




A Feminist Europe Dream or Reality?

*An In-Depth Analysis of Women's
Rights in EU Legislation*



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Table of Contents

Sr. No.	Topic	Page No.
1.	LIST OF ABBREVIATIONS	1
2.	INTRODUCTION	2
3.	LGBTQIA+ RIGHTS UNDER THE EU	8
4.	WOMEN'S RIGHTS IN THE EUROPEAN LABOUR MARKET	13
5.	VIOLENCE AGAINST WOMEN	19
	CONCLUSION	29
	APPENDIX	31
	BIBLIOGRAPHY	32

LIST OF ABBREVIATIONS

ART - Assisted Reproductive Technologies

CFRR - Center For Reproductive Rights

CJEU - Court of Justice of the European Union

DSA - Digital Services Act

ECE - European Charter for Equality

EDF - European Disability Forum

EEAS - European External Action Service

EIGE - European Institute for Gender Equality

EP - European Parliament

EU - European Union

FEMM - European Parliament Committee on Women's Rights and Gender Equality

FEPS - Foundation For European Progressive Studies

FGM - Female Genital Mutilation

FRA - European Union Agency for Fundamental Rights

GBV - Gender-Based Violence

GREVIO - Group of Experts on Action against Violence against Women and Domestic Violence

IPV - Intimate Partner Violence

LGBTQIA+ - Lesbian, Gay, Bisexual, Transgender, Intersex, Queer/Questioning, Asexual+

MEPs - Members of the European Parliament

SRHR - Sexual and Reproductive Health and Rights

TFEU - Treaty on the Functioning of the European Union

TGEU - Transgender Europe

VAW - Violence Against Women

INTRODUCTION

Within the context of human rights, the topic of gender equality weaves a story of progress and perseverance. In the European Union (EU), the narrative of women's rights is an essential chapter that has been continuously evolving since the foundation laid by the Treaty of Rome in 1957 (ECE 2023). Over the years, this commitment was fortified through various directives and policies, culminating in the establishment of comprehensive gender equality frameworks that form the bedrock of women's rights in the EU today. By promoting gender equality, the EU not only empowers women within its member states, but also sets a standard for all nations. Its advocacy not only fosters social progress, but also strengthens economies, promotes education, and ensures a more equitable and just society for all. In the 21st century, the importance of safeguarding and respecting women's rights cannot be overstated. Women are leaders, innovators, and agents of change in every sphere of life. Ensuring their rights is not just a moral imperative, but also a strategic necessity. Empowered women contribute significantly to economic growth, social stability, and sustainable development. Therefore, understanding and advancing women's rights is not just a matter of justice, but also a pathway to a more prosperous and harmonious future for all. This report will discuss the sexual and reproductive rights of women in the EU, including the legal entitlements and hurdles transgender women face. Furthermore, the paper will delve into the gender pay gap and gender-based violence against women. As we explore the intricate layers of women's rights within the EU, this report aims to illuminate the progress made, the challenges faced, and the path forward. Through knowledge, awareness, and collective efforts, the EU continues to champion the cause of women's rights, shaping a future where gender equality is the norm.

WOMEN'S SEXUAL AND REPRODUCTIVE RIGHTS IN THE EU

1.1. WHAT DO WOMEN'S SEXUAL AND REPRODUCTIVE RIGHTS ENTAIL ACCORDING TO THE EUROPEAN UNION?

According to the EU's aims and values outlined in Article 2 of the Lisbon Treaty and the EU Charter of Fundamental Rights, the principle of equality between women and men underpins all European policies and is the basis for European integration. In alignment with these principles, the EU is committed to safeguarding women's sexual and reproductive rights. What do these rights encompass, and how does the EU ensure their protection?

According to the European External Action Service (EEAS), sexual and reproductive health and rights (SRHR) are crucial for women's and girls' right to self-determination (EEAS 2022). In March 2022, the strategic communications division of the EEAS, focused on the EU's work in this regard by promoting SRHR:

*Each individual has the right to have full control over and **decide freely and responsibly on matters affecting their sexuality and sexual and reproductive health, free from discrimination, coercion, and violence**, to lead healthy lives and to participate in the economy and in social and political life. Access to quality and affordable comprehensive sexual and reproductive health information, education, including comprehensive sexuality education, and health-care services is needed (EEAS 2022).*

The EEAS states on behalf of the entire European Union that it continues to promote access to quality and affordable comprehensive sexual and reproductive health information, including comprehensive sexuality education, and health-care services. The EU demonstrates a clear commitment to safeguarding women's sexual and reproductive rights. The following sections will examine how the EU safeguards the sexual and reproductive rights of women and LGBTQIA+ individuals. Finally, this report will analyse whether criticisms are warranted, and whether there are any areas which need improvement.

1. 2. ACCESS TO SAFE AND LEGAL ABORTION

Access to safe and legal abortion has been a debated topic, with diverse positions among most EU Member States, with decisions regarding the legality, availability, and conditions of abortion determined at the national level. According to Article 5(3) of the Treaty on the European Union, the principle of subsidiarity is established, meaning that the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at the central, regional, or local level (European Union, 2012). However, the European Union does not have a specific, unified policy on abortion, as this issue primarily falls within the jurisdiction of each member state, regardless of whether ensuring this right has been done unsatisfactorily.

Today, almost all EU member states allow abortion upon an individual's request, while only an isolated

minority upholds highly restrictive laws prohibiting abortion in most situations. The standard practice is to legalise abortion on request or on broad social grounds, at least in the first trimester of the pregnancy (CFRR, 2020). However, while abortion is generally legal, albeit subject to conditions, across different Member States, the period during which a woman can legally request an abortion varies across the EU Member States, with some prohibiting it altogether, and others allowing it up until the 24th week of pregnancy (FEPS, 2023).

While the EU does not have a comprehensive policy specifically addressing abortion, it does support broader principles related to women's sexual and reproductive rights. Further examination is needed to understand which adjacent initiatives taken by the EU can positively ensure the right to safe and legal abortion.

1.2.1 Members of the European parliament demand the right to abortion included in the EU charter of fundamental rights

A specific initiative to strengthen abortion rights within EU legislation is the call of the members of the European Parliament (MEPs) to include the right to abortion in the EU's Charter of Fundamental Rights and for member states to guarantee the right to legal and safe abortion. This demand is a response to a decision by the US Supreme Court to suspend abortion rights in the United States:

*The right to abortion should be included in the EU Charter of Fundamental Rights, MEPs urge in a resolution on the US Supreme Court decision to overturn abortion rights in the United States and the need to safeguard abortion rights and women's health in the EU. A proposal should be submitted to the Council to amend Article 7 of the Charter adding that **everyone has the right to safe and legal abortion** (emphasis added). (European Parliament, 2022/a).*

The arguments put forth by MEPs include the idea that the EU should lead by example. Therefore, the Council of the European Union is urged to promptly include the right to safe and legal abortion in the EU's Charter of Fundamental Rights. MEPs argue, on the resolution adopted on 7th of July 2022, that every woman should have the right to decide over their own body, and emphasise that abortion is not a matter of politics, opinions, or religion. (European Parliament, 2022/b).

