



**european
sex workers
rights
alliance**

Feedback by European Sex Workers Rights Alliance about the Commission's Proposal for a Directive on Combating violence against women and domestic violence

About the contributor:

The European Sex Workers' Rights Alliance (ESWA) – previously the International Committee on the Rights of Sex Workers in Europe (ICRSE) - is a sex worker-led network representing 100+ organisations in 29 countries in Western, Eastern and Central Europe and Central Asia. Our aim is to ensure that all sex worker voices are heard, and that their human, health and labour rights are recognised and protected. With our actions and approach inspired by our membership community, ESWA works to build a strong, vibrant and sustainable network that mobilises national, regional and international advocacy activity towards long-term, systemic change.

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ESWA welcomes the proposal of the Directive. In particular, ESWA applauds that attention is paid to the recognition that victims face heightened risk due to intersecting forms of discrimination, to the strong support and assistance measures proposed, and in particular for recognizing that undocumented migrant women and women sex workers are at increased risk of violence against women (VAW) and domestic violence (DV), and require targeted support as at-risk groups of victims.

Recognition of sex workers as at-risk group of victims that requires targeted support- Art. 35

ESWA applauds the Commission for listing undocumented migrant women and women sex workers among victims with specific needs and groups at risk in **Article 35 (1)**. Listing sex workers in the Directive can have a significant positive effect on sex workers access to justice and holding authorities accountable for facilitating access to justice. This is particularly important as sex workers bear a disproportionate burden of human rights abuses. Reports show that sex workers are not only vulnerable to violence by clients or private individuals, but often more so from the police and other authorities. Violent acts documented include extortion, coerced sexual services, rape, verbal and physical assault, inhuman and degrading treatment and arbitrary arrest and detention. Other common abuses experienced by sex workers are coerced abortion, denial of healthcare, loss of custody over their children on the sole grounds of their work, detention in rehabilitation centres and restrictions on the ability to organise. As highlighted by Amnesty International (2016), many of the forms of violence sex workers face constitute serious human rights abuses “while far too often they receive no, or very little, protection from the law or means for redress”.

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CASE STUDY

Since 2006, female sex workers have been treated as hate crime victims in Merseyside (England, U.K.) as a result of culminated victimisation of sex workers, including murders. Merseyside Police recognised these homicides as hate crimes in this geographical area, which resulted in an unprecedented increase in reporting, prosecution, and conviction of crimes against sex workers in Merseyside¹. The overall effect was that being recognised as hate crime victims significantly improved the legal position of sex workers as victims, and increased their chances to access justice.

As the above case study illustrates, listing sex workers as hate crime victims contributed to increased reporting and chances for sex workers to access justice at the local level in Merseyside (U.K.). Similarly, listing sex workers as a group with specific needs and at increased risk of gender based violence in the Directive can improve the position of sex workers as victims in the entire EU. We however, expect a backlash against mentioning sex workers in the Art. 35. **We strongly believe that different political understandings of sex work, and different terminological differences, should not lead to leaving sex workers - a group that faces high levels of gender based violence, a group that is highly discriminated, stigmatised and marginalised - behind, by removing them from the list of groups with specific needs or by de-classifying them as an at-risk group.** We also urge the Commission, the MEPs and the Council to avoid using the term 'women in prostitution', 'prostituted women' or 'prostitutes' in this important Directive, since it has strong connotations of criminality and immorality and it is perceived by the sex working community as a demeaning and stigmatizing term, which contributes to further exclusion and marginalization.

JUSTIFICATION OF TERMINOLOGY

The definition of sex work by Joint United Nations Programme on HIV and AIDS (UNAIDS) Guidance Note on HIV and Sex Work includes female, male and transgender adults, over the age of 18, who receive money or goods in exchange for sexual services, either regularly or occasionally, and who may or may not self-identify as sex workers². In terms of this definition, three elements are worth highlighting:

- a) sex work and sex workers involve adults only;
- b) sex work involves consensual acts between adults;
- c) acts involving deceit, fraud, coercion, force or violence do not fall under the definition of sex work.

The 2015 UNAIDS terminology guidelines³ and the recommendations of the Global Commission on HIV and the Law advice against the use of the terms "prostitution", "prostitute" "women in prostitution" or "prostituted women", as they denote value judgement. We urge you to use the term '**sex work**' or '**sex workers**' in the Directive, as we identify ourselves as such. This is because **prostitution** has connotations of criminality and immorality. Many people who sell sexual services prefer the term "sex worker", and find "prostitute" demeaning and stigmatizing, which contributes to their exclusion from health, legal, social services and from access to justice system.

