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Gert Vermeulen, Nina Peršak
& Stéphanie De Coensel *(Eds.)*

Researching the boundaries of **sexual integrity, gender violence and image-based abuse**

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Summary

IT'S (NOT) A MAN'S WORLD. THE EU'S FAILED BREAKTHROUGH ON AFFIRMATIVE SEXUAL CONSENT

CAUGHT BETWEEN GENDER-SPECIFICITY AND GENDER EQUALITY

Gert Vermeulen and Wannes Bellaert[*]

Abstract

This paper discusses the non-inclusion in the EU's Gender Violence Directive of May 2024 of a provision on mandatory EU-wide criminalisation of rape of women, though proposed by the European Commission in its 2022 draft. The provision went significantly further than the Council of Europe's 2011 Istanbul Convention, by bringing much-needed clarity on consent (by unambiguously requiring it to be affirmative) as well as on factors precluding freely given consent. The scope limitation to women was in line with the EU's criminalisation competence for so-called Euro-crimes, featuring 'sexual exploitation of women and children'. While the European Parliament had supported the provision and even proposed to mirror it for sexual assault, the Council of the EU has opposed it, for two reasons. The first erroneously held that 'sexual exploitation of women and children' was not a self-standing Euro-crime and that the label 'sexual exploitation' could not be stretched to rape, being a form of gender violence. The second objection was valid: a gender-specific criminalisation of rape of women only was (and is) in violation of EU law, which prohibits discrimination based on sex and (gender) inequality. While this formally explains the EU's failure in criminalising rape (and sexual assault) featuring a gender-specific and affirmative sexual consent requirement, the Council's rejection may have been prompted also by gendered conceptions about sexuality and sexual interactions in certain Member States. The paper offers a clear way forward, ie to extend the Euro-crimes list with sexual offences against persons of whichever gender (female, male, trans).

1 Interpretive ambiguity around non-consensuality, despite Istanbul

Consent issues in sexual interactions are often not black and white but complex, both conceptually and factually. Consequently, evidentiary discussions are manifold, and not limited to hetero-stereotypical 'he said, she said' situations. Evidentiary discussions can never be entirely avoided, and that is fine, for they are inherent to adversarial proceedings and the right to defence. Nonetheless, they are simplified and can be conducted more meaningfully and with greater precision when the conceptual quality requirements for valid sexual consent are clearly defined, and the constitutive role of consent (or non-

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consent or the presence or absence of either) in sexual offence descriptions is clear and unequivocal.

The #MeToo movement has not only sharpened the societal and political debate on sexually transgressive behaviour but also underscored the urgency of a renewed consent debate. Various countries – especially in the Western world – have since been revising the concept of sexual consent and sexual criminal law. At least at the European level, the impetus for this was broader and predates the #MeToo movement.

Some European countries did not yet meet the standard set by the European Court of Human Rights in 2003 in *M.C. v Bulgaria*,[1] which stated that all 'non-consensual' sexual acts must be criminalised and that no physical resistance by a participating party is required for sexual acts to be considered non-consensual. The Council of Europe further anchored this in the 2011 Istanbul Convention on preventing and combating violence against women and domestic violence (CETS 210).[2] Art. 36 (concerning sexual violence, including rape) prescribes that intentional 'non-consensual' acts of a sexual nature must be criminalised. The fact that Art. 36 itself does not clarify the meaning of 'non-consensual' – at least not in the authentic English language version[3] – has undoubtedly added to the interpretive ambiguity associated with the notion. Often, legal practice as well as doctrine, both before[4] and since[5] the Istanbul Convention, take it that non-consensuality requires one of the parties *not* to consent to the sexual acts. Substantive discussions on the difference between '*non*-consent' and '*without* consent' have been scarce[6] in legal

[1] ECtHR, 4 December 2003, No 39272/98, M.C. v Bulgaria.

[2] Council of Europe Convention on preventing and combatting violence against women and domestic violence, No. 210, 11 May 2011.

[3] Note that eg in Dutch (both in the unofficial translation by the Council of Europe and the authentic version in the Belgian Official Gazette, as Belgium ratified the Convention in 2016: Wet 1 maart 2016 houdende instemming met het Verdrag van de Raad van Europa inzake het voorkomen en bestrijden van geweld tegen vrouwen en huiselijk geweld van 11 mei 2011, Belgisch Staatsblad, 9 June 2016), non-consensual is translated as '*without* mutual consent' [emphasis added]. This choice of words not only adequately expresses the required mutuality for permissible sexual conduct (without the consent of both (or all) parties involved, it must be criminalized) but also avoids interpretive ambiguity.

[4] See eg Liesbeth Stevens, *Strafrecht en seksualiteit. De misdrijven inzake aanranding van de eerbaarheid, verkrachting, ontucht, prostitutie, seksreclame, zedenschennis en overspel* (Intersentia, 2002) who, in her then vision on a 'new' Belgian criminal law framework for human sexual interactions, suggested that these should be punishworthy in case of 'non-consensualism' only, ie 'when at least one of the persons involved does *not* or not validly consent' ('wanneer minstens één van de betrokkenen er *niet* of niet geldig mee toestemt') [emphasis added].

[5] See eg Dominik Brodowski, 'Protecting the right to sexual self-determination: models of regulation and current challenges in European and German sex crime laws' in Eduardo Saad-Diniz, *O lugar da vítima nas ciências criminais* (LiberArs, 2017) 20, who, drawing on the notion '*non-consensual*' in the English language version of the Convention, interprets Art. 36 as if it requires 'that there [is] some form of (explicit or implicit) *disagreement*' [emphasis added].

