

# **My Voice, My Choice: For Safe And Accessible Abortion**

## LEGAL ADDENDUM

With the “My Voice, My Choice” campaign we have an opportunity to make Europe more fair, more free, and more equal. Currently, the lack of access to abortion as basic women’s healthcare in many parts of Europe not only puts women at risk of physical harm but also puts undue economic and mental stress on women, often in marginalised communities that can afford it the least. There is strong consensus among scientific and International Bodies that treating reproductive care as a luxury does not reduce abortions, it simply leads women to seek unsafe abortions. Countless lives, livelihoods, and communities are ended, disrupted, and lost because of these dangerous practices. With this European Citizens' Initiative, we will move to a more just policy that expresses our European values more concretely and compassionately.

These are not only the wishes of the people, they have also been strongly expressed by EU institutions. In January 2022, in a speech before the Parliament, the President of the Council of the European Union emphasised the need to explicitly recognise a right to abortion within European law, recalling the democratic voice of the EU, embodied by its Parliament.

When confronted with a de facto abortion ban, the European Parliament strongly condemned all legislative proposals or restrictions that aim to further prohibit, criminalise, and limit access to safe and legal abortions (Resolution 2021/2925 (RSP)). When observing the global backsliding of access to safe and legal abortions, the European Parliament called for the EU and its Member States to include the right to abortion in the Charter of Fundamental Rights of the European Union (Resolutions 2022/2665 (RSP) and 2022/2742 (RSP)).

Additionally, the EU external action that aims to achieve the Millenium development goals, as adopted by the UN General Assembly, provides for the possibility to support safe abortions outside of Europe financially (Regulation n°236/2014; Resolution 2012/2289 (INI); Resolution 2020/2215 (INI)).

How can we reconcile the fact that the EU supports vulnerable women in need outside of its borders but neglects those within?

## OUR INITIATIVE

Our initiative echoes the call of the European Parliament to the Commission “*to make full use of its competence in health policy, and to provide support to Member States in guaranteeing universal access to SRHR in the framework of the EU4Health Program for 2021-2027; in promoting health information and education; in strengthening national health systems and the upward convergence of healthcare standards in order to reduce health inequalities within and between Member States*” in its Resolution 2022/2665 (RSP).

We are asking the Commission to submit a proposal for financial support to Member States that would be able to perform safe termination of pregnancies, in accordance with their domestic law, for anyone in Europe who still lacks access to safe and legal abortion.

This solution could take the form of an opt-in mechanism open to Member States on a voluntary basis. Those who would opt-in would then receive financial support from the EU to compensate for the weight of this solidarity effort.

Therefore, our initiative does not aim to harmonise nor interfere with the laws and regulations of Member States. In accordance with article 168 (7) of the Treaty on the Functioning of the European Union, an optional mechanism respects their responsibilities for the definition of their health policy and for the organisation and delivery of health services and medical care, thus only lends support to their action.

## **LEGAL BASIS**

### **1. Preventing unsafe abortion is a public health matter within the scope of the EU**

According to **Article 9 of the TFEU**: “*In defining and implementing its policies and activities, the Union shall take into account requirements linked to (...) [the] protection of human health.*”

The action of the EU in public health matters is further detailed in **Article 168 of the TFEU**: “*1. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities. Union action, which shall complement national policies, shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health. (...) 5. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may also adopt incentive measures designed to protect and improve human health (...)*”.

The EU enshrined the protection of human health in **Article 3 of its Charter of Fundamental Rights**: “*Everyone has the right to respect for his or her physical and mental integrity*”.

These norms lay the ground for tangible actions, such as the recognition of a principle of non-discrimination with regard to the nationality of patients, taking into account the case law of the ECJ (Directive (EU) No 2011/24), and therefore introduce an equal right to access healthcare in any Member State. In addition, the EU recently adopted the *EU4Health* program based on article 168, setting up a €5.3 billion investment to achieve goals for better health in Europe, including “*supporting Member States’ actions to promote access to sexual and reproductive healthcare*” (Regulation (EU) No 282/2014).

Despite all these measures, **many women in Europe do not have access to a safe and legal abortion and their health remains in jeopardy.**

The status quo of EU legislation and policies highlights the need for European action to provide better protection for women’s health, including access to safe and legal abortions, and demonstrates that there is a path for an adequate solution at a regional level.

In this context, our initiative creates an opportunity to better implement the treaties in the field of public health.

### **2. Preventing unsafe abortions upholds the values, objectives and fundamental rights recognized by the EU**

**Article 2 of the Treaty on the European Union (TEU)** states: “*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.*”

including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

**Article 3 of the TEU** goes further: “The Union's aim is to promote peace, its values, and the well-being of its peoples. (...) It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations, and protection of the rights of the child.”

In parallel, **Article 8 of the TFEU** “In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.”

The inability to access a safe and legal abortion has the direct consequences of restricting women’s rights such as self-determination, physical and mental integrity, education, or work. The restriction of such rights reduces women to their procreative role and thus creates discrimination on the basis of sex in violation of the Charter.

These values and objectives of the EU are found in human rights protected in the Charter that our initiative aims to uphold.

“Human dignity is inviolable. It must be respected and protected.” as provided for by **Article 1 of the Charter**. For a woman, having to choose between carrying an unwanted pregnancy, thus threatening her mental health, or having an unsafe procedure, and threatening her physical health, can only be seen as a violation of her human dignity.

The prohibition of torture and inhuman or degrading treatment or punishment is guaranteed in **Article 4 of the Charter**. According to the UN Special Rapporteur on torture, when a woman is denied safe abortions and subjected to humiliating and judgmental attitudes in such contexts of extreme vulnerability and where timely health care is essential, it may “amount to torture or ill-treatment” (A/HRC/31/57).

The right to equality and non-discrimination is protected by **Article 21 of the Charter**. “In countries where induced abortion is highly restricted by law or unavailable due to other barriers, safe abortion has often become the privilege of the rich, while poor women have little choice but to resort to the services of unskilled providers in unsafe settings or induce abortion themselves often using unsafe methods, leading to deaths and morbidities” concludes the World Health Organization (Abortion care guidelines, 2022, p.40).

Therefore, women who lack access to safe and legal abortions are deprived of many of their fundamental rights and thus reduced to second-class citizens.

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We, the citizens of the EU, want to take this opportunity to make women’s lives substantially and materially better wherever they live in our union, whatever conditions they find themselves in. It was stated by the President of the European Commission that their task is “to provide full support to Member States’ efforts in implementing the United Nations Sustainable Development Goals relevant to women’s health, universal access to sexual reproductive care, family planning, and education.” (Ares (2019) 6127222)

With the “My Voice, My Choice” campaign, we the people of the European Union, aim to make these promises a reality and to create a safer and more just Europe that works for all its citizens.