



Definitions of rape in the legislation of EU Member States



IN-DEPTH ANALYSIS

EPRS | European Parliamentary Research Service

Lead author: Ionel Zamfir
Members' Research Service
PE 757.618 – May 2025



EN

This publication updates an earlier version published in January 2024. It provides an overview of the legal provisions on rape in the 27 EU Member States, focusing on the issue of rape victims' lack of consent. The comparative analysis of these provisions is conducted against the relevant provisions of the Council of Europe Convention on combating violence against women and domestic violence, to which the EU itself became a party in 2023. The European Parliament aimed for the inclusion of an EU-wide definition of rape in the recently adopted EU directive on violence against women, but this element was not retained in the final text due to concerns over the limits of EU competences in the Council of the EU. Nevertheless, the issue continues to come up in parliamentary debates, in the plenary and the FEMM Committee, and evidence on the matter will be important for considering a possible review of the directive on this point five years after its transposition deadline of June 2027.

AUTHOR(S)

Ionel Zamfir with contributions from Piotr Bąkowski (Poland), Micaela Del Monte (Luxembourg), Silvia Kotanidis (Italy), Maria-Margarita Mentzelopoulou (Greece), Hendrik Alexander Mildebrath (Germany), Colin Murphy (Ireland), Ingeborg Odink (Finland), Anita Orav (Estonia), Martina Prpic (Croatia), Anja Radjenovic (Slovenia). EPRS country specialists provided input for the other country entries.

This paper has been drawn up by the Members' Research Service within the Directorate-General for Parliamentary Research Services (EPRS) of the Secretariat of the European Parliament.

To contact the author(s), please email: eprs@ep.europa.eu.

LINGUISTIC VERSIONS

Original: EN

Updated manuscript completed in April 2025.

DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

Brussels © European Union, 2025.

Photo credits: © AungMyo / Adobe Stock.

PE 757.618
ISBN: 978-92-848-2709-1
DOI:10.2861/9955040
CAT: QA-01-25-094-EN-N

eprs@ep.europa.eu

<https://eprs.in.ep.europa.eu> (intranet)

<http://www.europarl.europa.eu/thinktank> (internet)

<http://epthinktank.eu> (blog)

Executive summary

The introduction of common European Union (EU) standards for the definition of the crime of rape was one of the European Parliament's main objectives for the recently adopted EU directive on combating violence against women and domestic violence. While supported by the European Commission, such a definition was not retained by the Council due to concerns about the limits of EU competences in the field.

The traditional approach to defining rape in national legislation in the EU has been to base it on the assumption of violence, threats or the impossibility for rape victims to resist the aggression. In light of new cases of rape and new knowledge on victims' reactions, this approach has come to be seen as seriously deficient. The narrow definition of rape based on force and coercion does not take into account the fact that a reaction known as 'frozen fright' or 'tonic immobility', and not active physical resistance, is rape victims' most common response. Besides situations in which victims fear for their life and are thus involuntarily passive, traditional force-based definitions also ignore many other situations in which the victim is unable to react, such as surprise aggression, aggression against a background of power relations, sexual assault as part of a generalised pattern of violence in abusive relations, etc. Moreover, blaming the victims themselves (such as by arguing provocation in the way they were dressed, they behaved, their sexual morality, etc.) has been part of the traditional approach to rape, often endorsed by courts of law. As a 2024 Eurostat survey reveals, stereotypes attributing blame for rape on victims' behaviour are still endorsed by significant numbers of citizens in EU countries.

The entry into force of the Council of Europe Convention on preventing and combating violence against women (the Istanbul Convention)¹ in 2014, whose provisions on rape were inspired by the rich case law of the European Court of Human Rights, marked a turning point for legal reform. Of the 22 EU countries that have ratified this Convention, 16 countries have amended their legislation since 2014, to bring their laws into line with the relevant provisions of the Convention on sexual violence, and specifically on rape, including three countries whose legislation already included the notion of consent as a constitutive element of the crime of rape; France is currently amending its legislation. On the other hand, four state parties to the Istanbul Convention (Estonia, Italy, Latvia and Romania) have not taken any steps to modify their criminal definition of rape, considering that their law is already compliant in its application. Of the five EU countries which have not ratified the Istanbul Convention (Bulgaria, Czechia, Hungary, Lithuania, and Slovakia), only Czechia has so far reformed its legislation.

The EU itself ratified this Convention, but only to the extent of its exclusive external competences, i.e. the Convention applies to areas already covered to a substantial extent by EU rules where there is a risk of inconsistent application should Member States implement it individually. This ratification does not extend or affect in any way EU powers, as provided by its treaties, to criminalise certain offences at EU level.

¹ The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), [Council of Europe](#), 2011.

Table of contents

1. Lack of consent in the definition of rape	1
1.1. Arguments for a change of paradigm in addressing rape and sexual violence	1
1.2. International norms	4
1.3. No minimum standards on the definition of rape in EU legislation	6
2. Definition of rape in the EU Member States that are parties to the Istanbul Convention.....	8
2.1. Austria	9
2.2. Belgium	10
2.3. Croatia.....	11
2.4. Cyprus	11
2.5. Denmark	12
2.6. Estonia.....	12
2.7. Finland.....	13
2.8. France	13
2.9. Germany	14
2.10. Greece	15
2.11. Ireland	16
2.12. Italy	17
2.13. Latvia	17
2.14. Luxembourg	18
2.15. Malta	18
2.16. The Netherlands	19
2.17. Poland	20
2.18. Portugal	20

2.19. Romania	21
2.20. Slovenia	22
2.21. Spain	23
2.22. Sweden	23
3. ANNEX	26

Table of figures

Figure 1 – Percentage of respondents who totally agree or tend to agree with various rape stereotypes	4
Figure 2 – Consent-based definitions of rape/sexual assault in the EU	8

Table of tables

Table 1 – Legislative situation in the EU Member States that are parties to the Istanbul Convention	26
Table 2 – Legislative situation in the EU Member States that are not parties to the Istanbul Convention	32

1. Lack of consent in the definition of rape

During the legislative procedure for the adoption of the EU directive on combating violence against women and domestic violence, the Commission and the Parliament supported the establishment of minimum EU standards for defining the crime of rape, but this approach was not successful due to concerns in the Council about limited EU competences in the field. However, a wave of legislative reforms has swept most EU countries inspired by the norms set in the Istanbul Convention, to which 22 Member States and the EU itself have already adhered. Renewed social debates on sexual violence inspired by the #MeToo movement have equally contributed to driving these legislative amendments.

1.1. Arguments for a change of paradigm in addressing rape and sexual violence

The traditional approach to defining rape in national legislations in the EU² has been to base the definition on the assumption of violence, threats or rape victims' incapacity to resist the aggression. In the absence of evidence of violence, or of circumstances making it difficult for rape victims to physically oppose their aggressors (such as fear, temporary incapacity to react or disability), laws and judicial practices have often exonerated perpetrators. In light of new cases of rape and new knowledge on victims' reactions, this approach has come to be seen as seriously deficient. Several studies³ have shown that a reaction known as 'frozen fright' or 'tonic immobility',⁴ rather than active physical resistance, is the most common response among rape victims.

Traditional force-based definitions of rape ignore this psychological reality – that many victims are unable to fight back against rape or sexual assault. Thus, the narrow definition of rape based on force and coercion omits many situations in which the aggression occurs against the victim's will. Such situations include not only situations of extreme danger, but also surprise aggression, aggression against a background of power relations, sexual aggression as part of a generalised pattern of violence in abusive relations, etc., which render the victim unable to react. Evidence of victims' verbal resistance without evidence of physical struggle (saying no, but not fighting back) is another situation that force-based definitions may not cover appropriately.

Expecting victims of rape to always fight back is part of what are called 'rape myths' or stereotypes⁵ about how a rape victim 'should' behave before, during and after a sexual attack. These myths tend

² In English-speaking jurisdictions (such as certain US states and Canada), on the other hand, consent in relation to rape has been legally codified in law for much longer than in continental Europe, but has been surrounded by conceptual ambiguity – in certain cases meaning merely 'assent', or passive acceptance of the sexual attack. For a comprehensive terminological analysis see K. Ferzan, University of Pennsylvania Carey Law School, P. K. Westen, [How to Think \(Like a Lawyer\) About Rape](#), University of Michigan Law School, 2017. This common law tradition is reflected in the Irish and Cypriot legislation, the first to include lack of consent as a constitutive element of the crime of rape (albeit retaining a certain degree of conceptual ambiguity) among EU countries (see respective chapters).

³ Such as the expert opinion submitted to the European Court of Human Rights in the case of *M.C. v Bulgaria*, or A. Möller, H. P. Söndergaard, L. Helström, [Tonic immobility during sexual assault – a common reaction predicting post-traumatic stress disorder and severe depression](#), *Acta Obstetricia et Gynecologica Scandinavica*, Volume 96, Issue 8, 2017.

⁴ According to the study quoted above, 'Tonic immobility (TI) in animals has been considered an evolutionary adaptive defensive reaction to a predatory attack when resistance is not possible and other resources are unavailable.'

⁵ 'Rape myths' were first conceptualised by social psychologist Martha Burt in her 1980 article cultural myths and supports for rape, which proposes a scale of 'rape myths acceptance' based on 19 survey questions. See M. Burt, [Cultural myths and supports for rape](#), *Journal of Personality and Social Psychology*, 38(2), 1980, pp. 217-230.

to perpetuate the idea that rape is often committed by strangers in public spaces, in the dark and usually with a weapon, while the existing data show that most rapes are committed by acquaintances and indoors.⁶ Victims of this latter type of offence are often treated with disbelief, including by law professionals. Rape myths also often put the blame on the victim for provocative or promiscuous behaviour, or attribute rape accusations to an assumed desire for revenge, thus excusing or justifying the perpetrator.

In the judicial realm, the force-based approach has been driven by the assumption that material evidence of violence and resistance, or of serious threats, is needed to prove that the perpetrator is guilty beyond any reasonable doubt,⁷ as required by a fundamental principle of criminal justice in democratic societies. Concerns that innocent men may be victims of false allegations and thus wrongly condemned are legitimate,⁸ but concerns about the number of rape proceedings that are closed without a conviction, and the high number of unreported cases of rape and sexual violence are equally so.⁹

Even if all these arguments are accepted, an important question arises in this context: is the shift to a consent-based definition of rape necessary, or could courts interpret force-based definitions in such a comprehensive way as to tackle the issues described above? Numerous legal experts, feminist advocates, civil society organisations (such as Amnesty International) and international organisations (see next section) favour a shift to consent-based definitions of rape. In Europe, this approach has crystallised around European Court of Human Rights case law and has been enshrined in the Istanbul Convention, as explained in the next section.

However, some experts take a position that insists consent does not need to be mentioned explicitly for legal definitions to actually cover all cases of non-consensual sex. For example, in their response to monitoring undertaken by the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), countries criticised for their definition of rape (such as Denmark, France, Poland and Romania)¹⁰ argued that their legislation fulfils all the

⁶ See, for example, this academic article by G. F. Waterhouse, A. Reynolds, V. Egan, [Myths and legends: The reality of rape offences reported to a UK police force](#), in *The European Journal of Psychology Applied to Legal Context*, Volume 8, Issue 1, January 2016, pp. 110.

⁷ A cautionary instruction, attributed to British Lord Hale in the 17th century, is testimony of this traditional approach: rape 'is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent.' (quoted from this 1976 article [Criminal Law--Rape--Cautionary Instruction in Sex Offense Trial. Relating Prosecutrix's Credibility to the Nature of the Crime Charged is No Longer Mandatory; Discretionary Use is Disapproved](#), *Fordham Urban Law Journal*, Vol. 4.4, No 2, 1976).

⁸ See, for example, C. Young, [Crying Rape False rape accusations exist, and they are a serious problem](#), in *The Slate*, 2014. See also the case of Eleanor Williams, convicted in 2023 of perverting the course of justice in the United Kingdom, [Eleanor Williams jailed for eight and a half years after rape and trafficking lies](#), *The Guardian*, March 2023.

⁹ As evidenced by a study funded by the EU Daphne 2 programme: L. Kelly, J. Lovett, [Different systems, similar outcomes? Tracking attrition in reported rape cases in eleven countries](#), CWASU, London Metropolitan University, 2009. According to the authors, 'the proportion of cases designated as false allegations were extremely low, ranging from 2 % to a maximum of 9 %. This is extremely strong evidence that the extent of false allegations is exaggerated by professionals, but this over-estimation creates a culture of scepticism'. The study also concluded that 'the majority of women reporting rape across Europe do not see justice done'. [Similar data](#) were collected in the United States.

