



# Open Research Online

---

The Open University's repository of research publications and other research outputs

## Online violence against women as an obstacle to gender equality: a critical view from Europe

### Journal Item

How to cite:

Barker, Kim and Jurasz, Olga Online violence against women as an obstacle to gender equality: a critical view from Europe. *European Equality Law Review*, 2020/1 pp. 47–60.

For guidance on citations see [FAQs](#).

© [not recorded]

Version: Accepted Manuscript

Link(s) to article on publisher's website:

<https://www.equalitylaw.eu/downloads/5182-european-equality-law-review-1-2020-pdf-1-057-kb>

---

Copyright and Moral Rights for the articles on this site are retained by the individual authors and/or other copyright owners. For more information on Open Research Online's data [policy](#) on reuse of materials please consult the policies page.

---

[oro.open.ac.uk](https://oro.open.ac.uk)

# *Online violence against women as an obstacle to gender equality: a critical view from Europe*

Kim Barker and Olga Jurasz\*

## 1. Introduction

The use of social media, websites and other online platforms to discuss, debate and participate has resulted in significant upsurges in the abuse that women receive online. These – online – forms of violence against women manifest themselves increasingly as forms of sexist hate speech, online harassment, threats and online text-based abuses.<sup>1</sup> While not a new phenomenon,<sup>2</sup> these issues facing women participating online have become much more prominent and prevalent in recent years.<sup>3</sup> This is particularly the case with online violence against women (OVAW), which poses a growing barrier to women’s participatory rights and gender equality online, and which undermines the key principles of equality and non-discrimination embedded in human rights instruments, including the EU Charter of Fundamental Rights<sup>4</sup> and the European Convention on Human Rights.<sup>5</sup>

Revelations concerning abusive, disruptive, and harassing behaviours that subjugate women are not new either, but the increased capacity to share these quickly, digitally and to global audiences has changed the ways in which such things manifest themselves and has impacted on the ways in which they are (not) addressed. OVAW affects in particular those women who seek to actively participate in online spaces, but it is a phenomenon that also affects bystanders too. The harassing and violent responses that women regularly receive online pose a direct challenge not only to equality but also to participation, with the natural consequence of OVAW being the silencing of women and women’s voices in – and even their exclusion from – online spaces.

The growing problem of OVAW has been acknowledged at the European level, with the Council of Europe (CoE) Gender Equality Strategy, for instance, explicitly recognising the obstacles that online behaviours amounting to sexual and violent threats present to women’s participation online.<sup>6</sup> More recently, in February 2020, the European Court of Human Rights (ECtHR) gave

---

\* Dr Kim Barker, The Open University (UK), [kimberley.barker@stir.ac.uk](mailto:kimberley.barker@stir.ac.uk) (until 30 July 2020) and Dr Olga Jurasz, The Open University (UK) [olga.jurasz@open.ac.uk](mailto:olga.jurasz@open.ac.uk). Dr Kim Barker is a Senior Lecturer in Law at the Open University (UK). Dr Barker’s research focuses on internet regulation. Her research explores the regulation and control of online multi-user platforms including online environments (particularly online games and social media sites); and the intersection between user responsibility, platform provider responsibility and legal regulations. Her research (with Dr Olga Jurasz) explores the issues of online misogyny, including online violence against women (OVAW), and assesses the legal responses to such societal problems. Dr Barker (with Dr Jurasz) is author of *Online misogyny as a hate crime: a challenge for legal regulation* (Routledge 2019). Dr Olga Jurasz is a Senior Lecturer in Law at the Open University (UK). Dr Jurasz’s research focuses on international law, human rights, and legal responses to violence against women (including online violence), specializing in feminist perspectives on law in these areas. Her research (with Dr Kim Barker) also explores a number of aspects of online, text-based abuse, including consideration of online misogyny & online violence against women (OVAW) as a hate crime as well as legal regulation of online abuse. Dr Jurasz (with Dr Barker) is author of *Online misogyny as a hate crime: a challenge for legal regulation* (Routledge 2019).

<sup>1</sup> The overarching term used in this paper is ‘text-based abuses’ (TBA).

<sup>2</sup> As understood here, OVAW encompasses sexist hate speech, online harassment, threats and online text-based abuses. For further definition of OVAW, please see section 2 below.

<sup>3</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective*, (UN Publication, A/HRC/38/47), 18 June 2018; Amnesty International, *Toxic Twitter – a toxic place for women*, March 2018, available at: <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-1/>.

<sup>4</sup> In particular, Articles 20, 21, and 23 of the Charter.

<sup>5</sup> Specifically, Protocol No. 12 to the ECHR.

<sup>6</sup> Council of Europe (CoE), *Gender Equality Strategy 2018-2023*, June 2018, available at: <https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1>. [hereafter: GES].

explicit recognition to technology-facilitated forms of VAW in *Buturuga v. Romania*,<sup>7</sup> making it the first, albeit somewhat limited,<sup>8</sup> judicial decision at the ECtHR to acknowledge this. Yet, in spite of these declarations, recognising OVAW more universally as an obstacle to gender equality which requires adequate and timely law and policy interventions at national and supranational levels has not been straightforward. The overwhelming perception that ‘online is not real’;<sup>9</sup> that OVAW is less harmful than offline VAW; or that women need to ‘man up’ in order to participate online are among some of the common (mis)perceptions surrounding OVAW.<sup>10</sup> Furthermore, as evidenced by a 2017 study published by the European Institute for Gender Equality, the responses of law enforcement agencies across the EU to instances of OVAW reveal deeply concerning inadequacies in approaching such forms of abuse, as well as in the treatment of its victims.<sup>11</sup> Such deficiencies not only highlight the lack of understanding of gender perspectives on online crimes and online violence (exacerbated by the difficulties of investigating online crimes), but also stand in the way of recognising OVAW as an obstacle to gender equality and women’s participation and, more broadly, to women’s rights.

Alongside these challenges regarding the recognition of OVAW as an obstacle to gender equality, difficulties arise in defining and categorising the behaviours which are capable of amounting to OVAW. Significantly, while definitions of violence against women (VAW) are more established,<sup>12</sup> there is no widely accepted definition of OVAW, despite its prominence. Some of the challenges in developing a commonly used definition amount to the categorisation of ‘online’ behaviours and what is meant by these, but what is also problematic is the absence, to date, of consideration of text-based abuses as amounting to OVAW. The difficulties in addressing OVAW, online harms and online content arise because of the blurred lines between illegal content (which can and should be removed), and harmful but not illegal content. Harmful but legal content poses problems because of the damage to other fundamental rights that occurs should it be removed. This article does not propose to address those definitions; rather, it positions OVAW as one of the problematic categories of content which is captured not only by illegal content, but also by harmful and legal content, especially given the omission of considerations of gender within hate crime and hate speech frameworks.

---

<sup>7</sup> *Buturuga v. Romania*, No. 56867/15, 11 February 2020.

