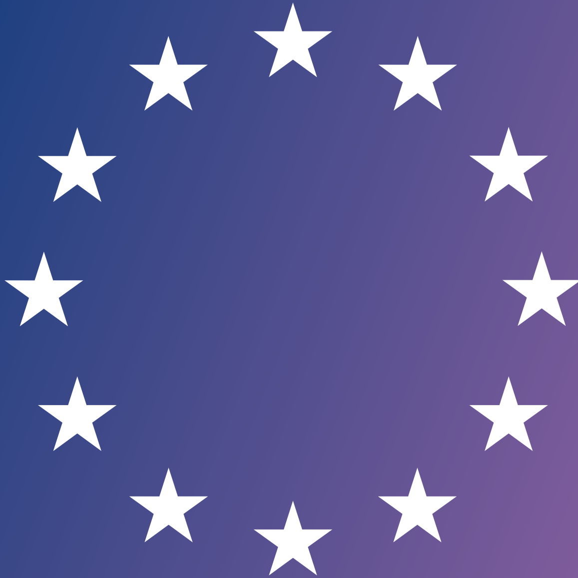

FEDERA

# Legal Framework of the European Union on Sexual and Reproductive Health and Rights: Analysis

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# EUROPEAN UNION REGULATIONS ON SEXUAL AND REPRODUCTIVE HEALTH

## 1. PRIMARY LAW

The term ‘*primary law*’ refers to the set of supreme sources of law in the European Union (hereinafter also referred to as the EU). It consists of the founding treaties: the Treaty of Rome (ultimately replaced by the Treaty on the Functioning of the European Union; hereinafter also referred to as TFEU) and the Treaty of Maastricht (also known as the Treaty on European Union; hereinafter also referred to as TEU), as well as the Charter of Fundamental Rights of the European Union (hereinafter also referred to as CFR), which has the same force as the Treaties.

Primary law defines the division of competences between the EU and its Member States. It provides the legal framework within which EU institutions formulate and implement policies in various areas, including sexual and reproductive health and rights (hereinafter also referred to as SRHR), although it does not contain any provisions explicitly guaranteeing access to SRHR services. However, the Treaties confer powers on the Union in several important areas related to health and sexual and reproductive

rights. In some of these areas, the EU shares competences with Member States, while in others it plays a supporting role[1].

## TREATY ON EUROPEAN UNION

The Treaty on European Union creates an axiological legal framework on the basis of which EU institutions construct policies on SRHR. Key in this context are the provisions on the values, objectives, fundamental rights and external actions of the European Union.

The starting point is Article 2 TEU, which states that *the Union is founded on the values of respect for human dignity, freedom, democracy, equality (...) human rights*, *including the rights of persons belonging to minorities*[2]. Dignity, equality and freedom are concepts inextricably linked to bodily autonomy, access to health services and the ability to make decisions about one's own life. On the basis of Article 2 TEU, the Court of Justice of the European Union (hereinafter: CJEU) and EU institutions justify anti-discrimination measures in the area of reproductive health[3].

1 Centre for Reproductive Rights, Policy Brief – Advancing Sexual and Reproductive Health and Rights in the European Union, https://reproductiverights.org/wp-content/uploads/2024/10/EU-Policy-Brief-SRHR_10-1-24.pdf

2 Article 2 of the Treaty on European Union.

3 E.g. Case C-769/22 concerning the Hungarian law restricting minors' access to content relating to non-heteronormative sexual orientations and gender identities, or the European Parliament resolution on the de facto ban on abortion in Poland (CELEX 52020IP0336).

Another important provision is Article 3 TEU, concerning the objectives of the Union. Paragraph 3 requires the promotion of *equality between women and men*. Undoubtedly objective strengthen the Union's mandate to combat barriers to access to contraception, safe abortion and sexuality education, as the lack of real access to these services exacerbates gender inequalities and affects the level of health protection[4, 5].

In its external actions, too, the TEU seems to require that reproductive rights be taken into account, although it does not use this term. Article 21(1) TEU states that *[t]he Union's action on the international scene shall be guided by the principles which have inspired its creation* and shall seek to promote universal and indivisible human rights, fundamental freedoms, respect for human dignity, and the principles of equality and solidarity[6]. This provision is the legal basis for financing and promoting SRHR in the EU's development, humanitarian and trade policies, as reflected

4 For example, in its Communication *'A Union of Equality: Gender Equality Strategy 2020-2025'* (COM(2020) 152), the EC links equality (Article 3(3) TEU) to a specific commitment to promote SRHR: *The systematic exchange of good practices between Member States and stakeholders on gender aspects in the context of health, including reproductive and sexual health and rights, will be supported.* See: point 4 Gender mainstreaming and intersectionality in EU strategies.

5 As the European Institute for Gender Equality points out: *"Unplanned pregnancies, complications around pregnancy and childbirth, unsafe abortions, gender-based violence, STIs, STDs and reproductive cancers threaten the well-being not only of women, but also of men and families"; Gender Equality Index 2021 Health,* Luxembourg: Publications Office of the European Union, 2021, doi:10.2839/834132, p. 110.

6 Article 21(1) TEU

in the NDICI-Global Europe programmes[7] and resolutions at the UN[8]. In the context of external action, attention should also be drawn to Article 3(5), which states that *[i]n its external relations*, *the Union shall strengthen and promote its values and interests and contribute to the protection of its citizens*.

## TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

In the Treaty on **the Functioning of the European Union**, attention should be paid to three mainstreaming provisions which establish rules for the interpretation of EU regulations:

Article 8, which states that in all its activities, the Union shall aim to eliminate inequalities and promote equality between men and women[9], which is a meta-obligation[10] Article 9, which states that

7 For example: Article 8(4) of Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, International Cooperation and Development Instrument – Global Europe, amending and repealing Decision No 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009 (OJ EU L 209, 2021, p. 1, as amended).

