



EXPLANATORY MEMO: COMMENTARY ON THE COUNCIL OF EUROPE DRAFT FEASIBILITY STUDY ON PREVENTING AND COMBATING INTERSECTIONAL DISCRIMINATION.

From: European Network of Migrant Women

Date: 9th of July, 2025

Subject: Commentary on the CoE Draft Feasibility Study on Preventing and Combating Intersectional Discrimination

[Read the CoE draft feasibility study with our comments.](#)

INTRODUCTION:

While the study makes an attempt to address intersectional discrimination, it fails to recognise sex as a foundational and non-negotiable ground of structural oppression. The introduction conflates sex with gender, omitting crucial distinctions that underpin existing legal protections for women and girls. This conflation risks undermining the ability to address sex-based violence, economic exclusion, and structural inequalities effectively.

We strongly recommend that the study reaffirm sex as a material and analytical category, distinct from identity-based concepts.

KEY OBSERVATIONS BY SECTION:

Intersectionality:

The study accurately identifies the origins of intersectionality in Black feminist legal theory, but collapses sex into a list of interchangeable grounds, erasing its foundational role in the oppression of women. The analysis should reflect the fact that intersectionality was never intended to erase categories like sex, but to illuminate how systems of oppression interlock, particularly sex and race.

Intersectional Discrimination:

Sex is treated as equal to other identity markers, flattening its structural significance. Furthermore, the study misses the opportunity to highlight that policies conflating sex with gender identity have already undermined protections for women (e.g. in services, data, and statistics).

Intersectional Discrimination in Law:

Embedding intersectionality only in general equality clauses risks weakening sex-specific legal obligations under CEDAW, Istanbul Convention and other instruments. Legal frameworks should centre sex as a material ground, and not dissolve it within vague identity-based categories.

Intersectional Discrimination in Policy:

This section uses gender and sex interchangeably, undermining clarity. As a result, it fails to identify how sex-specific harms like femicide, reproductive exploitation, and sexual violence require policies rooted in sex-based analysis. Furthermore, language should align with human rights standards, including the use of “prostitution” rather than “sex work” to avoid normalising exploitative systems.

Terminology and Meaning:

The terminological confusion arises from the study’s conflation of sex, gender and gender identity. For instance, identity-based framings (ref. Muslim LGBTI persons) risks dissolving the specific vulnerabilities faced by women and girls.

Policies and Measures:

The repeated focus on gender equality without clear reference to sex weakens the basis for designing targeted interventions for women. Intersectional frameworks must be anchored in sex, not reduced to gender-neutral categories.



Legislation:

Consolidated equality laws must retain sex as a standalone, clearly defined ground, with protections that are not diluted by overbroad identity classifications.

Procedure:

A flexible approach to evidence is welcome, but courts must maintain a clear sex-based lens to avoid erasing patterns of discrimination rooted in biological sex.

Data:

Sex-disaggregated data must remain central to tracking inequalities and developing effective interventions. Therefore, replacing sex with gender identity in data collection compromises accountability and the ability to monitor women's rights violations.

Knowledge:

Knowledge production must foreground sex-based analysis. Efforts to promote intersectionality must not exclude or silence women who speak from sex-based perspectives.

Voice:

Centering voices is essential, but must include women speaking from sex-based perspectives, who are often marginalised or dismissed. Meaningful participation must not be restricted to identity-based representation.

SUMMARY OF RECOMMENDATIONS:

To ensure that the Study meaningfully protects women and girls from intersectional discrimination while upholding legal clarity, we recommend:

1. **Recognise sex as a distinct and foundational ground** of structural oppression, not just one identity among many.
2. **Clearly distinguish sex from gender and gender identity** in all legal, policy, and analytical frameworks.
3. **Reframe intersectionality as building from sex**, rather than dissolving it within fluid or subjective identity constructs.
4. **Maintain sex-disaggregated data collection** and resist replacing sex with self-identified gender.
5. **Use accurate language** in line with human rights standards.
6. **Train equality bodies and judges** on the material realities of sex-based oppression and how these intersect with other forms of marginalisation.
7. **Ensure policy and legal reform** reinforce, not weaken, sex-based protections.
8. **Center diverse feminist and sex-based perspectives** in knowledge production and participation mechanisms.
9. **Avoid over-broad lists** of discrimination grounds that flatten or obscure sex-based harms.
10. **Standardise terminology** that reinforce sex-based rights, avoids conceptual overreach and protects legal clarity.