<sup>8</sup> The ECtHR in *Buturuga* made the explicit link between cyberviolence (term used by the Court) and domestic violence. As noted in the judgment, domestic violence can include many forms of violence such as ‘ICT-related violations of privacy, intrusion into the victim’s computer and the taking, sharing and manipulation of data and images, including intimate data’ (para. 74). While this recognition is a ‘first’ for the ECtHR, it is not as novel from the perspective of domestic laws in some European countries. Furthermore, the judgment considers ‘cyberviolence’ through the lens of Article 8, looking at it primarily as a privacy issue rather than an act of violence underpinned by gender inequality and structural causes. No analysis of cyberviolence under Article 3 is advanced by the Court, which significantly limits the ‘transformative’ potential of this decision. For further critique of *Buturuga*, see: Van Leeuwen, F., ‘Cyberviolence, domestic abuse and lack of a gender-sensitive approach – Reflections on *Buturuga versus Romania*’, 11 March 2020, available at: <https://strasbourgobservers.com/2020/03/11/cyberviolence-domestic-abuse-and-lack-of-a-gender-sensitive-approach-reflections-on-buturuga-versus-romania/>.

<sup>9</sup> Barker, K. and Jurasz, O., (2014) ‘Gender, Human Rights and Cybercrime: Are Virtual Worlds really that Different?’ in: Asimow, M., Brown, K. and Papke, D., (eds) *Law and Popular Culture: International Perspectives*, Cambridge Scholars Publishing.

<sup>10</sup> Barker, K. and Jurasz, O., ‘Text-based (sexual) abuse and online violence against women: towards law reform?’ in Bailey, J., Flynn, A. and Henry, N. (forthcoming 2021) *Technology-Facilitated Violence and Abuse – International Perspectives and Experiences*, Emerald.

<sup>11</sup> European Institute for Gender Equality, ‘Cyberviolence against women and girls’, 23 June 2017, available at: <https://eige.europa.eu/publications/cyber-violence-against-women-and-girls>.

<sup>12</sup> Council of Europe Convention on preventing and combatting violence against women and domestic violence, 2011, Art. 3; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, 1994, Art. 2; UN Committee on Elimination of All Forms of Discrimination Against Women (CEDAW Committee), General Recommendation 19: violence against women, 1992, CEDAW/C/GC/19; CEDAW Committee, General Recommendation 35 on gender-based violence against women, updating General Recommendation No. 19 of 26 July 2017, CEDAW/C/GC/35; UN Declaration on the Elimination of Violence Against Women, proclaimed by General Assembly Resolution 48/104 of 20 December 1993.

Conventionally, from a criminal law perspective, these types of abuses may be captured at least in part by offences of harassment or making threats. Text-based abuse (TBA) – taken here to be defined as: ‘Written, electronic communication containing threatening and/or disruptive and/or distressing content, such as, e.g. textual threats to kill, rape, or otherwise inflict harm on the recipient of such messages’,<sup>13</sup> and meaning written communications other than text messages – has not been considered as a factor in discussions on OVAW. Significantly, there is also a marker here that not all forms of TBA need to encompass a sexual aspect to be capable of amounting to OVAW, as is often considered to be the case. For instance, sending a direct message to a Member of the European Parliament on Twitter indicating that she will be killed on her way home because she is a stupid woman would still constitute an online text-based threat.<sup>14</sup> It could also amount to OVAW because it constitutes violence directed at a woman, despite there not being a sexual abuse element contained within it. This typology of OVAW has often been overlooked as part of VAW because it encompasses online harassment and because it does not fall within the – more widely established – image-based sexual abuse (IBSA) landscape. Nonetheless, TBA is as harmful as IBSA and requires greater attention and action from agencies, law enforcement bodies, and civil society than it has been granted so far.

This paper therefore advocates for the express recognition of the full spectrum of OVAW as a challenge to gender equality online. It begins with a definition of OVAW (section 2). After an introduction to the European perspectives on OVAW – from the CoE (section 3) and European Commission (section 4) positions – this paper will offer an assessment of the fragmented responses to OVAW (section 5). The argument here critiques the fragmented institutional and policy approaches which hinder the tackling of OVAW in a holistic and concerted manner. In light of this, and of these failings, this paper offers a number of recommendations for positive action from the perspectives of policy cohesion, legislative benchmarking, and definitional consistency. The paper closes with calls for concerted efforts to tackle all forms of OVAW with ‘joined-up thinking’ to offer equivalence between VAW and OVAW.

## 2. Online violence against women

Online violence against women is a growing global problem which affects women and girls across various demographics and geographic locations. OVAW is a form of gender-based violence that includes, but is not limited to, online misogyny, text-based abuse (e.g. on social media platforms such as Twitter or Facebook), upskirting, image-based sexual abuse (also referred to as ‘revenge pornography’), rape pornography, doxing, cyberstalking and cyber-harassment.<sup>15</sup> However, OVAW is not a new phenomenon – rather, it exemplifies the long pre-existing forms of VAW taking place in a different (online) environment. As such, the root causes of OVAW are not substantively different to the causes of offline forms of VAW. OVAW is rooted in unequal gender relations, patriarchy and gender stereotypes, as well as the societal normalisation of the ‘everyday’ nature of VAW.<sup>16</sup> That said, what makes OVAW distinct is the types of spaces in which it takes place – for instance, there is greater anonymity for the

---

<sup>13</sup> Barker, K. and Jurasz, O. (2019), *Online Misogyny as a Hate Crime: A Challenge for Legal Regulation?*, Routledge, xiv.

<sup>14</sup> While under EU law, in particular the framework decision on racism and xenophobia, illegal online contents are understood as hate speech, other incitement to violence or hatred, harassment or other criminal activity. As such, this should cover illegal threats, but where there are harmful inferred threats to kill, these may not be covered because they are not illegal per se, and are instead merely harmful. See Council Framework Decision 2008/913/JHA of 28 November 2008 on combatting certain forms and expressions of racism and xenophobia by means of criminal law, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008F0913>.

<sup>15</sup> Barker, K. and Jurasz, O. (2019), *Online Misogyny as a Hate Crime: A Challenge for Legal Regulation?*, Routledge, xiv.

<sup>16</sup> Barker, K. and Jurasz, O. (2019), *Online Misogyny as a Hate Crime: A Challenge for Legal Regulation?*, Routledge, Chapter 2.

perpetrators of OVAW as well as likely higher visibility of the abuse suffered (e.g. a misogynistic tweet can be viewed, liked or retweeted by thousands of users worldwide in a very short period of time).

The precise scale of OVAW in Europe is somewhat difficult to capture due to the lack of a comprehensive and systematic study examining the occurrence of OVAW across all EU Member States and/or CoE Member States. Moreover, any OVAW statistics are likely to be quickly outdated due to the high increase in the number of such incidents in light of changing socio-political events and developments, such as the rise of the #gamergate, #metoo, and #timesup movements, and the increase in online violence against women politicians in the run-up to a general election.<sup>17</sup> However, one smaller-scale study by Amnesty International examining OVAW in selected states (including EU Member States) demonstrates that as many as 30 % of women aged 18-55 have experienced online abuse once or more than once.<sup>18</sup> Furthermore, according to the EU Fundamental Rights Agency, ‘the risk of young women aged between 18 and 29 years becoming a target of threatening and offensive advances on the internet is twice as high as the risk for women aged between 40 and 49 years, and more than three times as high as the risk for women aged between 50 and 59 years’.<sup>19</sup> The growing problem of online violence against women has also been recognised at the European Union level by the European Commission and the EU High Representative Frederica Mogherini, in a statement marking the International Day for the Elimination of Violence against Women:

‘Violence against women happens anywhere, there is no safe place, not even at home. On the contrary. Women are targeted at home as well as in their workplace, in schools and universities, on the street, in displacement and migration, and increasingly online through cyber violence and hate speech’.<sup>20</sup>

### 3. Online violence against women: a CoE perspective

Despite its prevalence, OVAW has only relatively recently been captured in policy and law responses at both international and national levels. For instance, while the 2014 EU-wide survey on violence against women – the largest and most comprehensive study of its kind to date – touched on some forms of OVAW (such as online sexual harassment or revenge pornography/IBSA),<sup>21</sup> it did not do so in a systematic way. Similarly, the Council of Europe Convention on preventing and combatting violence against women and domestic violence 2011<sup>22</sup> (the Istanbul Convention) – the leading treaty in Europe on preventing and combatting violence against women – fails to account for or refer to online forms of gender-based violence

---

<sup>17</sup> International Foundation for Electoral Systems (2019), *Violence Against Women in Elections Online: A Social Media Analysis Tool*, available at: [https://www.ifes.org/sites/default/files/violence\\_against\\_women\\_in\\_elections\\_online\\_a\\_social\\_media\\_analysis\\_tool.pdf](https://www.ifes.org/sites/default/files/violence_against_women_in_elections_online_a_social_media_analysis_tool.pdf); Dhordia, A., ‘Unsocial Media: Tracking Twitter Abuse Against Women MPs’, Medium, 3 September 2017, available at: <https://medium.com/@AmnestyInsights/unsocial-media-tracking-twitter-abuse-against-women-mps-fc28aeca498a>.

<sup>18</sup> Amnesty International (2017), online poll of women aged 18-55 in the UK, USA, Spain, Denmark, Italy, Sweden, Poland and New Zealand about their experiences of online abuse or harassment on social media platforms, available at: <https://www.amnesty.org/en/latest/news/2017/11/amnesty-reveals-alarming-impact-of-online-abuse-against-women/>.

<sup>19</sup> European Union Agency for Fundamental Rights (2014), ‘Violence against women: an EU-wide survey. Main results’, Publications Office of the European Union, p. 96.

<sup>20</sup> European Commission, ‘Stop violence against women: Statement by the European Commission and the High Representative’, 22 November 2019, available at: [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_19\\_6300](https://ec.europa.eu/commission/presscorner/detail/en/statement_19_6300).

<sup>21</sup> European Union Agency for Fundamental Rights (2014), ‘Violence against women: an EU-wide survey. Main results’ (Publications Office of the European Union), p 103.

<sup>22</sup> Hereafter, Istanbul Convention.

in its text,<sup>23</sup> notwithstanding its status as an otherwise progressive and modern legal instrument.<sup>24</sup> Nonetheless, as we argue in the latter part of this article, certain provisions of the Istanbul Convention could provide an avenue for state parties to take practical steps towards addressing OVAW in a comprehensive and cross-sectoral manner.

To date, despite the absence of any reference to OVAW in the Istanbul Convention, the CoE has been the most proactive of the European supranational bodies in raising the matter of the abuse of women online and putting this pressing issue on the agenda. However, the CoE approach focuses strongly on a selected few aspects of OVAW – notably the gender stereotypes and sexist hate speech perspectives – and positions the matter in the broader context of tackling gender inequality, rather than approaching it comprehensively and in a way that includes those forms of OVAW which would not necessarily satisfy the threshold for hate speech (as the threshold for illegal online content). For instance, the key areas of focus in resolutions of the Parliamentary Assembly of the CoE (PACE) have been on sexist hate speech (both online and offline),<sup>25</sup> as well as on ending sexual violence and harassment of women in public spaces<sup>26</sup> – the latter presumably includes the online space, although there is no explicit indication of that in the document. Similarly, the CoE Gender Equality Strategy stresses the need to tackle violence against women (both online and offline) through combatting gender stereotypes and sexism – including sexist hate speech and violent and sexualised threats online, especially on social media platforms.<sup>27</sup> This approach is also embedded in the 2019 CoE Recommendation on Preventing and Combating Sexism<sup>28</sup> – the first ever international legal instrument to combat sexism.

Combatting (O)VAW through addressing sexism and gender stereotypes is certainly useful as it allows attention to be drawn to the root causes of (O)VAW and the way in which gender stereotyping reinforces unequal social power relations between men and women.<sup>29</sup> Consequently, positioning OVAW as an issue of sexism as well as one of power relations is strategically useful; it points towards the interrelatedness between the occurrence of specific forms of violence (online and offline) and the need to address sex and gender discrimination, as well as the harmful effects of perpetuating gender stereotypes. Where sex-based harassment is concerned, there exist binding provisions of EU law which, at least in theory, can be drawn upon when dealing with online sex-based harassment,<sup>30</sup> including when it occurs in

---

<sup>23</sup> Para. 183 of the Explanatory Report on the Istanbul Convention notes that stalking '(...) may include behaviour as diverse as (...) setting up false identities or spreading untruthful information online'. However, this does not adequately capture the full extent of acts of OVAW nor its typology. Council of Europe (2011), *Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence*, available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>

<sup>24</sup> Jurasz, O. (2015), 'The Istanbul Convention: a new chapter in preventing and combating violence against women', *Australian Law Journal*, 89(9), pp 619–627; Barker, K. and Jurasz, O., 'Online Violence Against Women: addressing the responsibility gap?' LSE WPS Blog, August 2019, available at: <https://blogs.lse.ac.uk/wps/2019/08/23/online-violence-against-women-addressing-the-responsibility-gap/>.

<sup>25</sup> Parliamentary Assembly of the Council of Europe (PACE), Resolution 2144 on ending cyberdiscrimination and online hate, 25 January 2017.

<sup>26</sup> PACE, Resolution 2177 on putting an end to sexual violence and harassment of women in public space, 29 June 2017.

<sup>27</sup> CoE, *Gender Equality Strategy 2018-2023*, June 2018, available at: [https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1\\_](https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1_), para. 44.

<sup>28</sup> CoE, Recommendation on preventing and combating sexism, 27 March 2019, available at: <https://rm.coe.int/prems-055519-gbr-2573-cmrec-2019-1-web-a5/168093e08c>.

<sup>29</sup> For the ECtHR's approach to and reasoning on the issue of gender stereotypes, see: *Markin v. Russia*, No. 30078/06, 22 March 2012, and *Carvalho Pinto de Sousa Morais v. Portugal*, No. 17484/15, 25 July 2017.

<sup>30</sup> 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, para. 17; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, paras. 9-11.

the work context.<sup>31</sup> However, none of the aforementioned instruments explicitly tackles online forms of VAW, which makes these provisions ‘vulnerable’ to an interpretation that excludes online forms of harassment.