¹ K. Corteen, "New Victimisations: Female sex worker hate crime and the 'ideal victim'", in M Duggan, *Revisiting the 'Ideal Victim': Developments in critical victimology*, Policy Press, Bristol, UK, 2018.

² See UNAIDS, 2012.

³ UNAIDS Terminology Guidelines, 2015. Available:

https://www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf

LGBTIQ persons, including LGBTIQ women, are at particular risk of violence that is directed against them because of that person's gender, gender identity or gender expression, that is, gender-based violence. As identified by the Victims' Rights Directive, they are particularly vulnerable and therefore need particular support and protection. It is of high importance to mention LGBTIQ women in the text of the directive- in particular **Article 35**, so as to ensure that the implementation addresses the risks they are exposed to and their specific needs. Experience shows that marginalised groups of the population are often not addressed and included in practice unless they are explicitly mentioned.

Intersectional discrimination - art. 2

In particular, ESWA welcomes Article 2, which pays attention to victims affected by intersectional discrimination, as explained in **Recital 11** of the Proposal.

(Lack of) Consent as key concept – art. 5 & 7

ESWA also welcomes the definitions of the crimes covered by the proposed directive, in particular **definitions of Rape (Art.5) and Non-consensual sharing of intimate or manipulated material (Art. 7)**, in which the absence of consent is the central and constitutive element. For sex workers, the concept of consent is key for their work and means agreed upon terms and conditions, under which sexual services are provided. If these consented terms and conditions are violated, the incident should be defined as rape or sexual assault, and sex workers should be able to complain and access non-judgmental support services and justice.

Conflating sex work with sexual exploitation or trafficking and/or defining sex work as violence per se deprives sex workers of agency and the right to make decisions over their own body and life. An inherent element of agency is the capacity to give or withhold consent. This makes consent not only a key concept for sex workers but also key in addressing violence against women, as rightly stated in the proposed Directive. Denying a particular group of women agency is not only utterly patriarchal, but is also in violation of the Directive which aims to strengthen the right of women to give or withhold consent. The conflation of sex work and sexual exploitation moreover strengthens the stigma on sex work, which increases the risk on violence, conceals actual incidences of violence against sex workers, and heightens the threshold for sex workers to report violence.

Group of Experts on Action against Violence against Women and Domestic Violence monitoring the Implementation of the Council of Europe Istanbul Convention (GREVIO) at the 19th meeting, engaged in a thematic discussion on the topic of women in prostitution. In delineating the scope of application of the Istanbul Convention in relation to women in prostitution, it noted that the **Istanbul Convention as such does not define prostitution as a form of violence against women**. Instead, it focuses on the support and protection of women and girls who engage in prostitution for any instances of gender-based violence they may experience.⁴

The issue of non-consensual sharing of intimate material is also highly relevant, since sex workers constitutes a group disproportionately affected by non-consensual sharing of intimate material.

Firewall – art. 16

ESWA particularly welcomes paragraph 5 of the Article 16 on reporting VAW and DV that explicitly prohibits competent authorities from transferring personal data pertaining to the residence status of the victim to competent migration authorities. ESWA, however, regrets that this ban is limited to completion of the first individual assessment referred in the Article 18 and is not accompanied by any additional alternatives - especially when it comes to undocumented migrant victims or victims with dependant residence status. ESWA believes that the insufficient firewall between the justice system and immigration enforcement may be

⁴ Second General Report on GREVIO's Activities. Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), Council of Europe. Covering the period from June 2019 to December 2020, para 6

contrary to the general tone and ultimate aim of the Directive, the ambition of which is to be intersectional and explicitly recognize that undocumented migrant women are at heightened risk of violence and in need of targeted support (Art. 35). Due to the high risk of deportation that undocumented migrant victims face, due to the absence of a proper firewall and minimal availability of residence permit schemes for undocumented migrant victims of VAW and DV may in fact impeded on these victims being able to access justice and exercise the rights covered by this Directive. In this regard, ESWA suggests adding para (6) under the Article 16, formulated in the similar manner as Article 13 (4) of the Employers Sanction Directive (2009/52/EC)

Article 16 (4): *In respect of criminal offences covered by Articles 5- 10, Member States shall define in national law the conditions under which they shall grant, permits of limited duration, at minimum linked to the length of the relevant national proceedings, to the third-country nationals involved, comparable to those applicable to third-country nationals who fall within the scope of Directive 2004/81/EC. The willingness to cooperate with authorities on prosecution of perpetrators shouldn't be conditional for granting this residence permit.*

Irrelevance of sexual history – Art. 22

ESWA also welcomes the provision referred in Article 22 that prohibits questions, enquiries and evidence concerning past sexual conduct of victim or other aspects of victims' private life. This provision is particularly relevant to sex workers victims' of crime and crucial for their non-discriminatory access to justice.