With the Resolution, members of the European Parliament recall that SRHR are fundamental human rights which should be protected and enhanced, and they cannot in any way be watered down or withdrawn. MEPs call on the governments of those states which have banned and/or restricted abortion to repeal them and to ensure that their legislation aligns with international standards on women's rights and human rights obligations in general. .

Although it is a non-binding resolution, it reflects a desire among elected members of the European Parliament to bring abortion rights to the forefront of EU debates. The resolution indicates a clear interest in addressing and discussing issues related to abortion, sending a strong message to the Council of the European Union to take action in this area.

2.2. European Parliament resolution on the de facto ban on the right to abortion in Poland

In further efforts to safeguard women's reproductive rights, members of the European Parliament adopted a resolution in 2020 on the de facto ban on the right to abortion imposed by Polish legislation. MEPs urged the European Commission to also take action in this area:

*Strongly condemns the Constitutional Tribunal's ruling and the setback to women's SRHR in Poland; affirms that the ruling puts women's health and lives at risk; recalls that it has strongly criticised any legislative proposals or restrictions that aim to further prohibit and limit access to safe and legal abortion in Poland, which come close to banning access to abortion care in Poland, as most legal abortions are performed on the grounds of a severe and irreversible foetal defect or an incurable illness that threatens the foetus's life; recalls that **universal access to healthcare and SRHR are fundamental human rights** (emphasis added). (European Parliament, 2020).*

MEPs argue that restricting or banning the right to abortion by no means eliminates abortion altogether, but merely pushes it underground, leading to an increase in unlawful, unsafe, clandestine, and life-threatening abortions.

1.3. CONTRACEPTION, SEX EDUCATION, VAT EXEMPTION ON MENSTRUAL PRODUCTS/PINK TAX

MEPs urge member states to protect and further enhance women's sexual and reproductive health and rights in a report adopted in 2021. The resolution passed in a plenary session of the Parliament after being approved by the Women's Rights and Gender Equality Committee, with 378 votes in favour, 255 against, and 42 abstentions. The plenary states that the right to health, particularly SRHR, is a fundamental pillar of women's rights and gender equality that cannot in any way be "watered down or withdrawn", language which has since been echoed in other resolutions on women's rights, as noted above (European Parliament, 2021/a).

The resolution is the first resolution on SRHR passed by the Parliament in almost 20 years and calls for the removal of all barriers in access to abortion, modern contraception, quality maternal health care, assisted reproductive technologies, and comprehensive sexuality education (CFRR, 2021).

The resolution includes recommendations for, inter alia/among others, sex education "Parliament encourages member states to ensure sexuality education is taught comprehensively to primary and secondary school children, as SRHR education can significantly contribute to reducing sexual violence and harassment" (European Parliament, 2021/b).

Furthermore, the resolution includes measures on considering menstrual products as essential basic goods. Drawing attention to the detrimental effects of the so-called "tampon tax" on gender equality, MEPs are urging member states to leverage the flexibility introduced in the VAT Directive (Council of the European Union, 2006). They advocate for the application of exemptions or a 0% VAT rate on menstrual products. Furthermore, MEPs call on EU member states to combat menstrual poverty by providing free period products to those in need.

The new Resolution from the European Parliament has been subject to some debate. In response to this the Rapporteur Predrag Matić stated that:

[t]his vote marks a new era in the European Union and the first real resistance to a regressive agenda that has trampled on women's rights in Europe for years. A majority of MEPs have made their position clear to member states and called on them to ensure access to safe and legal abortion and a range of

other sexual and reproductive health services (European Parliament, 2021/c).

The resolution not only affirms the right to abortion, but also expands its scope to encompass new dimensions, including, but not limited to, a comprehensive sexuality education and recognizing menstrual products as essentials. This marks a broader step forward in women's sexual and reproductive rights within the EU.

2. LGBTQIA+ RIGHTS UNDER THE EU

2.1 HOW HAS THE EU DEVELOPED ITS POLICIES TO INCLUDE PROTECTION OF THE LGBTQIA+ COMMUNITY?

The European Union addresses LGBTQIA+ rights, including transgender women's rights, through various instruments to promote equality and combat discrimination.

The EU has, for instance, adopted legislation prohibiting discrimination on the grounds of sexual orientation. Some key provisions include the 2000 Employment Equality Directive, which explicitly safeguards individuals against discrimination on the grounds of sexual orientation in both the workplace and beyond (Council of the European Union, 2000).

Furthermore, under Article 21 of the Charter of Fundamental Rights, discrimination based on any grounds, including sexual orientation and gender identity, is specifically prohibited. It serves as a broader legal framework to safeguard the rights of LGBTQIA+ individuals (European Union, 2000).

The European Parliament has also consistently taken a proactive stance on gender equality. Since 1984, it has had a permanent Committee on Women's Rights and Gender Equality (FEMM), which has spearheaded the inclusion of a gendered perspective across policy fields through its own initiative reports (European Parliament, 2023/a).

Robert Biedroń, Chair of the FEMM Committee, highlights:

*We will stand strong against the backlash against gender equality and the blatantly discriminatory actions we see in the shadow of the pandemic. **The EU cannot allow member states to actively discriminate against women, the LGBTQIA+ community, or other vulnerable groups - this goes against the heart of EU values and must be clearly penalised.** It is crucial we all stand united for our values and beliefs despite opposition (emphasis added).* (European Parliament, 2022/c).

In 2015, the European Commission presented the "List of Actions to Advance LGBTI Equality," which was the first policy framework specifically combating discrimination against LGBTQIA+ people (European Commission, 2015). The Council of the European Union adopted the first-ever conclusions on LGBTQIA+ equality in June 2016, requiring the Commission to thereafter report annually on the www.ghrd.org

implementation of the list of actions (Council of the European Union, 2016).

The EU demonstrably aims to be at the forefront of efforts to better protect LGBTQIA+ people's rights. Therefore, the European Commission adopted, on 12 November 2020, the LGBTIQ Equality Strategy 2020-2025 (European Commission, 2020/a). The strategy's foundation is partly informed by recent research:

[...]even when greater social acceptance and support for equal rights is present, it has not always translated into clear improvements in LGBTIQ people's lives. In a 2019 survey, the European Union Agency for Fundamental Rights (FRA) found that discrimination on grounds of sexual orientation, gender identity/expression, and sex characteristics was increasing in the EU: 43% of LGBT+ people declared that they felt discriminated against in 2019, as compared to 37% in 2012 (European Commission, 2020/b).

This is the first-ever Commission strategy on LGBTQIA+ equality and it seems to deliver on the European Commission's commitment to building a union of equality. It strives to build a Union where diversity is celebrated as part of our collective richness, where all people can be themselves without the risk of discrimination, exclusion, or violence (European Commission, 2020/b).

