

Discussion Paper No. 4

EU Network on the Prevention of Gender-Based and Domestic Violence

Consent and education on consent in sexual relationships: the role of the Violence against Women Directive

1.1 Introduction

Consent is expression of autonomy and self-determination. In this discussion paper we will focus on consent in sexual relationships, being aware of the importance of the debate on consent also with regard to other areas of personal behaviour, for example, to women's sexual and reproductive health, or the consent to the dissemination of intimate private images (on violence in the digital world, please refer to the minutes of the previous meeting of the network).

1.2 The Istanbul Convention

The 2011 Council of Europe Istanbul Convention defines rape as a form of sexual violence, consisting in a 'non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object,' where consent 'must be given voluntarily as the result of the person's **free will** assessed in the context of the surrounding circumstances' (Article 36). In the explanatory report to the Istanbul Convention, it is written that 'prosecution of this offence will require a *context-sensitive* assessment of the evidence in order to establish on a *case-by-case* basis whether the victim has *freely consented* to the sexual act performed. Such an assessment must recognise the wide range of behavioural responses to sexual violence and rape which victims exhibit and shall not be based on assumptions of typical behaviour in such situations. It is equally important to ensure that interpretations of rape legislation and the prosecution of rape cases are not influenced by *gender stereotypes and myths* about male and female sexuality.'¹ It is also added that 'in implementing this provision, Parties to the Convention are required to provide for criminal legislation which encompasses the notion of lack of freely given consent to any of the sexual acts listed [in the provision]. It is, however, left to the Parties to decide on the specific wording of the legislation and the factors that they consider to preclude freely given consent. Paragraph 2 only specifies that consent must be given voluntarily as the result of the person's free will, as assessed in the context of the surrounding circumstances.'²

The **absence of consent** represents the key element of the crime.

The CEDAW Committee contended that the lack of consent rather than the use of force must be at the centre of the offence, indeed, and that sexual crimes must be considered as violations of the women's right to bodily security, not as offences against decency.³

¹ Explanatory report, para. 192. Emphasis added.

² Ibid., para. 193.

³ Report of CEDAW to the General Assembly, Official Records Fifty-seventh Session (A/57/38), 2004, paras. 333-334, referring to Hungary; Report of CEDAW to the General Assembly (A/67/38), 2012, p. 31.

In *M.C. v. Bulgaria*, a case that is also mentioned as point of reference in the explanatory report, the European Court of Human Rights (ECtHR) compared the legislation of European countries regarding rape, and affirmed that ‘the definition of rape contains references to the use of violence or threats of violence by the perpetrator,’ and that ‘it is significant [...] that in case-law and legal theory lack of consent, not force, is seen as the constituent element of the offence of rape.’⁴ Considering national legislation, as well as international criminal law jurisprudence, the European Court concluded that ‘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.’⁵ The Court stressed that rape is a violation of personal autonomy and self-determination. In so doing, it considered this particular aspect of harm, ‘avoiding a paternalistic approach.’⁶ The Court also expanded the notion of harm in sexual intercourse in *Zontul v. Greece*, by including anal penetration.⁷

In a recent judgment, *Y. v. Czech Republic*, decided on 12 December 2024,⁸ the Court had the chance to explain legal obligations States must abide by under the European Convention on Human Rights when dealing with cases of sexual violence including rape. The Court, examining the case under Article 3 (prohibition of torture, inhuman or degrading treatment) and Article 8 (right to respect for private and family life) ECHR, did not say that States had to endorse a certain approach to consent and change the legislation – which, in the case of the Czech Republic, was still based on violence or threat of violence⁹ – but reiterated that States have an obligation to **effectively criminalise and punish** any **non-consensual** sexual act even where the victim has not offered physical resistance. In the Court’s view, requiring **physical resistance** in cases of rape ‘fails to take sufficient account of situations of invalid consent due to abuse of vulnerability and, more generally, of the psychological reaction of victims of sexual assault.’ The authorities also failed to ‘make a **contextual assessment** of the credibility of the applicant’s statements, which would have taken into account the development of her relationship with P.J. and a situation described by the victim as characterised first by forced relations, then by a kind of resignation,’ and the **surrounding circumstances**, including the psychological state, the suicide attempts and the material distress.

