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From: Presidency
To: Delegations

Subject: Combatting Violence against Women and Girls -
Istanbul Convention: the internal and external dimensions

In the context of the upcoming FREMP-COHOM meeting of December 2, the Presidency is submitting to delegations the annexed paper drafted in collaboration with the EEAS and containing, *inter alia*, the state of play on the EU's proposed accession to the Istanbul Convention and questions for discussion.

Violence against women is a global problem. At the European level, the Council of Europe's Istanbul Convention, to which 14 EU Member States have already acceded, is the most visible regional treaty that focuses on preventing and combatting violence against women.

I. What is the Istanbul Convention?

The Convention is the first instrument in Europe to contain legally binding measures to categorically **prevent violence against women and girls, protect its victims and punish perpetrators**. In addition, the Istanbul Convention understands women to include girls under the age of 18, while covering a broad range of measures, from data collection and awareness raising, to legal instruments on criminalising different forms of violence against women. It also deals with protection measures, the provision of support services and measures to address the asylum and migration dimension of violence against women. It has provisions from three perspectives (3 Ps) for preventing and responding to Violence Against Women (VAW): **Prevention, Protection and Prosecution**. Recognizing that effective responses require more than measures, another P was added – **integrated Policies**. As stated by the Convention, state parties are asked to implement comprehensive and co-ordinated policies involving government agencies, NGOs as well as national, regional and local parliaments and authorities. The aim is that policies to prevent and combat violence against women and domestic violence are carried out at all levels of government and by all relevant agencies and institutions.

Overall, the Istanbul Convention offers a holistic approach, forming part of a system that is internally consistent and combines a legal framework and practical measures to address the issue of VAW.

The Convention provides for the signing and ratification of the Convention also by the European Union. The EU can accede to it to the extent of its competences. The Convention, involving both Member States' and EU shared and exclusive competences, enables EU Member States and the EU to become parties jointly. EU Accession to the Istanbul Convention would subject the EU to the independent monitoring mechanism set up by the Convention and enable it to participate in the enforcement monitoring of the Convention also beyond the EU. This would send a firm political message. The main benefit of EU accession to the Convention lies in the harnessing of the EU's policy and legal framework. It will thus help reduce violence against women and therefore **improve the health and lives of women**. Absence of violence is necessary for women's full empowerment in social and economic life and will thus contribute to the EU's overall gender equality objective. (The process of EU accession is described further below).

II. Sexual and Gender-Based Violence – The EU Approach

The EU approach to all forms of gender-based and sexual violence is comprehensive, meaning that the prevention and response to all forms of gender based and sexual violence, including violence against women and girls, are at the core of the EUs policies and activities.

The Istanbul Convention is linked with several EU priority issues and agendas including Human Rights, Justice, Migration, Development Cooperation including the Sustainable Development Goals, the Women Peace and Security agenda and the work on gender issues, gender equality and gender mainstreaming.

Gender-based Violence (GBV) is an umbrella term for any harmful act that is perpetrated against a person's will, and that is based on socially ascribed (gender) differences between males and females. Acts of GBV violate a number of universal human rights protected by international instruments and conventions. Many — but not all — forms of GBV are illegal and defined as criminal acts in national laws and policies. Around the world, GBV has a greater impact on women and girls than on men and boys. It is important to note, however, that men and boys may also be victims of gender-based violence, especially sexual violence.

III. EU Action on combatting Violence against Women and Girls

1. Preventing and responding to violence against women within the EU

Preventing and responding to gender-based violence and protecting and supporting victims is one of the five priority areas set out in the **Strategic Engagement for gender equality 2016-2019**¹. The Union has implemented measures to prevent violence and protect and support its victims, including: legislation on protection of the rights of victims of crime, and on combatting trafficking in human beings and sexual exploitation of children and protecting its victims, legislation on sexual harassment in employment and occupation as well as in the area of access to and supply with goods and services, cross-border recognition of protection orders, as well as gender-sensitive asylum procedures². Besides legislative measures, the EU supports awareness-raising and provides funding to projects and will step up its activities further in 2017. It works on the improvement of data collection in the area of violence against women and supports exchanges of good practices to foster mutual learning among EU Member States.