In addition, the tackling of gender stereotypes is deeply embedded in the language of international and regional treaties such as the UN Convention on the Elimination of All Forms of Discrimination Against Women,<sup>32</sup> the Istanbul Convention<sup>33</sup> and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará);<sup>34</sup> as well as being embedded in the language of the positive human rights obligations of states to take steps to prevent discrimination and violence against women.<sup>35</sup> However, even where online violence is referred to, the CoE Gender Equality Strategy makes explicit references to specific yet narrowly conceptualised forms of OVAW, focusing mostly on sexualised violence such as pornography, rape, and violent and sexualised threats.<sup>36</sup> Although these are valid concerns that should be addressed in combatting OVAW, they do not fully capture the types of violence and abuse that women and girls experience online, nor the range of harms that arise from other (not always sexualised) forms of OVAW.<sup>37</sup> This narrow approach also promotes a particular and limited view of OVAW as a type of violence that is inherently sexualised or which involves the portrayal of women as submissive sexual subjects and objects.

Likewise, the narrow focus on sexist hate speech online takes away from a comprehensive and well-rounded approach to combatting OVAW. Importantly, CoE Recommendation 2144 notes that:

‘hate speech is not limited to racism and xenophobia: it may also take the form of sexism, (...), misogyny, (...) and other forms of hate speech directed against specific groups or individuals. Such forms of behaviour, which are not accepted offline, are equally unacceptable online. Just like the face-to-face world, the internet must provide space to be critical, without providing space for hate speech, including incitement to violence.’<sup>38</sup>

It is important to recognise that online misogyny and sexism can, and often does, amount to online hate speech against women. For instance, the CoE defines sexist hate speech as ‘expressions which spread, incite, promote or justify hatred based on sex’<sup>39</sup>. However, it is equally crucial to note that not all acts of OVAW are hateful for the purposes of prosecuting them as ‘hate crime’.<sup>40</sup> While an act committed online may appear to qualify as hate speech, it does not follow that it will be categorised as such under domestic criminal law. In some

---

<sup>31</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

<sup>32</sup> UN Convention on Elimination of All Forms of Discrimination Against Women, 1979, Article 5.

<sup>33</sup> Istanbul Convention, Article 12.

<sup>34</sup> Belem do Para Convention, Articles 6 and 8.

<sup>35</sup> See, e.g. CEDAW Committee GR 28, CEDAW/C/GC/28, on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010.

<sup>36</sup> CoE, *Gender Equality Strategy 2018-2023*, June 2018, available at: <https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1>, paras. 40, 44, 45.

<sup>37</sup> Barker, K. and Jurasz, O., ‘Text-based (sexual) abuse and online violence against women: towards law reform?’ in Bailey, J., Flynn, A. and Henry, N. (forthcoming 2021), *Technology-Facilitated Violence and Abuse – International Perspectives and Experiences*, Emerald.

<sup>38</sup> PACE, Resolution 2144 on ending cyberdiscrimination and online hate, 25 January 2017, para. 2.

<sup>39</sup> Council of Europe, ‘Combatting sexist hate speech’, available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680651592>.

<sup>40</sup> Barker, K. and Jurasz, O. (2019), *Online Misogyny as a Hate Crime: A Challenge for Legal Regulation?*, Routledge.

instances, hate speech may be criminalised because it would satisfy the legal threshold for an underlying criminal act (e.g. incitement to violence). It is only once this threshold has been satisfied that the 'hate' aspect is considered and the question of whether the crime committed was motivated by hostility or prejudice due to specific features of the victim (e.g. incitement to violence against a certain ethnic or religious group) is asked. As we argue elsewhere,<sup>41</sup> many jurisdictions (e.g. England & Wales) do not recognise gender as a protected characteristic for the purposes of hate crime legislation. In addition, the lack of adequate conceptualisation and legal formulation of acts of online violence (beyond IBSA) within domestic laws contributes to this problem. For instance, online text-based (sexual) abuse (TB(S)A) is not currently captured as an offence under the law of England & Wales. While TB(S)A may in some circumstances satisfy the relevant legal threshold for criminality within the legal system, there is no outright equivalent offence of TB(S)A to mirror that of IBSA. The overwhelming majority of acts of OVAW focus predominantly – almost specifically – on the sexual aspects of images, rather than on text.<sup>42</sup> Consequently, this lack of consistency in criminalisation leads to different outcomes for victims. Given that TB(S)A is not a criminal act, it is difficult to establish what the legal threshold might be for allowing this as an underlying offence in respect of which a hate crime aggravation (e.g. aggravation based on gender as a characteristic) may operate.

Strikingly, CoE documents remain relatively silent regarding the practical and legal steps which would be proposed to tackle OVAW in all its forms, including text-based forms of abuse. Although the CoE uses the notion of 'sexist hate speech', it is unclear what precise legal definition of such behaviours is being proposed. Furthermore, because OVAW is not used or defined as a legal term in any of the CoE instruments (including the Istanbul Convention), the question remains as to how (if at all) instances of online 'sexist hate speech' would be criminalised and, if so, how the 'hate' aspect would be captured within the hate crime frameworks of the diverse and disparate legal systems of CoE Member States.

Given these shortcomings, the current status quo in relation to tackling OVAW at CoE level appears to operate more as a political declaration of some – vague – willingness to address the problem rather than as a systematic approach towards tackling this modern phenomenon. The predominant focus on the sexualised aspect of some forms of OVAW (e.g. image-based sexual abuse and online pornography) as well as the 'sexist hate speech' aspect sets a rather narrow approach towards developing an effective and comprehensive modern, legal and policy framework that is capable of capturing diverse forms of online abuse and offering meaningful avenues of redress for the victims<sup>43</sup>. Although OVAW is a form of VAW (and, as such, amounts to gender-based violence), different tools are needed for tackling OVAW, despite some similarities between the two categories of violence (i.e. online and offline). This is largely due to the differences in the environments in which these online acts take place, and the specificity required (as well as the relative scarcity) of regulation, especially when it comes to online environments and social media. For instance, online OVAW is routinely overlooked by social

---

<sup>41</sup> Ibid n24, at 84; Barker K. and Jurasz, O., 'Submission of Evidence to Australian Online Safety Charter Consultation Paper', March 2019, available at: [https://www.communications.gov.au/sites/default/files/submissions/university\\_of\\_stirling.pdf](https://www.communications.gov.au/sites/default/files/submissions/university_of_stirling.pdf).

<sup>42</sup> The acts of OVAW envisaged here do not consider aspects of defamatory content, nor of distributing data. While it is not impossible to consider these issues as falling within the purview of gender equality, they are not the focus of discussions in this piece.

<sup>43</sup> Although failing to refer specifically to victims of online violence/OVAW specifically, the European Commission's new Victims' Rights Strategy introduces new measures focuses on concrete steps to empower victims of crime: European Commission, 'Questions & Answers – Victims' Rights: New Strategy to empower victims', 24 June 2020, available at: [https://ec.europa.eu/commission/presscorner/detail/en/QANDA\\_20\\_1169](https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_1169).



media platforms, which are protected from criminal charges through the liability shield<sup>44</sup> (although that area is timetabled for reform through the Digital Services Act,<sup>45</sup> on which consultation is currently ongoing) being introduced as an EU tool, which translates into freedom from prosecution where there is no editorialising of content, and where social media sites act only as mere conduits.<sup>46</sup> Questions and discussions around the difference between illegal content and legal but harmful content persist. Early indications suggest that, even with the Digital Services Act reforms, defining harmful but legal content will continue to be problematic, and it is therefore suggested here that a preferred approach should be to encourage platforms to allow greater user-based moderation so that users can choose what is seen in their respective feeds, rather than relying on platforms to do this for all users across all manner of cultures.