Not all definitions of rape at national level include the lack of consent. According to the then Special Rapporteur on violence against women (‘VAW’), Radhika Coomaraswamy, even though consent has been defined as the ‘legal dividing line between rape and sexual intercourse, ‘the argumentation over consent [...] often degenerates into a contest of wills and credibility,’ and ‘many courts are reluctant to find the defendant guilty of rape in the absence of physical injuries.’¹⁰

⁴ ECtHR, Judgment of 4 December 2003, Appl. No. 39272/98, *M. C. v. Bulgaria*, para. 159.

⁵ *M.C.*, cit., para. 166.

⁶ M. Sjöholm, *Gender-Sensitive Norm Interpretation*, Brill, 2017, p. 287.

⁷ ECtHR, Judgment of 17 January 2012, Appl. No. 12294/07, *Zontul v. Greece* (ECHR). The case concerned an asylum seeker of Turkish nationality, who was raped and beaten by officers of the Greek Coastguard while in immigration detention because of his homosexuality.

⁸ ECtHR, Judgment of 12 December 2024, Appl. No. 10145/22, *Y. v. Czech Republic*.

⁹ The Czech legislature recently adopted an amendment to the Criminal Code, introducing a new definition of rape that will come into force in January 2025. The new definition abandons the concept of rape as forced sexual intercourse and defines it as non-consensual sexual intercourse (based on the ‘no means no’ approach). A new offence of sexual assault will cover sexual offences without penetration.

¹⁰ SR on VAW, Report of 12 February 1997, E-CN.4-1997-47, para. 36.

1.3 The EU VAW Directive

As it is known, the major recent development in EU law is the Directive on combating violence against women and domestic violence, published in the Official Journal (OJ) on 24 May 2024 (VAW Directive).¹¹ The **VAW Directive** is based on Article 82(2) and Article 83(1) TFEU.

The Directive did not achieve the harmonisation of the elements of the crime of rape, however it includes a specific provision, Article 35, on the prevention of rape and the promotion of the central role of consent in sexual relationships. Key words in the provision have been highlighted in italics.

Article 35

Specific measures to prevent rape and to promote the central role of consent in sexual relationships

1. Member States shall take appropriate measures to promote changes in behavioural patterns rooted in the historically unequal power relations between women and men or based on stereotyped roles for women and men, in particular in the context of sexual relationships, sex and consent.

Measures as referred to in the first subparagraph shall be based on the principles of gender equality and non-discrimination and on fundamental rights and shall address, in particular, the *central role of consent in sexual relationships*, which must be given *voluntarily* as a result of the *person's free will*.

Measures as referred to in the first subparagraph shall include *awareness-raising campaigns or programmes*, the making available and distribution of *consent education material* and the *wide dissemination of information on measures of rape prevention*.

Measures as referred to in the first subparagraph shall be promoted or implemented on a regular basis, including, where appropriate, in cooperation with civil society and non-governmental organisations, in particular *women's organisations*.

2. *Awareness-raising campaigns or programmes* as referred to in the third subparagraph of paragraph 1 shall aim, in particular, to increase knowledge of the fact that non-consensual sex is considered a criminal offence.

3. *Consent education material* as referred to in the third subparagraph of paragraph 1 shall promote the understanding that consent must be given voluntarily as a result of a person's free will, mutual respect, and the right to sexual integrity and bodily autonomy. Such material shall be adapted to the evolving capacity of the persons to whom it is addressed.

4. Information as referred to in this Article shall be widely disseminated with a view to informing the general public about existing measures of *rape prevention*, including the *availability of the intervention programmes* referred to in Article 37.

The meeting of the EU Network will be structured in four sessions, guided by the text of Article 35 VAW Directive (paras. 1-3).

Introduction

True stories: reflection on the role of consent and how these cases could have been dealt in your country.

¹¹ Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, PE/33/2024/REV/1, OJ L, 2024/1385, 24.5.2024 (VAW Directive).

The first incident took place in the summer of 2002, when P.J., who presented himself as her spiritual father, locked her up in a presbytery and asked her to masturbate him. This then happened on a regular basis until 2005; although she told him that he shouldn't do this, P.J. allegedly blackmailed her by pointing out that she would certainly not want her and her family to be deprived of the financial support he was giving. At the beginning of 2006, after locking her in, he allegedly forced himself on her even though she had defended herself physically and verbally.

From then on, he allegedly regularly demanded that she have sexual intercourse with him, reminding her of his support and all that he had done for her. She finally complied, not having the strength to resist and knowing that he would find her anyway, as she was living in a flat rented by the parish.

Was there consent?

