

Proposed Amendments to European Commission Proposal on Combating Violence Against Women & Domestic Abuse

Amendment 1

<p>Recital 7</p> <p>Violence against women is a persisting manifestation of structural discrimination against women, resulting from historically unequal power relations between women and men. It is a form of gender-based violence, which is inflicted primarily on women and girls, by men. It is rooted in the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men, generally referred to under the term ‘gender’.</p>	<p>Recital 7</p> <p>Violence against women is a persisting manifestation of structural discrimination against women, resulting from historically unequal power relations between women and men. It is a form of sex gender-based violence, which is inflicted primarily on women and girls, by men. It is rooted in the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men, generally referred to under the term ‘gender’.</p>
<p>Justification</p> <p>Female victims of male violence are primarily and disproportionately targeted on the basis of their sexed bodies regardless of whether they identify with the socially constructed roles or behaviours that society imposes upon them. This is true for women around the world whether it concerns a small girl subjected to female genital mutilation or a woman being murdered for a mesh of hair escaping her veil. Empirical evidence shows that women in Europe are raped, beaten and murdered simply because they are biologically female regardless of how they define themselves.</p>	

Amendment 2

<p>Recital 11</p> <p>(...) In particular, lesbian, bisexual, trans, non-binary, intersex and queer (LBTIQ) women, women with disabilities and women with a minority racial or ethnic background are at a heightened risk of experiencing gender-based violence.</p>	<p>Recital 11</p> <p>(...) In particular, lesbian, <i>and</i> bisexual, trans, non-binary, intersex and queer (LBTIQ) women, <i>as well as women who do not conform to gender stereotypes</i>, women with disabilities and women with a minority racial or ethnic background, <i>women lacking legal status, elderly women and girls under 18 years old</i> are at a heightened risk of experiencing gender-based violence <i>against women</i>.</p>
<p>Justification</p> <p>It is women and girls, however they identify, who are at heightened risk of experiencing male violence on the basis of their sexed bodies and sometimes in combination with other factors such as legal status or age. Focusing on other groups aggregated under contested definitions or acronyms such as “LBTIQ” only diminishes the extra support and safety this legislation could afford to women and girls because it blurs the sex based reality of the violence perpetrated against them. Focusing on sex based violence does not mean that other marginalised groups should not be accorded the protections they deserve within another more appropriate context. The wording proposed in this amendment includes all women, including those who may define themselves differently.</p>	

Amendment 3

	<p>New recital 11a</p> <p><i>There are female survivors of male violence who, because of their experiences or cultural and religious backgrounds, may not be able to access a gender identity based service. It is a legitimate aim to ensure that all victims of violence are dealt with in a trauma-sensitive way that safeguards their personal sense of dignity, privacy and safety. Persons of the female sex who are likely to self-exclude from a service based on gender identity are often among the most vulnerable, and it is important that they are not disproportionately marginalized from accessing support and safety.</i></p>
<p><u>Justification</u></p> <p>It is important that all victims of sexual and domestic violence have access to trauma sensitive care that is tailored to their specific needs and takes account of their personal sense of dignity, privacy and safety. For many biologically female victims of male violence, sharing rape crisis services or domestic abuse shelters with persons born male, however they might identify, could lead some of the most vulnerable women to self-exclude or suffer from retraumatisation.</p>	

Amendment 4

<p>Recital 23</p> <p>(...) In assessing whether material qualifies as amounting to incitement to hatred or violence, the competent authorities should take into account the fundamental rights to freedom of expression as enshrined in Article 11 of the Charter.</p>	<p>Recital 23</p> <p>(...) In assessing whether material qualifies as amounting to incitement to hatred or violence, the competent authorities should take into account the fundamental rights to freedom of expression as enshrined in Article 11 of the Charter. <i>In this regard, Member States must ensure that public debate on controversial issues such as sex and gender identity is not silenced or hindered, particularly with regard to persons who hold beliefs that are unpopular.</i></p>
<p><u>Justification</u></p> <p>It needs to be clear that women and others must be able to speak freely about issues related to sex and gender without being intimidated and criminalised for hate speech. There are legitimate questions and concerns being raised about sex and gender which are often shut down with no debate and/or pursued as hate crimes. Cyber crime laws that are intended to give women added protection from online abuse must not be simultaneously used to hinder or silence their full participation, nor the participation of others, in a public debate on controversial issues related to sex and gender.</p>	