[6] See inter alia Gert Vermeulen, 'Seksuele toestemming in het nieuwe seksueel strafrecht: onvolkomen, inconsistente en aarzelende progressie', in Gert Vermeulen, Laura Byn and Stéphanie De Coensel (eds), *Seksuele autonomie, normativiteit, exploitatie en deviantie: criminologische en juridische verkenningen* (Gompel & Svacina, 2022), 25-45.

scholarship, which, especially since #MeToo, has primarily focused on (the pros and cons of) shifting sexual consent models from 'no means no' to a resolute 'yes means yes'.[7] '*Non*-consent' and '*without* consent' are mostly used interchangeably, and without discussion or even consideration regarded as meaning the same. This fails to recognise that for intentional sexual acts to be punishable in accordance with Art. 36 of the Istanbul Convention, it is *not* required that one of the parties does *not* consent. The mere *absence* of free consent of one of the parties suffices. The explanatory report[8] is clear on the issue: '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' [emphasis added]. Implementing states, however, are allowed full discretion as to the specific wording of the criminal provisions concerned, provided they stick with the minimum requirements for free consent in Art. 36.2 (in that it 'must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances'). Neither does the Convention specify factors that preclude freely given consent, leaving it to states to either do so or not. Against the backdrop of the interpretive ambiguity around non-consensuality and the considerable legislative leeway allowed by the Istanbul Convention, it is hardly surprising that many sexual consent models, including in Council of Europe states that have ratified the Convention, have continued to require (proof of) *non*-consent for sexual acts to be criminal,[9] while the Convention in fact requires criminalisation as soon as these acts are committed *without* the consent of one of the parties. Where *M.C. v Bulgaria* had long clarified that criminal laws that only criminalise sexual acts in case of physical resistance or other expressions of opposition no longer met the European standard, the Istanbul Convention in fact prohibits states to continue requiring a refusal

[7] See eg Laura Byn, 'Seksuele toestemming over de grenzen heen' in Gert Vermeulen, Laura Byn, and Stéphanie De Coensel (eds), *Seksuele autonomie, normativiteit, exploitatie en deviantie: criminologische en juridische verkenningen* (Gompel & Svacina 2022) 47-62; Linnea Wegerstad, 'Sex Must Be Voluntary: Sexual Communication and the New Definition of Rape in Sweden' (2021) 22(1) German Law Journal 734.

[8] Explanatory report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011.

[9] Including in Belgium, where only since 1 June 2022 (ie the date of entry into force of the renewed sexual criminal law), the new offence 'violation of sexual integrity' (Art. 417/7 of the Penal Code) has replaced the former offence of 'indecent assault' (old Art. 372-374 of the Penal Code), which was still based on collective morality instead of self-determination over sexual integrity and did not even reflect a 'no means no' standard. According to the text of the former offence, unless it involved minors under sixteen or persons in a position of authority or dependence, there was no indecent assault but in cases of 'violence, coercion, threat, surprise, or deceit or […] a lack of capacity or a physical or mental deficiency of the victim'. Fortunately, legal practice had already evolved significantly: through a broad interpretation of the terms in the offence description, almost any unwanted or undesired violation of sexual integrity by the victim could already be brought under the term 'indecent assault'; Ann Dierickx, 'Noopt nieuwe seksuele criminaliteit tot nieuwe seksuele misdrijven?' [2016] Preadviezen Vereniging voor de vergelijkende studie van het recht, 133 (margin number 24)

or *non*-consent. Its flawed implementation has been rightly criticised, including by the European Women's Lobby.[10]

2 The promise of much-needed EU clarity: 'no yes' means no

Moreover, several states have discontinued the ratification process[11] of the Istanbul Convention, including Member States of the European Union (hereafter: EU), or have even withdrawn from it,[12] primarily because it features the notion of 'gender' (as well as of 'gender identity' and 'sexual orientation').[13] The adoption of abortion-restrictive measures, even following rape,[14] the creation of LGBTQ+ free zones,[15] and the prevention of recognition of parenthood in same-sex relations made some EU Member States (in particular Poland and Hungary) face an uphill battle with the European Commission (hereafter: Commission).[16] In response, over the last years, the latter launched several new legislative proposals, including a 2021 proposal to include (LGBTQ+ related) hate

[10] European Women's Lobby, 'EWL Barometer on Rape in the EU 2013' (*European Women's Lobby*, June 2013) <https://www.womenlobby.org/IMG/pdf/ewl_barometre_final_11092013.pdf> accessed 5 July 2024.

[11] Armenia, Bulgaria, Czech Republic, Hungary, Lithuania, and Slovakia signed the Convention but never ratified it.

[12] Türkiye ratified the Convention in 2012 but denounced it in 2021.

[13] Eszter Zalan, 'Poland and Hungary battle to eradicate "gender" in EU policies' (*euobserver*, 16 December 2020) <https://euobserver.com/political/150395> accessed 5 July 2024; Maïa De La Baume, 'How the Istanbul Convention became a symbol of Europe's cultural wars' (*Politico*, 12 April 2021) <https://www.politico. eu/article/istanbul-convention-europe-violence-against-women/> accessed 5 July 2024; Graeme Reid, 'Breaking the Buzzword: Fighting the "Gender Ideology" Myth' (*Human rights Watch*, 10 December 2018) <https://www.hrw.org/news/2018/12/10/breaking-buzzword-fighting-gender-ideology-myth> accessed 5 July 2024.

[14] European Parliament, Poland: no more women should die because of the restrictive law on abortion, 11 November 2021; Polish Constitutional Court, K1/20; Krzysztof Wiak, 'Judgment of the Polish Constitutional Tribunal of 22 October 2020 (K 1/20) on Eugenic Abortion' (2021) XIV Teka Komisji Prawniczej PAN Oddział w Lublinie 491; Akmaljon Akhmedjonov and others, 'Europe's growing abortion nightmare' (*Politico*, 01 July 2023) <https://www.politico.eu/article/europes-growing-abortion-nightmare/> accessed 5 July 2024; Krisztina Than, 'Hungarians protest change in abortion rules' (*Reuters*, 28 September 2022) <https://www. reuters.com/world/europe/hungarians-protest-change-abortion-rules-2022-09-28/#:~:text=BUDAPEST%2 C%20Sept%2028%20(Reuters),on%20the%20number%20of%20abortions> accessed 5 July 2024.