In a post an anonymous woman titled: "I went on a date with XXXX. It turned into the worst night of my life." The woman, who is referred to in the story by the pseudonym Grace, said she met XXXX at a 2017 after party, where they exchanged numbers. After about a week of texting, they agreed to go out on a date.

After the date, the woman said that she went back to his apartment, where the person, who was well known in public, began to kiss her and then removed her clothes before undressing himself. According to the story, the woman "remembers feeling uncomfortable at how quickly things escalated."

According to the story, when XXXX went to grab a condom, Grace said "something like, 'Whoa, let's relax for a sec, let's chill.'" She said XXX continued to kiss her, performed oral sex on her and then asked her to perform oral sex on him, which she said she briefly did.

The woman, according to the story, used "verbal and non-verbal cues to indicate how uncomfortable and distressed she was" throughout the evening. After XXXX asked her to have sex in front of a mirror, Grace said no, according to the story. She said XXXX then said: "How about we just chill, but this time with our clothes on?"

After XXXX texted her after the date to say he had a good time, Grace said she responded that she was uncomfortable and told XXXX he "ignored clear non-verbal cues; you kept going with advances." XXX apologized, telling her: "I'm so sad to hear this. All I can say is, it would never be my intention to make you or anyone feel the way you described. Clearly I missed things in the moment and I'm truly sorry."

Could he reasonably assume that there was consent?

Would there be consent under the "no means no" model? And under vs the "only yes means yes" model?

A known case: "At that point, after that, is when he assaulted me," Evans said. "He forced me to perform oral sex on him." As she objected, Weinstein took his penis out of his pants and pulled her head down onto it. "I said, over and over, 'I don't want to do this, stop, don't,'" she recalled. "I tried to get away, but maybe I didn't try hard enough. I didn't want to kick him or fight him." In the end, she said, "he's a big guy. He overpowered me." She added, "I just sort of gave up. That's the most horrible part of it, and that's why he's been able to do this to so many people: people give up, and then they feel like it's their fault."¹²

¹² R. Farrow, 'From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories', NEW YORKER (Oct. 10, 2017)

The New York statute with which Weinstein was charged requires proof of “forcible compulsion,” meaning, “to compel by . . . use of physical force.”

We all know what happened in this infamous case. What if there was a legislation based on the “no means no model”? And on the “only yes means yes” model?

From a research conducted among young people in Canadian universities.

Jenna, an 18-year-old, heterosexual woman, explained: “I feel like that’s something that some [boys] don’t understand...like, if they say no in the middle then that’s taking away consent.” Jenna illustrated this statement by reporting on an experience of one of her female friends: “Her boyfriend was having sex with her and then she said like, that she wanted to just stop or whatever, and he didn’t stop cause I mean, once you say no then there’s no more consent...but that’s something that I feel young people might not understand.”

Some male participants [to the research] endorsed conceptualizations of consent that suggested they were less familiar with the concept of withdrawing sexual consent. For example, when Kyle, a 20-year-old, bisexual man, was asked how he envisioned the process of consent he responded: “We talked about like, we’re gonna have sex, it is going to happen. After you know ‘x’ criteria has been met, thus we both know we seem on board, yes? And maybe like, conversations don’t need to be had, like, in the moment.” This statement suggests that Kyle views consent as an initial discussion, and once the discussion is over, consent does not need to be revisited. Unfortunately, this conceptualization of consent does not acknowledge that a sexual partner can change their mind and withdraw consent during a sexual encounter.¹³

Is the yes-means-yes approach sufficient to avoid these risks? What should educators say to young people to convey the yes-means-yes approach?

Two years ago, a friend set me up on a date. I had seen the guy at a party and we made eyes at each other, but never spoke. Over the next week, he got my number, and we started texting. We ended up at a wine bar together. The banter was easy and the wine was good. When he invited me back to his place, I agreed to go.

At his apartment, things escalated quickly. Before I really had time to process, he had undressed and pulled me into bed. We began having sex — foreplay was not on the agenda for the evening — and “bad” is the only word I have to describe it. I felt like a human Fleshlight as he rammed into me, my head banging against his bedroom wall repeatedly. He didn’t notice until I put my hand up as a barrier, after which he mumbled an apology and kept going. My body went limp and I stared at the ceiling until he finished, rolled over and closed his eyes without touching me or talking to me. After a few minutes of silence, I got up, put my clothing on and left, barely exchanging a word with him.

Was there consent?

