



## INFOGRAPHICS



# REGULATIONS AND LEGISLATION

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**THE PRINCIPLE OF CONSENT**



Within the framework of international law, the most important legal instrument available to combat gender-based violence is the Istanbul Convention, concluded in 2011, which provides legally binding standards for the prevention of violence against women, the protection of victims and the prosecution of perpetrators.

It is the first legally binding international instrument on preventing and combating violence against women and domestic violence. Violence is recognised as a form of human rights violation and discrimination.

The Convention also provides, in Article 36(2), a specification on the principle of consent: consent "shall be given voluntarily, as a free manifestation of the person's will, and shall be evaluated taking into account the situation and the context":



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the Convention calls on States Parties to incorporate this principle into their legislation, so as to effectively change the legal weight of sexual acts consummated without violence or physical coercion, but without the full and explicit consent of both parties.

Although the EU signed the Convention in 2017, it still lacks ratification by six Member States (Bulgaria, Hungary, Czech Republic, Lithuania, Latvia and Slovakia).

To date, 34 Member States have ratified the Convention, but only Austria, Montenegro, Portugal and Sweden have amended their criminal codes to define rape as 'lack of consent', while discussions are still ongoing in the remaining countries on how to amend their legislation in this respect.



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In Germany, for example, the new legislation stipulates that dissent in words is also valid. For many observers, however, this element, while a step forward from the past, is still very much lacking because it does not protect victims who cannot adequately express dissent, such as women under the influence of alcohol or drugs.

Analysing rape legislation in 31 countries in Europe, only 9 of them have adopted consent-based laws.

In 2018, Iceland and Sweden became the 7th and 8th countries in Europe to adopt legislation defining rape as the absence of consent.

In June 2019, Greece became the 9th. The other countries are United Kingdom Ireland, Luxembourg, Germany, Cyprus, Belgium and Portugal.



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In Italy, Article 609-bis of the Penal Code (which dates back to 1930 and is still in force despite the numerous amendments adopted), introduced by Law No 66 of 1996, punishes the conduct of a person who, by means of violence or threats or by abuse of authority, forces another person to perform sexual acts and that of a person who induces another person to perform or undergo sexual acts by abusing his condition of physical or mental inferiority. Article 609-ter of the Criminal Code, on the other hand, provides for circumstances (known as aggravating circumstances).

In no case is the crime of rape explicitly defined as 'sexual intercourse without consent', as indicated in the Istanbul Convention, despite the fact that it was signed by Italy in September 2012 and ratified in Parliament on 27 June 2013.



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In other European countries, for the crime to be considered rape, the law requires that there are elements such as the use of violence, force or the threat of force, but this is not the case in the vast majority of rape cases. As a result, many victims are unable to seek justice and choose not to report the violence to the police.



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## **GENDER-BASED VIOLENCE: EUROPEAN COMMUNITY CRIME**

Despite the fact that most member states have laws to combat gender-based violence, there are no agreed definitions or rules to enable common and effective European action. In September 2021, MEPs called for a legal basis to be laid for making gender-based violence an EU-wide crime in order to establish common minimum criminal sanctions.

The European Parliament adopted a legislative initiative calling for targeted legislation and policies to address all forms of gender-based violence and discrimination (against women and girls, but also against LGBTIQ+ people), both offline and online. The Commission is therefore called upon to recognise gender-based violence as a new sphere of crime under Article 83(1) of the



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Treaty on the Functioning of the European Union, along with other crimes to be fought on a common basis such as trafficking in human beings, drugs and arms, cybercrime and terrorism.

The text, approved by 427 votes in favour, 119 against and 140 abstentions, would serve as the legal basis for a victim-focused EU directive, using the standards of the Istanbul Convention and other international standards, and would include in particular:

- prevention measures, including through gender-sensitive and cross-sectoral responsive education programmes;
- support services, protection and compensation measures for victims;
- measures to combat all forms of gender-based violence, including violence against LGBTIQ+ persons;





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- minimum standards of law enforcement;
- provisions to ensure that incidents of gender-based violence are taken into account when determining child custody and visitation rights;
- cooperation between member states and the exchange of best practices, information and expertise.



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## **LOCKDOWN EMERGENCY PROTOCOL**

Given the lack of readiness for the surge of abuse cases during lockdowns, a European prevention and law enforcement directive was proposed in February 2021, as well as a specific protocol for 'times of crisis'. The protocol, with special emphasis on domestic violence, is expected to recognise hotlines, shelters for women and children and health care as essential services across the EU. Proposals to combat online violence are also expected to be presented soon, and are scheduled for November 2021.



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**EPO**

In 2011, an instrument to protect victims of violence was also introduced: the European Protection Order (EPO), which aims to make the EU a common area of judicial protection. However, the EPO has so far only been applied in a few cases and its existence has not been adequately publicised, severely undermining its effectiveness.