



STATEMENT VAW DIRECTIVE 27th February 2024

On February 6th, a political agreement was reached on the proposal Directive on combating violence against women and domestic violence. The European Network of Migrant Women has been contributing to the work on this text since 2022, from early calls for consultation, to drafting amendments to help shaping the proposal, and offering the experience of migrant women's organisations across the EU to help inform decisions. Ahead of the plenary vote that should take place in April and lead to the final adoption of the Directive, we share our first analysis of the achieved political agreement.

The proposal Directive on combating violence against women and domestic violence, was set up to be an important initiative, explicitly recognising violence against women and domestic violence as violation of fundamental rights, such as the right to human dignity, the right to life and integrity of the person, the prohibition of inhuman or degrading treatment or punishment, and the right to non-discrimination on the ground of sex. Violence against women and girls is a deeply rooted and pervasive phenomenon in the EU while the impunity of perpetrators remains the norm. As a result, the proposal Directive carried much hope for women and girls, as well as women's rights organisations in the EU. However, our initial analysis of the information shared by the co-rapporteurs, along with a leaked version of the political agreement, reveals significant gaps, and the text does not appear to be matching the standards of protection needed for women and girls.

Acknowledging advancements, it is important to note that forced marriage and female genital mutilation, two extreme forms of violence against women that particularly impact migrant girls, are included in the final agreement for the Directive, which sets harmonised standards of definitions of those crimes. However, other articles addressing widespread and serious forms of violence against women and girls, such as rape and sexual assault, were abandoned, while those related to cyberviolence were significantly weakened. It is regrettable to see that a double-standard is therefore legally built at EU-level between forms of violence that impact minority communities disproportionately, and others which are equally present in all strata of society. This approach perpetuates the false perception that certain types of perpetrators - those from non-migrant communities - have immunity in the eyes of the law, and can continue acting without accountability.

From the beginning, the text missed the opportunity to tackle pimping and prostitution, although the Directive's legal basis relies in part on the Eurocrime of sexual exploitation against women and children, which is legally defined by encompassing at least the exploitation of the prostitution of others (Palermo Protocol, 2000). In spite of this, it is worth noting that the promotion of preventive measures aiming at targeting and reducing the demand for victims of sexual exploitation was included in the recitals, which constitutes an important addition.

From the successive steps we have witnessed through the negotiations, we foresee a lack of consistency and clarity in the language used in the Directive. While the definition of intersectionality rightfully mentions that violence against women and domestic violence can be exacerbated where it intersects with discrimination based on a combination of sex and other factors, using the grounds of discrimination listed in the EU Charter of Fundamental Rights, we expect the words "*gender*" and "*sex*" to be used interchangeably, thus creating grounds for confusion and misinterpretation.

Through the negotiations, we have witnessed the four proposed articles tackling online violence against women being significantly restricted in a very worrying way, creating a hierarchisation between forms of violence, including arbitrary notions such as "serious harm" and building an artificial divide between so-called "private" and "public" online spaces, thus paving the way to even more barriers for victims to access justice. We fear that freedom of expression, along with freedom of the academia, arts and sciences will be used to limit the protection of women and girls online. This instrumentalisation of freedom of expression is contrary to the European Convention of Human Rights' article 10 which allows for legitimate and proportionate limitations of this freedom in different instances, notably to protect the rights of others. Explicitly mentioning freedom of expression as a potential barrier to criminalise cyberviolence against women and girls, including the non-consensual sharing of intimate material, is a consequent barrier to effective victims' protection. The freedom of expression argument is indeed already widely used by perpetrators to escape accountability. The mention of this freedom in such a context also constitutes an extremely concerning shift in legal culture as freedom of expression, classically understood as a tool to protect a weaker party, is now weaponised in the war against women.

The chapters 3 and 4 on victim's protection as well as access to justice and victim support seem to be aligned with the standards laid out in the Istanbul Convention: Emphasising the importance of effective online complaint mechanisms for addressing violence against women and domestic violence, which aligns with the Convention's focus on ensuring accessible and efficient reporting mechanisms. In addition, it affirms that the investigations or prosecutions of acts of rape should not be dependent on the reporting or accusation by the victims, and that criminal proceedings should continue even if the victim withdraws the accusation. Regarding shelters for women victims of violence, the agreement also matches the standards of the Istanbul Convention, making reference to the need for single-sex facilities. This extends to women third-country nationals subject to return procedures or accommodations in reception centres. The agreement explicitly states that accommodation in such shelters should be available regardless of residence status, which we welcome.

The text also appears to underscore the importance of thorough evidence collection early in the process, recognising the unique challenges victims might encounter when

reporting crimes. Positive measures include encouragement for Member States to broaden access to legal aid, taking into consideration victims' financial resources, especially in cases involving economic control by perpetrators. In addition, the text states that professionals reporting violence should be shielded from liability for breaching confidentiality, excluding legal professional privilege for lawyers.

Importantly, the agreement also focuses on the significance of individual assessments in the early stages or proactively upon third-party reporting, considering a robust list of factors such as pregnancy, dependence on the offender, the risk of the victim's return, recent separation, risks for victims with disabilities, and the use of companion animals for control. The provision of specialist support before, during, and after occurrences of violence is stressed as crucial. This support can also extend to individuals dependent on the victim.