¹⁰ See [Comments submitted by Denmark on GREVIO's final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence](#), Council of Europe, 2017: 'The Danish Government believes that the chapter adheres to the requirements of the Convention by including all factors that preclude valid consent to sexual activity. [...] It is [...] left to the Parties to decide on the specific wording of the legislation and the factors that they consider to preclude freely given consent.' However, after a change of government in 2019, the definition was modified (see chapter on Denmark). For France, see [Commentaires soumis par la France sur le rapport final du GREVIO](#), Council of Europe, 2019. For Poland, see [Commentaires soumis par la Pologne sur le rapport final du GREVIO](#), Council of Europe, 2021. For more details on Romania, see chapter on Romania.

requirements of a consent-based definition – even if it does not mention consent explicitly. In a March 2025 opinion, the French State Council¹¹ supported a legislative reform that would introduce consent in the definition of rape, but made clear that the existing French legislation, even without this reform, is fully in line with the Istanbul Convention. This opinion insists that the Istanbul Convention leaves full freedom to State Parties to phrase their legislation as they wish, even without mentioning consent, and to determine an exhaustive list of factors that preclude consent. A similar view on the application of the Convention was also supported by the Polish Supreme Court opinion of 29 April 2021 on the bill to amend the Polish criminal code with regard to the definition of rape.

Moreover, some scholars¹² and women's rights advocates¹³ have warned that definitions which make lack of consent the constitutive element of the crime would not solve all the current problems in the criminalisation and prosecution of rape. According to such a point of view, such definitions are not necessarily more effective in increasing reporting and ensuring justice for victims. They do not take into account the structural inequalities between men and women, thus raising serious questions about how free women's consent really is in a context of gender inequality. In the end, according to such criticism, consent-based definitions endorse a patriarchal vision of gender relations, under which the man always proposes and the woman agrees or not, instead of enforcing mutual respect. A related concern refers to the risk of shifting attention from the perpetrator to the victim to establish if she or he was consenting or not. The victim is thus exposed during proceedings to careful and rigorous scrutiny and risks secondary victimisation.

Legislative reform needs to be accompanied by broad awareness raising in society about the central role of consent, to drive a shift in mentalities. Experts¹⁴ have criticised an exclusive focus on criminal law reform as the main tool for social change, on multiple grounds: it can be considered a form of 'legal optimism' that puts too much hope in what the law can accomplish; or a manifestation of 'carceral feminism', which promotes harsh punishments to eliminate gender-based violence, without taking into consideration the social vulnerability of many perpetrators. Moreover, such an approach that uses criminal punishments to set an example for society may over-penalise perpetrators who acted without the intention to commit a rape, with honest but mistaken beliefs about consent inspired by widespread social stereotypes.¹⁵ To eliminate such stereotypes, EU countries that have reformed their legislation have also conducted awareness raising campaigns, an approach encouraged by GREVIO, but the persistence of sexual violence shows that awareness, particularly among young people, is still insufficient.¹⁶ The EU directive on violence against women imposes an

¹¹ [L'avis du Conseil d'État sur une proposition de loi visant à modifier la définition pénale du viol et des agressions sexuelles.](#)

¹² C. A. MacKinnon, a Law Professor at University of Michigan and Harvard Law School, has criticised the focus on lack of consent in the definition of rape, for example in her article [Rape Redefined](#), Harvard Law and Policy Review, 2016. Looking at US states, which present a good mixture of rape laws based on consent only, consent and force, as well as force only, she contends that the focus on consent has made little difference in practice. She also analyses the ground-breaking decision of the European Court of Human Rights case *M.C. v Bulgaria* and finds that there were enough elements of force against the victim in this case to make lack of consent by the victim superfluous for a conviction. MacKinnon states that 'rape is less a question of unwanted sex than of unequal sex' and her proposal is to reframe rape as a crime of gender inequality.

¹³ [Justice: contre l'introduction du consentement dans la définition du viol, appel collectif d'organisations, de personnalités et de militantes féministes](#), in L'Humanité, October 2024

¹⁴ For an overview of such critical considerations in the academic discussion, see S. Uhnou, S. Erixon and M. Bladini, [The wave of consent-based rape laws in Europe](#), in the *International Journal of Law, Crime and Justice*, Volume 77, June 2024.

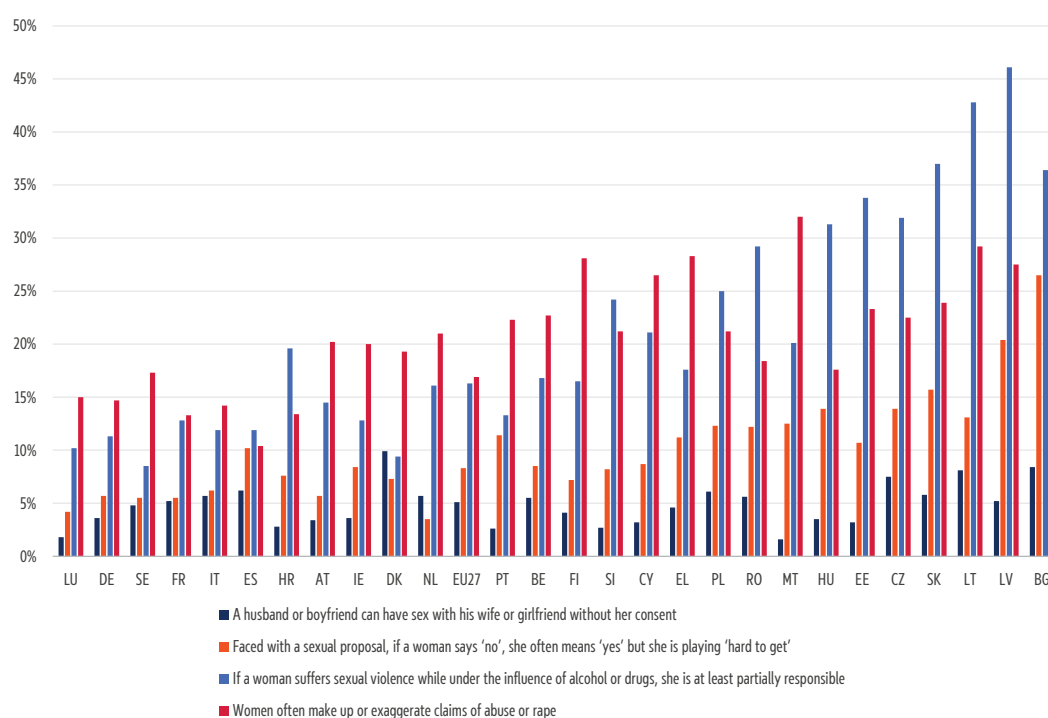
¹⁵ See K. Kessler Ferzan, [Consent, Culpability, and the Law of Rape](#), University of Pennsylvania Carey Law School, 2016.

¹⁶ See e.g. [Quand un coup d'un soir, dans les brumes de l'alcool, vire au cauchemar : "Dans l'imaginaire de ces jeunes hommes, un viol, ce n'est pas ça"](#), La Libre, April 2025.

obligation on EU Member States to take educative measures on the central role of consent in sexual relations.

Stereotypes persist across the EU, with significant variations among EU countries. A 2024 Eurostat survey¹⁷ (see Figure 1) reveals that a significant minority of citizens believe that women are partially responsible for enduring rape if they get intoxicated, or that women often exaggerate complaints of rape. Some of the highest shares of respondents endorsing such views are in countries that have not ratified the Istanbul Convention and have not reformed their legislation, indicating a possible absence of public debate on the issue.

Figure 1 – Percentage of respondents who totally agree or tend to agree with various rape stereotypes



Data source: Eurostat, Special Eurobarometer 544 on gender-based violence, 2024.

1.2. International norms

International human rights bodies have expressed support for a fundamental change in the legal approach to rape. In its General Recommendation No 35 of 2017,¹⁸ the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW) made clear that 'the definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances'. With this, the Committee gave general effect to the conclusions of its jurisprudence, particularly its Communication No 34/2011, in

¹⁷ [Flash Eurobarometer 544](#) on gender-based violence.

¹⁸ CEDAW, [General recommendation No. 35 \(2017\) on gender-based violence against women, updating general recommendation No. 19 \(1992\)](#), July 2017.

R. P. B. v The Philippines.¹⁹ Here, it asked the Philippine government to 'review the legislation of rape so as to remove any requirement that sexual assault be committed by force or violence, and any requirement of proof of penetration, so as to place the lack of consent at its centre'.

Under the European Convention on Human Rights (ECHR), a member state must effectively investigate and prosecute and punish all forms of rape and sexual abuse. In 2002, the member states of the Council of Europe (CoE), through the Committee of Ministers, agreed, in their Recommendation on the Protection of Women against Violence,²⁰ that national laws should 'penalise any sexual act committed against non-consenting persons, even if they do not show signs of resistance'.

In applying the ECHR, the European Court of Human Rights has adopted a number of important, even ground-breaking, decisions,²¹ in which it found that CoE member states have failed to properly investigate cases of rape and sexual abuse. Its 2003 decision in the case of *M.C. v Bulgaria*²² explicitly endorsed a consent-based definition of rape, against one that puts force and physical resistance at the centre, though leaving national authorities a considerable margin of discretion. According to this decision, 'any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual's sexual autonomy'. The Court considered that 'Articles 3 and 8 of the [ECHR] Convention must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim'. This interpretation was supported by an emerging approach in the interpretation of many national laws favouring a focus on consent.²³

In another case, *J.L. v Italy*,²⁴ the Court found that Italian judicial authorities breached Article 8 (right to respect for private life) of the Convention, by allowing considerations about the victim's previous sexual conduct to be taken into account in the final verdict. It found that the language and arguments used by the Italian court of appeal conveyed prejudices existing in Italian society regarding the role of women and could be an obstacle to providing justice to victims of gender-based violence (GBV).

The specific legal instrument of the Council of Europe for fighting violence against women and domestic violence – the Istanbul Convention, which entered into force in 2014 – imposes an obligation on its state parties to adapt their definitions of rape in criminal law to make the lack of consent their central element. According to Article 36 of the Convention, the following intentional conduct should be criminalised:

a. engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;

¹⁹ [Communication no. 34/2011](#), UN Committee on the Elimination of Discrimination against Women: views adopted by the Committee at its 57th session, 10–28 February 2014.

²⁰ Recommendation [Rec\(2002\)5](#) of the Committee of Ministers to member states on the protection of women against violence, Council of Europe.

²¹ Factsheet – [Violence against women](#), European Court of Human Rights, November 2022.

²² See the Press release issued by the Registrar, [Chamber judgment in the case of M.C. v Bulgaria](#), 4.12.2003. See also [full text](#) of the judgment.

²³ The Court also found that 'For example, in some legal systems "force" is considered to be established in rape cases by the very fact that the perpetrator proceeded with a sexual act without the victim's consent or because he held her body and manipulated it in order to perform a sexual act without consent. As noted above, despite differences in statutory definitions, the courts in a number of countries have developed their interpretation so as to try to encompass any non-consensual sexual act'.

²⁴ *J.L. v Italy* – [5671/16](#), Judgment 27.05.2021.

- b. engaging in other non-consensual acts of a sexual nature with a person;*
- c. causing another person to engage in non-consensual acts of a sexual nature with a third person.*
- 2. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.*

The EU ratified the Convention in 2023 and effectively became a party to it on 1 October 2023. The Convention applies to the EU only to the extent of its exclusive external competences, in line with Article 3(2) of the Treaty on the Functioning of the European Union (TFEU). This article provides that the EU alone becomes competent for ratifying international agreements if EU common rules are affected or their scope is altered if a Member State ratifies individually.²⁵ According to the existing case law, such competence arises in areas covered to a substantial extent by EU rules. The EU directive on combating violence against women is listed in a declaration²⁶ submitted by the EU to the Council of Europe on EU acts that potentially give rise to EU competence with respect to the Istanbul Convention. Nevertheless, the Convention cannot extend the limits of EU competences as they are defined in the EU treaties, with respect to criminalising rape at EU level.

1.3. No minimum standards on the definition of rape in EU legislation

In May 2024, the EU adopted a directive²⁷ on combating violence against women and domestic violence. The initial draft²⁸ proposed by the Commission in March 2022 contained provisions establishing common standards for criminalising rape²⁹ EU-wide, but these provisions were not retained in the final legislative text. The Commission considered that Article 83(1)³⁰ TFEU conferred on the EU competences to propose minimum EU standards for criminalising rape. More precisely, in the explanatory memorandum to the legislative proposal (Chapter 2 on the legal basis), the Commission argued that rape could be included under the scope of sexual exploitation of women.

²⁵ [Article 3\(2\) TFEU](#) states: 'The Union shall also have exclusive competence for the conclusion of an international agreement [...] in so far as its conclusion may affect common rules or alter their scope.'