Compensation in the course of criminal proceedings Art. 26

ESWA applauds to the proposed Article 26 (2) by which Member States should ensure that victims are able to obtain a decision on compensation in the course of criminal proceedings.

Guidelines- Art. 27

We welcome the provision of Art. 27 (5), stating that ... guidelines and protocols (for healthcare and social services professionals) shall also indicate how to address the specific needs of victims who are at an increased risk of such violence as a result of their experiencing discrimination (based on a combination of sex and other grounds of discrimination). ESWA suggests adding one more sentence: *Where relevant, affected communities should be meaningfully included in developing such guidelines and protocols.*

Shelter services regardless of residence status- Art. 32

ESWA welcomes the provision of Article 32 (3) that ensures availability of shelters and other appropriate interim accommodations regardless of victim nationality, citizenship, place of residence and – in particular - residence status. This provision will prevent service providers from liability for facilitation of illegal migration.

Prevention- Art.36

While Article 36 sets the minimum requirements for preventive measures, ESWA suggests strengthening the provisions regarding cooperation with community led initiatives and impacted communities. In this regard, we suggest reformulating Article 36 (2) in the following way:

Preventive measures shall include awareness-raising campaigns, research and education programmes, and shall be developed by meaningful inclusion of impacted communities and groups at risk, and where appropriate developed in cooperation with relevant civil society organisations, social partners, ~~impacted communities~~ and other stakeholders.

Further we suggest adding a recital:

Member States should meaningfully include impacted communities and groups at heightened risk of VAW in the development and implementation of preventive measures, education and research activities. It is only by meaningful inclusion of at-risk communities and partnership with community based organisations can we come to effective preventive and awareness raising measures and strategies.

Including affected communities in training, information and cooperation – art. 37(7), 40 & 41

Training and information for professionals mentioned in Article 37 (7) 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 ground, should be informed by concerns and needs of the communities affected.

Article 40: Multi-agency coordination and cooperation doesn't list community-based organisations and organisations working with and for groups at risk, such as organizations working with migrant women, sex workers, domestic workers, homeless women, refugees and asylum seekers. We suggest listing explicitly 'relevant community-based organisations and organisations working with impacted communities.'

According to Article 41, Member states shall cooperate with and consult civil society organizations, including non-governmental organisations working with victims of violence against women and domestic violence, in particular in providing support to victims. We suggest explicitly listing 'relevant community-based organisations and organisations working with impacted communities.'

Both, Articles 40 and 41 should be accompanied by additional Recitals recognising that communities facing intersectional discrimination often distrust authorities and victims support service providers. By including relevant community-based organisations and organisations working with impacted communities, we can bridge the gap between the accesses to justice system and marginalised and discriminated victims of crime.

Finally

We urge the European Commission, the MEPs and the Council to develop policies on gender-based violence that will benefit all women, including those marginalised by intersectional oppressions, such as sex workers. Despite high levels of violence and human rights violations, sex workers are rarely consulted in the development of gender-based violence policies and laws. This historical exclusion has led to the development of policies that very often fail sex workers - and other marginalized and discriminated groups - and instead increase sex workers' vulnerabilities, as documented by sex workers themselves and corroborated by Amnesty International⁵ and the World Health Organisation⁶, amongst others. Exclusion from policy-making is a form of structural violence and silencing. Sex workers and their organisations must be included in decision and policy-making at the local, national and European level. While we welcome the fact that the Commission took ESWA's previous feedback into consideration, by using clear and strong language in the new Directive the meaningful inclusion and consultation with affected communities should be set as a minimum standard in achieving the Union of Equality.

We remain at your disposal.

Brussels, May 17, 2022

⁵ Amnesty International: Norway: The Human cost of 'crushing the market, 2016, available: <https://www.amnesty.org/en/documents/eur36/4034/2016/en/> ; Amnesty International: Ireland: "We live within a violent system." Structural violence against sex workers in Ireland, 2022, Available: <https://www.amnesty.org/en/documents/eur29/5156/2022/en/>

⁶ World Health Organisation, 2005, "Violence against sex workers and HIV prevention"