However, in these chapters as well we regret that some measures are not sufficient to comprehensively address the needs of women and girls victims of violence. Notably, the necessity to ensure that victims of violence against women and domestic violence are able to lodge complaints was taken away from the final version, overlooking the fact that women victims of violence are often discouraged to lodge such complaints, including by police officers. No specific sanction is foreseen for law enforcement officials who discriminate against victims of violence against women, or demonstrate sexist behaviours in their handling of related complaints and cases.

The European Commission's proposal for Member States to ensure that questions, enquiries and evidence concerning past sexual conduct victims of violence against women should not be permitted in criminal investigations and court proceedings was nuanced under the initiative of the Council. It is stated in the text that such evidence shall only be permitted "where it is necessary and relevant", feeding the baseless and harmful idea that a victim's sexual conduct can potentially be considered a relevant piece of evidence in the context of a criminal proceeding.

Additionally, amendments proposed by the European Parliament such as the implementation of measures to ensure that employers are prevented from discriminating against a victim of violence against women in the immediate aftermath of the violence were not included in the final agreement. We also regret that specialist support for victims of sexual harassment at work does not include measures addressing the specific needs of domestic worker who are disproportionately impacted by sexual violence in their workplace. Indeed, this sector of the reproductive economy, although vital, is often not sufficiently regulated by labour law and not subject to inspections, which brings domestic workers (who are often migrant women) in vulnerable situations.

Generally, regarding the specific situations of migrant women, the text could also have gone further and established a stronger standard of support and protection. Indeed, while the text recalls the importance to ensure that third-country nationals victims of violence are not discouraged from reporting, regardless of their residence status, specific measures to ensure that migrant women victims of male violence are not discriminated against and have equal access to support services and legal action are lacking.

Regarding children, significant amendment proposals from the European Parliament were also abandoned in the text. For instance, the proposal for a recital highlighting the dangers of the use of unfounded concepts such as the "parental alienation syndrome", often leading to disregarding children's testimonies and blaming mothers, jeopardising their safety, was abandoned from the final version. On this topic, we recall that the United Nations Special

Rapporteur on Violence against Women Reem Alsalem issued a thematic report on the issue of child custody and its nexus with violence against women and children highlighting the danger of invoking accusations of parental alienation in custody cases. Similarly, another dropped amendment aimed at preventing bias in determining "the best interests of the child", avoiding the belief that maintaining contact with both parents or relatives is always in the child's best interests, even in cases of witnessed violence. To the views of ENoMW, the "best interest of the child" entails restricting custody rights, visiting privileges and contacts with the violent parent if needed to prevent detrimental effects on the child and the other parent. Indeed, it is well documented that ill treatment of children by perpetrators can be used to exercise power over and commit acts of violence against mothers.

ENoMW welcomes the establishment of a robust list of aggravating circumstances, including the so-called notion of "honour" as the motivation to a crime, the fact that the offence was associated with particularly inhuman, degrading or humiliating acts, and the fact that the offence was committed against a woman public representative, journalist or human rights defender. We also gladly note the understanding of legal status as a vulnerability factor in the context of violence against women and girls. However, we regret that the European Parliament proposal to include the filming and making accessible of the offence, along with the fact of gaining (or intending to gain) profit from the offence, were not kept in the final agreement. Indeed, these aspects are extremely relevant as they both highlight a systematic and methodical approach to the crime, thus impacting its gravity.

Regarding data collection, ENoMW welcomes the inclusion of an article requiring Member States to conduct data collection 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. In addition, according to the agreement, Member States are expected to collect data on the annual number of reported offences and convictions for violence against women. However, we regret that data collection on the overall number of victims is not required, acknowledging that violence against women is massively underreported and that such data is needed for the design of evidence-based policies, as well as budgetary and resource allocations, as underlined by the directive itself which states that the number of shelter places should depend on a realistic estimation of the actual need. Such estimation can only be realistic if thorough data collection is conducted. The proposals from the European Parliament to collect data on the motives, forms and impact of violence against women and domestic violence, the availability of victim support services and the number of victims accessing them, as well as the outcome and practical application of the training of professionals on violence against women were also abandoned. Overall, this limited agreement on data collection undermines the provision agreed upon in the victim support and prevention chapters.

Regarding prevention, the inclusion of measures for awareness raising on rape and sexual violence is much needed. However, when it comes to tackling sexual violence and promoting a feminist sexuality education, it is crucial to move beyond the mere concept of consent which can be coerced in many ways, especially in a patriarchal society.

Measures concerning the consultation of specialised women's rights organisations remain vague. Women's rights organisations are very often underfunded and lacking human capacity to carry out their work, which is essential in view of the often lacking support services for victims of male violence in EU Member States. It would have been important for the agreement to consolidate the resources available to these organisations, especially noting that their expertise, relevance, and the opportunity to consult and cooperate with them is highlighted throughout the text.

Finally, we note with worry that the European Parliament proposal to include an amendment requiring Member States to allocate sufficient, predictable and sustainable resources (financial and human) to implement the actions laid down in the Directive also not included, leading us to doubts regarding the Member States political will for effective implementation.