8 For example: points 18-19 *Council conclusions on EU priorities for the UN human rights forums in 2023*. https://www.consilium.europa.eu/en/press/press-releases/2023/02/20/council-conclusions-on-eu-priorities-in-un-human-rights-fora-2023/

9 A. Wróbel [in:] *Treaty on the Functioning of the European Union. Commentary. Volume I (Articles 1-89)*, ed. D. Miąsik, N. Półtorak, Warsaw 2012, Article 8. https://sip.lex.pl/#/commentary/587327082/124522/miasik-dawid-ed-poltorak-nina-ed-wrobel-andrzej-ed-treaty-on-the-functioning-of-the-european-union...?cm=URELATIONS (accessed: 30 May 2025, 10:42)

10 W. Sanetra [in:] *Treaty on the Functioning of the European Union. Commentary. Volume I (Articles 1-89)*, ed. D. Miąsik, N. Półtorak, A. Wróbel, Warsaw

*in defining and implementing its policies and activities*, *the Union shall take into account requirements linked to […] a high level of […] the protection of human health*, and Article 10, which sets out the Union's objective and task of combating all discrimination on the grounds of the prohibited criteria exhaustively listed in that provision, including sex[11].

Of the provisions in Part III of the TFEU, concerning EU policies and activities, Article 168 TFEU on health protection is key to SRHR. As Mirosława Malczewska points out: *Article 168 TFEU is the only provision of Title XIV "Public Health" in Part III of the TFEU, which means that health policy is an independent EU policy. In seven paragraphs, it defines the European Union's competence to act in the field of public health, sets out the objectives to be achieved, indicates the measures that should or may be taken to achieve them, and defines the means.*[12]

Article 168(1) requires that *a high level of human health protection be ensured in the definition and implementation of all Union*

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2012, Article 9. https://sip.lex.pl/#/commentary/587327083/124523/miasik-dawid-ed-poltorak-nina-ed-wrobel-andrzej-ed-treaty-on-the-functioning-of-the-european-union...?cm=URELATIONS (accessed: 30 May 2025, 11:37)

11 [ A. Wróbel [in:] *Treaty on the Functioning of the European Union. Commentary. Volume I (Articles 1-89)*, ed. D. Miąsik, N. Półtorak, Warsaw 2012, Article 10. https://sip.lex.pl/#/commentary/587327084/124524?tocHit=1&cm=URELATIONS (accessed: 30 May 2025, 11:47)

12 M. Malczewska [in:] *Treaty on the Functioning of the European Union. Commentary. Volume II (Articles 90-222)*, ed. K. Kowalik-Bańczyk, M. Szwarc-Kuczer, A. Wróbel, Warsaw 2012, Article 168. https://sip.lex.pl/#/commentary/587648129/445569/kowalik-banczyk-krystyna-ed-szwarc-kuczer-monika-ed-wrobel-andrzej-ed-treaty-on-the-functioning...?cm=URELATIONS (accessed: 2025-06-08 16:30)

*policies and activities*. The integration of the health perspective into all policy areas allows SRHR to be taken into account in the design of internal market regulations[13], digitalisation[14][and scientific research[15].

The EU has the competence to adopt regulations setting common standards for the quality and safety of medicines and medical devices, including those with contraceptive or abortive effects (also known as abortifacient)[16][. It may also adopt measures to promote health protection and combat cross-border health threats[17] – for example, by funding Member State initiatives that improve access to high-quality healthcare, including sexual and reproductive healthcare, under the EU4Health programme[18].

13 Draft SoHO Regulation – COM(2022) 338

14 For example: European Health Data Space (EHDS)

15 For example: *The Horizon Europe – Strategic Plan 2021-2024 identifies the Action Plan for Sexual and Reproductive Health: Towards achieving the 2030 Agenda*, signalling that SRHR is a research priority in the Health cluster. European Commission, Horizon Europe strategic plan (2021–2024) Analysis, Luxembourg: Publications Office of the European Union, 2020, https://research-and-innovation.ec.europa.eu/system/files/2021-03/ec_rtd_horizon-europe-strategic-plan-2021-24-analysis.pdf

16 Article 168(4) TFEU

17 Article 168(5) TFEU

18 Centre for Reproductive Rights, *Policy Brief…*, op. cit., p. 3

## CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

The Charter of Fundamental Rights (hereinafter also referred to as CFR), which has the same force as the Treaties, gives concrete expression to the values of the TEU and applies both to EU institutions and to Member States when *they implement Union law*. It should be noted that the minimum standard of protection provided for in the CFR is set by the European Convention on Human Rights (see Article 53 CFR). In addition, it is worth emphasising that, according to the case law of the Court of Justice of the European Union (hereinafter also referred to as the CJEU), Protocol No. 30 (the so-called British Protocol) does not exempt Poland from the obligation to comply with the provisions of the CFR, nor does it prevent Polish courts from ensuring compliance with the CFR[19].

An analysis of the provisions of the Charter should begin with the fundamental regulation of Article 1, which points to the inviolability of human dignity. Article 3 points to the obligation to respect the physical and mental integrity of every person, and also explicitly refers to informed consent to medical procedures[2] – crucial for the informed use of reproductive health services.

The Charter protects private and family life (Article 7), emphasises the prohibition of discrimination, in particular on grounds of sex

19 See Judgment of the Court (Grand Chamber) of 21 December 2011, N.S. (C-411/10), paragraph 120

(Article 21), and the equality of women and men (Article 23).

It is also worth mentioning Article 35 of the Charter, which clearly states that *Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.*

# 2. SECONDARY LAW

Secondary law of the European Union refers to legal acts adopted by EU institutions on the basis of and for the purpose of implementing primary law. Its catalogue and binding force are defined in Article 288 TFEU. According to this, secondary legislation includes regulations (acts of general application, binding in their entirety and directly applicable in all Member States from the moment they enter into force), directives (binding as to the result to be achieved; Member States themselves choose the form and means of transposition into national law within a specified period), decisions (individual or general acts, binding in their entirety only on those to whom they are addressed), as well as recommendations and opinions (which express the position of the institution, suggest actions or interpretation of provisions, but do not impose legal obligations).