Amendment 5

<p>Recital 32</p> <p>Victims of violence against women and domestic violence are often in need of specific support. To ensure they effectively receive offers of support, the competent authorities should refer victims to appropriate support services. This should in particular be the case where an individual assessment has found particular support needs of the victim. In that case, support services should be able to reach out to the victim even without the victim's consent. (...)</p>	<p>Recital 32</p> <p>Victims of violence against women and domestic violence are often in need of specific support. <i>Member States must ensure that single-sex support services are made available to victims alongside uni-sex services that cater to various gender identities.</i> To ensure they effectively receive offers of support, the competent authorities should refer victims to appropriate support services. This should in particular be the case where an individual assessment has found particular support needs of the victim. In that case, support services should be able to reach out to the victim even without the victim's consent. (...)</p>
<p><u>Justification</u></p> <p>It is important that all victims of sexual and domestic violence have access to trauma sensitive care that is tailored to their specific needs and takes account of their personal sense of dignity, privacy and safety. For many biologically female victims of male violence, sharing rape crisis services or domestic abuse shelters with persons born male, however they might identify, could lead some of the most vulnerable women to self-exclude or suffer from retraumatisation. It is also important that transgender and gender non conforming people have access to differentiated and equal services that recognise their specific needs and experiences.</p>	

Amendment 6

<p>Recital 50</p> <p>The traumatic nature of sexual violence, including rape, requires a particularly sensitive response by trained and specialised staff. Victims of this type of violence need immediate medical care and trauma support combined with immediate forensic examinations to collect the evidence needed for prosecution. Rape crisis centres or sexual violence referral centres should be available in sufficient numbers and adequately spread over the territory of each Member State. Similarly, victims of female genital mutilation, who are often girls, typically are in need of targeted support. Therefore, Member States should ensure they provide dedicated support tailored to these victims.</p>	<p>Recital 50</p> <p>The traumatic nature of sexual violence, including rape, requires a particularly sensitive response by trained and specialised staff. Victims of this type of violence need immediate medical care and trauma support combined with immediate forensic examinations to collect the evidence needed for prosecution. Rape crisis centres or sexual violence referral centres should be available in sufficient numbers and adequately spread over the territory of each Member State. Similarly, victims of female genital mutilation, who are often girls, typically are in need of targeted support. Therefore, Member States should ensure they provide dedicated services tailored to these victims. <i>Member States must also ensure that single-sex support services are made available to victims alongside uni-sex services that cater to various gender identities.</i></p>
<p><u>Justification</u></p> <p>It is important that all victims of sexual and domestic violence have access to trauma sensitive care that is tailored to their specific needs and takes account of their personal sense of dignity, privacy and safety. For many biologically female victims of male violence, sharing rape crisis services or domestic abuse shelters with persons born male, however they might identify, could lead some of the most vulnerable women to self-exclude or suffer from retraumatisation. It is also important that transgender and gender non conforming people have access to differentiated and equal services that recognise their specific needs and experiences.</p>	