[15] European Commission, 'EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people', 15 July 2021; Piotr Kaczynski, 'Poland, an LGBT-free zone?' (*Euractiv*, 21 October 2021) <https://www.euractiv.com/section/politics/short_news/poland-a-lgbt-free-zone/> accessed 5 July 2024; Alan Charlish and Anna Wlodarczak, 'Polish court rules that 'LGBT-free zones' must be abolished' (*Reuters*, 29 June 2022) <https://www.reuters.com/world/europe/polish-court-rules-that-four-lgbt-free-zones-must-be-abolished-2022-06-28/> accessed 5 July 2024.

[16] Court of Justice of the European Union (Grand Chamber), 14.12.2021, C-490/20; Alina Tryfondiou, 'The Cross-Border Recognition of the Parent-Child Relationship in Rainbow Families under EU Law: A Critical View of the ECJ's V.M.A. ruling' (*European Law Blog*, 21 December 2021) <https://europeanlawblog.eu/2021/12/21/the-cross-border-recognition-of-the-parent-child-relationship-in-rainbow-families-under-eu-law-a-critical-view-of-the-ecjs-v-m-a-ruling/> accessed 4 July 2024.

speech and hate crime in the so-called Euro-crimes list[17] (which failed due to lack of unanimity amongst Member States) and a 2022 proposal for Parenthood Regulation[18] (which has low prospects of being adopted any time soon, especially with Hungary, which opposes the proposal, assuming the EU Presidency during the second half of 2024). In contrast, the Commission's 2022 proposal for a Gender Violence Directive (Directive on combating violence against women and domestic violence),[19] aimed to complement the EU *acquis* and the national legislation of the Member States in areas covered by the Istanbul Convention, while additionally focusing on cyber violence against women, was successfully adopted on 14 May 2024[20] – albeit after crucial amendments (*infra*) by the Council (ie one of the two EU co-legislators, the other one being the European Parliament). The Directive, which needs to be transposed in national law and policy by 14 June 2027, requires Member States to criminalise certain forms of violence against women both offline (female genital mutilation (Art. 3) and forced marriage (Art. 4)) and online (non-consensual sharing of intimate or manipulated material (Art. 5), cyber stalking (Art. 6), cyber harassment (Art. 7) and cyber incitement to gender violence or hatred (Art. 8)). In doing so, the Directive clearly goes beyond the obligations of Istanbul Convention, which did not target online forms of gender violence. Further, it features impressive chapters on victim protection and access to justice (chapter 3) as well as on victim support (chapter 4), while Member States must also take measures of prevention and early intervention (chapter 5), including specific measures to prevent rape and to promote the central role of consent in sexual relationships (Art. 35).

Admittedly, such specific preventative measures are badly needed, including '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' (Art. 35.1), 'to increase knowledge of the fact that non-consensual sex is considered a criminal offence' (Art. 35.2), to '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' (Art. 35.3) and to 'inform[…] the general public about existing measures of rape prevention' (Art. 35.4).

Painfully, however, all these must disguise (but fail to compensate) the removal from the initial Commission proposal of a provision (Art. 5 of the proposed text) on mandatory

[17] European Commission, Communication from the Commission to the European Parliament and the Council - A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime, Brussels, COM(2021) 777 final, 9 December 2021.

[18] European Commission, Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, Brussels, COM(2022) 695 final, 7 December 2022.

[19] European Commission, Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, Strasbourg, COM(2022) 105 final, 8 March 2022.

[20] Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, OJ L, 2024/1385.

criminalisation of rape (of women), which featured much-needed clarity on consent (by unambiguously requiring it to be affirmative) as well as on factors precluding freely given consent. The reason is that the Council, as one of both co-legislators (consisting of representatives of the 27 Member States), opposed the entire provision.[21] In contrast, the European Parliament, ie the other co-legislator, had proposed[22] to even insert further protections in the proposed rape provision and to insert an additional provision (Art. 5a) on sexual assault, fully mirroring the affirmative consent guarantees of the rape provision for non-penetrative non-consensual acts of a sexual nature. While one of the two official reasons put forward by the Council for its decisive position is, in fact, valid (both reasons will be scrutinised *infra*, under 3 and 4 respectively), its rejection of a mandatory criminalisation of rape and sexual assault featuring a gender-sensitive and affirmative sexual consent requirement may, in reality, have been prompted by gendered conceptions about sexuality and sexual interactions in certain Member States, represented at Council level.

While the proposed rape provision (Art. 5 of the Commission proposal) also featured the notion of 'non-consensual' act (of vaginal, anal or oral penetration of a sexual nature, with any bodily part or object), it clarified straightforwardly, ie in the provision itself, that Member States should understand it as 'an act which is performed *without* the woman's consent given voluntarily […]' [emphasis added]. The Commission also intended to limit the margin of national legislators further than the Istanbul Convention by stipulating that certain circumstances or factors per se exclude voluntary consent. For instance, Member States would have had to equally classify a penetrative sexual act as non-consensual 'where the woman is unable to form a free will due to her physical or mental condition, thereby exploiting her incapacity to form a free will, such as in a state of unconsciousness, intoxication, sleep, illness, bodily injury or disability.' The European Parliament had even proposed to extend the list with 'fear, intimidation […] or […] an otherwise particularly vulnerable situation' (amendment 103). Not only was the suggested insertion of 'fear' and 'intimidation' as factors that can affect free will truly valuable,[23] the suggested addition of 'an otherwise particularly vulnerable situation' would (notwithstanding that the text already mentions 'such as') have helped in ensuring that judges would not *de facto* interpret the listed situations as exhaustive. It suffices to think of additional situations barring free will of vulnerable victims due to eg their illegal or precarious administrative status, precarious social status, pregnancy or age, such that they have

[21] Council of the EU, Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence – General approach, Brussels, 9305/23, 17 May 2023.
[22] European Parliament, Report on the proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, A9-0234/2023, 6 July 2023.
[23] Given their prevalence and impact in rape situations.

