EUROPEAN
COMMISSION

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2024/0292 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 17th meeting of the Committee of the Parties of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence on the adoption of a decision on the procedure for issuing recommendations to Parties in the first thematic evaluation round, with regard to matters related to judicial cooperation in criminal matters

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 17th meeting of the 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 17 December 2024, in connection with the envisaged adoption of a draft decision concerning the Committee's new procedure for issuing recommendations to Parties on their implementation of the Convention, based on the first thematic evaluation round by the Group of Experts on Action against Violence against Women and Domestic Violence ('GREVIO) entitled "Building trust by delivering support, protection and justice".

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 Union[1] and with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement[2]. All EU Member States have signed the Convention and 22 have ratified it[3].

2.2. The Committee of the Parties

The CoP[4] 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 violence[5]. The tasks entrusted to the CoP are listed in Rule 1 of its Rules of Procedure[6]. 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).

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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 November 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)

5 Rule 2.1.b of the Rules of Procedure 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 Parties[7]. 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: GREVIO and the CoP. GREVIO is an independent group of experts tasked to monitor the implementation of the Istanbul Convention on a country-by-country basis, in accordance with Article 66(1) of the Convention.

The monitoring procedure is set out in Article 68 of the Convention. In accordance with Article 68(1), Parties are required to submit a report, based on a questionnaire prepared by GREVIO, detailing legislative and other measures taken to give effect to the provisions of the Convention. This procedure, referred to as the baseline evaluation procedure, provides a first comprehensive overview of the Party's implementation of nearly all provisions of the Convention. Based on the questionnaire and additional information from other relevant actors, GREVIO drafts a report that includes proposals for measures the Party should take to fulfil its obligations under 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, the CoP has been adopting recommendations to State Parties 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 year-period, and those which, while important, the CoP considers could be left at a secondary level of immediacy.

The applicable procedure for issuing recommendations based on GREVIO's baseline reports was established by the Committee at its 4th meeting on 30 January 2018 and is outlined in document IC-CP(2018)6[8]. In summary, it was agreed that recommendations should focus on shortcomings identified by GREVIO as requiring immediate action, indicated by the verb "urges", and those within Chapters I and II of the Convention that require remedial action in the near future, as indicated by the verb "strongly encourages."

While GREVIO considers all its proposals important, it has established a hierarchy of urgency, expressed through the use of different verbs: "urge," "strongly encourage," "encourage," and "invite." The CoP specifically decided to include in its recommendations the "strongly encourages" proposals from Chapters I and II of the Convention due to their particularly high importance, as they provide the foundation for the effective implementation of the rest of the Convention. GREVIO had also identified significant gaps in the implementation of these Chapters. It was further agreed that Parties should be given three years to implement the CoP's recommendations and report back. Lastly, the CoP decided to explicitly invite the Party to implement the remaining proposals from GREVIO, without requiring further reporting on those less urgent issues, as a way to endorse GREVIO's proposals in their entirety.

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7 Article 1(2) of the Istanbul Convention.

8 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.

2.4. The thematic evaluation rounds

As the baseline evaluation procedure has been completed for nearly all Parties to the Convention, GREVIO decided in late 2022 to move to the next phase in the evaluation of State Parties' compliance with the Convention. In accordance with Article 68(3) of the Convention, GREVIO's evaluation procedures following the baseline evaluation shall be divided into rounds. At the beginning of each round, GREVIO shall select specific provisions to evaluate and send out a questionnaire to gather information on their implementation. On the basis of the information collected, GREVIO will issue reports. This process is referred to as GREVIO's thematic evaluation rounds.

The first thematic evaluation round is entitled "Building Trust by Delivering Support, Protection and Justice" and will run from 2023 to 2031. While the baseline evaluation covered around 60 articles of the Istanbul Convention, the new thematic evaluation procedure addresses 19 specific provisions[9]. These provisions set out standards for law enforcement agencies, criminal justice actors, the provision of general and specialist support services for victims, and an overall victim-centred approach. The aim is to provide a more in-depth assessment of these areas, focusing on the progress made under each provision.