Amendment 7

<p>Article 4 Definitions</p> <p>For the purposes of this Directive, the following definitions shall apply:</p> <p>(a) “violence against women” means gender-based violence that is directed against a woman or a girl because she is a woman or a girl or that affects women or girls disproportionately, including all acts of such violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;</p> <p>(b) “domestic violence” means all acts of violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering, that occur within the family or domestic unit, irrespective of biological or legal family ties, or between former or current spouses or partners, whether or not the offender shares or has shared a residence with the victim;</p> <p>(c) “victim” means any person, regardless of sex or gender, unless specified otherwise, who has suffered harm, which was directly caused by acts of violence covered under this Directive, including child witnesses of such violence;</p> <p>(d) “cyber violence” means any act of violence covered by this Directive that is committed, assisted or aggravated in part or fully by the use of information and communication technologies;</p> <p>(e) “information and communication technologies” means all technological tools and resources used to digitally store, create, share or exchange information, including smart phones, computers, social networking and other media applications and services;</p> <p>(f) “providers of intermediary services” means providers of the services as defined in Article 2 point (f) of Regulation (EU) YYYY/XXX of the European Parliament and of the Council [Regulation on a Single Market for Digital Services];</p> <p>(g) “sexual harassment at work” means any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, where it</p>	<p>Article 4 Definitions</p> <p>For the purposes of this Directive, the following definitions shall apply:</p> <p>(a) “violence against women” means gender-based all acts of violence that is directed against a woman or a girl because she is a woman or a girl or that affects women or girls disproportionately, including all acts of such violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life; <i>It constitutes an intrinsic part of sex-based discrimination as defined in Art 1 of the Convention on Elimination of all forms of Discrimination Against Women (CEDAW).</i></p> <p>(b) “domestic violence” means all acts of violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering, that occur within the family or domestic unit, irrespective of biological or legal family ties, or between former or current spouses or partners, whether or not the offender shares or has shared a residence with the victim;</p> <p>(c) “victim” means any person, regardless of sex or gender, unless specified otherwise, who has suffered harm, which was directly caused by acts of violence covered under this Directive, including child witnesses of such violence;</p> <p>(d) “cyber violence” means any act of violence covered by this Directive that is committed, assisted or aggravated in part or fully by the use of information and communication technologies;</p> <p>(e) “information and communication technologies” means all technological tools and resources used to digitally store, create, share or exchange information, including smart phones, computers, social networking and other media applications and services;</p> <p>(f) “providers of intermediary services” means providers of the services as defined in Article 2 point (f) of Regulation (EU) YYYY/XXX of the European Parliament and of the Council [Regulation on a Single Market for Digital Services];</p> <p>(g) “sexual harassment at work” means any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, where it occurs in the course of, linked with, or arising in matters of employment, occupation and self-employment, with the purpose or effect of violating the dignity of the victim, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;</p> <p>(h) “child” means any person below the age of 18 years;</p>
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<p>occurs in the course of, linked with, or arising in matters of employment, occupation and self-employment, with the purpose or effect of violating the dignity of the victim, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;</p> <p>(h) “child” means any person below the age of 18 years;</p> <p>(i) “age of sexual consent” means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child;</p> <p>(j) “dependant” means a child of the victim or any person, other than the offender or suspect, living in the same household as the victim, for whom the victim is providing care and support.</p>	<p>(i) “woman” means a person of female sex, including girls under 18 years old</p> <p>(j) “sex” means the physical and biological characteristics recorded at birth that distinguish males from females</p> <p>(i) “age of sexual consent” means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child;</p> <p>(j) “dependant” means a child of the victim or any person, other than the offender or suspect, living in the same household as the victim, for whom the victim is providing care and support.</p>
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Justification

The directive should not use the terms sex and gender interchangeably (“sex or gender”) as this leads to confusion. Both in national, EU and international jurisprudence ‘sex’ is understood as a biological category that distinguishes women (females) and men (males). “Gender”, on the other hand, has no coherent definition in the EU law or policy and has often been erroneously conflated with biological sex. It is often used as shorthand for “gender identity” which has been defined as “an internal sense of gender”. However, women and girls experience a disproportionate level of male violence and sexual assault on the basis of their sexed bodies and irregardless of their gender identity. For the purposes of clarity and accuracy, the legislation should refer to “sex” and “woman” as defined in this amendment.

Amendment 8

<p>Article 10 Cyber incitement to violence or hatred</p> <p>Member States shall ensure that the intentional conduct of inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex or gender, by disseminating to the public material containing such incitement by means of information and communication technologies is punishable as a criminal offence.</p>	<p>Article 10 Cyber incitement to violence or hatred</p> <p>Member States shall ensure that the intentional conduct of inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex or gender, by disseminating to the public material containing such incitement by means of information and communication technologies is punishable as a criminal offence.</p>
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Justification

The directive should not use the terms sex and gender interchangeably (“sex or gender”) as this leads to confusion. Both in national, EU and international jurisprudence ‘sex’ is understood as a biological category that distinguishes women (females) and men (males). “Gender”, on the other hand, has no coherent definition in the EU law or policy and is often erroneously conflated with biological sex. It is often used as shorthand for “gender identity” which has been defined as “an internal sense of gender”. However, women and girls experience a disproportionate level of male violence and sexual assault on the basis of their sexed bodies regardless of their stated gender identity.