In 2023, a mid-term review session of the aforementioned LGBTQIA+ Equality Strategy Plan was held, which resulted in a progress report published by the European Commission. The report summarises the actions taken by the EU and serves as a basis for assessing the strategy's impact on the lives of LGBTQIA+ people in Europe. Currently, the status indicates that "[t]he overwhelming majority of the measures contained in the LGBTIQ strategy have either been delivered or are being implemented" (European Commission, 2023, p. 38).

Regarding transgender men and women, it is essential to emphasise that EU law does not distinctly prohibit discrimination on the grounds of transgenderism. This translates into varying forms of legislation adopted by EU Member States on a national basis. Some Member States treat it as another form of gender discrimination. Such an approach is corroborated by the extensive case law of the Court of Justice of the European Union (CJEU), which has adopted a definition of gender discrimination that includes provisions for people who have undergone sex reassignment procedures. In other Member States, this type of discrimination is treated as discrimination on the basis of sexual orientation. A

third group of Member States considers it as neither of the previous two types of discrimination, thus leaving transgender people to rely on the general principle of equality, unable to benefit from the more far-reaching protection of the EU anti-discrimination directives (European Parliament, 2023/b, p.5).

2.2 HOW DOES THE EU ENSURE SEXUAL AND REPRODUCTIVE RIGHTS FOR LGBTQIA+ INDIVIDUALS, ESPECIALLY TRANSGENDER WOMEN?

In 2021, the European Parliament adopted a Resolution addressing the status of SRHR in the EU within the context of women's health (European Parliament, 2021/d). For example, the Resolution articulates that the European Parliament:

[c]alls on the Member States to counter discrimination in SRHR services and use an intersectional approach to make sure that women and girls (both transgender and cisgender), non-binary persons, lesbian, bisexual, and intersex women have equal access to SRHR services and rights (emphasis added). (European Parliament, 2021/d).

The Resolution has garnered significant support and acclaim from various NGOs across Europe. Transgender Europe (TGEU), a member-based organisation established in 2005, played a role in shaping the resolution. They explain how the report addresses the specific forms of violence against transgender people, and urges to adopt an intersectional perspective in this area (TGEU, 2021). They also highlight how “trans-specific healthcare should be accessible and reimbursed by public health insurance schemes” (TGEU, 2021).

One of the measures in the Resolution is that transgender men and non-binary persons may also undergo pregnancy and should, in such cases, benefit from measures for pregnancy and birth-related care without discrimination based on their gender identity. Additionally, it is recommended that trans-specific healthcare, such as hormonal treatment and surgery, should be accessible and reimbursed by public health insurance schemes. Finally, the European Parliament calls on Member States to abolish the sterilisation requirement in legal gender recognition procedures and to protect transgender persons' right to self-determination (European Parliament, 2021/d).

The Resolution underscores the crucial acknowledgement of the distinctive needs pertaining

to the SRHR of transgender people . Vital aspects such as fertility information and treatment, measures related to pregnancy and birth, comprehensive sexuality education, and the accessibility of assisted reproductive technologies (ART) are relevant considerations transgender people. Overall, it is clear TGEU has reacted positively to the release of this resolution:

*The report is **an important statement for trans-inclusive equality in the sensitive area of sexual health and rights**. It urges governments but also civil society to upscale service provision and access to rights than give in to conservative hate groups. Sexual health and reproductive rights, such as information about and access to contraceptives, **are a precondition for enjoying other human rights, such as bodily autonomy** or the right to decide about the number and spacing of children. People need it also to learn more broadly about one's own body, gender, and sexuality (emphasis added). (TGEU, 2021).*

In spite of numerous initiatives, measures, and resolutions, designed to enhance the sexual and reproductive rights of women and LGBTQIA+ individuals, particularly put forth by the European Parliament, considerable progress remains to be made. The resolutions are non-binding declarations, merely urging member states and the European Commission to adopt these measures and take action in the field. Potential for binding legislation at EU level is likely to be limited by the principle of subsidiarity¹ and autonomy of individual member states, making any effective change difficult in practice.

3. EU'S GAPS IN PROTECTION OF WOMEN'S REPRODUCTIVE RIGHTS

The protection of women's sexual and reproductive rights by the European Union has been a subject of both commendation and criticism. While significant progress has been made, various challenges and areas for improvement have been identified in an issue paper published by the Council of Europe² (The Council of Europe, 2017):

One prevalent concern revolves around the inconsistent implementation of policies related to women's SHRH among EU member states. This lack of uniformity leads to disparities in access to services and

1 See section 1.2 of present report for explanation of the subsidiarity principle.

2 Although the issue paper is published by The Council of Europe, the challenges mentioned regarding women's sexual and reproductive health and rights can be translated to issues within the EU, as the vast majority of EU member states are also members of The Council of Europe.

rights, highlighting the need for a more standardised approach across the region. It is widely argued that harmonisation of these laws and standards is essential to ensure a cohesive and comprehensive strategy for safeguarding women's rights across the EU.

Access barriers to reproductive health services, including issues related to abortion, persist in certain member states. Highlighting the significance of universal access to these services, it is underscored that healthcare, including abortion, is a fundamental right that should be universally upheld.

Comprehensive sexuality education within schools across the EU has been identified as another area requiring attention. It is crucial to address gaps in sex education programs, aiming to empower individuals all over the EU with knowledge about their sexual and reproductive health.

Instances of violence, harassment, and intimidation against women's health advocates persist, necessitating stronger protections for human rights defenders throughout the EU. It is necessary to raise awareness about the importance of women's rights and address cultural stigmatisation surrounding reproductive choices.

According to the newest statistics from the European Parliament, women continue to be underrepresented in politics and in the public sphere at the local, national, and European levels (European Parliament, 2022/d). The lack of representation of women in decision-making bodies that influence policies related to SRHR remains concerning. Increasing the representation of women in relevant institutions, for instance, in the European Commission as the executive branch and the European Parliament as the EU's elected parliament, is proposed for more inclusive policymaking.

In a 2020 report titled "A Long Way to Go for LGBTI Equality" published by the FRA, the experiences of 140,000 LGBTQIA+ individuals from the EU, the UK, Serbia, and North Macedonia were analysed. The report reveals that 43 percent of respondents had experienced discrimination in some area of life in the previous 12 months. These figures are even higher for transgender individuals, with transgender youth and children facing the highest rates of discrimination among all groups (FRA, 2020).

Despite the direct prohibition of discrimination in the EU, there remains a substantial journey ahead to secure the rights of LGBTQIA+ individuals, with a specific emphasis on addressing the challenges faced by transgender individuals.

3. WOMEN'S RIGHTS IN THE EUROPEAN LABOUR MARKET

Examining labour rights and the gender pay gap in the EU is crucial for advancing women's rights. Labour rights form the foundation of fair and just societies, ensuring workers' dignity, safety, and fair compensation. By analysing labour rights within the EU, one gains insight into the conditions faced by women in the workplace, identifying disparities and injustices that hinder their economic empowerment. On average, women earned 37 percent less than men did in the EU in 2018. While this number has decreased, women still earn 12,7 percent less than men on average per hour in 2021 (European Parliament 2023). In colloquial language, the terms "the gender pay gap" and "equal pay" are often used interchangeably, ignoring the vast difference and underlying issues that these two topics cover. The following part will briefly introduce both terms and clarify why we should further investigate the gender pay gap as a hurdle to labour equality for women.

