

TGEU feedback

European Commission proposal for a directive on preventing and combating violence against women and domestic violence



TGEU welcomes the European Commission's directive on preventing and combatting violence against women and domestic violence because such violence, especially against marginalised communities such as trans people is widespread and devastating, and increased during the pandemic. TGEU also welcomes the acknowledgement that all people, including LGBTIQ people, can be victims of domestic violence. However, TGEU is disappointed that the directive falls short of truly addressing gender-based violence in the EU, and is concerned that if the European Parliament and Council adopt this directive in its current form, the opportunity to enshrine protection for some of the most marginalised people in EU-level law, will be missed.

On 8 March, International Women's Day, the European Commission launched its [proposal for a directive of the European Parliament and of the Council on combating violence against women and domestic violence](#).

Violence against trans people in the EU occurs at an alarming rate and threatens trans people at home. 36% of trans women, 36% of non-binary people, and 33% of trans men reported to the FRA 2019 LGBTI equality survey that they had experienced physical or sexual violence in the preceding five years.¹ An extraordinary 60% of trans people experienced in-person harassment in the same period. TGEU's COVID-19 impact assessment highlighted how, "many women and trans people have been forced to 'lockdown' at their residence with their abusers, while services to support survivors have been downsized or made inaccessible."² The 2021 update of the Trans Murder Monitoring project³ showed that 24% of the reported murders of trans people occurred in the victims' own homes.

¹ European Union Fundamental Rights Agency (2019) [A long way to go for LGBTI equality](#).

² Boglarka Fedorko, Anwar Ogrm, and Sanjar Kurmanov (2021) [Impact assessment: COVID-19 and trans people in Europe and Central Asia](#). TGEU. p7.

³ TGEU (2021) [TMM Update 2021](#).

As TGEU argued in our submission to the European Commission’s public consultation on this directive in May 2021, “trans people face violence and discrimination with regards to their gender identity and gender expression (GIGE) and are also affected by misogyny. Trans people face violence because they do not fit societal gender norms and stereotypes. In addition, trans women and transfeminine non-binary people are particularly affected by gender-based violence. Trans men and non-binary people who are assigned female at birth also suffer forms of violence that is often less visible and need additional protection, including domestic violence. Other exclusion axes such as race/ethnicity, migration status, sex work status, age and/or disabilities also impact in particular ways the violence and discrimination experienced by trans people.”

It is more necessary than ever that the European Commission strengthens its commitment and becomes fully inclusive of trans and gender diverse people in its work on gender-based violence and domestic violence.

In the lead up to the publication of this proposal, TGEU joined with other civil society representatives to call for an inclusive gender-based violence directive. In the manifesto⁴ we noted, “People facing marginalisation and intersectional discrimination - such as racialised women, women with disabilities, sex workers, those of lower socio-economic status, experiencing homelessness, with precarious or irregular migration status, as well as people with diverse sexual orientation, gender identities and expressions, and sex characteristics, including trans and non-binary people, are among the most at risk of gender-based violence and least protected and supported by existing efforts to prevent and tackle violence and other harm.”

And called for a directive that “[t]akes an intersectional and rights-based approach, recognising that to achieve gender equality and freedom from gender-based violence and protect fundamental rights for all, we have to address all forms of violence, in particular when linked to gender, gender identity and expression, sex characteristics, sexual orientation, race and ethnicity, age, disability, class, religion, and migration status, and that those who experience intersectional discrimination face greater vulnerability to all forms of gender-based violence and domestic violence.”

The Pay Transparency Directive,⁵ voted on and agreed to by the European Parliament on 17 March 2022, was the first piece of EU legislation containing a clear definition of

⁴ [Stop all forms of gender-based violence: A manifesto for an inclusive and comprehensive EU gender-based violence policy for all.](#)

⁵ European Parliament (2021) [Equal pay for equal work between men and women \(pay transparency and enforcement mechanisms\)](#)

intersectionality. Any new EU law, including this new directive, must reflect this high standard that has now been set. Intersectional discrimination is defined in the Pay Transparency Directive as, “a situation in which grounds of discrimination prohibited under Directive 2006/54/EC and one or more grounds of discrimination prohibited under Directive 2000/43/EC or 2000/78/EC - interact with each other at the same time in such a way as to be inseparable, producing distinct and specific forms of discrimination [...]”

The proposal directive makes significant reference to the importance of victims’ rights and the Victims’ Rights Directive,⁶ which itself contains careful inclusion of protection of victims’ with consideration of their gender identity and gender expression. Although this directive notes in its definitions that, “‘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,” this is not the same as explicitly including victims of gender-based violence who experience violence due to their gender identity or gender expression. This lack of clarity leaves open legal uncertainty for many trans people who experience gender-based violence.

TGEU is disappointed that the Commission’s original proposal⁷ for a directive on preventing and combatting gender-based violence has been narrowed to focus only on violence against women (acknowledged in the text as a form of gender-based violence) and domestic violence. The need for strong legislation that includes protection for all trans people was strongly supported by the EU Parliament in 2021,⁸ which recognised, in particular, how gender-based violence can be inflicted on LGBTIQ+ people because of their gender identity and gender expression.

⁶ [Victims’ Rights Directive](#), chapters 3 and 4.

⁷ [Gender Equality Strategy 2020-2025](#): “The Commission intends in particular to present an initiative with a view to extending the areas of crime where harmonisation is possible to specific forms of gender-based violence in accordance with Article 83(1) TFEU, the so-called Eurocrimes.”
[European Commission Work Programme 2021](#): “While the Commission remains committed to the EU accession to the Istanbul Convention, it will put forward a new proposal to combat gender-based violence.”

⁸ [EU Parliament resolution of 16 September 2021 with recommendations to the Commission on identifying gender-based violence as a new area of crime listed in Article 83\(1\) TFEU](#):
“G. whereas LGBTIQ+ persons are also victims of gender-based violence because of their gender, gender identity, gender expression and sex characteristics;
H. whereas gender-based violence against LGBTIQ+ persons includes physical violence, psychological violence, forced marriages, sexual violence, including ‘corrective’ rape, and sexual harassment, female and intersex genital mutilations, forced sterilisation of trans and intersex people, so-called ‘honour’ crimes, conversion therapy, hate speech, both online and offline, bullying and harassment, socio-economic deprivation and violence that occurs within the family and/or domestic unit.”

This has been reiterated again in recent weeks by the European Parliament Committee on Women's Rights and Gender Equality in its draft report on "Intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American, and Asian descent."⁹ The report "[h]ighlights the need for a comprehensive directive on gender-based violence with an intersectional approach, covering all women and girls in all their diversity and LGBTIQ people on the grounds of gender identity, gender expression or sex characteristics; calls on Member States to ensure that instances of gender-based violence are appropriately investigated, prosecuted and sanctioned and that victim-support services are comprehensive enough to address all forms of violence with a victim-centred perspective, particularly that which results from intersectional discrimination."

In consideration of the current directive proposal, TGEU urges the European Parliament and Council to push for a rights-based and feminist approach that includes:

- explicit coverage of gender-based violence and violence inflicted due to a person's gender identity and gender expression, complementing the Victims' Rights Directive and the EU Gender Equality Strategy;
- greater emphasis placed on intersectionality and the unique experience of violence that certain groups experience due to intersecting elements of their identity, reflecting the definition and approach used in the Pay Transparency Directive;
- collection of gender identity-segregated data on gender-based violence and domestic violence to have a complete picture of the true extent of such violence.

⁹ European Parliament (2022). [Intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American, and Asian descent](#). Draft report.