The most important binding secondary legislation relevant to SRHR is presented below.

# REGULATIONS

## EU4Health

Regulation (EU) 2021/522 of the European Parliament and of the Council of 24 March 2021 establishing a Programme of Union action in the field of health ('EU Health Programme') for the period 2021–2027 and repealing Regulation (EU) No 282/2014, often referred to as EU4Health for short, was issued in response to the COVID-19 pandemic to increase crisis preparedness in the EU. The pandemic has highlighted the shortcomings of national health systems. EU4Health aims to help address long-term health challenges by building stronger, more resilient and more accessible health systems[20]. The EU4Health programme originally had a budget of €5.3 billion for 2021–202 , which was reduced to €4.4 billion following the revision of the multiannual financial framework for 2021–2027[21][21] .

The Regulation contains a number of key standards for the protection of SRHR. Recital 19 already indicates that *health is an investment and that this concept should be central to the Programme. Ensuring that people remain healthy and active for longer and enabling them to actively take care of their own health by improving their health literacy will have a positive impact on*

20 https://www.gov.pl/web/zdrowie/program-ue-dla-zdrowia-w-skrocie (accessed on 7 July 2025)

21 https://health.ec.europa.eu/funding/eu4health-programme-2021-2027-vision-healthier-european-union_pl (accessed on 7 July 2025)

*health, reducing health inequalities, unjustified health inequalities,* ***access to sexual and reproductive health care***... (underlining added – FEDERA)[22].

Recital 41 points to the need to increase Union support for international and global health initiatives, in particular those under the auspices of the WHO, in order to improve health, reduce health inequalities and increase protection against global health threats[23]. The Regulation points to the need for cooperation with international organisations, emphasising the need to coordinate actions with the United Nations *to improve health, reduce health inequalities and strengthen protection against global threats*, also referring to the 2030 Sustainable Development Goals (SDGs). It is worth noting here that SDG 3.7 concerns universal access to reproductive health services[24].

Gender equality, as well as rights and equal opportunities for all, should be taken into account and promoted during the assessment, preparation, implementation and monitoring of the EU4Health Programme, and these objectives should be mainstreamed[25].

The normative content of the Regulation establishes the general

22 Theme 19, text from: https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:32021R0522

23 Recital 41

24 https://www.gov.pl/web/rozwoj-technologia/cele-zrownowazonego-rozwoju (accessed on 7 July 2025)

25 Motif 50

objective *of improving and promoting health in the Union* by promoting health, reducing inequalities in health and *promoting access to healthcare*[26]. In addition, it provides for increasing the availability of medicines, strengthening the medical workforce and combating the effects of demographic challenges[27]. This is achieved through actions to achieve specific objectives, while ensuring a high level of human health protection in all Union policies and activities, where appropriate in accordance with the *One Health* approach[28].  Among the specific objectives, several are of interest from an SRHR perspective, for example: strengthening the protection of patients' rights, improving the quality of infectious disease diagnosis, increasing access to high-quality, patient-centred and outcome-based healthcare and related services, and protecting mental health.

An analysis of the annex to the regulation also indicates the direction of development of SRHR services. It lists measures to achieve the objective of increasing access to high-quality, patient-centred and outcome-based healthcare and related services in order to ensure universal health coverage[29] *supporting Member States' efforts to promote access to sexual and reproductive healthcare*

26 Article 3

27 Art. 3(d)(iv)

28 Article 4

29 Article 4(g)

*and supporting an integrated and cross-cutting approach to prevention, diagnosis, treatment and care*[30].

## NDICI

Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, International Cooperation and Development Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009 (hereinafter also referred to as NDICI, Instrument), combines several previous EU external financing instruments.

The NDICI's task is to support countries most in need of assistance in overcoming long-term development challenges and to contribute to the implementation of international commitments and objectives adopted by the EU (such as the 2030 Agenda for Sustainable Development and its Sustainable Development Goals or the Paris Agreement)[31]. The instrument has a budget of EUR 79.5 billion, of which EUR 6.3 billion is allocated to thematic programmes, such as those relating to human rights and civil society organisations[32].

30 Annex I, paragraph 3(c)

31 https://enlargement.ec.europa.eu/funding-technical-assistance/neighbourhood-development-and-international-cooperation-instrument-global-europe-ndici-global-europe_en?prefLang=pl

32 Ibid

The Regulation refers to the main international documents relating to women's rights and reproductive health; it indicates that the Instrument is to be implemented in the light of, among others, the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW Convention), the Programme of Action of the International Conference on Population and Development and the Beijing Platform[33].

NDICI emphasises the need to take gender into account in all activities and programmes financed by the Instrument[34].The equality approach is also expressed in the normative part of the Regulation, where the general principle is that the Instrument should promote, through targeted and mainstreamed actions, gender equality, women's and girls' rights and empowerment, as well as the principle of non-discrimination on any grounds[35].

Furthermore, the Instrument *shall be implemented in full compliance with the Union's commitment to promote, protect and fulfil all human rights and to fully and effectively implement the Beijing Platform for Action, the Programme of Action of the International Conference on Population and Development and the outcomes of their review conferences, as well as the commitment to reproductive and sexual rights and health in this context. With this in mind, the Instrument supports the Union's commitment to promoting, protecting and respecting the rights of all individuals*

33 Recital 13

34 Recital 58

35 Article 8(3)

*to have full control and decide freely and responsibly, without discrimination, coercion or violence, on matters relating to their sexuality and sexual and reproductive health. It also supports the need for universal access at affordable prices to high-quality comprehensive information on sexual and reproductive health, education in this area (including comprehensive sexuality education) and health care services*[36]*.* This is a clear and strong commitment by the European legislator to support SRHR.