Equal pay includes the principle that men and women should receive equal pay for equal or similar work. It further promotes equal pay between genders when both are doing different jobs but produce the same value, which then can be evaluated on objective criteria such as skills, working conditions, etc. (EPIC 2023). The terminology of equal pay has been in circulation for a relatively long time.

The Equal Remuneration Convention, 1951 (No. 100) was the first international instrument on this issue. The Convention was adopted after the Second World War, during which women entered the labour force en masse and held the front line of production in many countries. Pay inequality was an obvious and measurable form of discrimination at work, and so the push for equal pay became an important first step towards wider gender equality in the labour market and society in general. The Convention was forward-looking for its time and remains relevant today, as full pay equity between women and men has still not been achieved (EPIC 2023).

While the cause of equal payment is vital to gender equality in the labour market, its purpose is solely to uncover the superficial misogynistic structures by staying on the micro level of the problem. The principle reduces all environmental and market-related factors and thereby reveals gender-based discrimination in the workforce.

On the other hand, the gender pay gap refers to the average difference in hourly earnings between
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men and women in the workforce (European Parliament 2023). In this paradigm, gender-based discrimination, explored by the principle of equal pay, is revealed as merely one symptom of a larger systemic predicament. It emphasises the injustice of unequal gendered valuation and prevents women from being valued less than men in economic terms. The gender pay gap stems from several interconnected factors. Firstly, women tend to engage in more unpaid work, dedicating significant hours to childcare and housework, leaving them with less time for paid employment. In 2020, approximately 28 percent of women worked part-time compared to only 8 percent of men, contributing to the disparity (European Parliament 2023). Additionally, women often make career choices influenced by family responsibilities, leading to career breaks, with a substantial 33 percent of employed women in the EU interrupting work for childcare reasons in 2018, compared to 1.3 percent of men. Another contributing factor is the concentration of women in low-paying sectors, accounting for 24 percent of the gender pay gap, particularly in fields like care, health, and education. While the presence of women in science, technology, and engineering has increased to 41 percent in 2021, they are still underrepresented (European Parliament 2023). Moreover, women face challenges in securing managerial positions, constituting only 34 percent of managers in the EU, earning 23 percent less per hour than their male counterparts. This multifaceted combination of factors results in an overall gender pay gap of nearly 37 percent in the EU, reflecting the complex nature of the issue (European Parliament 2023). Thus, focusing on the gender pay gap in the context of women's rights in the EU is crucial because it sheds light on systemic inequalities and provides essential data to formulate policies combating gender-based discrimination.

4.1 EUROPEAN UNION'S LABOUR RIGHTS LEGISLATION ON WOMEN - THE EQUAL PAY DIRECTIVE (2006/54/EC)

In the pursuit of gender equality and fair labour practices, the EU has been enacting directives aimed at safeguarding the rights of women in the workplace. This section will explore the most prominent EU policy regarding this subject and analyse potential weaknesses.

The EU's commitment to achieving full equality between men and women in the realm of working life is encapsulated in the Equal Pay Directive, as articulated in Article 141(4) of the Treaty (European Parliament 2006). Recognising the need for specific measures to address the under-representation of

females and to counteract disadvantages in professional careers, the Directive provides Member States with the flexibility to adopt advantageous measures tailored to facilitate the participation of the under-represented sex in vocational activities (European Parliament 2006).

Member States primarily operationalise the equal pay principle through equality legislation and labour codes, with some incorporating it into constitutional provisions (European Parliament 2006). While the legal frameworks across most Member States explicitly prohibit pay discrimination, the practical application of the equal pay principle remains a considerable challenge. This is particularly evident, for example, in the persistent gender pay gap as well as the limited number of pay discrimination cases brought before national courts (European Commission 2013).

Despite efforts to reduce direct discrimination concerning identical job roles, evaluating work predominantly performed by one gender poses substantial challenges, especially when such assessments occur within collective agreements. The lack of comprehensive data and effective monitoring in many Member States further complicates the assessment of pay discrimination between men and women (European Commission 2013).

The scarcity of national case law on equal pay raises concerns about the accessibility of justice for victims of gender pay discrimination. The effective implementation of the equal pay principle faces many obstacles in practice, particularly due to the lack of clarity and legal certainty regarding the concept of work of equal value, non-transparent pay systems, and procedural hurdles. Notably, most Member States' legislation lacks explicit guidance on what constitutes work of equal value, leaving it to the interpretation of national courts (European Commission 2013).

In summary, while the Equal Pay Directive underscores the EU's commitment to gender equality in the workplace, challenges persist in translating these principles into effective measures that address the gender pay gap and ensure fair compensation practices for women. The issues of clarity, transparency, and accessibility to justice underscore the need for continued efforts and improvements in implementing and monitoring the equal pay principle across Member States.

4.2 QUANTITATIVE SURVEY ON THE REALITY OF A FEMINIST LABOUR MARKET

In a survey prepared by GHRD staff aimed at exploring the realities of women in the EU labour market (see Appendix), responses from 34 participants shed light on several key aspects of their experiences.

