



Brussels, 21.5.2024
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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 16th meeting of the Committee of the Parties to the Council of Europe Convention on preventing and combating violence against women and domestic violence on the adoption of a recommendation and conclusions addressed to five State Parties on their implementation of that Convention, with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf, at the 16th meeting of Committee of the Parties ('CoP') of the Council of Europe Convention on preventing and combating violence against women and domestic violence ('the Istanbul Convention' or 'the Convention') on 31 May 2024, in connection with the envisaged adoption of one draft recommendation and four draft conclusions addressed to five State Parties on their implementation of the Convention.

2. CONTEXT OF THE PROPOSAL

2.1. The Istanbul Convention

The Istanbul Convention aims to lay down a comprehensive and harmonised set of rules to prevent and combat violence against women and domestic violence in Europe and beyond. The Convention entered into force on 1 August 2014.

The EU signed the Convention in June 2017, and completed the accession procedure with the deposit of two instruments of approval on 28 June 2023, triggering the entry into force of the Convention for the EU on 1 October 2023. The EU has acceded to the Convention as regards matters falling within its exclusive competence, namely with regard to matters related to institutions and public administration of the Union¹ and with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement². All EU Member States have signed the Convention but only 22 have ratified the Convention³.

2.2. The Committee of the Parties

The Committee of the Parties⁴ is composed of the representatives of the Parties to the Convention. Parties must endeavour to nominate, as their representatives, experts of the highest possible rank in the field of preventing and combating violence against women and domestic violence⁵. The tasks entrusted to the CoP are listed in Rule 1 of its Rules of Procedure⁶. On 1 October 2023 the EU became a Party to the Istanbul Convention, and thus a member of the CoP (Article 67(1) of the Convention).

¹ Council Decision (EU) 2023/1075 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union, OJ L 143 I, 2.6.2023, p. 1, ELI: <http://data.europa.eu/eli/dec/2023/1075/oj>.

² Council Decision (EU) 2023/1076 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement, OJ L 143 I, 2.6.2023, p. 4, ELI: <http://data.europa.eu/eli/dec/2023/1076/oj>.

³ Status of ratifications on [21].05.2024: AT (2013); BE (2016); CY (2017); DE (2017); DK (2014); IE (2019); EL (2018); ES (2014); EE (2017) FI (2015); FR (2014); HR (2018); IT (2013); LU (2018); MT (2014); NL (2015); PL (2015); PT (2013); RO (2016); SI (2015); SV (2014), LV (2023).

⁴ [Committee of the Parties - Istanbul Convention Action against violence against women and domestic violence \(coe.int\)](http://www.coe.int/t/treaties/ConventionAgainstViolenceAgainstWomen/CommitteeoftheParties/CommitteeoftheParties.aspx)

⁵ Rule 2.1.b of the Rules of Procedures of the Committee of the Parties.

⁶ Document IC-CP(2015)2, adopted on 4 May 2015.

2.3. The monitoring mechanism of the Istanbul Convention

The Istanbul Convention sets up a monitoring mechanism to ensure effective implementation of its provisions by the Parties⁷. The purpose is to assess how the provisions of the Convention are put into practice and to provide guidance to Parties. This monitoring mechanism consists of two distinct, but interacting, bodies: an independent expert body (the Group of Experts on Action against Violence against Women and Domestic Violence ‘GREVIO’), and the CoP.

GREVIO is an independent and impartial group of experts on action against violence against women and domestic violence tasked to monitor the implementation of the Istanbul Convention on a country-by-country basis, in accordance with Article 66(1) of the Convention. GREVIO is composed of 15 members chosen from among nationals of the Parties and elected by the CoP for a term of office of four years, renewable once.