¹³ Examples taken from A.A. Benoit, S.T. Ronis, *A Qualitative Examination of Withdrawing Sexual Consent, Sexual Compliance, and Young Women’s Role as Sexual Gatekeepers*, in *Int J Sex Health*, 34, 2022, pp. 577-592. <https://pmc.ncbi.nlm.nih.gov/articles/PMC10903583/>

Politically, I call it rape whenever a woman has sex and feels violated.
—Catharine MacKinnon (1987)

Legally, as the ECtHR, the Istanbul Convention and the VAW Directive tell us, it is important to consider whether the consent was voluntarily given and whether it was expression of free will, considering the surrounding circumstances.

DAY 1

Panel 1 – Definitions of consent in the criminal codes of Member States

Article 35 (1) VAW Directive:

‘Member States shall take appropriate measures to promote changes in behavioural patterns rooted in the historically unequal power relations between women and men or based on stereotyped roles for women and men, in particular in the context of sexual relationships, sex and consent.

Measures as referred to in the first subparagraph shall be based on the principles of gender equality and non-discrimination and on fundamental rights and shall address, in particular, the *central role of consent in sexual relationships*, which must be given *voluntarily* as a result of the *person’s free will*.’

In criminal law **definitions of sexual offences**, there are conceptual differences across jurisdictions especially with regard to the element of consent. There are essentially three models: 1) coercion (which can be combined or not with resistance)-based model; 2) consent-based model and 3) affirmative consent model.¹⁴ In the report *Definitions of rape in the legislation of EU Member States*, prepared by the *European Parliamentary Research Service* in January 2024, there is an update on the current legislation on rape.¹⁵ Another important point of reference is the special focus in the 2022 General Report of GREVIO’s Activity.¹⁶

1) Coercion and resistance-based model:

Under this model, the element of sexual activity (i.e., sexual assault, penetration, harassment) is combined with force to compel such sexual activity. For instance, the Italian criminal code, at Article 609-bis, criminalises the act of forcing ‘with violence or threats or by abuse of authority’ anyone ‘to perform or undergo sexual acts.’ As addition, ‘the same punishment applies to anyone who induces someone to perform or undergo 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.’¹⁷ In some countries, an additional or alternative element of resistance (for example the incapacity of resistance) is present in the legislation. 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.’¹⁸

¹⁴ <https://righttoequality.org/wp-content/uploads/2023/07/Policy-Paper-on-Affirmative-Consent.pdf>

¹⁵ EPRS, *Definitions of rape in the legislation of EU Member States*, 2024, [https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/757618/EPRS_IDA\(2024\)757618_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/757618/EPRS_IDA(2024)757618_EN.pdf)

¹⁶ 4th General Report on GREVIO’s Activity, 2022, p. 33 <https://rm.coe.int/4th-general-report-on-grevio-s-activities/1680aca199>

¹⁷ The Court of *Cassazione* (High Court) in 2019 interpreted the provision as following: ‘On the subject of sexual violence against a person in a state of physical or mental inferiority, in the case of alteration caused by the consumption of alcohol, the offence referred to in Article 609-bis, second paragraph, no. 1, of the criminal code may be committed when the agent, taking advantage of the victim’s condition, induces the victim to perform or undergo sexual acts to which the latter would not otherwise have given consent.’

¹⁸ *Definitions of rape in the legislation of EU Member States*, cit., p. 11.

Coercion and/or resistance reinforce the traditional stereotypes according to which the perpetrator is physically more powerful while ignoring structural discrimination against women, and systems of power also within same-sex couples.

2) Consent-based model (or no-means-no)

The consent-based model focuses on the sex agency of victims. The “no means no” approach is based on the premise that sexual intercourse is considered consensual as long as neither party said “no”. This approach criminalises sexual acts that happen ‘against the will of a person.’¹⁹ As reported by GREVIO, the “no means no” approach *presumes* consent, unless it is withdrawn – explicitly or implicitly – by the victim.²⁰ The prosecutor is therefore required to prove beyond a reasonable doubt that the act took place against the will of the complainant. In Germany, for example, according to Article 177(1) of the 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.²¹ The offence requires intent by the perpetrator, 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 continues (*dolus eventualis*). Definitions based on the no-means-no model vary a lot.

3) Affirmative consent model (only yes-means-yes)

Several studies, also reported in the EP report *Definitions of rape in EU Member States*, have shown that ‘a reaction known as ‘frozen fright’ or ‘tonic immobility’, 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. Experience has shown that definitions of sexual assault based on a “lack of consent-no means no” model may, in practice, result in the secondary victimization of the complainant/survivor as the prosecution has to prove beyond reasonable doubt that the complainant/survivor did not consent.