²⁶ [Declaration concerning the competence of the European Union with regard to matters governed by the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (2023/C 194/02).

²⁷ [Directive \(EU\) 2024/1385](#) of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence.

²⁸ [Proposal for a Directive](#) of the European Parliament and of the Council on combating violence against women and domestic violence, COM/2022/105 final.

²⁹ The draft () used a notion of consent inspired by the Istanbul Convention:
 2. [...] a non-consensual act is understood as an act which is performed without the woman's consent given voluntarily or where the woman is unable to form a free will due to her physical or mental condition, thereby exploiting her incapacity to form a free will, such as in a state of unconsciousness, intoxication, sleep, illness, bodily injury or disability.
 3. Consent can be withdrawn at any moment during the act. The absence of consent cannot be refuted exclusively by the woman's silence, verbal or physical non-resistance or past sexual conduct.

³⁰ [Article 83\(1\)](#) TEU provides that the Parliament and Council can adopt, by qualified majority, directives establishing 'minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis'. The article lists the crimes that qualify under this provision; among them, there is 'sexual exploitation of women and children'. On the other hand, if the Council wishes to identify a new area of euro-crime which qualifies under these criteria, it has to act by unanimity.

When deciding on its position³¹ for interinstitutional negotiations, the Parliament endorsed this approach, and proposed further amendments to define more sexual crimes at EU level based on Article 83(1): sexual assault (defined as any non-consensual act of a sexual nature other than rape), intersex genital mutilation, forced sterilisation, forced marriage, sexual harassment in the world of work.³² The directive as adopted only includes an EU-wide definition of female genital mutilation and forced marriage as forms of sexual exploitation of women.

The two rapporteurs who drafted the European Parliament report, a number of MEPs from the past and current terms, and various civil society organisations³³ have expressed serious disappointment about the fact that the legislation as adopted does not include an EU-wide, consent-based definition of rape. In the Council, several countries opposed an EU-wide definition of rape on grounds related to the limits of EU competences. Such a view was supported by the opinion of the Council's Legal Service, who considered that, interpreted strictly in line with its drafters' intention, Article 83 TFEU does not cover rape. While a more extensive interpretation was made possible by the EU Child Sexual Abuse and Sexual Exploitation Directive, including rape under the scope of 'sexual exploitation' would have created a problematic precedent and posed a serious risk of litigation leading to the directive's annulment.³⁴

The Parliament managed successfully to amend the text on two other points which are relevant in this context. Firstly, the directive includes a review clause that allows for modifying the text by introducing new offences five years after the transposition deadline (Article 45). Secondly, it obliges Member States to conduct awareness raising and education campaigns on the importance of consent in sexual relations (Article 35).

Even without an EU-wide definition, the directive remains important for victims of rape, reinforcing the consideration of lack of consent in investigation and prosecution. Within the scope of national definitions of rape, it strengthens the protection of victims and their access to justice. It obliges Member States to investigate and prosecute rape independently of whether the victim introduces and maintains a complaint. It protects victims from secondary victimisation banning the abuse of evidence about a victim's past conduct and private life, or their attire and outfit, to question their lack of consent in courts. It provides for the establishment of rape crisis centres and for training the competent authorities about the traumatic nature of sexual violence. The protection provided to victims is not limited to women. As explained in recital no 9 of the directive and provided for in Article 2 on the definition of victims, the term 'victim' encompasses all persons, regardless of their gender, who have suffered violence against women or domestic violence.

³¹ Joint report by the Committee on Women's Rights and Gender Equality (FEMM) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) on the proposal for a directive of the European Parliament and of the Council on combating violence against women and domestic violence ([A9-0234/2023](#)), European Parliament, July 2023.

³² See also the European Parliament's Committee on Legal Affairs (JURI) opinion, [Opinion on the legal basis of the proposal for a Directive combating violence against women and domestic violence](#), which considers that sexual assault in the world of work should fall under Article 83(1).

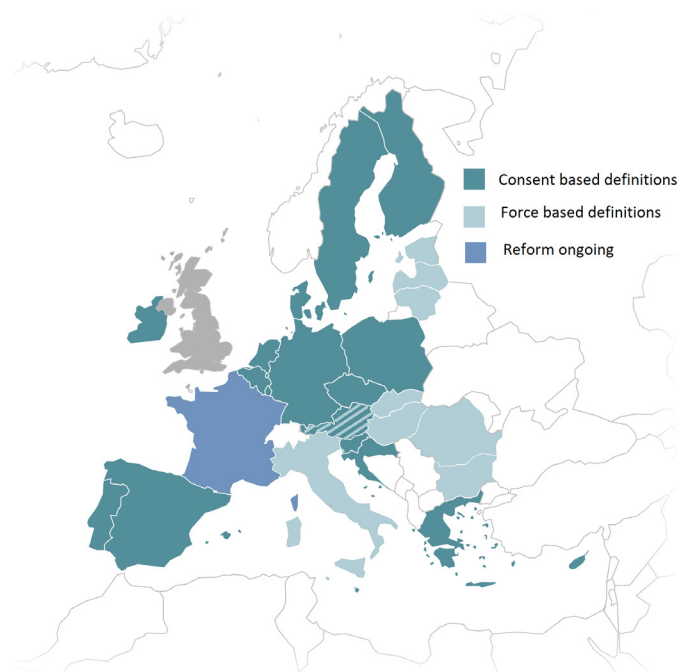
³³ See [Joint civil society reaction to the adoption of the EU Directive on combating violence against women and domestic violence](#), May 2024, signed by 13 civil society organisations; see also the European Women's Lobby (EWL), [EU Directive on violence against women](#).

³⁴ Council of the European Union, [Opinion of the Legal Service: Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence](#), 31 October 2022.

2. Definition of rape in the EU Member States that are parties to the Istanbul Convention

A comparative analysis of legislation in the Member States that have ratified the Istanbul Convention, as presented in the country sections below, indicates that most have reformed their legislation to bring it into line with the Convention. Of the 27 EU Member States, 22 have ratified the Istanbul Convention, which entered into force in 2014 (see Table 1 in annex). Since its entry into force, 16 EU Member States have amended their legislation to incorporate or make more explicit the notion of consent as a constitutive element of the crime of rape (or of a broader crime of sexual assault). The French Parliament is currently debating a possible reform of its legislation. In four Member States, criminal legislation included the notion of consent as a constitutive element before the Convention's adoption: Cyprus (1956), Ireland (1981), Belgium (1989) and Luxembourg (2011), but three of these (Cyprus, Belgium and Luxembourg) have reformed their legislation once again to make the notion of consent more explicit; Ireland considered doing so, but did not retain this point in its recent amendment. Thus, **in 17 Member States lack of consent features as a constitutive element of the crime of rape/sexual assault, with Austria as a special case, where it features in the definition of violation of sexual self-determination, but not of rape (Vergewaltigung) which is still force-based.**

Figure 2 – Consent-based definitions of rape/sexual assault in the EU



Source: National law (as explained below) and GREVIO positions (see Table 1).

On the other hand, four Member States that are parties to the Istanbul Convention (Estonia, Latvia, Italy and Romania) have not attempted to reform their legislation to align it with the Convention. The notion that the crime of rape is directed against the will of the victim is present in their legislation or case law, but GREVIO has insisted on the need for reform. The Estonian definition refers to rape as a violation of the victim's will under the use of force or threats. Italy's case law relies on the notion of consent. Latvia's legislation provides that sexual violence is perpetrated against the will of the victim under external constraint through force, threat or some other influence. The Romanian legal provisions refer to the incapacity of the victim to express her or his will. According

to GREVIO, even if references to the inability of victims to consent are present in force-based

definitions, these elements require consistent interpretation by courts, which these do not always provide, and 'the threshold of proof remains high, often resulting in secondary victimisation'.³⁵

As far as the substantive content of the relevant provisions is concerned, the countries that have reformed display a diversity of approaches. Austrian legislation distinguishes between a **broader crime of violation of self-determination** and the crime of rape, for which it retains an element of force or coercion. Thus, it continues to define rape based on force.

German and Spanish legislation provides for a general crime of sexual assault defined by the lack of consent, with **rape constituting an aggravated sexual assault**, defined by penetration or an equivalent act and subject to a more severe penalty. The Portuguese and Greek provisions on rape provide for **two sexual offences of rape – force-based rape and non-consensual rape** – subject to different prison sentences.

In terms of including the traditional elements of force and threat, Belgian, Croatian, Finnish, German, Luxembourgish, Maltese, Spanish and Swedish laws provide that such elements always preclude consent without changing the nature of the crime. Coercion or threats may be considered an aggravating circumstance. With regard to the punishment for rape defined through the lack of consent, minimum and maximum penalties vary significantly among EU countries, ranging from a minimum of six months imprisonment in Slovenia, or even a fine in the Netherlands, to a maximum of life imprisonment in Cyprus (see Table 1 in annex).

Several EU countries have adopted the wording of Article 36 of the Istanbul Convention on consent, while others have chosen different approaches, considering that these lead to similar outcomes in terms of integrating consent as an essential element of rape. The Istanbul Convention gives discretion to its state parties in shaping their legal approaches, but GREVIO has insisted that only a **positive consent model ('yes means yes')** fully satisfies the requirements of the Istanbul Convention. Two countries – Germany and Austria – have favoured a 'no means no' model, which has been criticised as putting an unnecessary burden on the victims, who have to prove before courts that they manifested explicitly, verbally or in other forms, their refusal of sexual intercourse.³⁶ This risks perpetuating myths and stereotypes about consent.

Of the five EU countries that are not parties to the Istanbul Convention, Czechia has recently amended its definition of rape based on a 'no means no' model with effect from 1 January 2025. In Slovakia, there was an attempt to initiate such a legislative change, but a recent legislative amendment has focused instead on shortening the limitation period for rape, in order to minimise the risk of false accusations.

2.1. Austria

Austria reformed its criminal code in 2015 and introduced a new Article 205a StGB (Violation of sexual self-determination), which provides that sexual acts against the victim's will are punishable by law. According to this paragraph, 'anyone who engages in sexual intercourse or a sexual act equivalent to sexual intercourse with a person against their will, by taking advantage of a situation of compulsion or after prior intimidation, is liable to a prison sentence of up to two years, unless the

³⁵ Council of Europe, [4th General Report on GREVIO's Activities](#), September 2023.

³⁶ See Council of Europe, [4th General Report on GREVIO's Activities](#), September 2023; European Women's Lobby [Observatory Analysis of definitions of rape in the EU: The added value of the EU Directive on VAW](#), October 2023.

act is punishable by a more severe penalty under another provision [such as for rape]'.³⁷ The same paragraph provides that it is a criminal offence to induce someone against his/her will to engage in sexual intercourse or a similar act, or to perform sexual acts on oneself.

As a result of this reform, the criminal code distinguishes between the criminal offence of violation of sexual self-determination, and rape. According to Article 201 StGB, the definition of rape retains force as a central element and does not mention consent: rape occurs when a person is forced to perform or submit to sexual intercourse or to a sexual act equivalent to sexual intercourse through violence, deprivation of liberty or through threats of danger to life or limb. Rape is liable to a punishment of 2 to 10 years imprisonment, which is more than for violation of self-determination (up to 2 years).

2.2. Belgium

Belgium is one of the EU countries that have pioneered the consent-based approach. Its first legislative reform in this regard goes back to 1989. The Law of 4 July 1989 amending certain provisions concerning the crime of rape, which broadened the definition of rape to also include marital rape, defined rape with a focus on the lack of consent: as any act of sexual penetration of any kind and by any means whatsoever, committed on or with the assistance of a person who does not consent.

In its 2020 baseline evaluation report, the Council of Europe expert body supervising the implementation of the Istanbul Convention, GREVIO, commended this definition as complying with Article 36 of the Istanbul Convention. However, the Belgian legislator felt that this legal provision was not sufficient to protect the right to sexual freedom. A further reform was conducted through the Law of 21 March 2022, amending the criminal code as regards sex crimes, which marked a legislative turning point. The law changed the qualification of sexual crimes from crimes against the family order and public morality (going back to 1867), to crimes against the person. In this modified version, Chapter I/1 of the criminal code now includes a separate provision (Article 417/5) defining consent as 'given freely'. It further specifies that 'this needs to be assessed in the light of the circumstances of the case. Consent cannot be inferred from the victim's mere lack of resistance. Consent may be withdrawn at any time before or during the sexual act'. The 2022 amendment broadens the list of circumstances that preclude consent. These now include: the victim's state of fear; the influence of alcohol, narcotics, psychotropic substances or any other substance with a similar effect; an illness or a situation of disability, altering the victim's free will; threat, physical or psychological violence, coercion, surprise, trickery or any other punishable behaviour; as well as unconsciousness or sleep. A minor aged under 16 is considered unable to give consent (excepting in case of relations between a minor over 14 years and another minor or a person no more than three years older). The Belgian law also condemns other forms of sexual violence, such as: voyeurism; unauthorised sharing of intimate images; as well as the violation of sexual integrity, which includes any act of sexual nature performed on or by a non-consenting person. The new law significantly increases prison sentences for rape from 5 to 10 years, to 10 to 15 years.

