

EUROPEAN PARLIAMENT REPORT ON THE SITUATION OF SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS IN THE EU, IN THE FRAME OF WOMEN'S HEALTH

- Internal Briefing -

This European Parliament Report¹, authored by MEP Predrag Fred Matić, is the first report specifically dedicated to **sexual and reproductive health and rights (SRHR)** in almost 10 years. Whilst the European Parliament has repeatedly expressed concerns over the lack of full realisation of, and attacks against women's rights, gender equality and SRHR in various reports², this report will give a high level of political importance to SRHR at EU level. It will send a strong signal to the European Commission, EU Member States, as well as all European citizens, that MEPs are fully committed to protect and promote SRHR in the EU.

REPORT'S MAIN HIGHLIGHTS

The report will be an important tool to be used both at EU and national level as it makes **concrete recommendations to the Commission** to promote best practices and include SRHR issues in relevant policies and funding instruments; and **to Member States** to remove all barriers and guarantee access to the full range of SRH services for all.

The draft Report reaffirms **SRHR as human rights**, which are intrinsically linked with gender equality and combating sexual and gender-based violence, and an integral part of health;

It addresses **the whole range of SRHR** and highlights the importance of accessing all essential SRH services, including comprehensive sexuality education, contraception, abortion and fertility services; and of preventing and addressing sexual and gender-based violence;

It **highlights remaining gaps, challenges and inequalities in access in the EU** – including the many remaining obstacles to abortion care, such as restrictive abortion laws, and procedural and practical barriers, including denial of care; and the fact that women belonging to vulnerable groups face even more obstacles to access SRH care;

Moreover, it **denounces the backsliding on women's rights, gender equality and SRHR** across Europe and globally.

THE REPORT COMES AT A CRUCIAL TIME



As highlighted in the report, there is a **wide range of remaining obstacles** to SRHR in the EU³, particularly for women and vulnerable groups. This situation is aggravated by the **current set-back and regression** in women's rights contributing to the erosion of acquired rights and endangering the health of women and girls⁴. On top of this precarious situation, the **consequences of the COVID-19 pandemic** and associated restrictions have further fragilised women's access to healthcare, including SRH services, and have exacerbated existing structural gender inequalities and sexual and gender-based violence⁵.

In this context, and while the international community is about to celebrate the **25th anniversary of the Beijing Declaration and Platform for Action with the launch of the six Action Coalitions**⁶, the EU must show a strong leadership in supporting and further promoting SRHR and gender equality for women and girls in Europe and beyond. This report will support the necessary **acceleration of the EU's implementation of international commitments related to SRHR, including SDGs targets 3.7 and 5.6.**

SRHR AND EU COMPETENCES

SRHR are intrinsically linked to several policy areas in which the EU is competent according to the Treaties, including **health, gender equality and non-discrimination, combating gender-based violence, fundamental rights and the rule of law.** In policy areas where the EU has shared competences with Member States, the EU should promote best practices and make recommendations, and support actions in Member States, including financially.

1 EU COMPETENCE ON HEALTH

In the area of public health, the **EU institutions should support, coordinate or supplement Member States' actions** (Article 6 TFEU) and offer guidance, organise exchanges of best practices and foster cooperation between countries (article 168 TFEU).

While the responsibility for defining health policies and managing health systems and medical care rests with Member States (Article 168, para 7), in complementing national policies, **the EU must improve public health, prevent physical and mental illness and diseases, and combat sources of major health issues, including through health information and education.**

The European Pillar of Social Rights affirms the **right of everyone to access healthcare**⁷. Improving equal access to health, reducing health inequalities, and strengthening disease prevention and health promotion are among the objectives of the EU4Health Programme⁸. Furthermore, some EU policies focus on access to health for vulnerable groups, including SRH and information, and more specifically for Roma women⁹, LGBTI people¹⁰ and young people¹¹.

Using soft law, the EU has also tackled SRHR in relation to **breast and cervical cancer** in the new Europe's Beating Cancer Plan¹².



2 EU COMPETENCES ON NON-DISCRIMINATION, GENDER EQUALITY AND GENDER-BASED VIOLENCE



SRHR are at the core of the fundamental right to gender equality that the EU has committed to promote in all its activities¹³.

In the Gender Equality Strategy (GES), the European Commission committed to address gender aspects of health, including SRHR¹⁴. The European Institute for Gender Equality will address SRH in the 2021 Index, and has tackled SRHR issues when reviewing the implementation of the Beijing Platform for Action (review +25)¹⁵.

The European Commission is also competent to take actions to prevent and combat sexual and gender-based violence. This is one of the main objectives of the GES, in which the European Commission notably affirms that "educating boys and girls from an early age about gender equality and supporting the development of non-violent relationships" is key for effective prevention¹⁶. Comprehensive sexuality education fulfils this role¹⁷.

In addition, **violations of women's SRHR, including the denial of access to safe and legal abortion care, have been rightly recognised as a form of gender-based violence against women and girls** and as amounting to torture in certain circumstances, including by the European Parliament¹⁸ and international human rights mechanisms¹⁹. This points towards the EU being competent to address these forms of gender-based violence as well.