That is where affirmative consent plays a role (only yes-means-yes). Consent is seen as an “agreement” communicated between the parties based on free will. As GREVIO explains: ‘the shift from “no means no” to “only yes is yes” is a shift in the way society, and in particular the justice system, looks at the process of consenting to sexual acts. This shift views sex as an act that should be entered into *willingly* by both parties. Affirmative consent approaches provide **clearer rules** to parties at risk of perpetrating or being victims of sexual violence, as well as providing clarity to those charged with investigating and prosecuting such cases.’²²

This model is now more and more present. In **Sweden**, as of 1 July 2018, every sexual act becomes a criminal offence if there is no mutual consent, and passivity can no longer be understood as agreement.

The **UK Sexual Offences Act** of 2003 as amended, defines consent (sec. 74): ‘For the purposes of this Part, a person consents if he agrees by choice, and has the freedom and capacity to make that choice.’ Several countries joined this model. In **Spain**, in 2022 the Spanish Parliament adopted the Bill on Comprehensive Guarantee of Sexual Freedom (*solo sí es sí* law) which now requires positive sexual consent. According to its current Article 178, sexual consent occurs 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. On 4 June 2021, the National Assembly of the Republic of **Slovenia** adopted the Act amending and supplementing Articles 170, 171 and 172 of the criminal code. The

¹⁹ 4th General Report on GREVIO’s Activity, cit..

²⁰ Ibid.

²¹ EPRS, *Definitions*, cit., p. 14.

²² GREVIO, 4th Report, cit., p. 35.

legislator changed the legal definition of rape, from the coercion model, to the ‘only yes means yes’ or affirmative consent model. In **Belgium**, which has been pioneer in the consent-based model back in the 1980s, the new modified version of 2022 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.’²³ It is interesting to note that the 2022 amendment broadens the list of circumstances that preclude consent, including 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.

The debate on the affirmative consent model has been very active in the US and in Australia. In November 2021, the Victorian Government announced that the definition of consent in the *Crimes Act* would change to an affirmative model: where those engaged in sexual activity have a responsibility to obtain consent before and during any sexual act.²⁴ Consent means **free agreement**. Anyone who wants to have sex with another person has a responsibility to get their explicit agreement both before and during the act. It also acknowledges that silence can be an answer indicative of the absence of consent and/or of consent not being actively communicated by words or actions. This creates a powerful stance that the lack of resistance cannot be interpreted as consent.

Invited speakers:

I recommend: Council of Europe, name TBC

Guiding questions:

Before the event: please tell us (via email or during the two days) whether there has been any update on the legislation regarding rape in your country in 2024. Please check in the report *Definitions of rape in EU Member States* the status of your country.

Discussion around the tables:

- Share with the participants at your table examples of cases in court where it was clear that the model used in your country re-victimises or does not adequately protect the victims of sexual violence including rape. Please before the event, it would be great if you could collect links or summaries of the judgments to be added to a ‘live’ file which we are going to share during the two days meeting.
- After the adoption of the VAW Directive, or even before, was there a debate in your country surrounding the concept of consent? Are there any push towards legislative change (to the ‘only yes-means-yes model’)?
- Lessons learnt from the Pélicot case: a “only yes means yes” model would rule out upfront any line of defense in cases where the person is asleep or unconscious.

²³ Ibid, p. 9

²⁴ <https://content.legislation.vic.gov.au/sites/default/files/2021-02/58-6231aa294%20authorised.pdf>

Panel 2 – Panel on communication around rape and the concept of consent

Article 35 VAW Directive (2): ‘*Awareness-raising campaigns or programmes* as referred to in the third subparagraph of paragraph 1 shall aim, in particular, to increase knowledge of the fact that non-consensual sex is considered a criminal offence.’ Also, under Article 34 (5): ‘Preventive measures shall, in particular, aim to challenge harmful gender stereotypes, to promote gender equality, mutual respect and the right to personal integrity, and to encourage all persons, especially men and boys, to act as positive role models to support corresponding behaviour changes across society as a whole in line with the objectives of this Directive.’

Videos (suggested by participants and provided in the Discussion paper).