As such, as a direct consequence, the willingness of platforms to address harmful and illegal content has been somewhat limited. These measures do not encourage platform operators such as Twitter and Facebook to act on such content. In recent years, platforms have shown some limited willingness to engage with initiatives from the European Commission and take measures to address selected categories of content on their platforms. These measures have included adopting principles for the removal of content inciting hatred,<sup>47</sup> content on addressing illegal hate speech online<sup>48</sup> and other measures that do not address characteristics such as race or religion.<sup>49</sup> Despite the so-called progress that is hinted at by these indicators of co-operation, there are two points worthy of note. First, none of these measures specifically address issues of OVAW, and even where there are broad mechanisms for addressing – for example – content inciting hatred, they are non-specific. Second, even where there are specific measures designed to tackle specific forms of hatred such as racist hate speech online, there is no specific consideration of gender within this. Platforms can therefore act to remove content inciting racial hatred, but not to remove content inciting gendered hatred. Even where there are instances of racial *and* gendered hatred, no consideration of the gendered prejudice will be forthcoming because removal can be considered on the basis of racial hatred alone.

Even where platforms do take some steps to address posts on their platforms, reports of failure to act even where content is reported are not uncommon.<sup>50</sup> This situation is particularly prevalent given that these social platforms are increasingly outsourcing content moderation,<sup>51</sup>

---

<sup>44</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

<sup>45</sup> Consultation on the Digital Services Act, June 2020, available at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers>.

<sup>46</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, Article 12. Other measures introduced include: European Commission, Communication (COM 2017) 555 (final) of 29 September 2017 on Tackling Illegal Content: Towards an enhanced responsibility of online platforms; and European Commission, Recommendation C(2018) 1177 (final) of 1 March 2018 on measures to effectively tackle illegal content online.

<sup>47</sup> The European Commission presented guidelines and principles to address removals of online content inciting hatred in September 2017. See EC, 'Tackling Illegal Content Online', 28 September 2017, available at: <https://ec.europa.eu/digital-single-market/en/news/tackling-illegal-content-online>.

<sup>48</sup> European Commission, 'Code of Conduct on Countering Illegal Hate Speech Online', 30 June 2016, available at: [https://ec.europa.eu/info/sites/info/files/code\\_of\\_conduct\\_on\\_countering\\_illegal\\_hate\\_speech\\_online\\_en.pdf](https://ec.europa.eu/info/sites/info/files/code_of_conduct_on_countering_illegal_hate_speech_online_en.pdf).

<sup>49</sup> For such other measures, see European Commission, 'Code of Practice on Disinformation', 26 September 2018, available at: <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>.

<sup>50</sup> Elgot, J., 'Twitter failing to act on graphic images and abusive messages, says MP', *The Guardian*, 22 August 2017, available at: <https://www.theguardian.com/technology/2017/aug/22/twitter-failing-to-act-on-graphic-images-and-abusive-messages-says-mp>;

McGoogan, C., 'EU accuse Facebook and Twitter of failing to remove hate speech', *The Telegraph*, 5 December 2016, available at: <https://www.telegraph.co.uk/technology/2016/12/05/eu-accuses-facebook-twitter-failing-remove-hate-speech/>.

<sup>51</sup> Levy, S. (2020), *Facebook – The Inside Story*, Penguin, p. 444.

and the volume of content is increasing at a rate which makes moderation almost unworkable with only human moderators.<sup>52</sup> Legal responses to OVAW need to take into account the volume of content and the scale of the problem, as well as the role and responsibilities of platform providers and social media companies – something that is seemingly not relevant nor taken into consideration in tackling VAW offline.

#### 4. Combatting OVAW – the fragmentation problem and the European Commission Gender Equality Strategy 2020-2025

The political commitment to combatting violence against women is strong, be it at the CoE, the European Parliament or the European Commission. Most recently, it was reflected in Ursula von der Leyen’s political agenda, which set the need to combat gender-based violence – presumably in both its online and offline forms – across the EU as a priority. Von der Leyen focused in particular on the issues surrounding the EU’s accession to the Istanbul Convention and suggested adding violence against women to the list of crimes in the EU treaty<sup>53</sup> – now reflected in the EC Gender Equality Strategy for 2020-2025 (EC GES).<sup>54</sup> The strategy makes a number of important points recognising the need to tackle online gender-based violence – including a commitment to clarifying the responsibilities of online platforms in respect of user-disseminated content.<sup>55</sup> However, it is striking that the EC GES does not elaborate on the proposed scope of state obligations concerning positive steps to tackle OVAW (alongside a plan to identify these obligations for platform providers) which, albeit not binding, could provide guidance for future legislative proposals on this pertinent issue. The strategy relies strongly on the notion of gender mainstreaming across EU policies<sup>56</sup> – a concept which is not novel, but which has been criticised by some feminist authors for promoting an ‘add women and stir’ approach,<sup>57</sup> having little transformative potential beyond political commitments at a supranational level. Furthermore, questions arise as to whether future policies and steps taken by the EC will in fact encompass a truly intersectional approach. Despite a declared commitment to the intersectional approach being present in the EC GES, the strategy itself does not go far enough to explore the multiple and intersecting grounds of discrimination against women across the EU. Nonetheless, it remains to be seen how the EC GES will be operationalised and implemented, and whether the commitment to mainstreaming gender across policy areas will become a reality rather than remaining just another political commitment.

It is to be hoped that these objectives will be prioritised in the work of the European Commission, with closer attention falling on the overlap between tackling violence against women and gender inequalities on the one hand, and the Commission’s principal concern of building a ‘Europe fit for the digital age’ on the other.<sup>58</sup> As the EC GES indicates, the European

---

<sup>52</sup> Roberts, S. T. (2019), *Behind the Screen: Content Moderation in the Shadows of Social Media*, Yale University Press, p. 2.

<sup>53</sup> Von der Leyen, U., ‘A Europe that strives for more. My agenda for Europe. Political guidelines for the next European Commission 2019-2024’, available at: 11 [https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf).

<sup>54</sup> European Commission, *A Union of Equality: Gender Equality Strategy 2020-2025*, 5 March 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0152&from=EN>.

<sup>55</sup> European Commission, ‘A Union of Equality: Gender Equality Strategy 2020-2025’, 5 March 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0152&from=EN>, p. 5.

<sup>56</sup> European Commission, ‘A Union of Equality: Gender Equality Strategy 2020-2025’, 5 March 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0152&from=EN>, p. 15.

<sup>57</sup> Chinkin, C., ‘Feminist Interventions into International Law’ *Adelaide Law Review*, 19(1), 1997, pp. 13, 18; Kouvo, S., ‘The United Nations and Gender Mainstreaming: Limits and Possibilities’ in Buss, D. and Manji, A. (eds.) (2005) *International Law: Modern Feminist Approaches*, Hart, pp. 237-252.

<sup>58</sup> European Commission, ‘A Europe fit for the digital age’, available at: [https://ec.europa.eu/info/priorities/europe-fit-digital-age\\_en](https://ec.europa.eu/info/priorities/europe-fit-digital-age_en).