Annex II to the Regulation, in paragraph 2(d), states that, *in cooperation in the field of population, for all geographical regions, poverty should be eradicated, inequalities and discrimination should be combated, and social development should be promoted* by *promoting respect for, protection and fulfilment of the rights of women and girls and their empowerment, including economic, labour and social rights, land rights, (...), the elimination of all forms of sexual and gender-based violence, including harmful practices such as forced and early marriage and female genital mutilation.* The second paragraph also confirms commitments in the area of SRHR[37]. In addition, it should be mentioned that, in the context of conflict prevention, the need to prevent all forms of sexual and gender-based violence, including the use of sexual violence as a weapon of war, has been highlighted[38].

36 Article 8(4)

37 Paragraph 2(k) of Annex II

38 Paragraph 6(f) of Annex II

The combined recitals and substantive provisions demonstrate that the NDICI places sexual and reproductive health and rights at the core of EU development cooperation.

**Horizon Europe**

Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing the Horizon Europe Framework Programme for Research and Innovation and the rules for participation and dissemination in that programme and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (hereinafter: Regulation, Horizon Europe) establishes the main EU programme dedicated to research and innovation.

Although it may not seem intuitive, even this Regulation contains provisions that are relevant to SRHR and gender equality.

Recital 53 emphasises that *activities carried out under the Programme should aim to eliminate gender bias and differences in the treatment of women and men, improve work-life balance and promote gender equality in research and innovation, including the principle of equal pay without discrimination based on gender, in accordance with Articles 2 and 3 of the Treaty on European Union and Articles 8 and 157 TFEU. The gender dimension should be taken into account in research and innovation content and monitored at all stages of the research cycle. Furthermore, activities under the Programme should aim to eliminate inequalities and promote equality and diversity in all aspects of research and innovation*

*with regard to age, disability, race and ethnic origin, religion or belief, and sexual orientation*[39].

To understand the structure of Horizon Europe, Article 4 of the Regulation should be analysed. It creates the structure of Horizon – pillars, which are then divided into components. One of the pillars, 'Global Challenges and European Industrial Competitiveness', includes the component 'Health'[40]**.** Its scope is explained in detail in Annex I to the Regulation.

This cluster is responsible *for improving and protecting the health and well-being of citizens of all ages by generating new knowledge, developing innovative solutions and ensuring the inclusion, where appropriate****, of a gender perspective*** [underalined by FEDERA] *for the purposes of preventing, diagnosing, monitoring and treating diseases and developing medical technologies; reducing health risks; protecting the population and promoting good health and wellbeing, including in the workplace; making public health systems more cost-effective, equitable and sustainable; preventing and treating poverty-related diseases; and supporting and enabling patient involvement and self-determination in their own health*[41].

In addition, Article 7 of the programme introduces a *gender mainstreaming* clause – *The programme shall ensure the effective*

39 Recital 53

40 Article 4

41 Annex I

*promotion of equal opportunities for all and the integration of the gender dimension, including the integration of the gender dimension into research and innovation content*[42].

## MDR

Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (hereinafter: Regulation, MDR) aims to ensure the smooth functioning of the internal market in the field of medical devices, taking as its basis a high level of health protection for patients[43].

The safety of medical choices undoubtedly affects the quality of SRHR services. Already in Article 2(1), **products used for contraception or assisted reproduction** are included in the category of medical devices[44]. Furthermore, Annex VIII to the Regulation indicates *that all devices used for contraception or for preventing the transmission of sexually transmitted diseases belong to class IIb, unless they are implantable devices or invasive devices for long-term use, in which case they belong to class III*[45].

42 Article 7

43 Recital 2

44 Article 2(1)

45 Rule 15

Classes, within the meaning of the Regulation, depend on the intended use of medical devices and the associated risks[46].

The Regulation also includes requirements concerning chemical composition relevant to reproductive health, which may affect fertility[47] or be dangerous for pregnant or breastfeeding women[48]. With regard to the latter, it is worth referring to Article 66 of the Regulation, which establishes a standard for clinical trials involving pregnant or breastfeeding women. As a rule, such trials are prohibited unless the general requirements set out in the Regulation[49] are met, together with specific requirements concerning, inter alia, the benefits to the woman and the safety of the child.

## DIRECTIVES

### Directive on cross-border healthcare

Directive 2011/24/EU of 9 March 2011 on the application of patients' rights in cross-border healthcare aims to facilitate access to safe and high-quality cross-border healthcare and to promote cooperation in healthcare between Member States, while

46 Article 51(1)

47 10.4.1.

48 10.4.2

49 Article 62(4)

preserving the independence of each country in the organisation of its healthcare system and the provision of healthcare services[50].

Recital 1 of the Directive recalls that, in accordance with Article 168(1) TFEU*, a high level of human health protection* must be ensured in all Union activities[51]. In addition, according to recital 6, *all types of medical care fall within the scope of the TFEU*, which also includes sexual and reproductive health services[52].

When interpreting the provisions of the Directive, it is important to bear in mind the common values of healthcare systems, which are also relevant from the perspective of SRHR: universality, access to high-quality care, fairness and solidarity[53].

Although the Directive refers to healthcare in general, without specifying aspects of reproductive health, its provisions give rise to a number of principles which, in the opinion of the European legislator, should form the basis of a healthcare system.

Cross-border healthcare should be provided in accordance with the law of the country of treatment, the quality standards and EU safety regulations in force there, and, most importantly, taking

50 https://www.cleiss.fr/docs/directive_en.html (accessed on 15 July 2025)

51 Recital 1

52 Recital 6

53 Recital 21

into account the principles of universality, access to high-quality care, and the principles of equality and solidarity[54].

Therefore, healthcare providers are required to provide patients with information to help them make informed choices, including information on treatment options, availability, quality and safety of healthcare[55]. This requirement is in line with the philosophy of patient-centred healthcare and forms the basis for the provision of reproductive health services.

The Directive also establishes a general principle of non-discrimination on grounds of nationality in access to healthcare for patients from other EU countries[56].