6 Do you believe there is a gender pay gap in your current workplace?

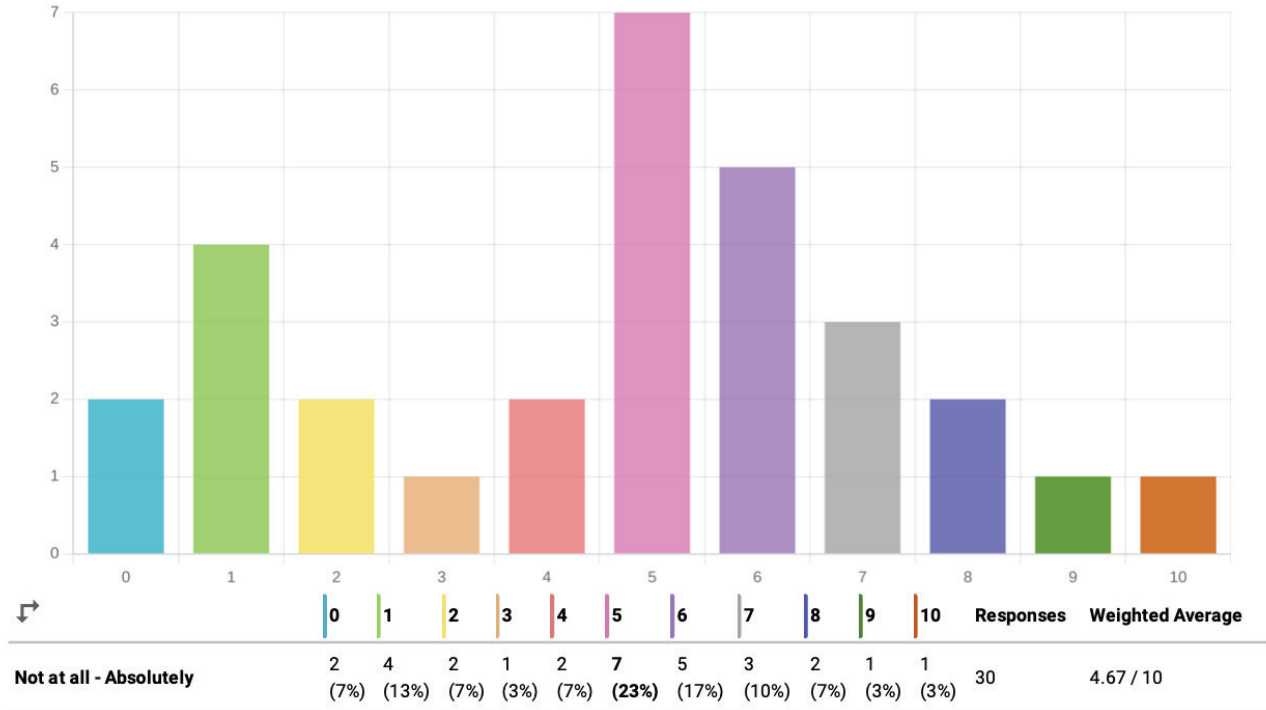


Figure 1

4.67 / 10

7 Are you aware of the labor rights provided to you under EU laws?

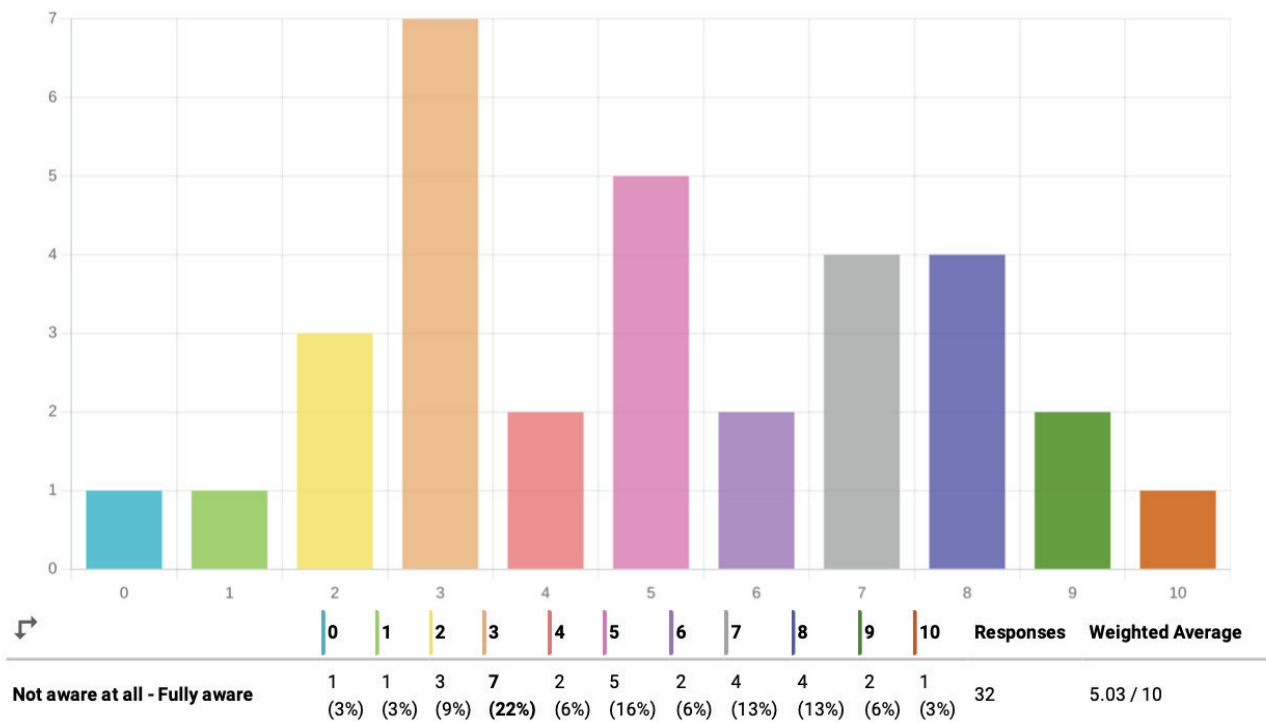


Figure 2

The survey revealed that 88 percent of respondents were women, with 82 percent falling under the age of 25 and the remaining 18 percent aged between 25 and 35. This demographic composition highlights the prevalence of young women in the survey, providing insights into the early stages of their careers. Alarming findings emerged regarding negative treatment at work, with 42 percent of participants reporting instances where they felt treated unfavourably compared to their male colleagues. Additionally, nearly half of the respondents, 47 percent, stated that they occasionally faced discrimination or harassment, regardless of gender.

The issue of the gender pay gap was also addressed in the survey, revealing that 23 percent of participants perceived a gap in their current workplace at an average magnitude of 5 on a scale from 1 to 10.³ This suggests a significant level of concern among participants regarding gender-based pay disparities within their professional environments (see Figure 1).

The survey further delved into participants' awareness of their labour rights under EU law, with 22 percent expressing a low level of awareness, scoring a 3 on a scale from 1 to 10 (see Figure 2). The weighted average for this question was 5.03, indicating a moderate level of awareness overall. This result underscores the need for increased education and dissemination of information regarding labour rights among women in the EU.

In an open-text response section, participants were asked to suggest measures that organisations, governments, or the EU could implement to bridge the gender pay gap. Several themes emerged, with respondents advocating for increased transparency in pay structures, legal repercussions for entities engaging in discriminatory practices, educational initiatives about rights, and the establishment of state-sponsored childcare facilities. These suggestions collectively underscore a desire for a comprehensive approach that addresses both systemic issues within organisations and societal factors that contribute to gender-based pay disparities.

In conclusion, the survey results offer valuable insights into the experiences and perspectives of women in the EU labour market. The prevalence of negative treatment, discrimination, and concerns about the gender pay gap, indicate the pressing need for continued efforts to create inclusive, equitable workplaces. The call for increased awareness, transparency, legal consequences, and supportive

³ 1 signifies “not at all” and 10 denotes “absolutely”.

policies reflects a collective plea for systemic change to foster gender equality in the European Union labour market.