Commission perceives these two areas as interlinked and closely related. That said, a closer look at the policy areas of ‘A Europe fit for the digital age’<sup>59</sup> reveals a focus on issues surrounding data protection, the digital marketplace, digital networks and services, and economy and society. However, none of these areas address the issues of digital exclusion of women from online public spaces, the impact of OVAW on its victims or the wider issue of (gender) inequalities online. For instance, while the EC GES recognises that OVAW acts as a barrier to women’s participation in public life,<sup>60</sup> it fails to acknowledge the wider effects of OVAW in discouraging young women from entering careers which likely involve working in online environments, including boosting ‘women’s participation in digital’.<sup>61</sup> Interesting examples of fragmentation persist, even across different gender equality portfolios, further indicating that there is a lack of holistic and ‘joined up’ thinking across the remit of the European Commission despite the extensive coverage the Commission offers in other areas. The attention paid to – for instance – gender equality in the research and development sectors<sup>62</sup> is admirable and potentially encouraging, yet to date the same attention and focus has not been paid to issues of OVAW. Similarly, while the EC GES calls for gender parity in decision-making and in politics, it fails to give explicit recognition to the harmful effects of OVAW on women’s participation in political life – for both existing and aspiring women politicians – which include alarming reports of women withdrawing from politics due to harassment and abuse suffered online.<sup>63</sup>

Overall, while the EC GES attempts to address some of the concerns expressed earlier in this article about the treatment of OVAW, this approach still demonstrates what we refer to as a ‘fragmented approach’ to tackling OVAW, which is relentlessly applied by intergovernmental agencies and bodies and is – sadly – reflected in domestic approaches to tackling online abuses and violence, including OVAW. Ultimately, this fragmentation, which arises from the lack of precisely articulated steps needed to encompass OVAW in policies concerning digital reforms, amounts to a failure at all levels.

Such fragmentation can be observed in a number of contexts and at various levels, including domestic, supranational and international law and policy initiatives. However, gender and platform perspectives within initiatives designed to tackle OVAW are mutually exclusive. For example, when considered from a gender perspective, the initiatives aimed at addressing OVAW thus far focus almost exclusively on the gender equality perspective, without giving due consideration to the broader regulatory environment in which gender-based harms and OVAW take place. Although the DSA initiative (still open for consultation at the time of writing this article) may change this approach to a more comprehensive one – i.e. in which gender equality and platform regulation are considered together – it has up to now been relatively common for such policies to ignore the perspective of platform regulation and the issue of legal obligations on platform providers, especially in relation to gender-based hate, violence, and the abuse of women perpetrated on these platforms. For instance, the German

---

<sup>59</sup> European Commission, ‘A Europe fit for the digital age’, available at: [https://ec.europa.eu/info/priorities/europe-fit-digital-age\\_en](https://ec.europa.eu/info/priorities/europe-fit-digital-age_en).

<sup>60</sup> European Commission, ‘A Union of Equality: Gender Equality Strategy 2020-2025’, 5 March 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0152&from=EN>, p. 5

<sup>61</sup> European Commission, ‘EU countries commit to boost participation of women in digital’, 9 April 2019, available at: <https://ec.europa.eu/digital-single-market/en/news/eu-countries-commit-boost-participation-women-digital>; EC GES (2020), p. 10.

<sup>62</sup> European Commission (2017), *Gender Equality Strategy in EU Research & Innovation*, available at: [https://graphene-flagship.eu/news/Documents/Gender%20Equality%20Strategy%20in%20EU%20RI\\_.pdf](https://graphene-flagship.eu/news/Documents/Gender%20Equality%20Strategy%20in%20EU%20RI_.pdf).

<sup>63</sup> Barker, K. and Jurasz, O., ‘Violence Against Women in Politics (#VAWP) – The Antithesis of (Online) Equality’, Scottish Policy and Research Exchange, 10 May 2019, available at: <https://spre.scot/violence-against-women-in-politics-online/>.

*Netzwerkdurchsetzungsgesetz* legislation<sup>64</sup> – colloquially known as the ‘hate speech act’ – rightly focuses on speech issues relating to the posting of unlawful content on social media platforms. It was introduced specifically to allow the enforcement of 22 other pieces of legislation that address harms including insults, child pornography, intimate privacy violations and incitement to hatred online.<sup>65</sup> There is, however, no specific consideration within that legislation of sexist hate speech, neither in terms of prohibitions nor in terms of protections. Similarly, the UK Government *Online Harms White Paper* specifically lists 23 categories of online harm<sup>66</sup> that it is envisaged an Online Harms Bill would address, but again there is a significant omission in that no gender protections are listed within this – albeit not exhaustive but still indicative – list.

This continued approach of ‘regulation by omission’ is a misguided one which reinforces the false perception that (O)VAW is a ‘women’s only issue’ rather than an issue of equality – not only gender equality and freedom from gender-based violence, but also equality of participation in the public sphere. Furthermore, such an approach creates a dichotomy between the realm of gender inequality and VAW, and the realm of technology and internet regulation. Excluding joint consideration of these issues means that OVAW and platform regulation are effectively portrayed as mutually exclusive concepts, resulting in only half-baked responses. For instance, where there is a platforms perspective, there is no gender analysis; on the contrary, when gender perspectives are considered, there is little or nothing on the substantive liability of platform providers – all of which curtails efforts to meaningfully address OVAW.<sup>67</sup>

The gender-platforms dichotomy is further reinforced by the common counterargument that OVAW cannot be legally regulated due to freedom of expression concerns. Internet platforms, and social media platforms in particular, are portrayed as bastions of freedom of expression, and it is argued that any attempts to regulate gender-based abuse and violent behaviours online would encroach on other users’ right to freely express themselves online. Paradoxically, freedom of expression concerns – although so prominent in relation to the regulation of online gender-based abuse – somewhat fade away when it comes to attempts to regulate other illegal or otherwise harmful content online, such as content that is deemed ‘terrorist’.<sup>68</sup> The juxtaposition of gender equality and freedom of expression creates a hierarchy of democratic values – as well as harms – whereby the value of protecting gender equality and advancing the non-discrimination of women is inferior to freedom of expression, including the freedom to express misogynistic views.<sup>69</sup> The untenability of maintaining such a hierarchy has been recognised by the CoE in its Gender Equality Strategy, which expressly observes that ‘freedom of expression is often abused as an excuse to cover unacceptable and offensive behaviour’.<sup>70</sup>

---

<sup>64</sup> Translated as the Network Enforcement Act, 2017. Hereafter NetzDG.

<sup>65</sup> Tworek, H., *An Analysis of Germany’s NetzDG Law*, Transatlantic Working Group, 15 April 2019. [https://www.ivir.nl/publicaties/download/NetzDG\\_Tworek\\_Leerssen\\_April\\_2019.pdf](https://www.ivir.nl/publicaties/download/NetzDG_Tworek_Leerssen_April_2019.pdf).

<sup>66</sup> HM Government, *Online Harms White Paper*, April 2019 (CP 57), 31.

<sup>67</sup> Barker K. and Jurasz, O. (2019), *Online Harms White Paper Consultation Response*, available at: <http://oro.open.ac.uk/69840/>.

<sup>68</sup> See, for example, European Commission, Recommendation C(2018) 1177 (final) of 1 March 2018 on measures to effectively tackle illegal content online. Although freedom of expression is referred to in the document, it is in the context of the need to consider potential safeguards to freedom of expression rather than negating the need for and/or possibility of regulation altogether. See also: NetzDG.