The 2022 Belgian reform had strong backing from civil society. Amnesty International Belgium launched a campaign on rape and consent³⁸ in 2020, to educate young people about the importance

³⁷ National legal provisions presented in this section do not represent an official translation in any way. The text reproducing or paraphrasing legal provisions have a purely indicative character. The reader is advised to check the legal text in its original language, available in the footnotes or the table below, should more precise information be needed.

³⁸ Amnesty International, [#JDIWI pour le consentement](#).

of consent. Their joint survey with SOS Viol³⁹ showed that 20 % of women in Belgium had been victims of rape. Revelations⁴⁰ about sexual assaults, including rape, suffered by women in Brussels nightspots also galvanised public opinion. The reform was broadly welcomed⁴¹ by civil society.

2.3. Croatia

Croatia has recently modified its legislation on rape to make consent a constitutive element of the crime of rape. In its modified form, Article 153 of the Croatian criminal code, entitled 'Rape', determines that rape is sexual intercourse, or other equivalent sexual act, that is performed without the victim's consent. Rape may also take the form of the mere inducement of the victim without his/her consent to commit sexual intercourse or an equivalent act with a third person or upon themselves. The punishment for rape is three to eight years imprisonment. Use of force or threat are considered aggravating circumstances. In such cases, the punishment increases to 5 to 12 years in prison. Consent is admitted only if the person decided to engage in intercourse of their own free will and was capable to make and express such decision. Consent is considered lacking especially if the rape was committed with the use of threat, deception, abuse of power or taking advantage of the state of a person due to their inability to express their rejection or over a person unlawfully deprived of liberty.

The new provision on rape is the result of a recent amendment, which took effect in January 2020. Before this change, the criminal code did not identify sexual acts committed without a victim's consent as rape, but provided for a specific crime under an article entitled 'Sexual act without consent'. The punishment for that crime was six months to five years imprisonment. Unlike 'sexual act without consent', rape required the use of force or threat on behalf of the perpetrator.

2.4. Cyprus

Absence of consent has featured as a central element of the definition of rape in the Cyprus criminal code since its adoption in 1959, in the pre-independence period. Until its amendment in 2020, Article 144 of the code provided that any person who has unlawful carnal knowledge of a female, without her consent; or with consent,⁴² if such is obtained by force or fear of bodily harm; or, in the case of a married woman, by impersonating her husband; is guilty of the felony termed rape. Courts in Cyprus have interpreted these provisions in the sense that lack of consent even without physical resistance from the victim indicates rape.⁴³

³⁹ Amnesty International, [Sondage sur le viol en 2020 : des chiffres alarmants](#).

⁴⁰ See, e.g. T. Dejace, [Balance ton Bar : on en est où ?](#), *La Libre*, 4 July 2022.

⁴¹ See C. Wernaers, [Une réforme "historique" du code pénal sexuel ? Ce qu'en pensent les associations féministes](#), *RTBF*, 1 April 2022. Some still consider that the reform does not go far enough. For example, an organisation defending women's rights ([Soralia](#)) considers that the new law defines what consent is not, but not what it is.

⁴² Consent in this legal provision is not necessarily meant in the same way as envisaged in the Istanbul Convention, as expressing the free will of the victim, since it can be also extracted through force and threat. For this reason, GREVIO asks Cyprus to clarify its concept of consent (see GREVIO position in Table 1).

⁴³ See this study on the application of the criminal law provisions on rape in Cyprus during 2010 to 2020: A. Constantinou, [The exposition of rape in Cyprus: From the crime scene to the court room](#), *The International Journal of Evidence & Proof*, 27(3), 2023, pp.169-191. According to this article, 'As the above law [on rape] has been interpreted by the (common law bound) Cypriot courts, in order to prove the offence of rape, it is not necessary that the victim (complainant) demonstrates or explicitly communicates to the offender (defendant) that she does not consent to a sexual intercourse (R v Malone [1998] 2 Cr App R 447).15. It is also not necessary to prove that the victim has put forward any resistance (R v Olugboja [1982] QB 320).16. However, the prosecution must prove that the victim's consent had not been given or, if it was given, was not the result of the victim's free will and that the action was illegal, as there was no consent on the part of the victim, Kailis v Republic [2004] 2 CA 251.'

The criminal code was amended in November 2020. Today, Article 144 on rape still classifies rape as a crime against morality. It replaces 'carnal knowledge' with unlawful intercourse by vaginal, anal or oral penetration of the penis into the body of another person, without his/her consent or with consent given under force, threat or fear. It introduces a distinct offence of sexual assault by penetration with an object or any part of the body (Article 146B), for which the lack of consent is also a constitutive element of the crime, alongside force, threat or fear. This reform was needed to bring the definition of rape and other sexual offences in line with contemporary realities, such as extending sexual offences to crimes committed against men. It also criminalises attempted rape or sexual assault, as well as coercion of a third person to commit rape or sexual assault.

2.5. Denmark

The Danish minister of justice put forward a proposal⁴⁴ for reforming the definition of rape in Danish penal law on 11 November 2020. The existing rape provision assumed that a perpetrator had used coercion or that a victim had been in a state or situation where they were unable to resist the act. Numerous reports had called this definition into question in recent years, by showing that rape was a widely under-reported crime in Denmark.⁴⁵

The bill proposed that section 216(1) of the Danish criminal code on rape be amended to state that sexual intercourse with a person without their consent is rape. The amendment was adopted by the Parliament on 17 December 2020, with no votes against or abstentions. The new law⁴⁶ entered into force on 1 January 2021. The Danish government assessed that the introduction of a rape provision based on consent would not only have an impact on how rape cases are assessed and handled by the police, the prosecution and the courts, but that it would also contribute to a general change of attitude in society, increasing focus on respect for other people's boundaries and freedom, as well as the right to decide over one's own body.

2.6. Estonia

The Estonian criminal code (§ 141(1)) defines rape as 'sexual intercourse with a person against his or her will by using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation' and sets the punishment as one to six years' imprisonment. While the legal provision states that rape is 'intercourse against the will of the victim', the use of force or abusing a situation of vulnerability remain constitutive elements of the crime, an interpretation endorsed by GREVIO. In its 2022 Baseline Evaluation Report, GREVIO expressed regret that in order for non-consensual sexual behaviour to constitute rape, the Estonian criminal code requires that force is used in the commission of the act, or that the perpetrator take advantage of the victim's inability to resist. GREVIO urged the Estonian authorities to speedily reform the legal definition of all sexual offences to fully incorporate the notion of freely given consent.

Public debate has taken place on the need to amend the criminal code, and the issue formed part of the electoral platforms of some political parties (for instance, the Social Democrats), but no specific action has been taken, nor any timeline set.

⁴⁴ See [bill](#).

⁴⁵ See e.g. [Amnesty International, Denmark: "Give us respect and justice!" Overcoming barriers to justice for women rape survivors in Denmark](#), March 2019.

⁴⁶ [LOV nr 2208 af 29/12/2020](#).

2.7. Finland

In Finland, new legislation entered into force on 1 January 2023, which reformed the criminal code with regard to sex crimes. Key changes include an amended definition of rape, now based on consent.

Section 1 of Chapter 20 (Sexual offences) of the Finnish criminal code now reads as follows:

Rape

A person who has sexual intercourse with a person who does not participate in it voluntarily shall be sentenced for rape to imprisonment for at least one year and at most six years. The participation of a person in sexual intercourse shall not be considered voluntary if:

- 1) the person has not verbally, through his or her behaviour or in any other way expressed that he or she is participating in it voluntarily,*
- 2) the person has been coerced into sexual intercourse by using violence against a person or by making a threat, or*
- 3) the person has not been able to formulate or express his or her will due to unconsciousness, illness, disability, state of fear, state of intense intoxication, reduced consciousness, sudden nature of the situation, serious abuse of a special position of power or another comparable reason.*

An attempt is punishable.

The aim of the reform⁴⁷ was to strengthen everyone's right to sexual self-determination and the protection of personal integrity. At the same time, the extensive reform harmonises and clarifies the provisions of the criminal code concerning sexual offences.

In addition to rape, most other provisions on sexual offences in Chapter 20 of the criminal code were amended. An important change is, for example, that when the act is sufficiently severe, sexual harassment (*seksuaalinen ahdistelu*) can be committed through acts other than touching. Non-consensual dissemination of a sexual image is punishable under the amended legislation, which also addresses online sexual abuse in many ways.

2.8. France

Article 222-22 of the French criminal code defines sexual assault ('agression sexuelle') as any act of a sexual nature committed with violence, coercion, threat or surprise. Coercion can be physical or moral. When it occurs against a minor, any sexual act is considered sexual assault (except when the age difference between perpetrator and victim is small, as defined by the law). Rape is a specific, aggravated form of sexual assault: more precisely it is any act of sexual penetration and any oral-genital act committed by violence, coercion, threat or surprise. Other forms of sexual assault than rape are criminalised in a separate article, and are subject to lesser punishment than rape. The French legal provisions on rape and other forms of sexual violence do not refer to the absence of victim consent.

France has amended its legislation on rape and sexual violence several times in recent years, but without making the lack of consent an explicit element of the crime. The 2018 Schiappa law⁴⁸

⁴⁷ According to the Ministry of Justice (*Oikeusministeriö*), [Rikoslain uudistaminen vahvistaa seksuaalista itsemääräämisoikeutta](#), (in English) February 2022.

⁴⁸ [LOI n° 2018-703](#) du 3 août 2018 renforçant la lutte contre les violences sexuelles et sexistes.

broadened the definition of rape in Articles 222-23 of the criminal code to also include rape committed by a woman against a man (not previously the case): 'Any act of sexual penetration, of whatever nature, committed on another person or on the person of the perpetrator by violence, coercion, threat or surprise is rape'.

A further reform in 2021⁴⁹ defines constrained non-penetrative oral-genital relations as rape (previously qualified as sexual assault). It also defines as rape any penetrative and oral-genital sexual acts between a minor less than 15 years of age and an adult, or between an adult and a minor above this age when age difference is more than 5 years.

In the Council of the EU,⁵⁰ during the negotiations on the EU directive on combating violence against women, France opposed the adoption of an EU-wide definition of rape, invoking limited EU competences in the area. Court proceedings conducted publicly in 2024 about the case of a woman sedated by her husband and raped by strangers, known as the Mazan rape trial, have reignited the debate on the matter and boosted support for reform.

A draft to reform the legislation⁵¹ was submitted in January 2025 to the French National Assembly, which adopted its first reading text. The government decided to initiate the accelerated procedure on 28 March 2025, and the text is before the Senate, as of April 2025. It aims to bring French legislation in line with the Istanbul Convention, introducing the notion of consent in the definition of rape. The draft notes that, in France, the rate of convictions for sexual violence is extremely low. Eight out of ten victims of sexual violence never file a complaint, and when they do, three quarters of complaints are dismissed without further action by the authorities.

According to this draft, consent must 'be given freely', 'is specific and can be withdrawn before or during the sexual act', is to be 'assessed in light of the surrounding circumstances' and 'cannot be inferred from the silence or absence of resistance of the person'. It specifies that there is no consent 'if the act of a sexual nature is committed in particular with violence, coercion, threat or surprise' (the four elements constitutive of the crime of rape according to the existing definition).

The State Council (an advisory body for adopting legislation and the highest French administrative court) gave a positive opinion⁵² on the draft, considering that the introduction of consent goes in the right direction. However, it requires the legislator to define rape as consisting exclusively of acts committed with violence, coercion, threat or surprise, as these elements cover all non-consensual sexual acts. This would avoid legal uncertainty. The Council notes that, even though it is absent from the legal text, consent is already considered a key element in the judicial practice.

2.9. Germany

With the 50th Act to amend the criminal code to improve the protection of sexual self-determination,⁵³ which came into force on 10 November 2016, Germany fundamentally reformed its criminal law relating to sexual offences and transposed the provisions of Article 36 of the Istanbul Convention into German law. In particular, it ensures that any sexual act against the recognisable

⁴⁹ [LOI n° 2021-478](#) du 21 avril 2021 visant à protéger les mineurs des crimes et délits sexuels et de l'inceste.