The monitoring procedure is described in Article 68 of the Convention. In short, each Party is required to submit a report based on a questionnaire prepared by GREVIO, on legislative and other measures giving effect to the provisions of the Convention. Based on this information, as well as information received from civil society, other treaty bodies, other Council of Europe bodies and country visits, GREVIO prepares a draft report on the measures taken by the Party concerned to implement the provisions of the Convention and gives suggestions and proposals on the way in which the Party may deal with identified problems⁸. After having given the Party the possibility to comment on the report, GREVIO adopts its final report⁹. The report contains conclusions highlighting the measures to be taken by the Party concerned to implement the Convention.

On the basis of GREVIO’s reports and its conclusions, the CoP, in accordance with Article 68(12) of the Convention, may adopt recommendations addressed to the Party concerned on the implementation of the Convention and set a date for submitting information on their implementation. Based on this provision, according to the agreed procedures, the CoP adopts recommendations which differentiate between those actions which it considers the Party concerned should take as soon as possible, with a requirement to report back to it on steps taken in this regard within a three years period, and those which, while important, the CoP considers could be left at a secondary level of immediacy¹⁰. At the end of the 3-year period, the Party must report back to the CoP on the progress made in implementing those measures. On the basis of this information, and any additional information obtained from non-governmental organisations, civil-society and national institutions for the protection of human rights, the CoP adopts conclusions on the implementation of the recommendations in relation to each Party under review, prepared by the Secretariat of the Committee¹¹. To date, the practice in the CoP has been to adopt recommendations and conclusions on the basis of consensus at its meetings which are to take place upon request¹², normally twice a year.

⁷ Article 1(2) of the Istanbul Convention.

⁸ Article 68(10) of the Istanbul Convention.

⁹ Article 68(11) of the Istanbul Convention.

¹⁰ The applicable procedure for issuing recommendations was settled by the CoP at its 4th meeting on 30 January 2018 and is described in the Discussion Paper on the adoption of Recommendations by the Committee of the Parties in light of GREVIO’s reports and proposals/suggestions, IC-CP(2018)6.

¹¹ The applicable procedure for supervising the implementation and the reporting is defined in the “Framework for supervising the implementation of the recommendations addressed to state parties”, adopted by the CoP on 13 April 2021, IC-CP/Inf(2021)2.

¹² Article 67(2) of the Convention.

2.4. The envisaged acts of the Committee of the Parties

On 31 May 2024, during its 16th meeting, it is foreseen that the CoP will proceed with the adoption of the following draft recommendation and conclusions ('the envisaged acts' or 'the draft recommendation and conclusions'):

- Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Liechtenstein [IC-CP(2024)1-prov];
- Conclusions on the implementation of recommendations in respect of Andorra adopted by the Committee of the Parties [IC-CP(2024)2-prov];
- Conclusions on the implementation of recommendations in respect of Belgium adopted by the Committee of the Parties [IC-CP(2024)3-prov];
- Conclusions on the implementation of recommendations in respect of Malta adopted by the Committee of the Parties [IC-CP(2024)4-prov]; and
- Conclusions on the implementation of recommendations in respect of Spain adopted by the Committee of the Parties [IC-CP(2024)5-prov].

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The envisaged acts are directed to five State Parties and include recommendations on measures to be taken to implement the Istanbul Convention as well as conclusions on State Parties' implementation of previous recommendations. They concern the implementation of provisions of the Convention which relate to judicial cooperation in criminal matters, such as matters relating to the protection of victims and support for victims of violence against women and domestic violence, as well as provisions of the Convention relating to asylum and non-refoulement. These matters are covered by the Union acquis, in particular the Directive on combating violence against women and domestic violence¹³, the Victims' Rights Directive¹⁴, the Asylum Procedures Regulation¹⁵ and the Reception Conditions Directive¹⁶. They fall within the Union's exclusive competence insofar as the relevant provisions of the Convention may affect common rules or alter their scope within the meaning of Article 3(2) of the Treaty on the Functioning of the European Union (TFEU). It is therefore appropriate to establish the position to be taken on the Union's behalf in the CoP with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement, as the envisaged acts are capable of decisively influencing the content of Union law in that they may affect the interpretation of relevant provisions of the Convention in the future.