With regard to the costs incurred, the directive guarantees reimbursement of the costs of cross-border care up to the level of benefits due in the country of affiliation, provided that the service in question is included in the national basket[57]. However, it should be remembered that the reimbursement cannot exceed the actual costs of the care received abroad[58].

54 Article 4(1)

55 Article 4(2)(a)

56 Article 4(3)

57 Article 7(1)

58 Article 7(4)

The Directive also imposes an obligation of mutual recognition of prescriptions, enabling the cross-border dispensing of medicinal products or medical devices, although, as the document indicates, *the recognition of prescriptions does not affect the right of a pharmacist, under national law, to refuse – on ethical grounds to dispense a product prescribed in another Member State if the pharmacist would have the right to refuse to dispense the product if the prescription had been issued in the Member State of insurance*[59]. However, it should be borne in mind that restrictions on the recognition of prescriptions must be necessary and proportionate to ensure the protection of human health and must not be discriminatory[60].

**Directive on the rights, support and protection of victims of crime**

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA was adopted to support victims of crime and establish minimum standards in this area. Special protection is provided for women and their SRH rights.

As indicated in recital 17, *violence which is directed against a person because of their gender, gender identity or gender expression, or which predominantly affects persons of a particular gender, is understood as gender-based violence. It can cause physical,*

59 Article 11

60 Article 11(1)(a)

*sexual, emotional or psychological harm or economic damage. Gender-based violence is understood as a form of discrimination and a violation of the victim's fundamental freedoms and includes violence in close relationships, sexual violence (including rape, sexual assault and sexual harassment), human trafficking and slavery, and various forms of harmful practices such as forced marriages, female genital mutilation and so-called 'honour crimes'. Women who are victims of gender-based violence and their children often require special support and protection due to the high risk of secondary and repeat victimisation, intimidation and retaliation associated with such violence*[61]*.*

Recital 18 also points *out that when violence occurs in close relationships, the perpetrator is a person who is or has been the victim's spouse, partner or other family member, regardless of whether they share or have shared a household with the victim. Such violence may include physical, sexual, psychological or economic violence and may result in physical or psychological injury, moral or emotional suffering, or financial loss. Violence in close relationships is a serious and often hidden social problem that can result in systematic psychological and physical injuries with serious consequences, as the perpetrator is a person whom the victim should be able to trust. Victims of violence in close relationships may therefore need special protection measures. The victims of this type of violence are predominantly women, and their situation may be all the more serious the more they are*

61 Recital 17

*dependent on the perpetrator for economic or social reasons or because of their right of residence*[62].

Support for victims of violence should be available *from the moment the competent authorities become aware of the victim* and should include *the geographical distribution* of services so that every victim can access them, which creates a framework for the accessibility of sexual and reproductive health services[63].

The Directive specifically mentions assistance (*specialised support*) which should be provided in an integrated and targeted approach, taking into account the specific needs of victims of crime, the severity of the harm suffered as a result of the crime, and the relationship between victims, perpetrators, children and their wider social environment. The types of support that should be offered by specialised support services may include the provision of shelter, medical assistance, referral for medical examinations, psychological counselling, post-traumatic care, legal advice and access to a solicitor, and specific services for children who are direct or indirect victims[64].

It should be noted that restorative justice measures offered to survivors[65], such as mediation, should take into account the needs

62 Recital 18

63 Recital 37

64 Recital 38

65 We introduce the term "survivor" (used by anti-violence organisation) as it emphasises the subjectivity and agency of the person experiencing violence.

of the victim of crime in order to prevent secondary victimisation or the threat of retaliation. Services should take into account *[...] repeated violations of the victim's physical, sexual or psychological integrity*[66].

The Directive establishes a general right for victims to *confidential victim support services, free of charge (...) before, during and for an appropriate period of time after criminal proceedings*, which is essential in cases of sexual autonomy violations[67][. In addition, in accordance with Article 9(3)(b), Member States must provide *targeted and integrated support to victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including support and counselling in relation to traumatic experiences*[68].

With regard to the right to protection, the Directive requires measures to be put in place to protect against *secondary and repeat victimisation* and emotional or psychological harm. Special protection is provided for persons who have experienced sexual violence, gender-based violence or violence by a partner[69]. As part of this special protection, for example, the Directive guarantees that victims of violence can be interviewed by a person of the same

66 Theme 46

67 Article 8

68 Article 9(3)(a)

69 Article 22(3)

sex[70] and also requires Member States to carry out educational activities aimed at this group[71].

## Directive on the reception of applicants for international protection

Directive 2024/1346/EU of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection already refers to protection related to sexual and reproductive rights in its preliminary remarks.

When designing accommodation for applicants for international protection, Member States should ensure, as far as possible, the prevention of assaults and violence, including sexual and gender-based violence[72]. The Directive repeats this standard in relation to children[73].

Recital 46 is extremely important for the interpretation of the Directive's objectives. It states *that Member States should provide applicants for international protection with the necessary healthcare, provided by general practitioners or, where necessary, by specialists. Essential healthcare should be of adequate quality and should include at least emergency care and basic treatment of illnesses, including serious mental disorders,* ***as well as sexual and***

70 Article 23

71 Article 26

72 Recital 37

73 Recital 39

***reproductive healthcare that is essential in the case of serious health problems*** (underline added – FEDERA)***.***

The recitals of the Directive are also confirmed in the normative part.

Article 20(3) obliges Member States to take *into account gender and age issues and the situation of applicants for international protection with special needs in terms of* reception[74]. In addition, as in the recitals of the Directive, Member States are required, as far as possible, to prevent sexual and gender-based violence and abuse[75]. Women and their children should also be provided with separate sanitary facilities[76].

Article 22(1) requires Member States to provide the necessary healthcare, including at least **sexual and reproductive healthcare, which is necessary in the case of serious health problems**, making SRHR an integral part of the medical services available to everyone. Minors are to receive the same healthcare[77].