no real and acceptable choice but to allow themselves to be sexually abused.[24] Additionally, the Commission-proposed Art. 5 specified that '[c]onsent can be withdrawn at any moment during the act' and that '[t]he absence of consent cannot be refuted exclusively by the woman's silence, verbal or physical non-resistance or past sexual conduct.' The importance of preventing consent to be inferred from the mere lack of resistance or disagreement can hardly be overestimated, for these may often prove psychologically (fear, blockage) or neurologically (tonic immobility) impossible and are totally counterproductive in avoiding injuries. The inclusion of 'past sexual conduct' would also have considerably helped in preventing victim blaming and (slut) shaming. The European Parliament had further proposed to resolutely strike out 'exclusively' from the text, making it even less ambiguous (amendment 104). It has also suggested to make it equally impossible to refute the absence of consent based on the woman's 'existing or past relationship with the offender including marital or any other partnership status' (amendment 104), thereby rightly addressing inacceptable (male) claims of sexual entitlement towards former partners. Finally, the Parliament's proposed Art. 5a (amendment 105) would have further extended the above standards to all non-penetrative acts of a sexual nature (engaging women). The combined Commission and Parliamentary proposals would have marked a decisive step towards a sexual interaction standard requiring all parties to voluntarily, consciously and mutually affirm (verbally or non-verbally) their consent, provided they are sufficiently competent to do so, while having the ability to withdraw their consent at any moment, and where consent cannot be inferred from mere silence or the absence of resistance.[25] Hence, the mere 'absence' of (mutual) consent would have sufficed for (penetrative and possibly also non-penetrative) acts of a sexual nature to qualify as offences, without the need for a refusal or a verbal or non-verbal expression of non-consent. 'No means no' would have been more excluded than ever, the EU unequivocally embracing an affirmative sexual consent concept, reinforced with relevant additional explicit guarantees, albeit not perfect. Ideally, as in various other branches of law (health law or data protection law, to name two), it would have been proposed for the affirmative consent to not only be free and withdrawable but also explicitly 'prior', as well as informed, unambiguous, and specific.[26]

It bears relevance to note that none of the above would have implied a reversal of the burden of proof, which would force the accused to demonstrate and provide evidence

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[24] Gert Vermeulen, 'Seksuele toestemming in het nieuwe seksueel strafrecht: onvolkomen, inconsistente en aarzelende progressie', in Gert Vermeulen, Laura Byn and Stéphanie De Coensel (eds), *Seksuele autonomie, normativiteit, exploitatie en deviantie: criminologische en juridische verkenningen* (Gompel & Svacina, 2022) 25-45.

[25] Mary G Leary, 'Affirmatively replacing rape culture with consent culture' (2016) 49(1*)* Texas Tech Law Review 1, 8.

[26] Gert Vermeulen, 'Seksuele toestemming in het nieuwe seksueel strafrecht: onvolkomen, inconsistente en aarzelende progressie', in Gert Vermeulen, Laura Byn and Stéphanie De Coensel (eds), *Seksuele autonomie, normativiteit, exploitatie en deviantie: criminologische en juridische verkenningen* (Gompel & Svacina 2022), 25-45; Gert Vermeulen, 'Een stille seksuele strafrechtsrevolutie. Verrassende realiteitszin inzake seksueel strafrecht in het nieuwe Strafwetboek' (2018) 39(6) Panopticon 479; Laura Byn, 'Toestemming tot seksuele handelingen' (Master's thesis, Ghent University 2019).

that valid consent was obtained for the sexual acts concerned. Whilst frequently advocated since #MeToo as part of a strict 'yes means yes' approach,[27] such models seem quite simplistic, and appear to have numerous flaws and even counterproductive effects. Reversing the burden of proof will in fact hardly avoid 'he said, she said' discussions, especially when the claimed consent is only verbal or even non-verbal. Written consent is detrimental to spontaneity in healthy consensual sexual interactions, and, hence, quite an unrealistic expectation. Experiments with consent apps have moreover exposed their weaknesses and counterproductive nature.[28] They are often used only for procedural protection, fail to adequately capture health or mental state and factual context (pressure, intoxication, etc), and typically record a mere snapshot; they thus shield against later non-consent or withdrawal of initial consent (eg, when sexual interaction evolves into other than the initial sexual acts). More fundamentally, the presumption of innocence and the *in dubio pro reo* principle, both inherent to criminal law, must remain intact.

The discussed Commission proposal (as reinforced by the Parliament) aimed at introducing affirmative sexual consent as a substantive criminal law notion only, not a procedural one,[29] without a shift or reversal of the burden of proof. It would, in fact, have set a standard that we consider quite ideal and suggest being labelled a *'no yes' means no* standard,[30] where the absence of positive or affirmative consent ('no yes') is constitutive for a sexual offence ('no'). While the burden of proof remains with the complainant (and potential victim), the latter can suffice by showing that nothing indicates that affirmative consent (opt-in) was given, not even implicitly or non-verbally. This does not eliminate all discussions between the involved actors but fundamentally changes them without shifting the burden of proof, while adequately expressing the societal expectation that mutual affirmative consent is required for sexual acts. The criminal law should be able to give that signal.[31]

3 Fake counterargument: lack of competence

The so-called Euro-crimes list, embedded in the second para of Art. 83(1) TFEU, is an exhaustive list of areas which the EU considers as areas of 'particularly serious crime