⁵⁰ See Agence Europe, [Europe Daily Bulletin No. 13264](#).

⁵¹ [Proposition de loi visant à modifier la définition pénale du viol et des agressions sexuelles](#).

⁵² [L'avis du Conseil d'État sur une proposition de loi visant à modifier la définition pénale du viol et des agressions sexuelles](#).

⁵³ [Fünfzigstes Gesetz zur Änderung des Strafgesetzbuches](#) – Verbesserung des Schutzes der sexuellen Selbstbestimmung vom 4. November 2016.

will of the victim is covered by criminal law (the 'No means no' rule). Prior to the reform, non-consensual sexual acts were penalised, insofar as the offender used force or threats or exploited certain vulnerable situations to coerce a victim into performing or tolerating sexual acts on or from the perpetrator or another person (previous Section 177(1) of the German criminal code, 'sexual coercion'). 'Rape' qualified as an aggravating circumstance. According to a legal expert,⁵⁴ 'several scenarios could not be prosecuted even though the lack of consent was evident. These were arguably: saying "no" without physical resistance; surprise attacks (if a sexual touching happens quickly, without the victim's prior awareness of what is coming, there is no need for coercion to bend the victim's will); the silent victim in "climate of violence" cases (after repeated assaults in relationships and families, violence or threats are no longer needed to achieve submission); threats of harm other than serious physical violence or death'.

What counts today is that the perpetrator commits 'sexual assault', but ignores a victim's recognisably opposing will. According to Article 177(1) of the German criminal code, anyone who performs sexual acts against the discernible will of another person, or has that person perform sexual acts on them, or causes that person to perform or acquiesce to sexual acts being performed on or by a third person, shall be punished for 'sexual assault' by imprisonment for a term of between six months and five years. The subsequent paragraph equally penalises cases where communicating refusal is impossible or unnecessary. According to Hörnle, '[T]he German approach is based on a mixed or hybrid model of consent, which combines the attitudinal element with a performative, expressive element'. The offence requires intent by the perpetrator (Section 15 German criminal code), meaning the perpetrator must have known that the victim did not agree or seriously considered it possible that the sexual act was against the will of the other person and acceptingly continued (*dolus eventualis*). Offences termed 'sexual coercion' and 'rape' remain part of Section 177 of the German criminal code, but 'sexual coercion' is no longer the basic offence but (like 'rape') qualifies as an aggravating circumstance (Section 177(5)). Rape presupposes 'sexual intercourse' or 'similar sexual acts, ... which are particularly degrading for the victim' and no longer requires a coercive act by the offender (Section 177(6), No 1). Attempting these offences is punishable (Section 177(3)).

2.10. Greece

Greece amended its definition of rape in 2019, to bring it into line with the Istanbul Convention (ratified by Law 4531/2018). Article 336 *et seq*⁵⁵ of the criminal code provides that sexual violence and rape are recognised as crimes against sexual freedom. Before the 2019 reform of the criminal code, Article 336 on the crime of rape referred to forcing another person by physical violence, or by threat of great and immediate danger, into intercourse or another immoral act or into tolerating these. In its current form, the article on rape adds a new offence based on the lack of consent. Paragraph 1 of Article 336 retains the previous definition of rape as coercion to sexual intercourse or indecent assault, by corporal violence or threat of great and imminent danger. If more than one perpetrator acts together, the act is considered to constitute a more serious crime. By amending the criminal code, Law 4619/2019⁵⁶ introduces a new provision in Article 336, providing in par. 4: 'Whoever, except in the case of par. 1, commits a sexual act without the consent of the victim, is

⁵⁴ T. Hörnle, 'The New German Law on Sexual Assault', in Tatjana Hörnle (ed.), *Sexual Assault: Law Reform in a Comparative Perspective* (Oxford University Press, 2023).

⁵⁵ The Government of Greece's response of March 2009 is available in the [UN Women Global Database on Violence against Women](#).

⁵⁶ On 6 March 2019, the Greek Minister of Justice, Transparency and Human Rights presented a new [draft criminal code](#) for public consultation.

punished by imprisonment for up to ten (10) years'. This therefore criminalises any sexual act without the consent of the victim. 'Sexual act' means sexual intercourse and any other act of equivalent gravity. In addition, Law 3500/2006 on combating domestic violence criminalises marital rape. The legislative reform was supported by civil society.⁵⁷

2.11. Ireland

Irish legislation provides that 'a man commits rape if (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it, and (b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it' (Criminal Law (Rape) Act 1981,⁵⁸ Section 2). Point (2) of the same section asks the court to look into the man's belief as to whether the woman was consenting and to assess the reasonableness of this belief among other relevant factors.

A 1990 legislative amendment⁵⁹ widened the definition of rape. Thus, 'rape under Section 4' means a sexual assault that includes: (a) penetration (however slight) of the anus or mouth by the penis, or (b) penetration (however slight) of the vagina by any object held or manipulated by another person. Section 5 of the act introduced the abolition of marital exemption in relation to rape.

A 2017 amendment⁶⁰ defines consent, codifying the existing legal practice, and puts forward a non-exhaustive list of circumstances that preclude it. Thus, it provides in Article 48 that 'A person consents to a sexual act if he or she freely and voluntarily agrees to engage in that act'. The following circumstances preclude consent: use of force or threat against the victim; sleep or unconsciousness; influence of drugs or alcohol; physical disability preventing communication of consent; the victim is mistaken about the nature and purpose of the act, or about the identity of the perpetrator, or is unlawfully detained; consent is given by a different person.

In 2018, the Irish Law Reform Commission published a report on 'Knowledge or Belief Concerning Consent in Rape Law',⁶¹ in which it argued for the need to reform the legislation by adding an objective reasonable belief test to the mental element (*mens rea*) of the offence.

A recent amendment adopted by the Oireachtas (Irish Parliament) in July 2024⁶² addresses some long-standing issues affecting victims and survivors of sexual violence.⁶³ It provides for anonymity for victims and the accused in all trials for sexual offences, excludes the public from sexual offence trials and removes the obligation for the verdict and sentence to be announced in public. In addition, it provides greater support to victims by extending their right to separate legal representation, where they are being questioned.

⁵⁷ For example, Amnesty International, in its [Submission on the Legal Definition of Rape in Greece](#), called on Greece to become one of the countries to criminalise rape based on lack of consent in line with international law and standards, and insisted on this aspect being included in the new legislation.

⁵⁸ [Criminal Law \(Rape\) Act, 1981](#); see also consolidated text [Revised Act](#) as of 11 March 2025.

⁵⁹ [Criminal Law \(Rape\) \(Amendment\) Act, 1990](#).

⁶⁰ [Criminal Law \(Sexual Offences\) Act, 2017](#).

⁶¹ [Knowledge or Belief Concerning Consent in Rape Law](#), Law Reform Commission, 2019.

⁶² [Criminal Law \(Sexual Offences and Human Trafficking\) Act 2024](#).

⁶³ This amendment was inspired by a high-profile rape case, which had taken place in Northern Ireland in 2018. The case and its outcome brought considerable attention to the conduct of rape trials and the experiences of complainants not just in the Northern Ireland jurisdiction, but also in the Republic of Ireland. In 2020, a working group with representatives from key criminal justice agencies presented its recommendations, known as the [O'Malley Review](#).

There were expectations⁶⁴ that this amendment would strengthen the legal provisions on consent and reasonable belief in rape cases, providing for an objective evaluation, in line with the recommendations of the Law Reform Commission, but this change was not retained by the legislator.

2.12. Italy

Article 609-bis of Italy's criminal code, defines rape as follows:

Whoever, by violence or threat or by abuse of authority, forces someone to perform or undergo sexual acts shall be punished by imprisonment of six to twelve years.

The same punishment shall apply to anyone who induces someone to perform or be subjected to sexual acts

1) by abusing the physical or mental inferiority of the offended person at the time of the act

2) by misleading the offended person by substituting himself for another person.

In less serious cases, the penalty is reduced by an amount not exceeding two thirds.

Analysis of the current formulation of Article 609-bis of the Italian criminal code shows that there have been no recent amendments to align it with the Istanbul Convention, which Italy ratified with Law 77/2013.⁶⁵ In particular, no mention of consent in the formulation of Article 609-bis is comparable to that of Article 36 (1)(a) of the Istanbul Convention. However, the need to prove lack of consent has been consistently affirmed in Italian case law⁶⁶ as an essential consideration for the requirements for the felony of sexual violence to be fulfilled. For example, recent judgment⁶⁷ of the Criminal Supreme Court 32447 of 26 July 2023 confirms a consolidated orientation of case law requiring that consent is present at the moment of the act (despite provocative behaviour) and must be present all along the sexual act (point 6).

2.13. Latvia

Latvia ratified the Istanbul Convention in 2024.⁶⁸ Its Constitutional Court adopted a decision in June 2021, stipulating that the obligations under the Convention are not in conflict with the country's Constitution. This decision did not look into the definition of sexual offences.

The Latvian Criminal Code⁶⁹ includes the notion of the victim's will in the definition of sexual violence and of rape in particular, providing that sexual violence is perpetrated against the will of the victim. Section 159(1) defines rape as an 'act of sexual intercourse taking advantage of the state of helplessness of a victim or an act of sexual intercourse against the will of the victim by means of violence, threats or using trust, authority or exerting other influence over the victim'. Section 160(1)

⁶⁴ See on this point, e.g. M. Hilliard, [Mistaken belief of consent no defence to rape accusation under new law](#), *The Irish Times*, July 2023: 'Under current law, a rape accused can be cleared where they claim to have been honestly but mistakenly under the belief that consent had been given. The new laws would objectively test whether such a belief would have been held by a reasonable person in the circumstances.'

⁶⁵ [LEGGI 27](#) giugno 2013, n. 77.

⁶⁶ Giurisprudenza Penale, [Violenza sessuale: ai fini della consumazione del reato è richiesta la mera mancanza di consenso e non la manifestazione di dissenso](#), 11 May 2023.

⁶⁷ [Cass. pen. Sez. III, Sent., \(ud. 14/06/2023\)](#) 26-07-2023, n. 32447.

⁶⁸ [Information regarding the judgment of the Constitutional Court of the Republic of Latvia in case no. 2020-39-02 on the compliance of the Istanbul Convention with the Constitution of Latvia](#), 4 June 2021.

⁶⁹ [Criminal Code](#) (Krimināllikums), text in English consolidated by Valsts valodas centrs (State Language Centre) with amending laws, published in October 2023.

defines sexual violence similarly as 'acts of sexual nature for the purpose of sexual gratification in physical contact with the body of the victim, if such acts have been committed taking advantage of the state of helplessness of a victim or against the will of the victim by means of violence, threats or using trust, authority or exerting other influence over the victim'.

2.14. Luxembourg

Under Article 375 of the criminal code, as modified by the Law of 16 July 2011,⁷⁰ '(a)ny act of sexual penetration, of whatever nature and by any means, committed against a person who does not consent to it, including by means of violence or serious threats, by trickery or artifice, or by abusing a person who is unable to give free consent or to resist, constitutes rape and shall be punishable by imprisonment for five to ten years'. The provision further clarifies that when the crime is committed against a child under the age of 16, the victim should be considered incapable of giving free consent. While the perpetrator will be subject to imprisonment for 5 to 10 years in the former case, the imprisonment will reach 10 to 15 years in the latter. Article 376 enumerates the aggravating circumstances (e.g. the assault results in the illness or permanent incapacity of the victim, death of the victim). Article 376, as modified by the Law of 21 February 2013,⁷¹ clarifies that the penalties will be increased when the perpetrator is a member of the family, has authority over the victim, or when the victim is in a situation of vulnerability in relation to the perpetrator.

Most recently, the Law of 7 August 2023⁷² modified the criminal code to introduce a new Article 371-2 which states that: 'Consent to a sexual act is assessed in light of the circumstances of the case. It cannot be inferred from the victim's lack of resistance. Consent can be withdrawn at any time before or during the sexual act.' Article 371 clearly states that: 'A violation of sexual integrity consists of performing an act of a sexual nature on a person who does not consent'.

The main idea of the reform was to link the violence to the consent in order to criminalise any non-consensual sexual act, including when the victim has not resisted physically. In addition, the reform explicitly spelled out that consent might be withdrawn at any time, and thus the withdrawal of consent during sexual intercourse holds legal relevance. It also introduced an irrefutable presumption⁷³ of absence of consent when the victim is a minor under 16 years.