1) https://www.youtube.com/watch?v=pZwvrXVavnQ&ab_channel=ThamesValleyPolice

This is an old video, which uses the metaphor of wanting or not a cup of tea. See the website: <https://www.thamesvalley.police.uk/police-forces/thames-valley-police/areas/c/2017/consent-is-everything/>
Quoted from the website of the Thames Valley Police (UK):

Consent – it’s simple as tea.

Responsibility for rape rests solely with the perpetrator. The below attributes do not automatically mean consent to sex.

- *Dating, flirting, kissing or being friendly or intimate does not mean consent,*
- *Consenting in the past or being in a relationship does not mean consent is automatically given in the future,*
- *Being married or in a relationship does not mean automatic consent,*
- *Both parties have to agree to sex. When someone is asleep or unconscious they cannot give consent. Someone on drugs or too drunk to make decisions doesn’t have the mental capacity to give consent,*
- *If someone is on drugs or is too drunk to consent, stop. Wait until they are sober and ask again.*

If you think one or both people are incapable of consenting step in and say something before it goes too far. Other things can also affect a person’s capacity to consent, for example a serious mental health problem, learning disability or a head injury.

Having capacity means the person can make and communicate a decision, understand the consequences and know they have a choice. If they cannot do this, they cannot give consent.

Partners have the right to withdraw their consent at any time.

Once consent is withdrawn sexual activity must stop immediately. To continue is to commit a crime.

Make sure you have Sexual Consent

The person seeking or instigating sex can confirm if they have consent both verbally and by checking the other person’s body language.

If they do not have consent, or the other person is not capable of giving consent, they must stop.

You should:

- *Check with partners each time a new type of sexual activity is started,*
- *Check with them on each occasion any sexual conduct begins,*
- *Look at their body language and facial expression to see if they are eager and comfortable,*
- *Ask them if they are okay,*
- *Know that silence, or the absence of a "no" does not guarantee somebody is consenting,*
- *Stop, if they seem unhappy, or you are not sure if they are consenting,*
- *Know that a clear affirmative freely-given "yes" indicates consent.*

2) <https://www.youtube.com/watch?v=rmBqNgzIB9I>

‘Se io non voglio tu non puoi’, *If I do not want to, you cannot*

This Italian video was launched on 25 November 2024, by Foundation ‘Una Nessuna Centomila’ (one, no one, one hundred thousand, a remake of the title of the well-known book by the Italian writer Pirandello, *Uno, nessuno, centomila*, but in the case of the foundation, in the female form).

Guiding questions:

- What are the best ways are to raise awareness around the central role of consent in sexual relationships?
- How to engage **men and boys**, including by reassuring them that they can keep on being spontaneous in their approach to girls and women (cfr. boys in the UK who film their sexual encounters to have proof of consent)?
- What **‘language’** is better to use to convey the message (metaphors, official videos, videos from civil society, etc).
- Which communication strategy to **counter the false narrative that a consent-based definition of rape would lead to shifting the burden of proof on the victim** (who would have to demonstrate the lack of consent)²⁵
- Which **other measures of rape prevention** prove to be effective in your home country?

DAY 2

Panel 3 – Debunking myths

There are myths surrounding the concept of rape and the behaviour a victim of sexual violence should have. For example, expecting victims of rape to always fight back, scream or always use the explicit word ‘no’ is part of what are called **‘rape myths’ or stereotypes**. Myths attribute blame to the victim for their rape (e.g., women who dress scantily provoke rape), suggest that many claims of rape are false (e.g., women often make up rape accusations in revenge against the alleged perpetrator), remove blame from the perpetrator (e.g., implying men cannot control their sex drive), and suggest that rape only happens to particular kinds of women (e.g., only women who are promiscuous get raped).²⁶ The fact that there are stereotypes and myths surrounding rape does not mean that there cannot be cases of false accusations of rape.²⁷

However, it should be stressed that a) the **presumption of innocence** and the right to defence are always guaranteed to the alleged perpetrator; b) **statistics show that false allegations of rape or sexual assault is low**.²⁸

²⁵ See, for example, the resistance showed by France. https://www.lepoint.fr/societe/definir-le-viol-par-l-absence-de-consentement-serait-un-recul-27-11-2023-2544703_23.php#11

²⁶ G. Waterhouse et al., ‘Myths and legends: The reality of rape offences reported to a UK police force’, 2016, <https://doi.org/10.1016/j.ejpal.2015.04.001> G. Bohner, F. Eyssel, A. Pina, F. Siebler, G. Tendayi Viki, ‘Rape myth acceptance: Cognitive, affective and behavioural effects of beliefs that blame the victim and exonerate the perpetrator’, *Rape: Challenging contemporary thinking*, Willan Publishing, Devon, UK, 2009, 17-45

²⁷ Eurobarometer Report, February 2024, Gender stereotypes – violence against, <https://europa.eu/eurobarometer/surveys/detail/3252> According to the Eurobarometer report, approx. 18 % of the respondents around Europe agree with the affirmation that women often make up or exaggerate claims of abuse or rape.