[27] John F Decker and Peter G Baroni, 'No Still Means Yes: The Failure of the Non-Consent Reform Movement in American Rape and Sexual Assault Law' (2011) 101(4) J Crim. L & Criminology 1081; Erick Kuylman, 'Constitutional Defense of Yes Means Yes: California's Affirmative Consent Standard in Sexual Assault Cases on College Campuses' (2011) 25(2) Southern California Review of Law and Social Justice 211.
[28] John Danaher, 'Could There Ever be an App for that? Consent Apps and the Problem of Sexual Assault' (2018) 12(1) Criminal Law and Philosophy 143.
[29] As also put forward by Mary G Leary, 'Affirmatively replacing rape culture with consent culture' (2016) 49(1) Texas Tech Law Review 1.
[30] Gert Vermeulen, 'Seksuele toestemming in het nieuwe seksueel strafrecht: onvolkomen, inconsistente en aarzelende progressie', in Gert Vermeulen, Laura Byn and Stéphanie De Coensel (eds), *Seksuele autonomie, normativiteit, exploitatie en deviantie: criminologische en juridische verkenningen* (Gompel & Svacina, 2022), 25-45.
[31] Paul H Robinson, 'The Legal Limits of "Yes Means Yes"' (2016) All Faculty Scholarship 1628.

with a cross-border dimension'. Only for the listed crime areas, featuring inter alia 'trafficking in human beings and sexual exploitation of women and children', the two co-legislators, Council and European Parliament, may establish minimum rules concerning the definition of criminal offences and sanctions. Hence, the list limits the EU's supranational competence in the sphere of substantive criminal law. As mentioned before (*supra*, under 2), the Council successfully opposed the Commission-proposed inclusion of a provision on rape of women in the Gender Violence Directive. An opinion of its Legal Service[32] provided the official underpinning for both Council's counterarguments. The first argument, dealt with in the current section, is plainly unconvincing. It claimed that the EU would lack competence to criminalise rape of women under the Euro-crimes list, because, on the one hand, 'trafficking in human beings and sexual exploitation of women and children' would form a 'single area of crime', and, on the second hand, 'sexual exploitation' could not be stretched so far as to allow bringing rape under it. Both sub-arguments lack credibility.

The first sub-argument, holding that 'trafficking in human beings and sexual exploitation of women and children' was to be considered a 'single area of crime', aimed at underpinning the Council's claim that 'sexual exploitation of women' was no self-standing area in which the EU could propose minimum criminalisation by the Member States. This is a denial of history.

The truth is that, early in the Maastricht era, the domains of 'trafficking in human beings' and 'sexual exploitation of children' got *artificially* connected because of *ad hoc* events in Belgium. Following the adoption in 1995 of forerunner internal legislation on trafficking in human beings and child pornography,[33] Belgium initiated, still in 1995, a proposal for an EU Joint Action concerning action to combat 'trafficking in human beings', which would have been the very first EU legal instrument calling for EU-wide criminalisation of trafficking in human beings. In the summer of 1996, however, Belgium was confronted with the *Dutroux* case,[34] which revealed that young girls had been kidnapped, sexually abused and subsequently killed. The case had raised suspicion and allegations about (international) pedophile networks, involved in trafficking in children, *inter alia* for the purpose of sexual exploitation and exploitation of children in pornographic performances

[32] Council Legal Service, Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence - Legal basis – Scope of Article 83 TFEU - Rules for specific victims – Compatibility with the principle of non-discrimination, 14277/22, Brussels, 31 October 2022.

[33] Liesbeth Stevens and Dirk Dewandeleer, 'De zedenwetten van 27 maart en 13 april 1995. Wijzigingen van Boek II van het strafwetboek' (1997) 1 AJT-dossier.

[34] Marc Dutroux abducted and sexually abused children, raped women, and murdered several persons, including children. He also visited Slovakia, where he also raped women and convinced parents to let their children temporarily travel to Belgium under false pretenses, after which he abused them during their time in Belgium.

and materials.[35] Based thereon, Belgium broadened the scope of its proposal on trafficking in human beings, which was still pending, by *adding* 'sexual exploitation of children'. The enlarged proposal was tabled during the informal Justice and Home Affairs Council meeting in Dublin of September 1996 and adopted in February 1997 as the EU Joint Action concerning action to combat trafficking in human beings *and* sexual exploitation of children[36] [emphasis added]. The informal Council meeting also initiated the so-called STOP programme, ie an incentive and exchange programme for persons responsible for combating trade in human beings *and* the sexual exploitation of children[37] [emphasis added]. The 1997 Joint Action included elements of trafficking in human beings respectively sexual exploitation of children as separate crimes.[38] Logically, the *ad hoc* connection between both crime areas also influenced the Intergovernmental Conference (IGC) 1996 revising the Maastricht Treaty on European Union (TEU). The preparatory work of the Irish Presidency of the Council in the IGC suggested to include '*la lutte contre la traite d'êtres humains et les crimes commis contre des enfants*'[39] amongst the EU priority crimes in the revised treaty. This was confirmed in the 1997 Amsterdam Treaty, which inserted 'trafficking in persons and offences against children' in Art. 29(2) TEU. During the October 1999 Tampere Summit, the European Council put forward that, '[w]ithout prejudice to the broader areas envisaged in the Treaty of Amsterdam […], with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance, such as [list shortened] […] trafficking in human beings, *particularly exploitation of women*, sexual exploitation of children […].'[40] In doing so, the European Council laid the early foundations for the later Euro-crimes list. It was the first time that, on the highest political level, 'exploitation of *women*' explicitly featured amongst priority crimes, although, in this early formulation ('particularly') as a prioritised sub-form of trafficking in human beings, and not as a self-standing crime area. This changed, however, with the (failed) 2004 Constitutional Treaty. While the Tampere list had been on the negotiation

[35] Gert Vermeulen 'International trafficking in women and children: General report' (2001) 72 Revue internationale de droit pénal, 837.

[36] Council, Joint Action of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children; Nathalie Siron and others, *Trafficking in migrants through Poland: multidisciplinary research into the phenomenon of transit migration in the candidate Member States of the EU, with a view to the combat of traffic in persons* (Maklu 1999) 12; European Parliament, Report on measures to protect minors in the European Union, 25/11/1996.

[37] Joint Action of 29 November 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children 1996.

[38] Boaventura de Sousa Santos, 'The Fight against Trafficking in Human Beings in EU: Promoting Legal Cooperation and Victim's Protection' 74.