2.15. Malta

Malta revised its criminal code in 2018 to make the lack of consent a constitutive element of sexual offences. Prior to 2018, Article 198 of the criminal code defined rape as 'carnal knowledge' achieved through violence. According to Article 198 of the criminal code in its current form, engaging in non-consensual 'carnal connection', i.e. vaginal, anal, or oral penetration, is a criminal offence. Elements of coercion, listed in the same article in a subsequent paragraph (force, bribery, deceit, deprivation of liberty, improper pressure or any other unlawful conduct or threats of such conduct causing another person to engage in any of the non-consensual acts described by the law with any person),

⁷⁰ [Law of 16 July 2011](#) on the approval of the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse, opened for signature in Lanzarote on 25–26 October 2007 and the Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and amending certain articles of the Penal Code and the Code of Criminal Procedure.

⁷¹ [Loi du 21 février 2013](#) relative à la lutte contre les abus sexuels et l'exploitation sexuelle des enfants et portant modification de plusieurs dispositions du Code pénal.

⁷² [Loi du 7 août 2023](#) portant modification : 1° du Code pénal ; 2° du Code de procédure pénale ; en vue de renforcer les moyens de lutte contre les abus sexuels et l'exploitation sexuelle des mineurs - Mémorial A n° 520 de 2023.

⁷³ The irrefutable presumption (*praesumptio iuris et de iure*) is that which cannot be disproved.

make the perpetrator liable to the same punishment as for rape. The notion of consent is excluded for persons under 12 years and when the person abused was unable to offer resistance owing to physical or mental infirmity (Article 201). Article 207 makes any non-consensual act of a sexual nature, other than those of a penetrative nature already covered by other provisions, a criminal offence.

Paragraph 3 of Article 198 provides a definition of consent: it must have been 'given voluntarily, as the result of the person's free will, assessed in the context of the surrounding circumstances and the state of that person at the time, taking into account that person's emotional and psychological state, amongst other considerations'.

2.16. The Netherlands

The Netherlands has recently reformed its definition of rape under criminal law, with the new law entering into force on 1 July 2024. According to the Dutch Sexual Offences Act, force is now an aggravating factor, but no longer a central element for a conviction of rape or sexual assault. Previously, the 1991 law⁷⁴ defined rape as 'actions comprising or including the sexual penetration of the body that have taken place by force'. Force is specified as 'coercion through violence, the threat of violence or through another act or the threat of another act'.

Under the new law,⁷⁵ it is sufficient that there is 'knowledge or serious reason to suspect that sexual acts are taking place while the other person's will to do so is lacking'. Central to the new threshold for sexual assault and rape is the absence of will: when the other person shows explicit verbal or physical restraint in behaviour, markedly passive behaviour, or when obvious (non-)verbal signs indicate reluctance on her or his part.⁷⁶ The law also modernises the definition of rape, so that all forms of coerced sexual penetration involving a victim's body without her or his consent can be qualified as rape.

The Sexual Offences Act introduces a new distinction in the Dutch Penal Code between *intentional* rape and sexual assault (Articles 241 and 243 respectively) and sexual assault and rape where intent cannot be established, but where the perpetrator had *serious reason to suspect that the other person did not consent* ('lacked the will' to engage in sexual acts) ('negligent' variant – Articles 240 and 242 respectively). Article 244 lists circumstances that preclude consent: unconsciousness, reduced consciousness, physical incapacity due to psychological disorder, psychogeriatric condition, or intellectual disability rendering the victim unable or partially unable to form the will, express their will, or resist sexual acts. Intentional rape and sexual assault carry a higher maximum penalty in case of use of force, violence or threat (Article 243).

According to an academic article,⁷⁷ Dutch courts will face the substantial task of clarifying this distinction between negligent and intentional rape and sexual assault in the years to come.

⁷⁴ Article 42 of the Dutch criminal code as amended in 1991 by [Wet van 9 oktober 1991 tot wijziging van de artikelen 242 tot en met 249 van het Wetboek van Strafrecht](#).

⁷⁵ See Explanatory Memorandum [Wijziging van het Wetboek van Strafrecht en andere wetten in verband met de modernisering van de strafbaarstelling van verschillende vormen van seksueel grensoverschrijdend gedrag \(Wet seksuele misdrijven\)](#).

⁷⁶ *Ibidem*.

⁷⁷ For more information, see J. ten Voorde, [Sexual assault and rape in the new Dutch Sexual Offences Act: On perpetration, intent, and negligence](#), *Zeitschrift für Internationale Strafrechtswissenschaft* 3/2024. The article dwells on the legal complexities of distinguishing between intentional and negligent sexual crimes and concludes: 'It is in any way clear that the courts will have their work cut out for them in the years to come to establish what can count as criminally liable behavior and on what grounds such a liability might be established.'

2.17. Poland

Until recently, the absence of consent had not been included in the Polish criminal code's definition of rape. Article 197 § 1 of the criminal code⁷⁸ stipulated that: 'Whoever compels another person to engage in sexual intercourse through violence, unlawful threat, or deceit, shall be subject to imprisonment for a term of 2 to 15 years.' Civil society organisations and the Polish Ombudsman repeatedly called for the criminal code to be amended to include consent in the definition of rape.⁷⁹

While welcoming the fact that context-sensitive interpretations were emerging in Polish jurisprudence and that some courts offered very extensive interpretations of the term 'deceit', in its 2021 Baseline Evaluation Report on Poland GREVIO urged the Polish authorities to reform all sexual offences to 'fully incorporate the notion of freely given consent as required by Article 36' of the Istanbul Convention.

In 2021, Lewica (the Left) – then an opposition party – proposed an amendment⁸⁰ to the criminal code that would include the notion of consent. However, the bill remained 'frozen' following a negative evaluation by the Council of Ministers⁸¹ that did not recommend it for further legislative proceedings.

After a change in government, a group of lawmakers from the ruling coalition submitted a new bill⁸² that, among other things, proposed replacing the need to prove the use of violence, unlawful threat or deceit with the lack of the victim's prior explicit and voluntary consent. Moreover, the bill aimed to increase the minimum penalty to at least 3 years of imprisonment, effectively reclassifying the offence from a misdemeanour (*występek*) to a felony (*zbrodnia*). Various bodies, including the Supreme Court and the Ombudsman, have issued opinions on the bill.⁸³

After several months of intensive legislative work, the law was adopted and became applicable as of 13 February 2025 – 6 months after its publication.⁸⁴ The initially proposed wording of Article 197 § 1 was not retained, as the new provision states that: 'Whoever compels another person to engage in sexual intercourse through violence, unlawful threat, or deceit, or in any other way without their consent, shall be subject to imprisonment for a term of 2 to 15 years.'

Additionally, Article 198 of the criminal code was modified to cover taking advantage of the 'helplessness of another person' or a 'significant limitation of their ability to understand the meaning of an act or to control their behaviour', resulting not only from mental disability or mental illness, but also from 'other impairment of mental function' (due, for example, to intoxication).

2.18. Portugal

Portugal reformed its legislation in 2015 and 2019, broadening the understanding of coercion to redefine the crime of rape.⁸⁵ The 2015 law criminalised any type of coercion to an act of sexual intercourse or penetration (and not only based on force and threats as was previously the case),

⁷⁸ [Ustawa](#) z dnia 6 czerwca 1997 r. – Kodeks karny.

⁷⁹ See [here](#).

⁸⁰ [Poselski projekt ustawy o zmianie ustawy Kodeks karny](#).

⁸¹ See [here](#).

⁸² [Poselski projekt ustawy o zmianie ustawy Kodeks karny](#).

⁸³ See [here](#) for the opinion of the Supreme Court and here for the [opinion](#) of the Ombudsman.

⁸⁴ [Ustawa](#) z dnia 28 czerwca 2024 r. o zmianie ustawy Kodeks karny oraz niektórych innych ustaw.

⁸⁵ Laws [No 83/2015 of 5 August 2015](#) and [No 101/2019 of 6 June 2019](#).

while the 2019 law added an explicit definition of coercion, as acting against the cognisable will of the victim. This reform was necessary to take account of the GREVIO recommendation. In its evaluation report of 2019 (issued before the second legislative amendment), GREVIO noted that the offensive conduct was qualified by the use of the verb 'constrain' and considered that this wording was 'not sufficient to definitively break away from the long-standing practice of Portuguese courts to require proof of the victim's resistance in order to sentence the perpetrator'.

Article 164 on rape of the Portuguese criminal code now criminalises any type of coercion. Coercing another person to '(a) engage in copulation, anal intercourse or oral intercourse with the perpetrator or with another person; or b) perform acts of vaginal, anal or oral introduction of body parts or objects is punishable'. Under a separate point, the same article now criminalises coercion by means of violence or serious threat, or after having rendered the person unconscious or unable to resist, to perform or tolerate such acts, and provides for more severe punishment in this case. The same article in the ensuing paragraph 3, provides a definition of consent, as being 'understood to be any means, not provided for in the previous paragraph 1, used to carry out the acts referred to in the article against the victim's cognisable will'. Paragraph 3 of Article 164 was introduced by the 2019 reform, with the purpose of stressing that a sexual act without the victim's knowable will is rape. It moves the emphasis from 'serious threat, having been rendered unconscious, rendered unable to resist', to 'any means' used against the victim's knowable will.

2.19. Romania

Romania last amended its definition of rape with the adoption of its 2009 criminal code, five years before the country's ratification of the Istanbul Convention in 2014. The new Romanian criminal code, which entered into force in 2014, does not focus on consent as required by the Istanbul Convention, but on circumstances that preclude consent. Article 218 defines rape as 'sexual intercourse, oral or anal intercourse with a person, committed by coercion, by making it impossible to defend oneself or express one's will, or by taking advantage of this state'. The same article provides that any other acts of vaginal or anal penetration committed in similar circumstances are subject to the same punishment. Article 219 of the criminal code defines sexual assault as an act of sexual nature other than rape committed in the same circumstances as rape. Inciting someone to rape or sexual assault is not covered specifically, but incitement to any crime is subject to the same punishment as the crime (Chapter VI of the criminal code).

In 2022, GREVIO recommended that Romania change its definition of rape to match the requirements of Article 36 of the Istanbul Convention, by incorporating the notion of freely given consent, and to ensure that such provisions are effectively applied in practice. The Istanbul Convention Committee of the Parties⁸⁶ endorsed this recommendation. However, Romania has replied⁸⁷ that, while different in wording, its legislation on rape fully complies in substance with the Istanbul Convention. There is no limitation to the number of ways in which the lack of consent may be manifested, so the law covers any impossibility to give consent – including that of a psychological/traumatic nature ('tonic immobility'). The reply also stresses that it is up to the judiciary to prove the commission of the crime (including the lack of consent), and any other

⁸⁶ The [Committee of the Parties](#) is composed of the representatives of the Parties to the Convention. On the basis of GREVIO reports and conclusions, it adopts recommendations and supervises their implementation by the State Parties.

⁸⁷ See Romania's [reply](#).

interpretation would reverse the burden of proof on the accused, infringing thus on the presumption of innocence.

Romania has recently amended its legislation on sexual crimes⁸⁸ to criminalise any sexual intercourse committed by an adult with a minor under 16 years. In case the act was committed through coercion, the punishment is more severe. This legislative change has left the definition of rape otherwise untouched.

2.20. Slovenia

The criminal code, which entered into force on 1 November 2008, defined rape as an act of forcing another person to engage in sexual intercourse or sexual acts by using force or threatening a direct attack on life or body.

At the beginning of January 2019, media coverage⁸⁹ of a rape case, handled by the Koper High Court caused uproar in Slovenia. According to High Court⁹⁰ 'when the perpetrator uses force only after sexual intercourse has already taken place, or after the sexual intercourse has been completed [...] then the crime of rape is not committed'. The court decision was widely criticised,⁹¹ especially regarding the legal definition of the crime of rape.

On 15 January 2019, Amnesty International Slovenia, Ključ Association, SOS Telephone Association, Peace Institute and the Legal Information Center of Non-Governmental Organisations appealed⁹² to the minister of justice for a change in the definition of rape. The actors called for change in the definition of the crime of rape to make it consistent with international human rights standards and based on the absence of consent.

On 4 June 2021, the National Assembly of the Republic of Slovenia adopted the Act⁹³ amending and supplementing Articles 170, 171 and 172 of the criminal code. The legislator changed the legal definition of rape, from the coercion model, to the 'yes means yes' or affirmative consent model. The latest statutory definition of rape is regulated in the first paragraph of Article 170 of the code and reads: 'Anyone who, without the consent of another person, achieves sexual intercourse with another person or conducts sexual acts equivalent to this, shall be punished by imprisonment from six months to five years'.

According to the Slovenian redefinition of rape, rape is a criminal act when there is no free consent to sexual behaviour (intercourse or equivalent sexual behaviour); the use of force or threat is thus no longer a condition for the existence of the criminal act of rape. The existence of force or threat becomes the aggravating circumstance, as defined in the third paragraph of Article 170.