2. Preventing and responding to violence against women in the EU's external action

- Violence against women and girls is a violation of human rights and an extreme form of gender discrimination. There cannot be sustainable development, security or peace without women's empowerment and this cannot be achieved without eliminating all forms of violence against women and girls. This is reflected in **Sustainable Development Goal 5** which through targets 5.2 and 5.3 aims to eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking, sexual and other types of exploitation and end all harmful practices, such as child, early and forced marriage and female genital mutilation.

¹ http://ec.europa.eu/justice/gender-equality/files/documents/151203_strategic_engagement_en.pdf

² See page 7-9 of the Explanatory Memorandum of the Commission's proposal for a Council Decision on the signing of the Convention (COM(2016)111), providing references to existing acquis.

- The effective implementation of the **2008 EU Guidelines on Violence against women and girls and combating all forms of discrimination against them** is a key aspect of the EU's external human rights policy.
- The **EU Gender Action Plan (GAP) 2016-2020**³ commits the EU to implement actions in its external relations in the following priority areas: ensuring girls and women's physical and psychological integrity; promoting the economic and social rights and empowerment of girls; and women and strengthening girls' and women's voice and participation. Internally, the GAP aims at shifting the EU's institutional culture to more effectively deliver on EU gender commitments.
- The EU is active in the annual United Nations Commission on the Status of Women (CSW), the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women. Protecting the human rights of women and girls, as well as respecting previous commitments such as those made in the Beijing Platform for Action are important considerations. In its interventions during the various parts of the Session and in the organisation of side-events, the EU regularly reiterates its commitment to combating gender based violence and addresses various ways of doing so.
- The EU supports the universal principle of **zero tolerance to VAW**, and consistently condemns any form of violence against women and girls including situations when violence is perpetrated under the pretext of a cultural, traditional or religious prescription or practice [such as Female Genital Mutilation or Cutting/FGM, and all forms of Child/Forced Marriage].

³ Gender Equality and Women's Empowerment: Transforming the Lives of Girls and Women through EU External Relations 2016-2020.

- To prevent and criminalize such violence, the **EU actively promotes initiatives**, including preventive measures and at the legislative level. These initiatives focus on 1. Political commitment to gender equality through specific (and budgeted) measures that tend to progressively achieve a shift in gender relations and gender norms; 2. Support to gender-sensitive research: in order to understand the phenomenon and measure society's actual support (or rejection) of gender equality; 3. Investment in education and in its transformational power; 4. Engaging not only Women and Girls, but also Men and Boys as gender does not equate with women and gender equality can only be achieved when the whole of society works together. Furthermore, gender equality is beneficial for all: men, women, girls and boys.
- The **EU invests millions** of euros in the promotion and fulfilment of women's rights and in the fight against any form of violence against women and girls in non-EU countries (almost €700 million between 2007-2013). The EU also plays an active role in countering and preventing sexual violence in conflicts through various instruments such as bilateral and multilateral diplomacy; development and humanitarian assistance; the Instrument contributing to Stability and Peace, and; missions and operations of the Common Security and Defence Policy.
- **The Women, Peace and Security agenda**⁴ Contemporary conflicts affect civilian populations in particular, and in this context women have often become strategic targets, sometimes on a massive scale, such as when rape is used as a tactic of warfare and ethnic cleansing. They also play active roles as combatants, peace builders, politicians and activists. The EU works, together with MSs through the EU informal TF on UNSCR 1325 and based on agreed policy, to implement the women, peace and security agenda. One example of this work is the work conducted within the context of CSDP where all military and civilian missions have allocated resources to implement EU policy on gender and human rights. Another example is the support to MSs and third countries on the development and implementation of National Action Plans on UNSCR 1325, where SGBV including SVC are an integral part. Although there has been some progress in the implementation of UNSCR 1325 and the subsequent resolutions on WPS, important challenges remain. With regard to the protection of women, the weakest pillar of the implementation of Resolution 1325 is prevention of and response to Sexual and Gender-based Violence.

⁴ The WPS agenda is relevant, not only for countries in conflict -or post-conflict situations, but for all countries that are engaged in matters related to conflict-prevention, as the foundation within the WPS agenda is primarily about prevention (conflict-prevention), participation and protection.

