
- Witnessing violence.
- Training of professionals.
- Multiagency cooperation.

IN LINE WITH THE ISTANBUL CONVENTION AND THE ECtHR JURISPRUDENCE.

Even broader: ICT-facilitated violence

## Reflecting on cyber violence

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ICT-facilitated violence.

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The coordination of this directive with a future directive on countering hate speech (when included as eurocrime).

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The impact of the so-called revenge porn and of sexist hate speech on victims. The reasons for action.

What is not in the proposal

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A broader definition of gender.

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The chapter on migration of the Istanbul Convention.

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What about forced marriages, forced abortion, stalking and others?

Could the EU do more?

- The option of a Eurocrime of Gender-Based Violence against Women (failed).
- The option of other legal bases.
- Has the Commission asked too much from Article 83(1) TFEU?
- The ongoing debate.



## Conclusions

The EU legal constraints.

The risk of stretching too much the legal basis.

A satisfactory though perfectible proposal.

QUESTION: Should we need perfection considering the environment in which the proposal is discussed?

## Thank you for your attention

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- *Violence against women's health in international law*, MUP, 2020  
<https://www.manchesteropenhive.com/view/9781526124982/9781526124982.xml?rskey=zvLU3l&result=1>
- S. De Vido, L. Sosa, report on the criminalisation of violence against women, including ICT-facilitate violence in 31 European States  
<https://www.equalitylaw.eu/downloads/5535-criminalisation-of-gender-based-violence-against-women-in-european-states-including-ict-facilitated-violence-1-97-mb>
- Forthcoming: S. De Vido and M. Frulli (eds), *The Istanbul Convention. A Commentary*, Elgar, 2023.