<sup>69</sup> Barker, K. and Jurasz, O., ‘Online Misogyny: A Challenge for Global Feminism’, *Journal of International Affairs* 72(2), 2019, pp. 95-113, 105.

<sup>70</sup> CoE, *Gender Equality Strategy 2018-2023*, June 2018, available at: <https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1>, para. 44. A similar point has been made by the UN Special Rapporteur on violence against women, its causes and consequences and by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: UN OHCHR, ‘UN experts urge States and companies to address online gender-based abuse but warn against censorship’, 8 March 2017, available at:

However, beyond this important recognition, efforts to tackle OVAW at the European level have shown no signs of incorporating a ‘joined-up thinking’ approach to bridge the gap between gender equality/VAW issues, and digital technology/internet regulation. Given the current priority reform agendas in these respective areas, this further adds to the notion of fragmentation with an inability to think across, and beyond, strictly confined policy areas.

Another area of fragmentation is the terminology and language used to describe OVAW and – as inherently follows – the way in which offences pursuant to OVAW are defined (or not) in domestic laws and legal documents. The term ‘OVAW’ is not generally used in the documents examined in this article. Instead, the focus is on ‘online sexist hate speech’, ‘cyberstalking’, ‘online abuse’, ‘online sexism’, ‘online attacks’ and ‘sexualised threats online’.<sup>71</sup> While the terms used suggest various forms of online abusive behaviours, there is very little certainty as to exactly which behaviours they describe and how, if at all, these acts are defined or captured within the law at both the supranational and domestic levels. There is a tendency to subsume quite distinct forms of OVAW within other general categories of online abusive behaviours such as cyberbullying or image-based sexual abuse, largely to the exclusion of non-image-based, textual forms of online abuse.<sup>72</sup> The interchangeable and frequently incorrect use of terms attempting to describe specific OVAW offences results in the production of a confusing picture of what OVAW is and which acts amounting to OVAW are defined in law – and if so, how. As we note above, an unintended consequence of such narrow categorisations of OVAW results in the exclusion of other (legal) aspects and categories which equally characterise it.<sup>73</sup>

Furthermore, this linguistic fragmentation is reinforced by the diversity of institutions and bodies (at both governmental and non-government levels) whose work focuses on OVAW or other forms of online abusive behaviours. Different areas of focus, different institutional priorities and varying levels of expertise on the legal aspects of OVAW mean that there is effectively scarcely any attempt to harmonise the use of terminology. Similarly, OVAW is frequently ‘co-opted’ into other agendas in a manner that diminishes the gender perspective and root causes of this form of abuse, or which favours the regulation of online abusive behaviours where they concern minors rather than adult women or can be captured under a different agenda (e.g. OVAW as a part of domestic violence). This is particularly evident – to note but one example – in the UK Government’s recent *Online Harms White Paper*;<sup>74</sup> it lists 23 types of potential ‘harm’, yet this (albeit non-exhaustive) list fails to include gender-based abuses. Similarly, the absence of gender considerations is also noticeable within the Online Harms proposals, highlighting that the gender perspective is not considered in platform regulation discussions. This persistent omission leads to potentially harmful and unfair outcomes for the victims – for instance, an act of OVAW committed in a domestic violence context would offer an avenue of redress for the victim, while the same act committed outside that context would not. Such an approach inherently leads to the creation of a hierarchy of harms<sup>75</sup> and victims, reinforcing a double inequality: first, the inequality that led to the

---

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21317#:~:text=%E2%80%9CEnsuring%20an%20internet%20free%20from,is%20integral%20to%20women's%20empowerment.%E2%80%9D>

<sup>71</sup> Terms used in the *Gender Equality Strategy* and in CoE, Recommendation on preventing and combatting sexism.

<sup>72</sup> Barker, K. and Jurasz, O., ‘Text-based (sexual) abuse and online violence against women: towards law reform?’ in Bailey, J., Flynn, A. and Henry, N. (2021), *Technology-Facilitated Violence and Abuse – International Perspectives and Experiences*, Emerald.

<sup>73</sup> Barker K. and Jurasz, O. (2019), *Online Misogyny as a Hate Crime: a Challenge for Legal Regulation?*, Routledge, xiii.

<sup>74</sup> HM Government, *Online Harms White Paper*, April 2019 (CP 57), p. 31.

<sup>75</sup> Barker, K. and Jurasz, O., ‘Text-based (sexual) abuse and online violence against women: towards law reform?’ in Bailey, J., Flynn, A. and Henry, N. (2021), *Technology-Facilitated Violence and Abuse – International Perspectives and Experiences*, Emerald.

commitment of OVAW and, secondly, the inequality in the treatment of victims of the same crime in the legal and justice system.

## 5. OVAW and VAW Recommendations for Resolving Fragmentation?

Given the pressing need to adopt an approach which is not disparate and fragmented, gender equality online should be a principal objective for all institutions with a remit in, or responsibility for, gender equality. The fragmented, disparate, and disjointed approaches to platform regulation, and to internet regulation more broadly, have consistently failed to offer regulatory solutions to the pervasive and increasingly harmful phenomenon of OVAW. This is mirrored in the lack of cohesive mechanisms to address OVAW at CoE and EC levels. That said, there are potential avenues for reform on the horizon when it comes to redressing the balance for women's equality online and tackling OVAW. To that end, and in light of the preceding analysis of consistent failings, this paper now offers four workable recommendations for tackling the current fragmented approach to OVAW.

### (a) An Amended Approach – 'Joined-Up Thinking'

First and foremost, an amended approach to issues of OVAW is required at all levels, but in particular from EU and European institutions – especially those beyond the European Commission and the CoE, including the European Parliament and the European Council. There needs to be a distinct and emphasised approach to addressing and resourcing activities combatting OVAW. This requires institutions, civil society and experts to come together to discuss OVAW *specifically*, and to think about it cohesively. Isolated initiatives can no longer be offered – while undoubtedly beneficial, they have proven to be too sporadic to have a substantive impact on the broader phenomenon of OVAW. In short, fragmented and disjointed or isolated initiatives/agendas must be a thing of the past. Mechanisms of abusing women and spaces in which such abuse occurs have developed to encompass technology and the internet – accordingly, initiatives to tackle these abuses must also evolve. A holistic, collaborative approach to OVAW must become a flagship initiative, with the EU leading the way. This will continue to address VAW but give a new emphasis to OVAW and non-traditional forms of text-based abuses.

### (b) Legislative Benchmarking – Gender and Platform Dichotomy

Secondly, there must be renewed efforts to expressly incorporate OVAW within the legal framework at the CoE and EU levels. This should necessitate, at the very least, the amendment of the Convention on Cybercrime (Budapest Convention)<sup>76</sup> to include all forms of OVAW. Moreover, the Budapest Convention should include specific definitions of behaviours capable of amounting to OVAW. The focus of the Budapest Convention has so far fallen on crimes committed via the internet, and while the CoE claims that this convention is the 'first' international treaty dealing with such crimes and the commission of them, there remain – in our view – some significant weaknesses in its provisions. Interestingly, the Budapest Convention is supplemented by an Additional Protocol,<sup>77</sup> which deals with specific forms of

---

<sup>76</sup> Convention on Cybercrime of the Council of Europe (CETS No. 185), 23 November 2001 (Hereafter, Budapest Convention).

