

TO: Permanent Representatives to the European Union

Protect women and girls from gender-based violence

Dear Ambassador,

I am contacting you in view of the upcoming interinstitutional negotiations on the Directive on combating violence against women and domestic violence.

Today, the European Parliament has given green light to its mandate to enter into trilogue negotiations. The ETUC welcomes the leadership shown by co-rapporteurs and shadow rapporteurs in the European Parliament, as they have negotiated a mandate that further strengthens the draft Directive.

Notably, the mandate of the European Parliament reinforces the criminalization of numerous forms of gender-based violence, in particular with regard to the criminal offense of rape, based on lack of consent.

The criminal offense of rape constitutes the most severe attack on a person's physical, psychological and sexual integrity and autonomy. Yet, the severity of the offense is all too often not met with the appropriate response from criminal justice systems. As the Fundamental Rights Agency notes in its report from 2014 "*many criminal justice systems have difficulty in bringing offenders to account and accurately serving the needs and rights of victims*"¹. Even worse, victims and survivors of rape are too often faced with blatant banalization of the human-rights violation they have experienced, with their testimonies being called into question and their courage to report their offender not leading to convictions.

With this draft Directive, you have the opportunity of lifting the standards of protection of victims and survivors of gender-based violence, offline and online, to a higher level.

As to ongoing attempts to discredit the legal basis of the Directive, may I recall that:

1. The Directive is based on the combined legal bases of Article 82(2) and Article 83(1) TFEU. As regards the definition of rape, the relevant Article is 83(1), **which provides for the possibility to establish minimum rules on the definition of criminal offences in relation to the sexual exploitation of women and children.**
2. In line with the wording of Article 83(1), the reference to 'particularly serious crime with a cross-border dimension' also covers offences where there is 'a special need to combat them on a common basis'. To this end, **the term 'sexual exploitation' must be understood as covering also non-consensual sexual acts, including rape.** In order to fully protect the sexual integrity of victims and

¹ European Union Agency for Fundamental Rights: *Violence against women: an EU-wide survey Main results (2014)*

ensure equal protection throughout the EU, it is therefore necessary to establish lack of consent as a central and constitutive element of rape.

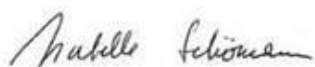
3. A broad interpretation of Article 83(1) TFEU can also be justified by **the need to ensure consistency with the EU's aim of promoting gender equality**, as set out by Articles 2 and 3(3) TEU, Articles 8 and 11 TFEU and Article 21 of the Charter of Fundamental Rights. Moreover, as affirmed by Declaration No. 19 on Article 8 TFEU, combatting 'all kinds of domestic violence' is part of the Union's general efforts to eliminate inequalities between women and men.
4. In addition, the EU's ratification of the Istanbul Convention in 2023 calls for a broad understanding of the term 'sexual exploitation'. The ratification affirms the EU's commitment to combat all forms of violence against women, including rape as a non-consensual sexual act under Article 36 of the Convention. As noted also by the EU Court of Justice in its Opinion 1/19 on EU access to the Convention, **the Treaties provide basis for a broad range of measures** that can be adopted in the areas of prevention, protection, victim support, and access to justice.
5. The legal service of the Council itself has [stated](#) that the "**Council could choose to [...] endorse a more extensive reading of the legal basis** as regards the notion of sexual exploitation of women and children, on the basis of two aspects [...], namely i) the use of the coordinating conjunction "and" in the description of the area of crime in Article 83(1) TFEU, and ii) the fact that in the Child Sexual Abuse and Sexual Exploitation Directive, the legal basis of "sexual exploitation of children" has been interpreted somewhat extensively and used in order to establish minimum rules concerning an offence where the exploitative element is less present but is rather focused on the use of violence as a form of sexual abuse."

It is regrettable that, until now, Member States have not used the chance at hand to decisively step-up efforts in the fight against gender-based violence and to ensure that women and girls throughout the European Union can be assured the same level of protection and access to justice against forms of gender-based violence.

I therefore urge you to correct this approach and to meaningfully engage in trilogues, with the aim of reaching an ambitious Directive that includes all relevant criminal offenses to make Europe a safer place for all women and girls.

The European trade union movement calls on you to pave the way for substantial and transformative change for women and girls.

Sincerely yours,



Isabelle Schömann
Deputy General Secretary