4. VIOLENCE AGAINST WOMEN

Violence targeting women and girls constitutes a pervasive and systematic violation of human rights worldwide, including within EU Member States. Regrettably, statistics show that one in three women has encountered physical or sexual violence, primarily at the hands of their intimate partners. In addition, a significant surge in incidents of physical and emotional violence against women was registered during the COVID-19 pandemic (Council of the EU and the European Council, 2023). According to an EU-wide survey⁴ on violence against women (VAW) conducted by the European Union Agency for Fundamental Rights, a total of 11 percent of women surveyed have encountered some type of sexual violence from the age of 15 onwards, either by a partner or another individual. Moreover, one in 20 women (5 percent) has experienced rape since they've reached 15 years old. The most frequently reported instances of physical violence were pushing or shoving, slapping or grabbing, and pulling a woman's hair (FRA, 2014).

The biggest challenges of tackling VAW in the EU firstly pertain to the lack of comprehensive and comparable data (Goodey, 2017), due to high levels of underreporting, with more than two-thirds of women (68 percent) refraining from reporting acts of violence to the police (FRA, 2021). Second, the existing legal gaps in legislation also hinder addressing VAW, as no specific EU legal instrument addresses it. Thus, inconsistencies in national legislation can hinder protection for victims. Consequently, in 2021, the European Parliament proposed a new Directive to tackle these challenges. This Directive also urges the European Commission to make gender-based violence (GBV) a crime under EU law, and demands targeted legislation and policies to address all forms of violence and discrimination based on gender (European Commission, 2022/a).

The EU has nonetheless intensified its actions to combat VAW in many ways. For example, it signed the Council of Europe Convention on Preventing and Combatting Violence against Women (the Istanbul Convention) in 2017 and this year, the EU ratified it. On October 1st 2023, the Istanbul Convention entered into force, making the EU the 38th party to the first legally binding international instrument

⁴ The FRA survey on violence against women is the first survey of its kind to comprehensively assess the extent and characteristics of violence against women across all 28 EU Member States. It employs a uniform questionnaire, consistent methodology, and random sampling for data collection.

Source: <https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

dedicated to preventing and combatting violence against women and girls at the international level (European Parliament, 2023/d). Another significant action aiming to counter the challenges of tackling VAW is the Gender Equality Strategy 2020-2025 of the EU, which aims to eliminate GBV by 2025 in the EU by putting emphasis on preventive measures (European Commission, 2020/c). Lastly, in 2022, the Commission established a common EU helpline number (116 016) for victims of violence against women:, which enables female victims of violence across the EU to seek advice and support (European Commission, 2022/b).

In the next section, this chapter will further analyse the above-mentioned proposed new Directive, the Istanbul Convention, and several sub-categories of VAW such as partner violence, sexual harassment, cyber violence and female genital mutilation.

4.1. THE NEW PROPOSED DIRECTIVE TO PUNISH GBV

To enhance the combat against gender-based violence across all EU countries, MEPs in September 2021 recommended that the European Commission criminalise it under EU law, aligning it with offences like terrorism, trafficking, cybercrime, sexual exploitation, and money laundering. This approach would establish consistent legal definitions, standards, and minimum criminal penalties across the EU (European Parliament, 2021/e). The European Parliament (2021/f), called on the Commission to categorise gender-based violence as a new crime category under Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) which states that

[t]he European Parliament and the Council may, 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 [...] These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children [...] (TFEU, 2008).

While it encompasses the sexual exploitation of women, it does not cover VAW as a broader category, nor does it address the prevention, protection, and effective prosecution of such incidents, both online and offline. Thus the proposed Directive uses existing legal bases set out in Articles 82(2) and 83(1) TFEU to ensure that such offences are effectively prosecuted and to provide better support and protection for victims. The Directive defines VAW as GBV directed against a woman because she is a

woman,

encompass[ing] offences such as sexual violence, including rape, female genital mutilation, forced marriage, forced abortions or sterilisation, human trafficking for the purposes of sexual exploitation, stalking, sexual harassment, femicide, hate speech and crimes on the basis of sex and various forms of online violence ('cyber violence'), including non-consensual sharing or manipulation of intimate material, cyber stalking and cyber harassment (European Commission, 2022/a).

It emphasises that since EU legislation has to date failed to comprehensively tackle VAW, this Directive will be the first act specifically addressing this type of violence, thus filling a gap in EU law. The measures it provides align with the recommendations of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the independent expert body tasked with monitoring the implementation of the Istanbul Convention. It proposes the following: criminalising VAW and rape based on the lack of consent (in some Member States the use of force or threats is still a prerequisite); strengthening victims' access to justice by ensuring that national authorities treat victims in a gender-sensitive manner so that victims can successfully seek compensation from the perpetrator; providing victim support tailored to each victim's specific needs; investing in prevention by raising awareness and providing training for professionals who may encounter victims, collaborate with offenders; strengthening coordination and cooperation at national and EU-level to enhance data collection (European Commission, 2022/a, p. 3-4).

The Directive also lists several legal instruments of the EU that are relevant for victims of VAW, either by establishing general rules applicable to the victims specifically, or to certain forms of such violence. Below are the most relevant ones that the current Directive aims to complement:

Victims' Rights Directive (Directive 2012/29/EU). It sets minimum standards for the rights, protection, and support of crime victims in the EU, including those of GBV, sexual violence, and violence in close relationships. However, it lacks specific rules for these types of victims. The current proposal aims to address this by complementing the existing directive with specific measures for victims of VAW.

European Protection Order Directive (Directive 2011/99/EU) and Mutual Recognition Regulation (No 606/2013). These Directives facilitate the cross-border recognition of protection orders issued under national law. The current initiative mandates Member States to include emergency barring and

protection orders in their national legislation.

Child Sexual Abuse Directive (Directive 2011/93/EU). The proposal aims to extend the specific framework criminalising rape based on consent to children, considering variations in the age of sexual consent across Member States. The proposed modifications introduce penetration as an aggravating circumstance and elaborates on the conditions for establishing a child's consent, even when they are above the required age of sexual consent

Anti-Trafficking Directive (Directive 2011/36/EU). It addresses human trafficking for sexual exploitation and is currently under review to evaluate the necessity for future amendments. This assessment considers criminalisation at the EU level and the associated penalties introduced by the Directive.

Compensation Directive (Council Directive 2004/80/EC). It allows victims of violent intentional crimes to seek state compensation. The current initiative aims to enhance victims' rights to compensation by strengthening their ability to seek compensation from the offender, establishing minimum rules for the provision of such compensation.

Gender Equality directives (on equal treatment between men and women in the access to and supply of goods and services, equal treatment of men and women in matters of employment and occupation, and equal treatment between men and women engaged in an activity in a self-employed capacity). The directives mandate Member States to forbid such behaviours, guarantee remedies (including compensation), and impose effective penalties. The current directive supplements these by establishing minimum standards for supporting and ensuring access to justice for victims of such harassment.

Digital Services Act (DSA). It aims to protect fundamental rights online, including women's safety, through a framework for oversight and accountability. The current proposal enhances the DSA by introducing minimum rules for cyber violence offences and empowering national judicial authorities to issue orders against such illegal content (European Commission, 2022/a, p. 4-7).