<sup>77</sup> Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189), 28 January 2003.

hatred manifested through online means. However, the emphasis of this protocol rests on xenophobia and racism, and it does not include provisions relating to gendered abuses or gender equality online. The Budapest Convention itself suffers from further weaknesses in that it is now somewhat outdated; despite discussions concerning the drafting of a second additional protocol in 2019<sup>78</sup> – focussing on data-related aspects of the internet and mutual legal assistance – there are still no provisions offered within this framework to address gender-based abuses online.

The Budapest Convention is, nevertheless, not the only legal mechanism that requires a firmer stance on OVAW – so too does the Istanbul Convention. Given that the Istanbul Convention is potentially applicable to the media sector, this would, for the first time, allow for private platform operators such as Twitter to be required to develop standards and regulatory mechanisms to tackle OVAW on their platforms. There is, after all, very little evidence to date showing private sector actors engaging with mechanisms to offer their users protection from OVAW, even where they have shown willingness to engage with other regulation, such as data protection. More importantly, taking such steps would effectively mean that the dichotomy between platform operators and gender would have to be actively bridged, and women would have to be equally considered alongside platform regulation debates – something which has not previously been considered.

In adding women to considerations in platform regulation debates, there is a pressing need for the digital services reform agenda to encompass perspectives on OVAW. While reforming digital services across the EU is – understandably – a priority in the digital age, it is disappointing to see that no emphasis falls on efforts to ensure that online platforms and spaces are safe spaces for women to engage in. In reforming other elements of the digital realm – including content regulation to protect creative artists – there is a clear appetite to prioritise some interests over others. Given the priority list of areas for reform under the digital services agenda, it is again disappointing to see that there is no gender component present, despite the nature of online harassment and OVAW. As the digital services reform package is still in progress, there is still time for this to be modified to include mechanisms to address OVAW. Given that the European Parliament has been rather silent on the issue of OVAW generally – with the digital services reform agenda resting with the European Commission<sup>79</sup> – it is perhaps time that the issue was moved front and centre; tweaking the digital services reform package would be one way of ensuring a different emphasis on OVAW at the highest legislative levels. By incorporating a specific gender aspect in considerations of digital reform, the dichotomy between platform regulation and gender equality would no longer be an obstacle to *online* gender equality.

### (c) Definitional Consistency

Thirdly, in addressing changes to the institutional thinking and legislative frameworks, it is necessary to give credence to one of the – potentially – more challenging aspects of OVAW: definitional consistency. As we have noted both here and elsewhere, terms in the OVAW area are frequently used interchangeably, without precision, and to address ‘similar’ behaviours

---

<sup>78</sup> CoE, ‘Consultations with civil society, data protection authorities and industry on the 2<sup>nd</sup> Additional Protocol to the Budapest Convention on Cybercrime’, available at: <https://www.coe.int/en/web/cybercrime/protocol-consultations>.

<sup>79</sup> European Commission, ‘A Europe fit for the digital age’, [https://ec.europa.eu/info/priorities/europe-fit-digital-age\\_en](https://ec.europa.eu/info/priorities/europe-fit-digital-age_en).

that are often not ideal comparators and which do not capture the accuracy of the behaviour, nor its harm. It is therefore imperative that clear and precise definitions and terms are established and – critically – that they are used accurately. Terminology must focus on OVAW as the phenomenon, and attention must be given within this to non-image-based abuses. OVAW that manifests as textual threats to rape or kill, or harassment, must be categorised as text-based abuse and as OVAW. Focusing solely on image-based abuses as OVAW does not offer a full picture and fails to capture much of the harassment that is violently inflicted on women online. Similarly, not including text-based abuses within OVAW does not address the equality challenge for women online. In addressing both text-based and image-based abuses, OVAW as a term will enhance reporting procedures, but also offer some consistency to law enforcement and activist initiatives. In turn, capturing TBA alongside IBSA reflects the ongoing harm suffered by women online.

#### (d) Momentum rather than Moments

Fourthly, showboating, ‘PR’ opportunities and ‘glossy’ campaigns must be recognised as political posturing – usually at politically appropriate moments in the calendar year,<sup>80</sup> such as International Women’s Day or the International Day for the Elimination of Violence Against Women. While these days are important, and it is right that they be recognised, there is a careful balance to be struck between recognising them with events and statements, and simply using them for other, more politicised purposes. Using these opportunities for pure posturing does not offer much in terms of tackling OVAW and addressing the significant harms that such behaviours cause for those on the receiving end. Events should be used to highlight or reinforce ongoing work, and should mark the culmination of work to address gender equality and OVAW; they should not simply be press stunts, especially where organisations that have – arguably – fallen short on action to address OVAW and VAW are those repeatedly hosting such ‘glossy’ events. To continue to host PR activities on strategically important days serves to undermine the severity of the issues being discussed here; a glossy campaign poster and a social media campaign does little to directly tackle OVAW<sup>81</sup> and its impact long-term.

## 6. Conclusions

Small, incremental, and isolated initiatives no longer work in addressing issues of OVAW. The proliferation of digital living, together with the prevalence of OVAW, makes this a very real challenge for contemporary society. This is due – at least in part – to the increased requirement to be active online in order to fully participate in society, yet readily being ‘online’ means being open to harassment, abuse, and violence. In reality, ‘social media platforms belong to the companies that create them and they have almost absolute power over how they are run’,<sup>82</sup> and this continues to be a significant regulatory challenge in tackling OVAW. Social media platforms, despite claims of free expression, remain private entities that are increasingly providers of so-called ‘public space’. Until this paradox is addressed, regulation will continue to be challenging. OVAW is a distinct threat not only to the rights of women, but also to the existence and business models of online platforms, and a continued failure to address fragmented responses to TBA as a form of OVAW will result in consistent and repeated harms.

---

<sup>80</sup> Barker, K. and Jurasz, O., ‘Why misogyny and hate crime reforms need more than slick campaigns’, *The Conversation*, 23 March 2020, [https://theconversation.com/why-misogyny-and-hate-crime-reforms-need-more-than-slick-campaigns-134265#comment\\_2180791](https://theconversation.com/why-misogyny-and-hate-crime-reforms-need-more-than-slick-campaigns-134265#comment_2180791).

<sup>81</sup> Barker, K. and Jurasz, O., ‘Online Misogyny as a Hate Crime: #TimesUp’ in Zempi, I., Smith, J. (2020) *Misogyny as Hate Crime*, Routledge.

<sup>82</sup> Suzor, N.P. (2019), *Lawless – The Secret Rules That Govern our Digital Lives*, Cambridge University Press, p. 11.



There is currently a unique opportunity to tackle the dominance of platforms by moving away from notions of self-regulation and by putting OVAW at the heart of policy agendas. In short, it is our recommendation that legal reform should be introduced to require platforms to address TBA and IBSA on their sites, and in so doing to address all forms of OVAW. In addition, further reforms should be introduced to ensure that TBSA and IBSA are explicitly captured, rather than being treated as a sub-category of sexual harassment provisions. It is essential that concerted efforts are made to tackle the pernicious and widespread phenomenon of OVAW, and to expressly include OVAW in policy, legislative, and enforcement arenas.