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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	6695/16
Subject:	Presidency compromise proposal for a COUNCIL DECISION on the signing, 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 Articles 60 and 61 pertaining to Gender-based asylum claims and Non-refoulement

Delegations will find attached the above-mentioned Presidency compromise proposal on signature in case the EU were to sign the Convention only for its exclusive competence.

Changes comparing to doc ST 6695/16 are highlighted: **new text in bold**, ~~deletions as strikethrough~~.

2016/0063 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, 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 Articles 60 and 61 pertaining to Gender-based asylum claims 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~~~~82(2)~~ and Article 84, in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Union participated alongside Member States as an observer in the negotiation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Convention No. 210) ('the Convention'), which was adopted by the Council of Europe Committee of Ministers on 7 April 2011. The Convention was opened for signature on 11 May 2011.
- (2) In accordance with Article 75 of the Convention, the Convention is open for signature by the Union.

- (3) The Convention creates a comprehensive and multi-faceted legal framework to protect women against all forms of violence. It seeks to prevent, prosecute and eliminate violence against women and girls and domestic violence. It covers a broad range of measures, from data collection and awareness-raising to legal measures on criminalising different forms of violence against women. It includes measures for the protection of victims and the provision of support services, and addresses the gender-based violence dimension in matters of asylum and migration. The Convention establishes a specific monitoring mechanism in order to ensure effective implementation of its provisions by the Parties.
- (4) The signing of the Convention on behalf of the Union **will** contributes to the realisation of equality between men and women in all areas, which is a core objective and value of the European Union to be realised in all its activities in accordance with Articles 2 and 3 of the Treaty on European Union, Article 8 of the Treaty on the Functioning of the European Union and Article 23 of the Charter of Fundamental Rights of the European Union. Violence against women is a violation of their human rights and an extreme form of discrimination, entrenched in gender inequalities and contributing to maintaining and reinforcing them. By committing to the implementation of the Convention, the Union confirms its engagement to combating violence against women within its territory and globally, and reinforces its current political action and existing substantial legal framework in the area of criminal procedural law that is of particular relevance for women and girls.

(5) **Both the Union and its Member States have competence in the fields covered by the Convention.**

While the Member States remain competent for the criminalisation of a number of violent forms of behaviour against women in their national substantive criminal law as required by the Convention, the Union has competence covering most of the provisions of the Convention and has adopted an extensive set of rules in these areas. In particular, the Union has adopted rules on the rights of crime victims, notably through Directive 2012/29/EU of the European Parliament and of the Council¹. The Convention also addresses the needs of female migrants and persons seeking asylum or complementary and subsidiary protection by imposing a gender-specific perspective in these areas, in which a comprehensive body of Union legislation already exists.

(6) The Union has exclusive competence **pursuant to Article 3(2) TFEU** to the extent that the Convention may affect common rules or alter their scope. **In particular, the Union has exclusive competence under Article 3(2) TFEU for the provisions of Chapters IV, V and VI of the Convention insofar as they relate to victims covered by Directive 2011/36/EU² and Directive 2011/93/EU³ as well as for Articles 60 (Gender-based asylum claims) and 61 (Non-refoulement) of Chapter VII of the Convention. In addition, the Union has exclusive competence under Article 3(2) TFEU for the provisions of Chapters VIII to XII corresponding to the provisions of Chapters IV to VII for which the Union has acquired exclusive competence;**

¹ 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 315 of 14.11.2012, p. 57).

² **Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, (OJ L 101, 15.4., p. 1).**

³ **Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, (OJ L 335, 17.12.2011, p. 1). and Corrigendum (OJ L 18, 21.1.2012, p. 7).**

- (7) **The Union also has exclusive competence to accept the obligations set out in the Convention with respect to its own institutions and public administration;**⁴
- (8) **Because the exclusive competence of the Union and the competences of the Member States are interlinked, the Union should become a party to this Convention alongside its Member States, so that together they can fulfil the obligations laid down by the Convention and exercise the rights vested in them, in a coherent manner.**
- (97) **This Decision concerns only Articles 60 (Gender-based asylum claims) and 61 (Non-refoulement) of the Convention. It does not concern the provisions of Chapters IV to XII of the Convention insofar as they relate to victims covered by Directive 2011/36/EU and Directive 2011/93/EU, which are addressed by a separate Council decision on signature that will be adopted in parallel with this Decision.**
- (10) **In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States** and the United Kingdom are bound by Directive 2012/29/EU and are **not** therefore taking part in the adoption of this Decision.
- (118) 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.
- (129) Therefore, the Convention should be signed on behalf of the Union, subject to its conclusion at a later date,

⁴ **Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ L 56, 4.3.1968, p. 1).**

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Council of Europe Convention on preventing and combating violence against women and domestic violence, **with regard to Articles 60 and 61 pertaining to Gender-based asylum claims and Non-refoulement**, is hereby approved on behalf of the Union, subject to the conclusion of the said Convention.

The text of the Convention to be signed is attached to this Decision.

Article 2

~~The Council Secretariat General shall establish the instrument of full powers to sign the Convention, subject to its conclusion, for the person(s) indicated by the Commission.~~

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

Article 3

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council

The President