As regards consent, the second paragraph of Article 170 stipulates that the 'consent is given if the person consented to sexual intercourse or equivalent sexual behaviour according to their outwardly perceptible, unequivocal and free will and was capable of making such a decision'. A person concerned must therefore not be subject to any coercive circumstances regarding their will. He/she

⁸⁸ [LEGE nr. 217 din 10 iulie 2023](#), applicable from 1 January 2024.

⁸⁹ Mladina, [Oproščen posilstva, ker je žrtev na začetku spolnega napada spala](#), January 2019.

⁹⁰ See High Court [judgment](#).

⁹¹ See e.g. lus-info, [Sodba v primeru spolnega napada odmeva v javnosti](#), January 2019.

⁹² Amnesty International Slovenije, Društvo Ključ, Društvo SOS telefon, Mirovni inštitut, Pravno-informacijski center nevladnih organizacij - PIC, [Poziv k spremembi definicije kaznivega dejanja posilstva](#), January 2019.

⁹³ [Zakon o spremembah in dopolnitvah Kazenskega zakonika](#), Official Gazette of the Republic of Slovenia, no. 95/21.

must also be capable to make a decision to engage in sexual intercourse, which excludes cases of victims under the age of 15, who are presumed to be unable to give such consent.

2.21. Spain

On 6 September 2022, the Spanish Parliament adopted the Bill on Comprehensive Guarantee of Sexual Freedom.⁹⁴ The law known in Spain as the 'yes means yes' (*solo sí es sí*) law now requires positive sexual consent. According to its current Article 178, sexual consent would be understood as such only when freely expressed through acts, which in light of the circumstances of the case, show in a clear manner the will of the person. Any sexual act committed against the sexual freedom of another person without their consent is considered sexual assault ('*agresión sexual*') and thus punishable by four years imprisonment. Consent is precluded in the following cases: use of violence, intimidation or abuse of a situation of superiority or vulnerability of the victim, as well as in cases of acts carried out on persons who are sensory deprived or whose mental situation is abused, as well as those carried out when the victim's will is denied for any reason.

Rape is criminalised in Article 179, which concerns vaginal, anal or oral intercourse or vaginal and anal penetration by a body part or object, and is liable for a more severe prison sentence (4 to 10 years) than sexual assault in general. Before this legal reform, the Spanish law required the use of force or threats for a penetrative act to constitute rape, otherwise it would qualify as sexual assault. Today, the use of force or threat is considered an aggravating circumstance for all types of sexual assault (Article 178.2)).

The legislative reform in Spain followed a public outcry caused by the sentencing of perpetrators of a gang rape case (known as the '*La Manada*' case) against an 18-year-old victim in Pamplona in 2016, during the San Fermín celebrations.⁹⁵ The five perpetrators were convicted at first instance of the lesser crime of sexual assault, a conviction endorsed by a higher court in appeal. However, the Spanish High Court overturned their sentence in 2019, considering that they had committed rape.

The amendment to the law had however the unintended effect of reducing the prison term for more than 1 000 sexual offenders,⁹⁶ including one of the perpetrators in the *La Manada* case. This was because the new law reduced the minimum prison term for rape, and convicted persons were able to benefit⁹⁷ from this more favourable provision.

2.22. Sweden

Sweden modified its rape legislation to broaden the definition of rape to any act of penetration committed without the consent of the victim in 2018. Previously, the Swedish criminal code was based on the concept that rape must involve force or the threat of force or other circumstances where the victim could not resist: 'sleep, serious fear, intoxication or other drug influence, illness, physical injury or mental disturbance, or otherwise [when the victim] in view of the circumstances, is in a particularly vulnerable situation'. The change to the rape definition occurred after several

⁹⁴ [Ley Orgánica 10/2022, de 6 de septiembre, de garantía integral de la libertad sexual.](#)

⁹⁵ R. Rinçon, [Supreme Court raises convictions in "Wolf-Pack" sexual assault case to 15 years](#), *El País*, June 2019.

⁹⁶ Poder judicial, [Los tribunales han acordado 1.205 reducciones de pena en aplicación de la Ley Orgánica 10/2022](#), September 2023.

⁹⁷ M. Marraco, [El Gobierno ya tiene la respuesta del Supremo: la revisión de sentencias por la ley del sí es sí "es obligatoria"](#), *El Mundo*, December 2022.

highly mediatised cases⁹⁸ of sexual violence ended in acquittal, and particularly a sexual assault against a 15-year-old girl in 2013, provoked an intense public debate.⁹⁹ Under the new law, it is no longer necessary to prove the use of threat, force, or that the perpetrator took advantage of a victim's vulnerable situation. More specifically, the new law defines rape as sexual intercourse with a person who is not participating voluntarily. The law does not determine the concept of voluntariness exhaustively, but lists situations (mostly retained from the previous version) in which participation is always considered involuntary:

- participation is a result of assault, other violence or a threat of a criminal act, a threat to bring a prosecution against or report another person for an offence, or a threat to give detrimental information about another person;
- the perpetrator improperly exploits the fact that the person is in a particularly vulnerable situation due to unconsciousness, sleep, grave fear, the influence of alcohol or drugs, illness, bodily injury, mental disturbance or otherwise in view of the circumstances; or
- the perpetrator induces the person to participate by seriously abusing the person's position of dependence on the perpetrator.

Sexual assault is defined similarly to rape, as including sexual acts other than intercourse and is subject to a lower penalty. Inducing another person to undertake or submit to either rape or sexual assault is punishable similarly to committing these acts.

A particularity of Swedish legislation is the introduction of a new crime of 'negligent' rape (and negligent sexual assault), which is subject to a less severe criminal (prison) sentence than rape itself. In such situations, the perpetrator does not have the active intent to commit rape, but is grossly negligent regarding the circumstance that the other person is not participating voluntarily. On 11 July 2019, Sweden's Supreme Court issued its first judgment¹⁰⁰ on negligent rape. The new offence of negligent rape had a comparatively low application after introduction, with only 12 convictions out of 400 judgments in 2019. The Swedish Council for Crime Prevention (BRÅ) suggested¹⁰¹ that this was due to the imprecise definition of 'gross negligence'.

Overall, the new law has led to a significant rise in convictions – with a 75 % increase¹⁰² in 2019 compared to the previous year – but its implementation has not been without challenges for the courts. The precise meaning of non-voluntary participation was a disputed issue in the legislative process,¹⁰³ and the legislation as it is now leaves to the courts the task of deciding on an individual basis, in light of the surrounding circumstances, whether participation was voluntary or not.

⁹⁸ See G. Nilsson, [Towards voluntariness in Swedish rape law: Hyper-medialised group rape cases and the shift in the legal discourse](#), in *Rape in the Nordic Countries*, 1st edition, 2019.

⁹⁹ See e.g. this interview with Women's rights activist Demet Ergun, IPPF, [Anything less than yes is rape: the campaign for a consent-based rape law in Sweden](#), November 2022.

¹⁰⁰ [Supreme Court's Judgment Case no. B 1200-19](#), delivered in Stockholm on 11 July 2019.

¹⁰¹ According to the Swedish Council for Crime Prevention (BRÅ), [Den nya samtyckes-lagen i praktiken](#), 2020:6.

¹⁰² Ibidem.

¹⁰³ Swedish Council for Crime Prevention (BRÅ), [The new consent law in practice. An updated review of the changes in 2018 to the legal rules concerning rape](#). English summary of Brå report 2020:6 'The courts' assessment of the provision of consent: The main criticism of the changes to the law raised by lawyers was that it would be difficult to adjudge whether the injured party had participated voluntarily or not. [...] The picture presented by the review is that, in those cases that resulted in a conviction for rape, it has been clearly established that the injured party did not wish to participate. In some cases, she has been taken by surprise; in other cases, she has not given the accused any signals that she wishes to have sex, and has reacted with passivity during the act due to being paralysed. It is primarily in those cases that resulted in a conviction for negligent rape that there is greater uncertainty as to how the injured

The objectives of the law are considered broader than of a purely penal nature. According to experts,¹⁰⁴ the 'new legislation was explicitly designed to transform societal norms around sexual interactions', with the objective to encourage 'an active voluntary participation that is communicated, either through word or deed or in some other way'.

party's reaction – or failure to react – is to be interpreted. The judgments illustrate a range of different problems of application, and, in several of these cases, the outcome is far from given.'

¹⁰⁴ L. Wallin, S. Uhnö, Å. Wettergren and M. Bladini, [Capricious credibility – legal assessments of voluntariness in Swedish negligent rape judgements](#), in *Nordic Journal of Criminology*, 2021, 22:1, pp. 3-22.

3. ANNEX

Table 1 – Legislative situation in the EU Member States that are parties to the Istanbul Convention

Member State	National legislation: Definition of rape in relation to consent (all emphasis - bold - has been added by author)	Punishment (prison term)	GREVIO* comments or recommendation/Committee of the Parties (CoP)** recommendations	Year of reform
AT	<p>Violation of sexual self-determination (distinct from rape): engaging in sexual intercourse or an equivalent sexual act with a person against their will...' (§205a StGB)</p> <p>Rape retains an element of force (§ 201 StGB).</p>	<p>Up to 2 years for crimes under §205</p> <p>2 to 10 years for rape</p>	<p>GREVIO notes the wide discrepancy between the statutory punishments for force-based rape, on the one hand, and sexual acts against the will of a person, on the other hand. It reiterates that, according to Article 36 of the Istanbul Convention, sexual intercourse without the consent of the victim constitutes rape. (GREVIO First thematic evaluation report, 2024)</p>	2015
BE	<p>Rape: Any act of sexual penetration, regardless of its nature and by whatever means, committed against a non-consenting person (criminal code, Article 417/11)</p> <p>Definition of consent: consent must be 'given freely and needs to be assessed in the light of the circumstances of the case. Consent cannot be inferred from the victim's mere lack of resistance. Consent may be withdrawn at any time before or during the sexual act' criminal code, Article 417/5</p>	10-15 years	<p>GREVIO commends Belgium for its definition of sexual violence, which rests on the victim's lack of consent, in line with Istanbul Convention Article 36 (GREVIO BER, 2020)</p> <p>CoP welcomes 'the introduction of an amendment to the Criminal Code in March 2022, whereby rape is now based on the lack of freely given consent' (Conclusions on the implementation of CoP recommendations, May 2024)</p>	1989 2022
HR	<p>Rape: committing sexual intercourse or an act equivalent to it with another person without their consent (criminal code, Article 153)</p>	3-8 years	<p>GREVIO notes with satisfaction that the legal definition of rape has undergone significant changes with the criminal amendments that entered into force in 2020 (GREVIO BER, 2023)</p>	2020
CY	<p>Rape: unlawful intercourse by vaginal, anal or oral penetration of the penis into the body of another person, without his/her consent or with consent given under force, threat or fear (criminal code, Article 144)</p>	Life	<p>GREVIO welcomes the inclusion in the Cypriot criminal code of a definition of rape and sexual abuse by penetration, criminalised on the basis of the lack of consent given by the victim</p> <p>GREVIO recommends that Cyprus take legislative or other measures to qualify more precisely the concept of consent, clarifying that it should be given voluntarily as the result of the person's free will, assessed in the context of the surrounding circumstances (GREVIO, BER 2022)</p> <p>Similar recommendation from CoP, December 2022</p>	2020

Member State	National legislation: Definition of rape in relation to consent (all emphasis – bold – has been added by author)	Punishment (prison term)	GREVIO* comments or recommendation/Committee of the Parties (CoP)** recommendations	Year of reform
DK	Rape: sexual intercourse with a person who has not consented thereto (criminal code , Article 216)	Up to 8 years		2021
EE	Rape: Sexual intercourse with a person against his or her will by using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation (criminal code , Article 141)	1-6 years	GREVIO regrets that Article 141 of the penal code requires that in order for non-consensual sexual behaviour to constitute rape, force must be used in the commission of the act or the perpetrator must take advantage of the victim's inability to put up resistance (GREVIO BER 2022) Reform also required Committee of the Parties, December 2022	
FI	Rape: sexual intercourse with a person who does not participate in it voluntarily (Section 1 of Chapter 20 (Sexual offences) of the Finnish criminal code)	1-6 years	Committee of the Parties conclusions (June 2023) welcome the introduction of consent-based definition of rape in the criminal code	2023
FR	No mention of consent or will of the victim (See Article 222-22 , and following, of French criminal code)	15 years	The wording chosen by the French legislator emphasises the evidential elements that make it possible to establish the absence of consent, to the detriment of the centrality of the absence of consent GREVIO urges the French authorities to base the definition of sexual violence on the victim's lack of free consent, in accordance with Istanbul Convention Article 36 (GREVIO BER) Committee of the Parties conclusions, June 2023 , require reform	Reform ongoing
DE	Sexual assault (general offence): performing or causing to be performed, against the apparent will of another person , sexual acts on that person, or causing that person to perform or tolerate sexual acts on or by a third person (criminal code , Section 177 (1)) Rape: aggravated sexual assault consisting of sexual intercourse or particularly degrading acts (Section 177(6))	6 months to 5 years At least 2 years for rape	GREVIO welcomes the introduction of a definition of rape and sexual violence based on consent and notes with satisfaction that the reform process has been accompanied by important awareness-raising campaigns that have led to a broad public debate (GREVIO, BER 2022)	2016