The draft recommendation and conclusions on matters falling within the competence of the Union are in line with the Union's objectives and policies in the areas of judicial cooperation in criminal matters, asylum and non-refoulement and do not raise any concerns with respect to

¹³ Directive .../... of the European Parliament and of the Council on combatting violence against women and domestic violence (OJ, ELI:...).

¹⁴ 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 (OJ L ..., ELI: ...).

¹⁵ Regulation .../... of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L..., ELI:...).

¹⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L ..., ELI:...).

Union law. It is therefore proposed that the Union does not object to the adoption of the draft recommendation and conclusions at the 16th meeting of the CoP.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) TFEU provides for decisions establishing ‘*the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.*’

The concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’¹⁷.

4.1.2. Application to the present case

The CoP is a body set up by the Istanbul Convention. The envisaged acts which the CoP is called upon to adopt constitute acts having legal effects. The envisaged acts are capable of decisively influencing the content of Union law, because they may affect the interpretation of the relevant provisions of the Istanbul Convention in the future. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union’s behalf. If the envisaged act pursues two aims or has two components and if one of these aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2. Application to the present case

As regards the substantive legal basis, the EU has acceded to the Istanbul Convention as regards matters falling within its exclusive competence, namely with regard to matters related to institutions and public administration of the Union¹⁸ and with regard to matters related to

¹⁷ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

¹⁸ Council Decision (EU) 2023/1075 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union (OJ L 143 I, 2.6.2023, p. 1, ELI: <http://data.europa.eu/eli/dec/2023/1075/oj>).

judicial cooperation in criminal matters, asylum and non-refoulement¹⁹. The EU's accession to the Istanbul Convention was split into two separate Council decisions to take into account the special position of Denmark and Ireland with respect to Title V of the TFEU. Consequently, also the decision establishing the position to be taken on the Union's behalf in the CoP is to be split into two decisions, when the relevant recommendations or conclusions concern both matters.

The envisaged acts pursue objectives and have components in the area of judicial cooperation in criminal matters (Article 82(2) and Article 84 TFEU), as well as on asylum and non-refoulement (Articles 78(2) TFEU). They are inseparably linked without one being incidental to the other. Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Article 78(2), Article 82(2) and Article 84.

4.3. Conclusion

The legal basis for the proposed decision should be Article 78(2), Article 82(2) and Article 84, in conjunction with Article 218(9) TFEU.

¹⁹ Council Decision (EU) 2023/1076 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement (OJ L 143 I, 2.6.2023, p. 4, ELI: <http://data.europa.eu/eli/dec/2023/1076/oj>).

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 16th meeting of the Committee of the Parties to the Council of Europe Convention on preventing and combating violence against women and domestic violence on the adoption of a recommendation and conclusions addressed to five State Parties on their implementation of that Convention, with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2), Article 82(2) and Article 84, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Council of Europe Convention on preventing and combating violence against women and domestic violence ('the Convention') was concluded by the Union by Council Decision (EU) 2023/1075¹ with regard to institutions and public administration of the Union, and by Council Decision (EU) 2023/1076² with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement, and entered into force for the Union on 1 October 2023.
- (2) In accordance with Article 66(1) of the Convention, the Group of Experts on Action against Violence against Women and Domestic Violence ('GREVIO') has been tasked with monitoring the implementation of the Convention by its Parties. Pursuant to Article 68(11) of the Convention, GREVIO is to adopt its reports and conclusions concerning the measures taken by the Party concerned to implement the provisions of the Convention.
- (3) The Committee of the Parties of the Convention may adopt recommendations addressed to the Party concerned, in accordance with Article 68(12) of the Convention. The recommendations are based on the GREVIO reports and differentiate between those actions which the Committee of the Parties considers the Party should take as soon as possible, with a requirement to report back to it on steps taken in this regard within a 3-year period, and those which, while important, the Committee of the Parties considers could be left at a secondary level of immediacy. At the end of the 3-year period, the Party must report back to the Committee of the Parties on the actions

¹ Council Decision (EU) 2023/1075 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union (OJ L 143 I, 2.6.2023, p. 1, ELI: <http://data.europa.eu/eli/dec/2023/1075/oj>).