Amendment 9

<p><i>Article 18</i></p> <p>Individual assessment to identify victims' protection needs</p> <p>4. The assessment shall take into account the victim's individual circumstances, including whether they experience discrimination based on a combination of sex and other grounds and therefore face a heightened risk of violence, as well as the victim's own account and assessment of the situation. It shall be conducted in the best interest of the victim, paying special attention to the need to avoid secondary or repeated victimisation.</p>	<p><i>Article 18</i></p> <p>Individual assessment to identify victims' protection needs</p> <p>4. The assessment shall <i>be undertaken by a person of the sex or gender identity of the victim's choice and</i> take into account the victim's individual circumstances, including whether they experience discrimination based on a combination of sex and other grounds and therefore face a heightened risk of violence, <i>whether they require referral to single-sex or uni-sex support services that cater to victims with various gender identities</i>, as well as the victim's own account and assessment of the situation. It shall be conducted in the best interest of the victim, paying special attention to the need to avoid secondary or repeated victimisation.</p>
<p><u>Justification</u></p> <p>It is important that all victims of sexual and domestic violence have access to trauma sensitive care that is tailored to their specific needs and takes account of their personal sense of dignity, privacy and safety. For many biologically female victims of male violence, sharing rape crisis services or domestic abuse shelters with persons born male, however they might identify, could lead some of the most vulnerable women to self-exclude or suffer from retraumatisation. It is also important that transgender and gender non conforming people have access to differentiated and equal services that recognise their specific needs and experiences.</p>	

Amendment 10

<p><i>Article 28</i></p> <p>Specialist support for victims of sexual violence</p> <p>1. Member States shall provide for appropriately equipped, easily accessible rape crisis or sexual violence referral centres to ensure effective support to victims of sexual violence, including assisting in the preservation and documentation of evidence. These centres shall provide for medical and forensic examinations, trauma support and psychological counselling, after the offence has been perpetrated and for as long as necessary thereafter. Where the victim is a child, such services shall be provided in a child-friendly manner.</p>	<p><i>Article 28</i></p> <p>Specialist support for victims of sexual violence</p> <p>1. Member States shall provide for appropriately equipped, easily accessible rape crisis or sexual violence referral centres to ensure effective support to victims of sexual violence, including assisting in the preservation and documentation of evidence. These centres shall provide for medical and forensic examinations, trauma support and psychological counselling, after the offence has been perpetrated and for as long as necessary thereafter. <i>Member States must ensure that single-sex rape crisis or sexual violence referral centres are made available to victims alongside uni-sex options that cater to various gender identities.</i> Where the</p>
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	victim is a child, such services shall be provided in a child-friendly manner.
<p><u>Justification</u></p> <p>It is important that all victims of sexual and domestic violence have access to trauma sensitive care that is tailored to their specific needs and takes account of their personal sense of dignity, privacy and safety. For many biologically female victims of male violence, sharing rape crisis services or domestic abuse shelters with persons born male, however they might identify, could lead some of the most vulnerable women to self-exclude or suffer from retraumatisation. It is equally important that transgender and gender diverse people have access to differentiated and equal services that recognise their specific needs and experiences.</p>	

Amendment 11

<p><i>Article 32</i> Shelters and other interim accommodations</p> <p>1. The shelters and other appropriate interim accommodations as provided for in Article 9(3), point (a), of Directive 2012/29/EU shall address the specific needs of women victims of domestic violence and sexual violence.. They shall assist them in their recovery, providing adequate and appropriate living conditions with a view on a return to independent living.</p>	<p><i>Article 32</i> Shelters and other interim accommodations</p> <p>1. The shelters and other appropriate interim accommodations as provided for in Article 9(3), point (a), of Directive 2012/29/EU shall address the specific needs of women victims of domestic violence and sexual violence. <i>Member States must ensure that single-sex shelters and other interim accommodation are made available to victims alongside uni-sex options that cater to various gender identities.</i> They shall assist them in their recovery, providing adequate and appropriate living conditions with a view on a return to independent living.</p>
<p><u>Justification</u></p> <p>It is important that all victims of sexual and domestic violence have access to trauma sensitive care that is tailored to their specific needs and takes account of their personal sense of dignity, privacy and safety. For many biologically female victims of male violence, sharing rape crisis services or domestic abuse shelters with persons born male, however they might identify, could lead some of the most vulnerable women to self-exclude or suffer from retraumatisation. It is equally important that transgender and gender non conforming people have access to differentiated and equal services that recognise their specific needs and experiences.</p>	