3

EU COMPETENCES ON FUNDAMENTAL RIGHTS AND THE RULE OF LAW



Under international human rights law, EU Member States have the duty to respect and protect women's sexual and reproductive rights²⁰. Some human rights are particularly relevant to SRHR, including **the rights to health, to life²¹, to be free from torture and ill-treatment, to privacy, equality and non-discrimination**. These rights are all affirmed in the EU Charter of Fundamental Rights (in that order, Articles 35, 2, 4, 7, 21, 23). The European Commission reminded Member States that "when making use of their competences, [they] must respect fundamental rights, as they are binding on them by virtue of their constitutions and commitments under international law"²².

The protection of SRHR is also dependent on respect for the rule of law, and in particular, the independence of the judiciary. **Recent developments in Poland have shown that SRHR are among the first rights to be undermined when the rule**

of law collapses, whether it be the access to safe and legal abortion or the provision of comprehensive sexuality education. On these two issues, the European Parliament has adopted strong resolutions and has further condemned other violations of minorities' rights such as LGBTI rights²³.

The European Commission, as recognised by the Court of Justice of the European Union, is responsible for guaranteeing the respect of the rule of law as a fundamental value enshrined in the EU's Treaties, and for making sure that EU law, values and principles are respected. The EU has developed various mechanisms to ensure the respect of the rule of law by Member States, whether it be preventive (European rule of law mechanism) or responsive (infringement procedures, Article 7 TEU, proposed regime of conditionality of EU funds)²⁴.

4

THE NEED FOR COHERENCE BETWEEN INTERNAL AND EXTERNAL EU POLICIES



The EU is a strong supporter for SRHR in its development and human rights policies and must ensure coherence with its internal policies. The EU's support to gender equality and SRHR has been reflected in many external policy documents, notably the European Consensus on Development (paragraph 34), the Gender Action Plan III, the EU Action Plan on Human Rights and Democracy 2020-2024. The EU should be consistent and also promote SRHR within the EU.

1. Draft report on the situation of sexual and reproductive health and rights in the EU, in the frame of women's health.
2. Among many other examples, EP Resolution on the backlash against gender equality and women's rights in the EU, 13 February 2019. See also European Parliament resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland.
3. See the report of the Council of Europe Commissioner for Human Rights on Women's sexual and reproductive health and rights in Europe, December 2017.
4. EP Resolution on the backlash against gender equality and women's rights in the EU, 13 February 2019. See also the European Institute for Gender Equality's report of 22 November 2019 on Beijing +25.
5. European Parliament resolution of 21 January 2021 on the gender perspective in the COVID-19 crisis and post-crisis period; UN Secretary-General's policy brief: The impact of COVID-19 on women, April 2020.
6. <https://forum.generationequality.org/>
7. https://ec.europa.eu/info/european-pillar-social-rights/european-pillar-social-rights-20-principles_en
8. European Parliament legislative resolution of 9 March 2021 on the proposal for a regulation of the European Parliament and of the Council on the establishment of a Programme for the Union's action in the field of health – for the period 2021-2027 and repealing Regulation (EU) No 282/2014 ("EU4Health Programme")
9. The new Commission's Proposal for a Council Recommendation on Roma equality, inclusion and participation mentions access to SRH for Roma women as an objective.
10. The EU LGBTIQI Strategy includes aspects on access to health for LGBTIQI people, includes sexual health.

11. The EU Youth Strategy recognises the need to provide guidance and support on health and relationships to young people; and the related European Youth Goals include the need to "equip all young people with life skills such as [...] health education including sexual and reproductive health".
12. Communication from the Commission Europe's Beating Cancer Plan, February 2021
13. Art 2 TEU and Article 8 TFUE amongst others.
14. Communication from the Commission A Union Of Equality: Gender Equality Strategy 2020-2025, March 2020
15. EIGE Report "Beijing +25 – The 5th Review of the Implementation of the Beijing Platform for Action in the EU Member States", November 2019
16. Communication from the Commission A Union Of Equality: Gender Equality Strategy 2020-2025, March 2020
17. See the Council of Europe Commissioner for Human Rights' Human Rights Comment on Comprehensive Sexuality Education, July 2020
18. European Parliament resolution of 12 September 2017 on the proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence
19. The CEDAW Committee affirmed that "a restriction affecting only women from exercising reproductive choice, and resulting in women being forced to carry almost every pregnancy to full term, involves mental and physical suffering constituting violence against women and potentially amounts to torture or cruel, inhuman and degrading treatment". See also CEDAW General Comment n°35, para.18.
20. See the Convention on the Elimination of All Forms of

- Discrimination against Women, the ICPD Declaration and Programme of Action, the Beijing Declaration and Platform for Action. See the report of the Council of Europe Commissioner for Human Rights on Women's sexual and reproductive health and rights in Europe, December 2017, including its recommendations to "ensure that refusals of care by health care workers do not jeopardise women's timely access to sexual and reproductive health care."
21. UN Human Rights Committee's General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018; which states that measures to regulate abortion "must not result in violation of the right to life of a pregnant woman or girl", and that "States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable".
 22. As affirmed by European Commissioner Helena Dalli in the LIBE and FEMM Committees joint hearing on "Attacks on abortion rights and breaches of the Rule of Law in Poland" of 24 February 2021.
 23. Resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland; Resolution of 14 November 2019 on the criminalisation of sexual education in Poland. Resolution of 18 December 2019 on public discrimination and hate speech against LGBTIQI people, including LGBTIQI free zones.
 24. https://ec.europa.eu/info/sites/info/files/rule_of_law_mechanism_factsheet_en.pdf