² Council Decision (EU) 2023/1076 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement (OJ L 143 I, 2.6.2023, p. 4, ELI: <http://data.europa.eu/eli/dec/2023/1076/oj>).

taken, within 10 specific areas of the Convention. On the basis of this information, and any additional information obtained from non-governmental organisations, civil-society and national institutions for the protection of human rights, the Committee of the Parties is to adopt conclusions on the implementation of the recommendations, prepared by the Secretariat of the Committee.

- (4) The Committee of the Parties, during its 16th meeting on 31 May 2024, is expected to adopt the following draft recommendation and four draft conclusions, concerning five State Parties' implementation of the Convention (the draft recommendation and conclusions):
- Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Liechtenstein [IC-CP(2024)1-prov];
 - Conclusions on the implementation of recommendations in respect of Andorra adopted by the Committee of the Parties [IC-CP(2024)2-prov];
 - Conclusions on the implementation of recommendations in respect of Belgium adopted by the Committee of the Parties [IC-CP(2024)3-prov];
 - Conclusions on the implementation of recommendations in respect of Malta adopted by the Committee of the Parties [IC-CP(2024)4-prov]; and
 - Conclusions on the implementation of recommendations in respect of Spain adopted by the Committee of the Parties [IC-CP(2024)5-prov].
- (5) The draft recommendation and conclusions concern the implementation of provisions of the Convention which relate to judicial cooperation in criminal matters, such as matters relating to the protection and support of victims of violence against women and domestic violence, as well as provisions of the Convention relating to asylum and non-refoulement. These matters are covered by the Union acquis, in particular Directive .../... of the European Parliament and of the Council³ [Directive on combating violence against women and domestic violence], Directive 2012/29/EU of the European Parliament and of the Council⁴, Regulation .../... of the European Parliament and of the Council⁵ [Regulation establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU] and Directive 2013/33/EU of the European Parliament and of the Council⁶. It is therefore appropriate to establish the position to be taken on the Union's behalf in the Committee of the Parties with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement, as the envisaged acts are capable of decisively influencing the content of Union law in that they may affect the interpretation of relevant provisions of the Convention in the future.
- (6) As regards Liechtenstein, the draft recommendation on its implementation of the Convention includes the need to adopt and align relevant definitions with the

³ Directive .../... of the European Parliament and of the Council on combating violence against women and domestic violence (OJ, ELI:..).

⁴ 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 (OJ L *insert* , ELI: *insert*).

⁵ Regulation .../... of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ + ELI).

⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ + ELI).

Convention (Article 3 of the Convention), to strive for gender equality, including by taking measures in this regard, and to address the rights and needs of groups exposed to or at risk of intersectional discrimination (Article 4 of the Convention), to develop a comprehensive strategy or action plan for preventing and combating all forms of violence covered by the Convention (Article 7 of the Convention), to ensure funding for relevant civil society organisations (Article 8 of the Convention), to allocate human and financial resources to coordinating bodies (Article 10 of the Convention), to harmonise data-collection systems and to regularly conduct population-based surveys on all forms of violence covered by the Convention (Article 11 of the Convention), to ensure a free, dedicated state-wide telephone helpline (Article 24 of the Convention) and to make use of police barring orders to ensure victim protection (Article 52 of the Convention). As the recommendations on these matters are in line with the Union's policies and objectives in the area of judicial cooperation in criminal matters and do not raise any concerns with respect to Union law, the position of the Union should be to not object to the adoption of the recommendation addressed to Liechtenstein.