Amendment 12

	<p><i>Article 36</i> Preventive measures <i>(new point 1a)</i> <i>Prevention measures must sufficiently ensure that gender self-identification procedures are not, as far as can be reasonably assured, abused by sexual predators and other perpetrators of violence. To this end, Member States must ensure that persons of the female sex are</i></p>
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	<p><i>kept separately from the other sex in settings such as prisons and hospitals. Member States must also provide robust guidance on how any eventual self-identification procedures would work in practice with regard to persons who have a history of sexual assault and domestic violence.</i></p>
<p><u>Justification</u></p> <p>As the UN Special Rapporteur on Violence Against Women and Girls, Reem Alsalam, recently stated, “...insistence on safeguarding and risk management protocols does not arise from the belief that transgender persons represent a particular safeguarding threat. It is instead based on empirical evidence that demonstrates that the majority of sex offenders are male, and that persistent sex offenders will go to great lengths to gain access to those they wish to abuse. One way to do this is by abusing the [gender self identification] process to access single-sex spaces or to take up roles which are normally reserved to women for safeguarding reasons.”</p>	

Amendment 13

<p><i>Article 36</i> Preventive measures</p> <p>Point 4</p> <p>(4) Targeted action shall be addressed to groups at risk, including children, according to their age and maturity, and persons with disabilities, taking into consideration language barriers and different levels of literacy and abilities. Information for children shall be formulated in a child-friendly way.</p>	<p><i>Article 36</i> Preventive measures</p> <p>Point 4</p> <p>(4) Targeted action shall be addressed to groups at risk, including children, according to their age and maturity, and persons with disabilities, taking into consideration language barriers and different levels of literacy and abilities. Information for children shall be formulated in a child-friendly way and include <i>accurate information about human biology and reproduction.</i></p>
<p><u>Justification</u></p> <p>Education addressing sexuality and gender stereotypes should be based on facts, informed by realities and tailored to the target audience. This has been highlighted by both The UN Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child in their joint general recommendation (No. 31). The recommendation underlines the importance of “age-appropriate education, which includes science-based information on sexual and reproductive health”.</p>	

Amendment 14

<p style="text-align: center;"><i>Article 37</i> Training and information for professionals</p> <p>Point 7</p> <p>(7) Training activities referred to in paragraphs 1 and 2 shall be regular and mandatory, including on cyber violence, and built on the specificities of violence against women and domestic violence. Such training activities shall include training on how to identify and address the specific protection and support needs of victims who face a heightened risk of violence due to their experiencing discrimination based on a combination of sex and other grounds.</p>	<p style="text-align: center;"><i>Article 37</i> Training and information for professionals</p> <p>Point 7</p> <p>(7) Training activities referred to in paragraphs 1 and 2 shall be regular and mandatory, including on cyber violence, and built on the specificities of violence against women and domestic violence. Such training activities shall include training on how to identify and address the specific protection and support needs of victims who face a heightened risk of violence due to their experiencing discrimination based on a combination of sex and other grounds. <i>Training activities must be based on a clear understanding of the social salience of biological sex.</i></p>
<p><u>Justification</u></p>	

It is vital that those being trained to deal with female victims of violence are aware of the importance of how a woman's sexed body continues to be a factor in the violence she may experience. If training activities are to be effective and meaningful, they must not be perceived by the recipients as a form of ideological indoctrination that denies the reality and importance of sex.

Amendment 15

Article 44

Data collection and research

1. Member States shall have a system in place for the collection, development, production and dissemination of statistics on violence against women or domestic violence, including the forms of violence referred to in Articles 5 to 10.
2. The statistics shall include the following data disaggregated by sex, age of the victim and of the offender, relationship between the victim and the offender and type of offence:
 1. the number of victims who experienced violence against women or domestic violence during the last 12 months, last five years and lifetime;
 2. the annual number of such victims, of reported offences, of persons prosecuted for and convicted of such forms of violence, obtained from national administrative sources

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2. The statistics shall include the following data disaggregated by **biological** sex, age of the victim and of the offender, relationship between the victim and the offender and type of offence:
 1. the number of victims who experienced violence against women or domestic violence during the last 12 months, last five years and lifetime;
 2. the annual number of such victims, of reported offences, of persons prosecuted for and convicted of such forms of violence, obtained from national administrative sources

Justification

We need data that is disaggregated by biological sex in order to understand differences in crime rates and patterns between men and women. To date, such data has shown that women are disproportionately affected by male violence. However, in several Member States accurate data collection is being undermined by the conflation of biological sex with legal sex (i.e. gender identity) when recording crimes. As males commit violent and sexual crimes at much higher rates than females, even a few males “self identifying” into female crime statistics could considerably skew the data. This means that policy decisions could be based on misleading data sets - to the detriment of the women and girls for whom this legislation is meant to provide support and safety.