[39] Sécrétariat général du Conseil de l'Union européenne, 'Receil de Texts Produits Sous La Présidence Irlandaise de La CIG (Juillet-Décembre 1996)'.

[40] European Council, Tampere European Council 15 and 16 October 1999, 15/10/1999, point 48.

table, it failed to obtain the required support.[41] The wording of the Tampere list was changed in a decisive fashion, in that 'particularly' was replaced by 'and', and that 'women' became just another category of persons in need of criminal law protection against sexual exploitation, in addition to 'children'. The resulting text of the Constitutional Treaty was as follows: 'trafficking in human beings *and* sexual exploitation of women and children' (Art. III-271) [emphasis added]. Following its failure, the text was copied unchanged into the current Art. 83(1) TFEU by the 2007 Lisbon Treaty. The Council Legal Service's opinion, holding that the current wording forms a 'single area of crime' (points 18-19), as if the EU would only have criminalisation competence for 'sexual exploitation of women' if still somehow 'narrowly linked to, and a specific and important form of, trafficking in human beings' (point 17), makes no sense really. The above history convincingly demonstrates that the notion of 'sexual exploitation of women' may (and should) be interpreted 'in isolation, as an autonomous area of crime that would comprise crimes being centred on sexual violence, and thus capable of including the crime of rape.'[42] This has equally been the case for 'sexual exploitation of children', which, despite its *ad hoc* (factual and political) connectedness with 'trafficking in human beings' in the early Maastricht era, was – even then – always juxtaposed to 'trafficking in human beings', and never presented as a form of it. Soon after the 1997 Joint Action, moreover, the EU has chosen to discontinue the artificial combination of both areas in its further crime approximation policies, thereby explicitly confirming their status as separate, autonomous crime areas. In the field of trafficking in human beings, reference can be made to Framework Decision 2002/629/JHA[43] and Directive 2011/36/EU,[44] amended last by Directive (EU) 2024/1712[45]. In the area of sexual exploitation of minors, reference can be

[41] Council Legal Service, Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence – Legal basis – Scope of Article 83 TFEU – Rules for specific victims – Compatibility with the principle of non-discrimination, 14277/22, Brussels, 31 October 2022.

[42] Ibid.

[43] Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings, OJ L 203/1.

[44] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101/1.

[45] Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, OJ L, 2024/1712.

made to Framework Decision 2004/68/JHA,[46] replaced later with Directive 2011/93/EU,[47] for which the Commission has proposed a recast Directive in February 2024.[48]

Furthermore, the Court of Justice of the European Union (CJEU), in its 2021 advice on the ratification by the EU of the Istanbul Convention, referred to '[…] human trafficking, sexual exploitation of women and children *and* organized crime' [emphasis added] when summarizing the opinion of the European Parliament,[49] thus clearly presenting 'human trafficking' and 'sexual exploitation' (of women and children) as two separate areas of crime. Moreover, already in 2017, the CJEU had stated that 'in accordance with Art. 83(1) TFEU, the sexual exploitation of children is one of the areas of particularly serious crime',[50] thereby completely disconnecting 'sexual exploitation' from 'human trafficking', the latter notion not even featuring in the judgment.

Finally, the existence of ten Euro-crimes (which implies calculating 'trafficking in human beings' and 'sexual exploitation' (of women and children) as two separate crimes) is also firmly rooted in in legal scholarship.[51]

The second sub-argument, holding that 'sexual exploitation' could not be stretched so far as to allow bringing rape under it, equally denies history.

Whilst the aforementioned 1997 Joint Action concerning action to combat trafficking in human beings and *sexual exploitation of children* [emphasis added] urged Member States to criminalise behaviour related to both sexual abuse and sexual exploitation of children, including 'the exploitative use of children in pornographic performances', it did not as yet seek the criminalisation (of the production, possession, spreading, etc) of 'child pornography' (currently referred to as Child Sexual Abuse Material (CSAM)). Without much ado, this radically changed with its first successor instrument, adopted after the entry

[46] Council framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, OJ L 13/44

[47] Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335/1.

[48] Proposal for a Directive of the European parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast), COM/2024/60 final, Strasbourg, 6 February 2024.

[49] Opinion 1/19 of the Court (Grand Chamber), 6 October 2021, para 55.

[50] Case C-193/16, E, EU:C:2017:542, para 20.

[51] Peter Csonka and Oliver Landwehr, '10 Years after Lisbon – How "Lisbonised" Is the Substantive Criminal Law in the EU?' [2019] EUCRIM 7; Jacob Öberg, 'Normative Justifications of EU Criminal Law: European Public Goods and Transnational Interests' (2023) 27 European Law Journal 408; Steve Peers, 'The Legal Grounds for Inclusive EU Legislation against Bias Violence and Hatred' (ILGA Europe); Alexandra Horváthová, 'EU Criminal Law and the Treaty of Lisbon - Where Shall We Go Now?' (*SSRN*, 12 May 2011) <https://ssrn.com/abstract=1836754> accessed 8 July 2024; see also European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Towards an EU Criminal Policy: Ensuring the Effective Implementation of EU Policies through Criminal Law.' (2011) COM(2011) 573 final.

into force of the Amsterdam Treaty, ie Framework Decision 2004/68/JHA 2003 (also mentioned *supra*) 'on combating the sexual exploitation of children *and child pornography*' [emphasis added]. With Art. 29 TFEU referring to any 'offences against children' as EU priority crimes, there was no competence barrier to do so. Strangely, the choice in the 1997 Joint Action to also criminalise 'sexual abuse' of children was discontinued, even if compatible with the broad Treaty mandate. The second successor instrument, ie Directive 2011/93/EU (also mentioned *supra*), came about only after the entry force of the Lisbon Treaty, which, in Art. 83(1) TFEU, had limited the Euro-crime area concerned to '*sexual exploitation* of (women and) children' [emphasis added]. Notwithstanding, it did not only perpetuate the requirement to criminalise CSAM, but further broadened the approximation scope by requiring criminalisation of both sexual abuse (including introducing an age of sexual consent notion) and the solicitation of children (grooming), following the example set by the Council of Europe with the 2007 Lanzarote Convention. Back then, the Council never challenged the broad mandatory criminalisation as too stretched in relation to the Euro-crime of 'sexual exploitation' of children. It expressed support, voicing just few scrutiny reservations in the legislative process, mostly linked to the proposed penalty levels.[52] The 2024 proposal for a recast Directive (equally mentioned *supra*) continues the broad interpretation of 'sexual exploitation', by further proposing to criminalise the solicitation of others to commit child sexual abuse, eg when paying (as EU citizens or residents) for accessing a live stream of such abuse.[53]