IV. State of play on the EU's proposed accession to the Istanbul Convention

On 4 March 2016, the European Commission submitted two proposals for signing and conclusion, by the EU, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). The two proposals were discussed at technical level within the Council by the FREMP Working Party and the JHA Counsellors during the Dutch Presidency. The discussions focused primarily on the scope of the EU's accession to the Istanbul Convention and the distribution of competences between the EU and its Member States in the areas covered by the Convention. At the meeting of JHA Counsellors in June, the Commission presented examples of areas of the Istanbul Convention where, in the Commission's view, the EU has exclusive competence⁵. The Slovak Presidency informed delegations at the FREMP meeting in July of the way ahead and announced a Presidency discussion paper⁶. On this basis, at the FREMP meeting in September, the Slovak Presidency initiated a *tour de table* on various aspects of the accession. The discussion showed broad support for EU accession, subject to clarification of the division of competences between the EU and the Member States. The scope of EU accession is to be determined on the basis of such clarification⁷. During the October FREMP meeting the Presidency announced that the Council Legal Service was entrusted with the preparation of the opinion on delimitation of competences⁸. The legal opinion was issued on 27 October 2016⁹. Last FREMP discussions took place on 10 November 2016. During this meeting several Member States reiterated that the accession should be limited to the extent of the exclusive competences of the Union. During the next meeting on this dossier, on 2 December 2016, the Presidency intends to come back to this issue on the basis of a drafting proposal.

⁵ See also WK 363/2016.

⁶ WK 464/16.

⁷ Summary of this discussion is set out in 12974/16.

⁸ 13539/16.

⁹ 13795/16.

As work is progressing towards a Council decision authorising the signature, on behalf of the EU, of the Istanbul Convention, the Slovak Presidency and the EEAS deem it useful to have a joint FREMP/COHOM debate on the wider implications of this EU act in the context of the internal-external coherence of human rights. In particular, delegations are invited to reflect and provide input on the **following questions**:

1. How can the EU's (possible) signature of the Istanbul Convention be used as a winning argument vis-à-vis third countries in the context of preventing and responding to violence against women. Can the proposed signature have an impact both on substance and in encouraging further ratifications?
2. Which are the biggest ratification obstacles in EU Member States and in third countries (e.g. procedure for amending national law, definition of gender, education issues, financial aspects for the infrastructure investment required under Convention etc.)?
3. The Americas have a similar instrument: the Belém do Pará Inter American Convention on the Prevention, Punishment and Eradication of Violence against Women. Should the EU and its Member States explore the feasibility of promoting the Istanbul Convention in the global context¹⁰ or is an international instrument still merited?

¹⁰ The Convention is open for signature not only by Council of Europe member states but also the European Union and states not member of the Council of Europe (Canada, the Holy See, Japan, Mexico and the United States) which took part in drawing it up. After consulting the Parties and obtaining their unanimous consent, the Committee of Ministers may invite any other state not member of the Council of Europe member to accede to it.

Specific question for COHOM delegates:

4. In 2012 COHOM negotiated a Code of Conduct in the context of the EU's conclusion of the United Nations Convention on the Rights of Persons with Disabilities. The Code of Conduct between the Council, the Member States and the Commission sets out the internal arrangements for the implementation by and representation of the European Union relating to the UNCRPD. It is helpful in clarifying the various responsibilities in the implementation of the Convention. It contains useful provisions for participation in UN meetings and speaking and voting. It clarifies that the Commission is the Focal point for the EU and provides for the organization of coordination meetings which take place regularly on the eve of the Conference of State parties. The provisions concerning the exchange of information are regularly used for sharing the reports on the implementation and the possibility of inviting experts as observers during the examination of reports has been occasionally used. As mentioned above, in line with its provisions, the Commission proposed an EU framework for the promoting protection and monitoring of the Convention which was then agreed by the Council after discussions in COHOM. It is likely that EU's accession to Istanbul Convention would entail the need for a similar document setting out the details for coordination between the EU and its Member States. In this respect, could COHOM share its experience with FREMP on the elaboration of the *Code of Conduct between the Council, the Member States and the Commission as regards internal arrangements for the implementation by and representation of the European Union relating to the United Nations Convention on the Rights of Persons with Disabilities*¹¹?

¹¹ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42010Y1215\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42010Y1215(01)&from=EN)