In terms of implementation of the measures, the new proposed directive to punish GBV stresses the importance of subsidiarity to tackle VAW, but also sheds light on the fact that Member States address VAW to varying degrees, leading to legal uncertainty across the EU. While Member States' efforts at the national level are commendable, targeted legislative action at EU level is deemed necessary.

for effectiveness. The current proposal seeks to establish minimum rules, balancing effectiveness and flexibility for Member States to address national specificities in combating violence against women and domestic violence (European Commission, 2022/a, p. 9).

Finally, on June 9th, 2023, the Council agreed on its position on the proposed Directive to prevent and combat violence against women and the criminalisation of the following offences across the EU: female genital mutilation, cyberstalking, cyber harassment, non-consensual sharing of intimate images, cyber incitement to hatred or violence (Council of the EU, 2023). On July 12th, the European Parliament also formally approved their position on the proposed EU Directive (EDF, 2023). The Directive is currently waiting for its final adaptation to enter into force.

5.2. THE ISTANBUL CONVENTION

The Council of Europe Convention on Preventing and Combating Violence against Women (Istanbul Convention), which came into force in 2014, is the first legally binding international instrument addressing violence against women and girls. It outlines a comprehensive framework of legal and policy measures aimed at preventing such violence, supporting victims, and penalising perpetrators (European Parliament, 2023/c). The key obligations of Parties to this Convention are the following:

Equality and non-discrimination. The duty of due diligence is reflected explicitly in this legally binding instrument;

Integrated policies and data collection. Parties to the Convention have a duty to strive to incorporate the expertise and perspective of pertinent stakeholders and institutions into the policymaking process;

Prevention. It takes the form of awareness-raising, education, preventive intervention and treatment, media self-regulation and acknowledges the need to actively involve men as part of the solution;

Protection and support. The following services should be made available: general support services, specialist support services, assistance in complaints, shelters, helplines, rape crisis or sexual violence centres, protection of child witnesses;

Substantive law, including criminalising various forms of violence. The Convention denotes a duty upon Member/ signatory States to address significant shortcomings in their national legislation regarding criminalised acts of violence, reparation, and compensatory measures;

Investigation, prosecution, procedural law and protective measures. Investigations and judicial proceedings must be carried out without undue delay, and certain protection measures are to be put in place during the investigations and proceedings, such as risk assessment and risk management, emergency barring orders, restraining or protection orders, and measures of protection;

International cooperation. Where there are reasonable grounds to believe that a person is at immediate risk of VAW, states must cooperate to ensure that appropriate protection measures are taken;

Monitoring mechanism. GREVIO monitors the implementation of this Convention, and Parties shall submit a report on legislative and other measures giving effect to the provisions of this Convention (European Union, 2020, p. 27-29).

As of December 2022, the Convention has been signed by all EU Member States, and ratified by 21. Only Bulgaria, Czechia, Hungary, Latvia, Lithuania and Slovakia have not ratified the Convention. Disagreements between Member States and legal uncertainties hindered the EU's ratification of the Convention for many years. The ratification process was accelerated in 2022 due to the von der Leyen Commission prioritising the matter in the Gender Equality Strategy 2020-2025 and the proposed new Directive on VAW. The European Parliament consistently supported EU ratification and, in 2023, adopted a resolution urging ratification. Following an Opinion from the European Court of Justice in 2021, the Council requested Parliament's consent in February 2023. In May 2023, Parliament granted consent, and on June 1st, 2023, the Council adopted decisions completing the ratification process, specifying EU competencies and introducing a Code of Conduct (European Parliament, 2023/c).

Although some EU Member States remained resistant to ratifying the Convention, the CJEU confirmed that the EU as a whole can ratify the Convention without the consent of all member states, as the qualified majority is sufficient. Thus, since October 1st, 2023, when the Istanbul Convention entered into force for the EU as a legal entity, pressure has increased for the non-ratifying countries to align with the measures of the Convention as its content became enforceable in areas of EU competence (Zachová et al., 2023).

5.3. INTIMATE PARTNER VIOLENCE

Intimate partner violence (IPV) represents the prevalent and severe manifestation of gender discrimination, constituting the most common form of violence against women. It jeopardises

fundamental rights such as dignity, liberty, security, health, and, ultimately, the lives of women. However, there is not yet a unified definition of IPV across EU Member States, leading to variations in understanding and measurement across jurisdictions. The European Institute for Gender Equality (EIGE) defines IPV as “any act of physical, sexual, psychological, or economic violence that occurs between former or current spouses or partners, whether or not the perpetrator shares or shared the same residence with the victim.” This definition was also applied in the EP’s Report on the impact of intimate partner violence and custody rights on women and children as a result of the plenary session of the Parliament in Strasbourg from October 4th to October 7th, 2021. EIGE also defines 4 different types of IPV such as physical (any act that causes physical harm to the partner), sexual (sexual act without consent of the partner), economic (any act that causes economic harm such as property damage or restricting access to financial resources) and psychological (any act causes psychological harm to the partner such as coercion, defamation, verbal abuse or harassment) (EIGE, 2023).

According to the previously mentioned survey conducted by the FRA, the forms of violence most likely to recur in IPV are being pushed, shoved, slapped, grabbed or pulled by the hair, or beaten with a fist or a hard object. Approximately half of women who have encountered one of these forms of violence have experienced it from a current partner, while two-thirds have experienced such violence from a previous partner. More than half of the women who have been raped by their current partner, or whose current partner has attempted rape or coerced them into sexual activity when unable to refuse, have been victims of more than one such multiple incident. About one-third of rape victims (31 percent) have experienced six or more incidents with their current partner (FRA, 2014).

The EP’s report emphasises the “exponential increase” in the prevalence and intensity of cases of IPV/intimate partner violence during the COVID-19 pandemic, noting in particular a 60 percent increase in emergency calls reported by victims of domestic violence. It also acknowledges that due to lockdown measures, women and children encountered difficulties in accessing effective protection, support services and justice. In the General Remarks of the report, the European Parliament condemns all forms of VAW, acknowledges the increased number of incidents of domestic violence during the pandemic, and recognises IPV as a serious violation of their human rights and dignity (European Parliament, 2021/g, p. 7).

In addition, the report sheds light on the general practice of the perpetrators of domestic violence to use legal proceedings to exert control and intimidate victims, particularly through child custody requests. It notes the manipulation of children and the withholding of maintenance allowance as tactics of abuse. The document calls on Member States to ensure maintenance allowance is paid through victim funds to prevent financial abuse. It also highlights the urgency of reshaping patriarchal behaviours and emphasises the need for intersectional approaches to combat gender-based and domestic violence. Finally, the report recommends alternative approaches/measures that victims can take if they do not want to file a complaint, and outlines the economic support available to victims so that they can achieve financial independence. It also calls for measures to tackle economic violence, protect victims' financial resources, and ensure rapid decisions are made concerning maintenance allowances. The text also calls for full access to legal protection, restraining orders, shelters, counselling, and financial empowerment programmes for victims of intimate partner violence (European Parliament, 2021/g, p. 14-18).