Against the backdrop of the historically extensive interpretation of 'sexual exploitation' of children as a Euro-crime, the Council's position that a comparably extensive interpretation of sexual exploitation of women would be too stretched, fails to convince.

It should, however, not obscure the truth, the latter being that the Commission, especially after the lack of unanimity for its proposal to extend the Euro-crimes list with hate crime and hate speech, and in light of the distaste of several Member States for the term gender (*supra*, under 1), was not keen to follow up on the repetitive 2019, 2021 and 2023 European Parliament resolutions seeking the inclusion of 'gender-based violence' (comprising *inter alia* rape and sexual assault)[54] in the Euro-crimes list of Art. 83(1). Instead, it resorted to the alternative of relying on the existing 'sexual exploitation' Euro-crime area, justifying its choice by providing, in its proposal for the Gender Violence Directive, a

[52] Council, Proposal for a Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA – State of play and Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA – State of play, 18/05/2009; Council, Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA, 22/07/2010.
[53] European Commission, Proposal for a Directive of the European Parliament and of the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Sexual Abuse Material and Replacing Council Framework Decision 2004/68/JHA (Recast) (2024) COM(2024) 60 final recital 33.
[54] European Parliament, Resolution on Identifying Gender-Based Violence as a New Area of Crime Listed in Article 83(1) TFEU (2021) 2021/2035(INL) point 29.

broad, albeit defendable, definition of 'sexual exploitation', fitting the purpose: 'any actual or attempted abuse of a position of vulnerability, differential power or trust, including, but not limited to, profiting monetarily, socially or politically from a sexual act with another person. The exploitative element can refer to the achievement of power or domination over another person for sexual gratification, financial gain, and/or advancement'.[55]

4 Deadlock: caught between female gender-specificity and gender equality

The Council's second argument against the proposed provision on rape (and sexual assault)[56] of women, cannot be as easily set aside: its Legal Service[57] rightly pointed out that '[l]imiting the EU-law definition of the crime of rape only to women would lead to a situation which cannot be reconciled with the non-discrimination provisions set out in Art. 2 and 3(3) TEU, Art. 8 and 11 TFEU, and Art. 1, 3 and 21 of the [EU Fundamental Rights] Charter' (points 22-23), and that, 'in order to safeguard the internal consistency of the Treaties', 'in particular […] between [the above provisions] and Art. 83(1) TFEU, […] the phrase "sexual exploitation of women and children" would have to be interpreted in such a way as to include the sexual exploitation of all persons, including men', implying that 'the crime of rape could not be defined as solely referring to women' (point 27).

This is a catch-22 situation. Building on 'sexual exploitation of women' as an autonomous Euro-crime area of Art. 83(1) TFEU, the Commission proposal could not protect men against rape,[58] thus implying prohibited sex-based discrimination (*supra*) and (gender) equality (as enshrined in Art. 20 and 23 of the Charter). Hence, a gender-neutral phrasing would be required, which in its turn undermines the Commission's choice of legal basis in Art. 83(1) TFEU. The 'solution' offered by the Legal Service, was to regard 'trafficking in human beings and sexual exploitation of women and children' as a 'single area of crime' (*supra*, under 3), implying that 'sexual exploitation of women' would still somehow have to 'be[…] narrowly linked to, and a specific and important form of, trafficking in human beings' (point 17). That would allow for an interpretation that 'the reference to

[55] European Commission, Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, Strasbourg, 8 March 2022, COM(2022) 105 final.

[56] The Council's opinion pertained to the Commission proposal (on rape) only; however, the discussed argument would have been equally valid as regards the Parliament's proposed amendment seeking to introduce a mirror provision on non-penetrative non-consensual acts of a sexual nature (sexual assault).

[57] Council Legal Service, Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence – Legal basis – Scope of Art. 83 TFEU – Rules for specific victims – Compatibility with the principle of non-discrimination, 14277/22, Brussels, 31 October 2022.

[58] The impact assessment joined to the proposal explicitly excluded the approximation of rape against men, given the required nexus with the euro-crime are of 'sexual exploitation of women'. European Commission, 'Commission Staff Working Document - Impact Assessment Report - Accompanying the Document - Proposal for a Directive of the European Parliament and of the Council on Combating Violence against Women and Domestic Violence' (2022) SWD(2022) 62 final 8–9.

"women" is not exhaustive but mainly descriptive of a situation where those two categories (women and children) are […] the *main* victims of sexual exploitation and therefore requiring *particular* attention' (point 19) [emphasis added], making it 'possible to adopt rules which apply to both sexes' (point 24), thereby avoiding discrimination based on sex and gender inequality. This would, however, prevent the criminalisation of rape (and sexual assault), which are forms of sexual violence, and not of exploitation linked to trafficking in human beings.