Member State	National legislation: Definition of rape in relation to consent (all emphasis - bold - has been added by author)	Punishment (prison term)	GREVIO* comments or recommendation/Committee of the Parties (CoP)** recommendations	Year of reform
EL	<p>Article on rape provides for two distinct offences:</p> <p>sexual intercourse or act of equivalent gravity without the consent of the victim (criminal code, Article 336(4))</p> <p>coercion to sexual intercourse, by corporal violence or threat of great and imminent danger (criminal code, Article 336(1))</p>	Up to 10 years for a paragraph (4) offence, at least 10 years for a paragraph (1) offence	GREVIO welcomes the definition of rape based on the notion of freely given consent introduced in Article 336, paragraph 4, of the Criminal Code [...] lawyers consulted by GREVIO argued that legislative shortcomings hinder the effective prosecution of sexual violence in Greece. [...] Among these shortcomings, GREVIO notes with concern that not all instances of rape carry the same criminal sanction. (GREVIO BER, 2023)	2019
IE	<p>Rape: A man commits rape if (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it, and (b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it (Criminal Law (Rape) Act 1981, Section 2, consolidated version August 2024)</p>	Up to 10 years	Concerns have been expressed by practitioners and by women's rights organisations that, under the current applicable legal framework, a defendant of rape and sexual violence can be found not guilty of an offence if he proves that he honestly believed that he had obtained a woman's consent, regardless of whether that belief is objectively reasonable. (GREVIO BER, 2023)	2017
IT	No mention of consent or of the victim's will (see criminal code , Article 609-bis)	6-12 years	Italy's legislation does not therefore define sexual violence as an offence based on the lack of consent given voluntarily as the result of a person's free will and assessed in the context of the surrounding circumstances, in accordance with the terms of Istanbul Convention Article 36. GREVIO strongly encourages the Italian authorities to consider amending their legislation to base the offence of sexual violence on the notion of freely given consent as required by Article 36, paragraph 1, of the Istanbul Convention (GREVIO BER, 2020)	
LV	Rape is an act of sexual intercourse taking advantage of the state of helplessness of a victim or an act of sexual intercourse against the will of the victim by means of violence, threats or using trust, authority or exerting other influence over the victim' (criminal code , Section 159(1))	4-10 years		
LU	Rape: Any act of sexual penetration, of whatever nature, by any means whatsoever, committed on a person who does not consent , including using	5-10 years	GREVIO is pleased to note that Article 375 of the criminal code defining rape was amended in 2011 to make it easier to take evidence of the absence of consent from the victim	2011

Member State	National legislation: Definition of rape in relation to consent (all emphasis – bold – has been added by author)	Punishment (prison term)	GREVIO* comments or recommendation/Committee of the Parties (CoP)** recommendations	Year of reform
	violence or serious threats by ruse or artifice, or abusing a person incapable of giving free consent or to oppose resistance (criminal code, Article 375)		GREVIO encourages the Luxembourg authorities to ... bring the definition of consent more into line with that set out in Article 36 (GREVIO, BER 2023)	
MT	<p>Rape: engaging in non-consensual carnal connection, that is to say, vaginal, anal or oral penetration with any sexual organ of the body of another person (criminal code, Article 198)</p> <p>Definition of consent: acts shall be deemed to be non-consensual unless consent was given voluntarily, as the result of the person's free will, assessed in the context of the surrounding circumstances and the state of that person at the time, taking into account that person's emotional and psychological state, amongst other considerations.</p>	6-12 years	GREVIO commends Malta for having made great strides in the legislative framework governing sexual violence and rape. It welcomes in particular that the definition of rape was modified following the entry into force of the GBVDV Act, in line with requirements of the convention (GREVIO BER 2020)	2018
NL	<p>Negligent rape: performing sexual acts with a person, which consist of or include sexual penetration of the body, while having serious reason to suspect that the other person lacks the will to do so (Article 242 criminal code)</p> <p>Intentional rape: performing sexual acts with a person, which consist of or include sexual penetration of the body, while knowing that the person lacks the will to do so (Article 243(1))</p> <p>Qualified intentional rape: the crime of intentional rape preceded by, accompanied by, or followed by coercion, violence, or threats (Article 243(1))</p>	<p>Up to 4 years or fourth category fine</p> <p>Up to 9 years or fifth category fine</p> <p>Up to 12 years or fifth category fine</p>	Reform carried out after GREVIO BER 2020 , which asked for a change in the legislation	Ongoing
PL	Whoever compels another person to engage in sexual intercourse through violence, unlawful threat, or deceit, or in any other way without their consent , shall be subject to imprisonment for a term of 2 to 15 years (see Article 197 § 1 on rape of the criminal code, Ustawa z dnia 6 czerwca 1997 r. - Kodeks karny)	2-15 years	GREVIO position (GREVIO, BER 2021) and CoP recommendations (CoP, December 2021) asked for a legislative reform	2025

Member State	National legislation: Definition of rape in relation to consent (all emphasis - bold - has been added by author)	Punishment (prison term)	GREVIO* comments or recommendation/Committee of the Parties (CoP)** recommendations	Year of reform
PT	<p>The article on rape provides for two sexual offences: without and with force:</p> <ul style="list-style-type: none"> • Coercing another person to engage in copulation, anal intercourse or oral intercourse with the perpetrator or with another person; or perform acts of vaginal, anal or oral introduction of body parts or objects (criminal code, Article 164(1)) • Coercion by means of violence or serious threat, or after having rendered the person unconscious or unable to resist, to perform or tolerate such acts (criminal code, Article 164(2)) <p>Definition of constraint: any means, not provided for in the preceding paragraph [2], used for the practice of the acts referred to in the respective points a) and b) [of paragraph (1)] against the knowable will of the victim.</p>	1-6 years for the crime under paragraph (1)	GREVIO report and Committee of the Parties recommendation, January 2019 , predated the legislative amendment of 2019, which introduced paragraphs (1) and (3) of Article 164	2019
RO	No mention of consent, only of the impossibility of the victim to express his/her will, see criminal code, Article 218	5-10 years	GREVIO recommended Romania to change its definition of rape to match the requirements of Article 36 in 2022, by incorporating the notion of freely given consent, and to ensure that such provisions are effectively applied in practice. Reform required by CoP, December 2022	
SL	<p>Rape: sexual intercourse or equivalent sexual acts, without the consent of another person (criminal code, Article 170(1))</p> <p>Definition of consent: The consent shall be given if a person, through his/her outwardly perceptible, unambiguous and free will, consented to sexual intercourse or equivalent sexual conduct and was able to make such a decision (criminal code, Article 170(2))</p>	6 months to 5 years	<p>In this context, GREVIO welcomes the recent amendment of the criminal code [...] However, since this amendment came very recently to GREVIO's attention, being adopted by the Slovenian Parliament after the submission of the government's comments on GREVIO's draft evaluation report, GREVIO is not in a position to assess its content (GREVIO, BER 2021)</p> <p>CoP welcomes 'the amendment of the Criminal Code to align the provisions on rape and sexual violence with the Convention's requirements by encompassing the notion of lack of freely given consent' (CoP recommendations, December 2021)</p>	2021
ES	Sexual assault: any act that violates the sexual freedom of another person without his/her consent (criminal code , Article 178(1))	4-12 years for rape	CoP praised Spain for amending its legislation on sexual violence (Conclusions on the implementation of CoP recommendations , May 2024)	2022

Member State	National legislation: Definition of rape in relation to consent (all emphasis - bold - has been added by author)	Punishment (prison term)	GREVIO* comments or recommendation/Committee of the Parties (CoP)** recommendations	Year of reform
	<p>Rape: sexual assault consisting of vaginal, anal or oral carnal access, or introduction of bodily limbs or objects through one of the first two pathways</p> <p>Definition of consent: Sexual consent would be understood as such only when it was freely expressed through acts that, in view of the circumstances of the case, clearly expressed the will of the person (criminal code, Article 178(1))</p>			
SE	<p>Rape: vaginal, anal or oral intercourse, or other comparable sexual act with a person who is not participating voluntarily (criminal code, Chapter 6, Section 1)</p> <p>Consent: When assessing whether participation is voluntary or not, particular consideration is given to whether voluntariness was expressed by word or deed or in some other way (criminal code, Chapter 6, Section 1)</p> <p>Negligent rape: rape committed with gross negligence regarding the circumstance that the other person does not participate voluntarily (criminal code, Chapter 6, Section 1A)</p>	3-6 years for rape	A recent amendment to the criminal code now ensures that all non-consensual sexual acts are criminalised. Sections 1 and 2 of Chapter 6 on sexual offences criminalise intercourse or any other sexual act with a person 'who is not participating voluntarily'. Participation in a sexual act must be voluntary and this must be perceptible. Passivity cannot be considered a sign of voluntary participation per se (GREVIO, BER 2019)	2018

Source: National legislation and the [monitoring mechanism](#) for the implementation of the Istanbul Convention.

* GREVIO is the Group of Experts on Action against Violence against Women and Domestic Violence, BER refers to the baseline monitoring report.

** The [Committee of the Parties](#) is composed of the representatives of the State Parties to the Convention. It issues recommendations to each state at the end of the monitoring process based on the GREVIO conclusions.

Entries shaded in orange indicate countries that do not include the notion of consent in their definition.

Table 2 – Legislative situation in the EU Member States that are not parties to the Istanbul Convention

Member State	Legislation on rape and proposals for reform
CZ	Czechia changed its legal definition of rape from forced to non-consensual sexual intercourse with effect from 1 January 2025 (Article 185 on rape in the Criminal Code). The amendment is based on 'the "no means no" principle' (rape is defined as committing sexual intercourse against the victim's 'known will').
LT	Article 149 Rape of the Lithuanian criminal code '1. A person who has sexual intercourse with a person against his will by using physical violence or threatening the immediate use thereof or by otherwise depriving of a possibility of resistance or by taking advantage of the helpless state of the victim, shall be punished by a custodial sentence for a term of up to seven years.' The Supreme Court of Lithuania, in its 2004 review No. 49 'On the Court Practice in Criminal Cases of Rape and Sexual Assault', emphasised the importance of non-consent, which must be expressed, and that the perpetrator must be aware of the other person's non-consent (except in certain exceptions specified by the Supreme Court).
BG	Article 152 of the Bulgarian penal code (official translation into English published on cyrilla.org) provides the following definition of rape: '(1) Whoever copulates with a female person: 1. unable to defend herself and without her consent; 2. forcing her to it by force or threat; 3. by bringing her to a helpless state, shall be punished for rape by imprisonment of two to eight years.'
SK	The provision of the criminal code § 199 par. 1 which defines rape focuses on force: 'Anyone who forces a woman to have intercourse by force or the threat of imminent violence, or who exploits her defencelessness for such an act, shall be punished by imprisonment for five to ten years.'
HU	The Hungarian criminal code defines sexual violence (Article 197) in relation to the use of force, threats or the exploitation of the victim's incapacity to defend themselves or to express their will. Sexual coercion to perform or tolerate sexual activities (Article 196) is defined exclusively based on force. The law does not mention consent. However, the terminology of 'consent' is used in the ministerial explanation of the criminal code , according to which 'exploitation/coercion to perform or tolerate a sexual act includes any behaviour where the victim does not voluntarily and freely consent to the sexual act. It must therefore always be investigated whether the victim consented to the sexual act. In the absence of consent, it is coercion.' Existing case law still emphasises however that the victim must resist, while recognising that this does not exclude abandoning resistance in hopeless situations.

This comparative analysis of national legislation on rape in European Union Member States provides an overview of legal provisions on the crime of rape, with a focus on the notion of consent. According to the Council of Europe Convention on combating violence against women and domestic violence, to which the EU became a party in 2023, lack of consent from victims of rape should be made a constitutive element of the crime. This norm, together with increased social awareness of sexual violence, has inspired a wave of legal reforms in many EU Member States.

This is a publication of the Members' Research Service
EPRS | European Parliamentary Research Service

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

PE 757.618
ISBN 978-92-848-2709-1
doi:10.2861/9955040
QA-01-25-094-EN-N