²⁸ As demonstrated by multiple studies. See, for example, C. Huntingtona , A. D. Berkowitzb , and L. M. Orchowskic, *False accusations of sexual assault: Prevalence, misperceptions, and implications for prevention work with men and boys*, in *Engaging Boys and Men in Sexual Assault Prevention*, Elsevier, 2022. One of the main methodological flaw was the incapacity to distinguish between false allegations, recantation of a complaint (which does not mean that the complaint was false) and unsubstantiated claims. “Whereas it is also possible that “unfounded” or “unsubstantiated” claims of sexual violence could be false accusations, rather than truthful claims with insufficient evidence, this would be less likely, given the courage it takes for a victim to report and the numerous barriers involved in doing so” (ibid., p. 381).

A useful table (best practice from Australia) with some examples of misconception about sexual offences is provided below:²⁹

<p>MISCONCEPTION Memory of rape should be clear, coherent, detailed, specific, and not contain any inconsistencies or omissions.</p>	<p>REALITY Victims of one-off traumatic events typically recall only a few clear details, therefore, many details are often lacking. Where they have been repeatedly raped within a relationship it will be difficult to isolate the details of single incidents. Following rape trauma, a person may not remember everything and different parts of memory may come back at different times. Memories are also vulnerable to impact of alcohol and other drugs, to impacts of previous or current injury, trauma or illness.</p>
<p>MISCONCEPTION The rate of false rape allegations is high. Many people lie and fabricate reports of rape and sexual offences.</p>	<p>REALITY There is no evidence that many women make vexatious reports of sexual offences. The rate of false allegations of sexual offences is very low. A range of studies show approximately 5% of rape allegations are proven false. This myth about false allegations is harmful for society and harmful for victims of sexual offences. It contributes to under-reporting. And victims wrongly fear they will be met with disbelief and blame if they report.</p>
<p>MISCONCEPTION Physiological responses by a victim such as erections and orgasms during a sexual offence must mean the person consented.</p>	<p>REALITY Unwanted sexual arousal and physiological responses can occur during rape/sexual offences, and such responses do not in any way indicate that the person consented to sexual activity.</p>

Invited speaker:

One of these experts on behavioural change:

- 1) [Katherine Daiss — No Means No Worldwide initiative](#)
- 2) [Sara Uhnoo, Sofie Erixon o Moa Bladini The wave of consent-based rape laws in Europe - ScienceDirect](#)

Guiding questions:

Discussion around the tables:

- What are the strongest myths and stereotypes regarding the role of consent in sexual relationships in your country? Please name some examples that can be shared among participants.
- Are police forces, social services, teachers, and other actors dealing with preventing violence against women and domestic violence trained to recognise these stereotypes that might lead to the re-victimisation of the victim?
- Are there campaigns to debunk myths and stereotypes in your country? Can you share experiences related to the role of the media in that respect? Are media contributing to the perpetuation of these myths?

²⁹ Retrieved from here. <https://www.police.vic.gov.au/sites/default/files/2019-01/FINAL-factsheet-for-web-Challenging-Misconceptions.pdf>

Panel 4 –Consent education material

Article 35 (3) VAW Directive: ‘*Consent education material* as referred to in the third subparagraph of paragraph 1 shall promote the understanding that consent must be given voluntarily as a result of a person’s free will, mutual respect, and the right to sexual integrity and bodily autonomy. Such material shall be adapted to the evolving capacity of the persons to whom it is addressed.’

Article 35 (4) VAW Directive: Information as referred to in this Article shall be widely disseminated with a view to informing the general public about existing measures of *rape prevention, including the availability of the intervention programmes* referred to in Article 37.