Article 24 of the Directive requires that the specific situation of applicants for international protection with special reception needs be taken into account. This category includes, among

74 Article 20(3)

75 Article 20(4)

76 Article 20(5)

77 Article 22(2)

others, pregnant women, LGBT+ persons and persons who have experienced gender-based violence, sexual violence or genital mutilation[78].

Article 28(1) guarantees persons who have experienced *trafficking, torture, rape or other serious acts of psychological, physical or sexual violence, including sexual violence and gender-based violence,* access to *the necessary medical and psychological treatment and care, and, where necessary, rehabilitation and counselling, in view of the harm caused by such acts*[79].

**Anti-violence directive**

Directive of the European Parliament and of the Council (EU) 2024/1385 of 14 May 2024 on combating violence against women and domestic violence aims to establish common rules to prevent and combat violence against women and domestic violence, and sets out minimum standards for offences, penalties and survivors' rights.

The recitals of the Directive point out that *violence against women is a persistent manifestation of structural discrimination against women, which stems from unequal power relations between women and men throughout history. It is a form of gender-based violence perpetrated mainly by men against women and girls. It is rooted in socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women*

78 Article 24

79 Article 28(1)

*and men. Therefore, a gender perspective should be taken into account when implementing this Directive*[80].

The Directive defines several offences that must be criminalised by Member States. These include, among others, female genital mutilation[81] , forced marriage[82] and cyberstalking[83]. In addition, it contains minimum standards for the penalties[84] and circumstances to be considered aggravating[85].

The Directive also establishes standards for providing support to victims of sexual violence. Specialised support services should be available regardless of whether a formal complaint has been made[86]. As part of specialised support services, Member States should provide, among other things, shelters, assistance in finding employment or childcare, medical services and legal assistance[87]. Services should be easily accessible and tailored to the needs of women[88].

80 Recital 10

81 Article 3

82 Article 4

83 Article 6

84 Article 10

85 Article 11

86 Article 25(1)

87 Ibid

88 Article 25(2)

Article 26 of the Directive requires the establishment of *adequately equipped, easily accessible crisis centres for victims of rape or support centres for victims of sexual violence*, which will be able to provide the necessary medical care and secure evidence. It is worth noting that this article explicitly mentions SRHR – survivors of violence must have *rapid access to healthcare services, including sexual and reproductive healthcare services, in accordance with national law*. These services must be free of charge and available every day of the week. The directive also points to the need for an adequate and even geographical distribution of support centres[89].

A separate regulation is devoted to assistance for women who have undergone genital mutilation, although in substance it overlaps with the regulations on assistance for survivors of sexual violence. The Directive guarantees adequate gynaecological, sexological, psychological and post-traumatic care. This assistance must take into account the specific situation of the woman and be available for as long as necessary. Support also includes providing information on units in public hospitals that perform surgical reconstruction of the genitals and clitoris[90].

Member States are required to provide nationwide free 24-hour helplines to provide information and advice and refer them to further support services[91]. In addition, special support must be provided to people who experience discrimination on multiple

89 Article 26

90 Article 27

91 Article 29

grounds[92] and support must be provided to children of victims of violence[93].

The Directive also requires active measures to combat violence against women, e.g. through educational campaigns, already at school level[94]. These campaigns should aim in particular *to combat harmful gender stereotypes, promote gender equality, mutual respect and the right to personal integrity, and encourage everyone, especially men and boys, to set a positive example in order to promote appropriate behavioural changes throughout society*[95]. Educational campaigns should also address the issue of informed consent to sexual contact[96].

**Directive on preventing and combating trafficking in human beings and protecting victims**

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA aims to establish minimum rules concerning the definition of offences and penalties relating

92 Article 33

93 Article 31

94 Recital 73

95 Article 34

96 Article 35(1)

to trafficking in human beings, and to strengthen the protection of victims, taking into account gender-related issues[97].

The Directive requires that, among other things, coercion into sexual work, sexual exploitation, slavery, exploitation of reproductive capacity and coercion into marriage – referred to in the Directive as *exploitation* – be made punishable offences[98]. Aiding and abetting such offences should also be punishable[99]. In addition, special criminal law protection should be granted to persons under the age of 18[100].

Article 4 establishes strict minimum penalties of at least 5 years' imprisonment, or even 10 years if the offence was committed against a child or with *serious violence*[101].

The Directive clearly indicates that trafficking offences are strongly gender-specific and that women are trafficked for different purposes than men. For this reason, support and assistance measures should also be differentiated according to gender where

97 Article 1

98 Article 2(1) and (3)

99 Article 3

100 Article 2(5)

101 Article 4

appropriate[102]. The approach to combating human trafficking should be integrated, comprehensive and rights-based[103].

The human rights-based approach is evident, inter alia, in recital 14, which points to the need to protect women who have been forced or compelled to commit a crime in order to ensure their safety[104], and in recital 18, which establishes a minimum level of protection for survivors[105].

This standard consists of support and assistance before the start of criminal proceedings, during those proceedings and for an appropriate period of time after their conclusion, measures to provide assistance to survivors, as well as support and protection, including treatment for serious physical or psychological consequences of the crime.

The Directive states that survivors of human trafficking who have already suffered abuse and humiliating treatment should be protected from revictimisation and further traumatic experiences during criminal proceedings. During criminal proceedings, unnecessary repetition of interviews during the investigation and court proceedings should be avoided and treatment appropriate to their individual needs should be ensured. When assessing their

102 Recital 3

103 Recital 7

104 Recital 14

105 Recital 18

individual needs, circumstances such as age, possible pregnancy, health, possible disability and other personal circumstances, as well as the physical and psychological consequences of the criminal activity to which the victim has been subjected, should be taken into account. The decision on treatment and its mode should be made on the basis of the grounds specified in national law, as well as practice and guidelines, as appropriate to the circumstances of the case. Any assistance and support should be provided with their informed and voluntary consent[106].