5.4. CYBER VIOLENCE

Since online platforms are increasingly becoming the norm in contemporary society, existing forms of violence that disproportionately affect women and girls are adapting to digital platforms. Gender-based cyber-violence has profound and enduring effects on victims, and tends to target in particular those who are most vulnerable, including women from ethnic minorities, women with disabilities, and LGBTQIA+ individuals. The European Parliament contends that a unified definition of gender-based cyber-violence at EU level is essential to combat such offences and ensure protection for victims across all Member States is consistent (European Parliament, 2023/d). Consequently, this issue is one of the main objectives of the proposed Directive, which defines cyber violence as “any act of violence [...] that is committed, assisted or aggravated in part or fully by the use of information and communication technologies” (European Commission, 2022/a). However, it is important to note that cyber violence has many forms such as cyber harassment, cyber stalking,⁵ non-consensual intimate image abuse, doxing,⁶ or cyber incitement to violence or hatred (EIGE, 2022).

5 The repeated use of electronic communications to harass or frighten someone (Oxford Languages).

6 The action or process of searching for and publishing private or identifying information about a particular individual on the internet, typically with malicious intent (Oxford Languages).

The criminalisation of such forms of gender-based violence on a national basis is lacking in many Member States. For example, cyber stalking is specifically criminalised in 17 Member States, meanwhile cyber harassment is criminalised only in five Member States, including only Greece and France who consider it an aggravating circumstance when harassment is conducted through electronic communication means. Lastly, legislation concerning cyber incitement to violence or hatred has been implemented in only seven Member States (European Union, 2022, p. 25-26).

According to the estimation of an EP's resolution in 2021, between 4 to 7 percent of women aged 18 and over in the entire EU experienced cyber-harassment in the past year, while 1 to 3 percent experienced cyber-stalking. Considering this data, the lack of harmonised legal definition at the EU level, and the absence of any mention of online-related offences in the Istanbul Convention, the proposed new Directive aims to make certain types of cyber-violence punishable offences, including cyber-stalking, cyber-harassment, the unauthorised sharing of intimate images, and online incitement to hatred and violence. Ultimately, the new Directive appears to enhance comprehensive victim support, including guidance on accessing legal assistance and removing inappropriate online content (European Parliament, 2023/d).

5.5. FEMALE GENITAL MUTILATION

Female genital mutilation (FGM) involves the (partial or complete) removal of the external female genitalia and the infliction of other medically unjustified injuries to the female genitalia. FGM results in pain, infection, issues during sexual intercourse, difficulties with urination, complications during childbirth, and can lead to death. An estimated minimum number of 600,000 women in Europe and 200 million women globally have experienced female genital mutilation (European Commission, 2021).

The EU is actively engaged in the eradication of female genital mutilation (FGM). To this end, the Commission issued in 2013 a Communication to the Parliament and the Council formulating an integrated strategy to eliminate FGM, with specific emphasis on prevention. In the Communication, the Commission also committed to tackling FGM in many ways such as supporting the EIGE to create a standardised methodology and indicators to measure the prevalence of FGM, examining criminal laws and court cases associated with FGM to facilitate the exchange of best practices among Member States to identify EU-level actions that would enhance effectiveness (European Commission, 2013).

Furthermore, in 2016, a prevalence study funded by the Commission's Daphne III programme⁷ aimed to establish a unified definition and methodology for assessing the prevalence of FGM. The study revealed that more than half a million first-generation immigrant women and girls in the EU, Norway, and Switzerland had experienced FGM before their arrival (European Commission, 2021).

The eradication of FGM is highlighted as a priority in the Istanbul Convention, which binds its Parties to criminalise it, and imposes responsibilities of victim protection in accordance with the Convention's support and protection measures. In addition, the proposed Directive emphasises the need for specialised support services for victims of FGM and criminalises the practice of FGM, regardless of any socio-cultural practices. The EU is also an active advocate for the elimination of this harmful practice in its external actions, as outlined in the EU Action Plan on Human Rights and Democracy for 2020-2024 (European Commission, 2021).

7 The Daphne III program is an EU funding initiative that seeks to enhance the protection of children, young people, and women from various forms of violence while promoting high levels of health protection, well-being, and social cohesion. Specifically, the program aims to prevent and combat all forms of violence, including sexual exploitation and human trafficking, whether in public or private domains. It focuses on implementing preventive measures and offering support and protection to victims and groups at risk. Source:

https://ec.europa.eu/justice/grants1/programmes-2007-2013/daphne/index_en.htm

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CONCLUSION

This report aimed to provide an in-depth analysis of women's rights under the law of the European Union focusing on treaties and directives, current initiatives and challenges to protect women's rights in the areas of sexual and reproductive health rights, LGBTQIA+ rights, labour rights and the different forms of violence against women.

In terms of sexual and reproductive health and rights (SRHR), the report found that despite the EU's strong support to ensure individuals have control over their sexuality and reproductive health without discrimination or coercion, the EU still lacks a unified policy on abortion. However, a recent initiative of the European Parliament calls for the inclusion of the right to abortion in the EU Charter of Fundamental Rights.

Regarding LGBTQIA+ rights, the EU addresses discrimination based on sexual orientation and gender identity through legislation, fundamental rights, and dedicated committees. In addition, the LGBTQIA+ Equality Strategy aims to protect and promote the rights of LGBTQIA+ individuals, by implementing a mid-term review to gain insight into the strategy's progress among member states. Nevertheless, inconsistencies in member states' implementing policies, access barriers to reproductive health services, gaps in comprehensive sexuality education, and persistent discrimination against LGBTQIA+ individuals, especially transgender individuals, are among the identified challenges.

Although the EU addresses women's rights in the European labour market through the Equal Pay Directive (2006/54/EC) by emphasising gender equality in working life, gender pay gap remains a significant issue in the EU, with women earning 12.7 percent less per hour than men in 2021. The quantitative survey conducted by the GHRD (see Appendix) emphasises the need for increased awareness of labour rights among women and suggests measures such as transparency in pay structures, legal consequences for discrimination, educational initiatives, and state-sponsored childcare facilities to bridge the gender pay gap.

In the field of violence against women (VAW), the EU is taking comprehensive measures to address and combat various forms of violence against women, emphasising the importance of legal frameworks, violence prevention, as well as protection and support for victims. The report highlighted the Commission's proposed directive on combatting violence against women and domestic violence. www.ghrd.org

Directive's objective is to eliminate gaps in protection and enhance access to justice throughout the EU by seeking to bring EU law in line with international standards, notably the Istanbul Convention. That being said, challenges persist in this field, due to the lack of comprehensive and comparable data, the high prevalence of underreporting, and the legal gaps since violence against women is not yet covered by a specific EU legal instrument.

APPENDIX

The full version of the GHRD survey on the gender pay gap is available here: <https://drive.google.com/drive/folders/1WEwaZu1DP70WWsUhlHw1qNM6cPIp5iYu>

List of Figures and Graphics

Figure 1: Sentiment about existence of the gender gap

Figure 2: Awareness of EU Labor Rights

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