If the co-legislators would have adopted the Gender Violence Directive *including* the proposed provision on rape of women, thereby ignoring the resulting gender inequality and discrimination, litigation before the CJEU was (and is) likely. In this context, it bears relevance to recall that the CJEU has ruled on several instances in favour of partial annulment,[59] which raises the question as to whether there is a chance that the CJEU could have annulled the scope limitation to women, thus making the provision neutral. In its jurisprudence, the CJEU considers partial annulment only possible in case of severability of the annulled part from the remainder,[60] whereby severability is assessed based on the spirit and substance of the legislation.[61] In *Tobacco Advertising I,*[62] the CJEU made clear that '[p]artial annulment of the [legislation]' by the Court is not allowed if this 'would entail amendment by the Court of provisions of the [legislation]', since '[s]uch amendments are a matter for the [Union] legislature'. It seems that the CJEU could only have made the rape provision gender-neutral by significantly altering its substance by systematically annulling and amending wordings[63] referring exclusively to women. Hence, to avoid assuming a legislative role, the CJEU would likely have to annul or invalidate the entire rape provision.

If and for as long as the CJEU would not have been asked to rule on the validity of the rape provision (or when it would have not entirely annulled it after all), Member States would have had to transpose it in their domestic laws, thereby duly respecting the principles of non-discrimination and equality. Logically, they would have had to criminalise rape (and possibly sexual assault) in general. Even a later annulment or invalidation of the entire rape provision by the CJEU would not invalidate the Member State laws having transposed it.

[59] Case 425/13, European Commission v Council,EU:C:2015:483 para 97; Case C-29/99, European Commission v Council, EU:C:2002:734; Case C-378/00, European Commission v European Parliament and Council, EU:C:2003:42.

[60] Case C-29/99, European Commission v Council, EU:C:2002:734, para 45-46; Case C-378/00, European Commission v European Parliament and Council, EU:C:2003:42, para 29; Case C-239/01, Germany v European Commission, EU:C:2003:514, para 33; C-244/03, France v European Parliament and Council, para 12; Case C-36/04 Spain v Council, EU:C:2006: 209, para 9.

[61] Case-540/03, European Parliament v Council, EU:C:2006:429 para 30.

[62] Case 376/98, Germany v European Parliament and Council, EU:C:2000:544 para 117.

[63] Case 425/13, European Commission v Council, EU:C:2015:483 para 97.

A more straightforward avenue towards a satisfactory solution would have been – and still is – to allow for criminalisation of sexual exploitation of persons of whichever gender, by formally extending the Euro-crime area 'sexual exploitation of women and children' to men, or by simply adding, as also suggested by the Council Legal Service, 'a new "euro-crime" […] in the field of sexual abuse and sexual violence concerning *persons*' (point 48) [emphasis added]. This requires running through the procedure of Art. 83(1)(3) TFEU, necessitating that three conditions are fulfilled: (1) there are 'developments in crime' legitimising an addition to or extension of the Euro-crime list, (2) the addition or extension pertains to 'particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis' and (3) the decision is taken by Council 'unanimously' after obtaining the consent of the European Parliament. The second condition is easily met; it suffices to accept and agree that there is *a special need to combat* sexual offending (exploitation, abuse, including rape and sexual assault) *on a common basis*. The first and third condition seem to go hand in hand. Surely, in recent years (#MenToo), the societal attention for sexual violence against and sexual abuse and exploitation of men has grown, while the prevalence of it may in fact have not risen. Hence, there may probably not have been a true *development in crime* (first condition), but only in the attention for it. However, the Council's decision of November 2022 to add the 'violation of Union restrictive measures'[64] (against Russia) as a new Euro-crime area 'that meets the criteria of Article 83(1) [TFEU]', demonstrates that, whenever there is *unanimous* agreement at Council level (third condition), everything is possible. Restrictive measures have always been violated and circumvented (already Napoleon's continental blockade was), so that, in the above example, there was in fact neither a development in crime.

5 Concluding thought

'Society cannot criminalize its way out of any complex social problem, which includes sexual assault' (Leary 2016: 3). Admittedly, criminal law is only one dimension of a necessary broader focus on an affirmative consent culture where passivity does not equate to consent. This requires broad societal awareness, correct information about the reality of sexual violence, debunking myths, targeted prevention initiatives, extensive education and efforts regarding giving and obtaining sexual consent,[65] as well as gender mainstreaming. In that respect, the adopted Gender Violence Directive must be commended for urging the Member States to take a range of preventive, educational and awareness raising measures, aimed at rape prevention and promote the central role of consent in sexual relationships.

[64] Council Decision (EU) of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Art. 83(1) of the Treaty on the Functioning of the European Union 2022 (2022/2332).

[65] Maddy Coy and others, 'From 'no means no' to 'an enthusiastic yes': changing the discourse on sexual consent through Sex and Relationships Education' in Vanita Sundaram and Helen Saunders (eds), *Global Perspectives and Debates on Sex and Relationships Education: Addressing Issues of Gender, Sexuality, Plurality, and Power* (Palgrave Macmillan 2016).

Nonetheless, mandatorily enshrining an affirmative sexual consent standard in the EU Member States' criminal laws would have made a genuine and decisive difference, especially for women, but also for men, and for transgender persons. Extending the Eurocrimes list with sexual offences *tout court*, committed against persons of whichever gender, would make a lot of sense, and likely even be supported by Member States where gendered conceptions about sexuality and sexual interactions still proliferate.

This seems wiser than trying to shape female gender-specific criminal law protections, which may well prompt counterproductive effects that even moderate-feminist perspectives have warned against.[66] They risk reinforcing traditional heterosexual scripts of female helpless passivity and responsiveness and aggressive male initiative, potentially perpetuating social role patterns of female helplessness and male responsibility. Sex may then (still or again) be perceived as something that inevitably happens to women, while focusing on an egalitarian, non-traditional culture and corresponding sexual scripts could be expected to reduce sexual offences.

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This special issue brings together nineteen topical and innovative papers, researching the boundaries of sexual integrity and affirmative sexual consent, gender violence, and image-based or online sexual abuse, including child sexual abuse material and non-consensual sexual deepfakes. It offers an original and nuanced approach to understanding the important legal elements, various agents and harms of topic-related deviant conduct as well as legislative processes aimed at tackling it. In light of recent societal developments, including changes in societal sensibilities, and recent or on-going legislative amendments at national and supranational levels, research on these topics is timely and much needed.

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