It is worth adding that Article 11(7) of the Directive also requires that the specific needs of victims of trafficking, resulting **in particular from pregnancy or serious sexual violence,** be taken into account**, explicitly covering situations related to reproductive health**[107].

The Directive imposes an obligation to take preventive measures, including education and campaigns, to discourage *demand that fosters all forms of exploitation related to human trafficking*[108], and an obligation to provide training for law enforcement officials, courts and health care professionals[109].

106 Recital 20

107 Article 11(7)

108 Article 18(1)

109 Article 18b(1)

# 3. SOFT LAW

Soft law in the European Union is a collective term for acts and instruments that originate from EU institutions or bodies but **are not legally binding** in the same way as hard law, as discussed earlier. Soft law expresses the position of an institution, sets out guidelines for action or proposes a uniform practice, but **does not** in itself **impose legal obligations or sanctions** for non-compliance.

In this context, the European Parliament's resolution should be reviewed:

**Resolution on the deterioration of women's rights and gender equality in the EU**

European Parliament resolution of 13 February 2019 on the deterioration of women's rights and gender equality in the EU (2018/2684(RSP)) was adopted at a time when a number of Member States were witnessing fierce opposition to the Istanbul Convention, which opened the door to hate speech targeting LGBTI+ people in particular, and when some Member States were seeking to introduce more restrictive laws on access to abortion and contraception, and associations fighting against sexual and reproductive rights for women enjoyed the full support of governments[110].

Among the many standards relating to women's rights in the broad sense, it should be noted that Parliament called on the

Commission to include the promotion and improvement of sexual and reproductive health and rights in the next public health strategy[111], and also called on Member States *to commit themselves to complying with the relevant international treaties and conventions and to fulfil those commitments, as well as to comply with the principles enshrined in their fundamental laws with a view to ensuring respect for and strengthening the rights of minorities and women's rights, including rights relating to sexual and reproductive health and gender equality in general*[112], and *to stop cutting spending on gender equality plans, public services and, in particular, the provision of sexual and reproductive health care*[113]. It also called for comprehensive sexuality education[114].

### Resolution on the criminalisation of sex education in Poland

The European Parliament resolution of 14 November 2019 on the criminalisation of sex education in Poland (2019/2891(RSP)) was a response to a citizens' bill in Poland providing for imprisonment for *promoting sexual intercourse by minors* and *promoting paedophilic behaviour*[115], the real aim of which was to criminalise sex education.

111 Paragraph 26

112 Paragraph 8

113 Paragraph 27

114 Paragraph 44

115 https://stronazycia.pl/wp-content/uploads/2019/02/oiu-2019_projekt-ustawy.pdf

Parliament pointed out that equating the promotion of paedophilia with providing young people with comprehensive sex education is alarming, wrong and harmful[116]. It also pointed to the dangerous chilling effect that the bill could have on teachers, health professionals and civil society activists[117].

In addition, the EP emphasised that education is an essential part of the school curriculum in order to meet WHO standards for Europe in terms of education and youth protection. It stated that sex education should cover topics such as sexual orientation and gender identity, sexual expression, relationships and consent, as well as information on negative effects or diseases such as sexually transmitted diseases and HIV, unplanned pregnancy, sexual violence and harmful practices such as grooming and female genital mutilation[118].

MEPs condemned *recent events in Poland aimed at misinforming, stigmatising and banning sex education, in particular the harsh, inappropriate and erroneous content of the explanatory memorandum provided for in the draft laws*[119] and recognised *the important role of civil society in providing sex education*[120].

116 Letter C

117 Paragraph 2

118 Paragraph 4

119 Paragraph 9

120 Paragraph 8

### Resolution on the de facto ban on abortion in Poland

Following the so-called Constitutional Tribunal ruling in Poland in case K 1/20, which eliminated the possibility of terminating a pregnancy due to foetal defects from the Polish legal system, the European Parliament, in its Resolution of 26 November 2020 on the de facto ban on abortion in Poland (2021/C 425/17), stated that the ruling is a threat to women's health and life . The EP recalled that universal access to healthcare and to reproductive and sexual health and rights are fundamental human rights[121].

As the Parliament pointed out, restricting access to abortion or banning it does not eliminate it, but pushes it underground, leading to *an increase in the number of illegal, poorly performed, extrajudicial and life-threatening abortions*. It also called for the decriminalisation of abortion in order to protect the medical environment from the chilling effect associated with criminal law regulation of health care[122]. The EP also criticised the measurable lack of access to prenatal testing, difficult access to contraception and the abuse of the conscience clause by doctors[123].

### Resolution on the situation of sexual and reproductive health and rights in the EU in the context of women's health

The Matić report is an own-initiative report by the European Parliament (*the situation of sexual and reproductive health and*

121 Paragraph 1

122 Paragraph 2

123 Paragraph 10

*rights in the EU,* 2020/2215(INI)), prepared by Croatian MEP Predrag Fred Matić. On 24 June 2021, Parliament adopted it in the form *of* a resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU in the context of women's health (TA-9-2021-0314).

The document called on Member States to guarantee the right of all individuals to make their own informed choices regarding reproductive and sexual rights and reproductive and sexual health. The document also calls for the right to bodily integrity, personal autonomy, equality and non-discrimination to be guaranteed, and for the necessary measures to be put in place to enable everyone to access reproductive and sexual rights and reproductive and sexual health[124]. The resolution confirmed that comprehensive sexuality education is beneficial[125] and called on Member States to ensure *universal access to high-quality and affordable modern contraceptive methods and products, family planning counselling and information on contraception for all, to remove all barriers to access to contraception, such as financial and social barriers*[126]. It is worth noting that the EP also called for the legalisation and decriminalisation of abortion and for effective access to it[127].