- (7) As regards Andorra, the draft conclusions on its implementation of the Convention include the need to ensure that relevant stakeholders receive sufficient human and financial resources (Article 8 and Article 25 of the Convention), to ensure a coordinated and cross-cutting approach to preventing and combating violence against women (Article 7 of the Convention), to ensure data collection on violence against women (Article 11 of the Convention), to ensure that victims have access to emergency barring orders in line with the Convention (Article 52 of the Convention) and to comply with the requirements of the Convention regarding the residence status of victims of violence against women (Article 59 of the Convention). As the conclusions on those matters are in line with the Union's policies and objectives in the areas of judicial cooperation in criminal matters, asylum and non-refoulement, and do not raise any concerns with respect to Union law, the position of the Union should be to not object to the adoption of the conclusions addressed to Andorra.
- (8) As regards Belgium, the draft conclusions on its implementation of the Convention include the need to ensure data collection on violence against women (Article 11 of the Convention), the need to ensure that specialist support services receive funding in a manner that ensures their continued services (Article 8 and 25 of the Convention) and the need to ensure that issues pertaining to violence against women are taken into account by relevant competent authorities deciding on custody and visitation rights (Article 31 of the Convention). As the conclusions on those matters are in line with the Union's policies and objectives in the area of judicial cooperation in criminal matters, and do not raise any concerns with respect to Union law, the position of the Union should be to not object to the adoption of the conclusions addressed to Belgium.
- (9) As regards Malta, the draft conclusions on its implementation of the Convention include the need to strengthen co-operation with non-governmental actors, including those providing specialist support services, and to ensure their effective participation in the design of relevant policies (Article 7 of the Convention), to ensure the comprehensive collection of data in relation to all forms of violence covered by the Convention (Article 11 of the Convention), to take a number of actions in the area of custody and visitation rights to ensure the safety of victims and their children (Article 31 of the Convention) and to ensure that the legislation is in line with the Convention as regards emergency barring orders and protection orders (Article 52 and Article 53 of the Convention). As the conclusions on these matters are in line with the Union's

policies and objectives in the area of judicial cooperation in criminal matters and do not raise any concerns with respect to Union law, the position of the Union should be to not object to the adoption of the conclusions addressed to Malta.

- (10) As regards Spain, the draft conclusions on its implementation of the Convention include the need to harmonise the level of support and protection of women victims throughout the country (Article 7, Article 10 and Article 25 of the Convention), to address the protection needs of women exposed to intersecting forms of discrimination (Article 4 of the Convention), to support women's rights non-governmental organisations, including financially (Article 9 of the Convention) and to ensure the swift access of asylum-seeking women to the asylum procedure and to safe accommodation and to ensure detection of asylum seeking women in need of protection (Article 60 and Article 61 of the Convention). As the conclusions on these matters are in line with the Union's policies and objectives in the areas of judicial cooperation in criminal matters, asylum and non-refoulement, and do not raise any concerns with respect to Union law, the position of the Union should be to not object to the adoption of the conclusion addressed to Spain.
- (11) Ireland is not bound by Council Decision (EU) 2023/1076 and is therefore not taking part in the adoption of this Decision.
- (12) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the 16th meeting of the Committee of the Parties, established under Article 67 of the Convention, shall be to not object to the adoption of the following acts:

- (1) Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Liechtenstein [IC-CP(2024)1-prov];
- (2) Conclusions on the implementation of recommendations in respect of Andorra adopted by the Committee of the Parties [IC-CP(2024)2-prov];
- (3) Conclusions on the implementation of recommendations in respect of Belgium adopted by the Committee of the Parties [IC-CP(2024)3-prov];
- (4) Conclusions on the implementation of recommendations in respect of Malta adopted by the Committee of the Parties [IC-CP(2024)4-prov]; and
- (5) Conclusions on the implementation of recommendations in respect of Spain adopted by the Committee of the Parties [IC-CP(2024)5-prov].

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*