‘Rape myths [...] can affect decisions to report, perpetrate, or convict for rape, and cause difficulties for organisations seeking to reduce the incidence of rape, increase the reporting rate, or ensure fair trials. One way of decreasing the prevalence of rape myth acceptance is **education**.’³⁰ It is important to engage women, men, and non-binary people of varying ages in the debate surrounding the concept of consent in sexual relationships. It would mean to encourage preschool teachers and parents to practice “skill building” with their children around consent, making it as basic as teaching toddlers to look both ways when they cross the street. Education on consent also means to debunk myths surrounding the concept of ‘rape’ and the ‘behaviour’ a victim of rape should have.

What does consent mean in practice? How can you build up “consent education material” within the meaning of the Directive?

An affirmative consent means an ‘unequivocal and voluntary agreement.’

This table below was redeemed from the website of the Monash University in Australia, addressed to students:³¹

Enthusiastic consent can include:
<ul style="list-style-type: none"> • Asking permission before changing the type or degree of sexual activity • Explicitly agreeing to certain activities, eg: saying “yes” or “I’m open to trying” • Confirming that there is reciprocal interest before initiating any physical touch • Letting your sexual partner know that you can stop at any time • Periodically checking in with your sexual partner, such as asking “Is this still okay?”
Consent is NOT:
<ul style="list-style-type: none"> • A sexual partner who is disengaged, nonresponsive, or visibly upset • Wearing certain clothes, flirting, or kissing • Pressuring someone into sexual activity in any way • Assuming permission to engage in a sexual act based on past experience with the same person.

Consent education is the process of teaching people about mutual agreement, communication, and respect in intimate situations. It is a significant tool in the reduction of sexual violence as it equips individuals with the knowledge to uphold their boundaries and respect others, fostering a culture of mutual understanding and communication.³² Whether initiated through open conversations with caregivers or structured programs in institutions, the significance of consent education is prevalent across different aspects of life, contributing to a

³⁰ G. Waterhouse et al., cit.

³¹ <https://www.monash.edu/students/news/articles/affirmative-consent-laws-from-no-means-no-to-yes-means-yes>

³² “Consent Education Guidance.” *Department of Education*, 2022, <https://fusecontent.education.vic.gov.au/ae359f66-8638-435f-9aa9-8bf849bd6c09/Consent%20Education%20Guidance.pdf>

safer and more respectful society.³³ It means, *as examples*, to debunk myths, to learn about ‘the complexity of consent situations, which will involve knowledge construction in dialogue with others, using resource material and scenarios to provoke discussion. It is a space where young people can be supported to critically think about what they see, say, do and engage with,’ to empower girls, to engage boys, to teach about respect for ourselves and others, a sense of equity, a positive attitude towards own and others’ wellbeing, care and concern for others, a sense of social justice.³⁴

In Australia and New Zealand, there has been a development of school programmes on healthy relationships. For example, BodySafe Tiaki Tinana, is an interactive secondary school programme that promotes healthy relationships by having open and supportive conversations about respectful relationships, sex and consent. The programme consists of four modules concentrating on consent, respect, support and active bystanding. School and student values are taken into consideration and included where appropriate.³⁵

Invited speaker: Jakob Lindahl jakob.lindahl@jamstalldhetsmyndigheten.se or Anna Collins Falk anna.collinsfalk@jamstalldhetsmyndigheten.se

Guiding questions:

Before the event: if possible, share with us education materials that are used in your country or be ready to upload links live during the two days.

Discussion around the tables:

- Is education on consent present in your country? If not, is there a debate in society on the importance of education on consent in sexual relationships?
- Are there any legislation/other acts on curricula in school (at what level?) containing information on consent and prevention of sexual offences?
- Can you provide examples of educational programme on consent? Are there universities that inform students about the concept of consent (see above the example of Monash university)?
- The VAW Directive requires Member States to ensure “the making available and distributing consent education material”. Do you see effective ways to make this material available and widely distributed? How? Where? To whom?

Conclusions

In a final session, the main points of the discussion will be summed up, and further suggestions collected from the participants on the role of the EU in the implementation of the VAW Directive and of the Istanbul Convention within the limits of EU competences.

³³ K. H. Robinson, E. Smith, C. Davies, ‘Responsibilities, tensions and ways forward: parents’ perspectives on children’s sexuality education’, *Sex Education*, 2017 <https://www.tandfonline.com/doi/pdf/10.1080/14681811.2017.1301904>

³⁴ *Teaching and learning about consent, the New Zealand Curriculum*, <https://healtheducation.org.nz/wp-content/uploads/2022/07/Learning-about-CONSENT-in-Health-Education.pdf>

³⁵ <https://rpe.co.nz/what-we-do/>