124 Paragraph 1

125 Paragraphs 26-29

126 Paragraph 30

127 Paragraphs 30-35

### Resolution on the US Supreme Court's decision to overturn abortion rights in the United States and the need to protect abortion rights and women's health in the EU

In 2022, in response to the repeal of *Roe v. Wade* in the United States, the European Parliament adopted a resolution on 7 July 2022 on the decision of the Supreme Court of the United States to overturn abortion rights in the United States and the need to protect abortion rights and women's health in the EU (2022/2742(RSP), condemning the regression in women's rights and reproductive and sexual health and rights around the world, including in the United States and in some EU Member States[128], and expressed its strong solidarity with and support for women and girls in the US, as well as those involved in providing and defending the right to and access to legal and safe abortion care[129].

### Resolution on enshrining the right to abortion in the EU Charter of Fundamental Rights

The culmination of parliamentary action was the European Parliament resolution of 11 April 2024 on enshrining the right to abortion in the EU Charter of Fundamental Rights (2024/2655(RSP)). The EP called for *the addition of sexual and reproductive health care and the right to safe and legal abortion to the Charter*; it also indicated the proposed wording of the proposed provision Article 3(2a) of the Charter: *Everyone has the right to bodily autonomy, to free, informed, full and universal*

128 Article 1

129 Article 4

*access to sexual and reproductive health and rights and all related healthcare services without discrimination, including access to safe and legal abortion*[130]*.* This is undoubtedly the strongest voice in favour of access to legal abortion from the EP.

## OTHER SOURCES OF SOFT LAW

Another important source of soft law in the European Union are communications and conclusions adopted by EU institutions. It is worth mentioning a few of them.

In Communication COM(2020) 152 – A Union of Equality: Gender Equality Strategy 2020-2025, the European Commission emphasised the need to combat gender-based violence and break down gender stereotypes[131]. The strategy uses a two-pronged approach with targeted measures to achieve gender equality and, at the same time, take greater account of the gender dimension[132].

The strategy emphasises that the systematic exchange of good practices between Member States and stakeholders on gender in the context of health, including reproductive and sexual rights and health, will be supported[133].

130 Paragraph 3

131 https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_pl (accessed on 21 July 2025)

132 Paragraph 6

133 Point 4.

In the context of the strategy that is coming to an end, it is worth recalling the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions –Action Plan for Women's Rights, which states that *women in the EU still face a lack of comprehensive information on sexual and reproductive health services and products and access to these services and products, if they are provided for in national law*[134]. The annex to the communication sets out specific commitments in the area of SRHR. Principle 2 includes, among other things, promoting women's health by supporting and complementing Member States' health actions in relation to women's access to sexual and reproductive health and rights, ensuring respectful and non-discriminatory gynaecological and obstetric care, ensuring access to affordable contraception and menstrual hygiene products, and gender-sensitive testing.

Communication COM(2022) 675 – EU Global Health Strategy takes a human rights-based, no one left behind approach to health. This includes a particular focus on reproductive and sexual health and rights. The EU is also committed to supporting universal access to SRHR, including: combating gender-based violence, harmful practices, unmet family planning needs, preventable maternal mortality and gender inequalities[135].

134 Page 3

135 Pages 9–10

Also relevant are the Council conclusions on the Women, Peace and Security agenda of 2022, updating the conclusions of 2018[136]. In these conclusions, the Council *adopted the EU's commitment to promoting, protecting and realising the right of all individuals to have full control over and decide freely and responsibly on matters related to their sexuality and sexual and reproductive health, free of discrimination, coercion and violence. The EU also draws attention to the need to ensure universal access to affordable and high-quality comprehensive information on reproductive and sexual health, education in this area, including comprehensive sexuality education, and access to healthcare services*[137].

136 Point 1. https://www.consilium.europa.eu/pl/press/press-releases/2022/11/14/council-conclusions-on-women-peace-and-security/pdf

137 Ibid., point 5

# EUROPEAN UNION STANDARDS IN THE FIELD OF SRHR – summary

The most important EU regulations cited in this study reveal a clear shape of the healthcare system desired by European legislators, taking into account reproductive and sexual rights. In order to summarise and prepare comparative material, it is advisable to summarise it, dividing it into the most important categories.

In the declarative and normative sphere, the EU presents an ambitious vision of equal sexual and reproductive rights. Access to reproductive rights and health, including safe and legal abortion, is undoubtedly a fundamental right in the light of the above legislation. Without effective access to SRHR services, it is impossible to talk about effective protection of human dignity, combating violence against women, including sexual violence, or ensuring the protection of human rights – freedom from torture, the right to privacy and health.

In the context of the right to terminate a pregnancy, the European legislator emphasises that the right to safe and legal abortion care must be protected. Access to voluntary termination of pregnancy is part of the protection of the right to privacy and has a direct impact on the effective realisation of the right to health and physical and mental integrity. Abortion, as a medical procedure, must be left outside the scope of criminal law – otherwise, it

constitutes a form of gender-based violence. In addition, in order to ensure effective and efficient access to abortion care, Member States should cover its costs.

EU law requires comprehensive, age-appropriate and evidence-based sexuality and relationship education (CSE). CSE is essential for developing children's and young people's skills in building healthy, equal and safe relationships, in particular by addressing issues of gender norms, gender equality, power dynamics in relationships, and consent and respect for boundaries. Sex education should address issues of sexual and reproductive health, including social development, sexual and reproductive anatomy and physiology, consent, puberty and menstruation, reproduction, modern methods of contraception, pregnancy and childbirth, sexually transmitted infections, and combating gender-based violence.

Access to contraception should be built around the fundamental pillars of availability, safety, free of charge and high quality. It ensures the realisation of the right to bodily autonomy and reduces the number of unplanned pregnancies, as well as enabling people to make informed decisions about their lives and bodies. States should counter harmful stereotypes about contraception, such as the belief that contraception is solely the responsibility of women.

Member States have a duty to create comprehensive legislation and a supportive environment to help people who have experienced sexual and domestic violence. Support should include ensuring effective prosecution of perpetrators, necessary medical services,

including gynaecological, psychological and psychiatric services, as well as social support networks such as shelters, help in finding work and childcare.

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