In order to adopt recommendations to Parties based on GREVIO's new thematic evaluation, the CoP needs to establish a dedicated procedure. A preliminary discussion on this matter took place at the CoP meeting on 3 May 2024, based on a discussion paper prepared by the Secretariat [IC-CP(2024)6][10]. Following this discussion, the CoP Secretariat circulated a draft decision [IC-CP(2024)10] in September 2024 on the procedure for issuing such recommendations, along with a template outlining the proposed structure of the recommendations to be addressed to the Parties[11].The draft decision is largely based on the applicable procedure for issuing recommendations based on GREVIO's baseline reports.

2.5. The envisaged act of the Committee of the Parties

During its 17th meeting on 17 December 2024, it is foreseen that the CoP will proceed with the adoption of a decision on the Committee's new procedure for issuing recommendations to Parties on their implementation of the Istanbul Convention based on GREVIO's first thematic evaluation reports, along with a template outlining the structure of such future recommendations ('the envisaged act').

The procedure as proposed by the CoP Secretariat in document IC-CP(2024)10 can be summarised as follows:

– The recommendations should cover the proposals in the thematic evaluation reports that GREVIO considers should be remedied with particular urgency ("urges") and those which GREVIO considers should be remedied in the near future ("strongly encourages"), concerning all chapters of the Convention.

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9 Articles 7, 8, 11, 12, 14, 15, 16, 18, 20, 22, 25, 31, 48, 49, 50, 51, 52, 53 and 56 of the Istanbul Convention, GREVIO Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by the Parties 1 st thematic evaluation round: Building trust by delivering support, protection and justice: 1680a90c67 (coe.int)

10 Entitled Discussion paper on the adoption of recommendations by the Committee of the Parties in light of GREVIO's first thematic evaluation reports and proposals/suggestions made.

11 Decision on the recommendations to be adopted by the Committee of the Parties in light of GREVIO's reports adopted as part of its first thematic round of evaluation [IC-CP(2024)10]

– The CoP shall supervise the implementation of these recommendations, in line with its Rules of Procedure, by requesting that the Party submits a written report on how it has implemented the recommendations within three years of the adoption of the recommendations. The CoP may thereafter choose to not take any further steps in its supervision to avoid overlap with any future evaluation rounds by GREVIO.

– The recommendations should explicitly recommend that the Party implements the remaining proposals from GREVIO, without requiring further reporting on these less urgent issues, as a way to endorse GREVIO's conclusions in their entirety, and invite the Party to a continued dialogue with GREVIO.

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

The envisaged act concerns the CoP Secretariat's proposal for the scope of and the procedure for issuing recommendations to Parties on their implementation of the Istanbul Convention based on GREVIO's first thematic evaluation reports, along with a template outlining the structure of such future recommendations. The thematic evaluation round concerns Parties' implementation of provisions of the Convention which relate to judicial cooperation in criminal matters, such as matters relating to protection and support of victims of violence against women and domestic violence. The recommendations adopted by CoP 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 envisaged act determines the procedure for the adoption of recommendations and the supervision of the implementation of recommendations issued to the Parties and will be binding on the Union. Therefore, it is appropriate to establish the position to be taken on the Union's behalf in the CoP on the envisaged act, with regard to matters related to judicial cooperation in criminal matters.

It is proposed that the EU agrees with the Secretariat's proposal, as the suggested procedure aligns with the baseline evaluation procedure which has been effective and ensures effective implementation of all provisions chosen for the thematic evaluation, while avoiding overlapping monitoring processes.

A proposed change compared to the baseline evaluation procedure pertains to the scope of the recommendations. The new proposal would broaden the scope to include all conclusions that GREVIO deems requiring urgent action ("strongly encourages"), rather than limiting recommendations to Chapters I and II of the Convention as per the previous procedure. This broader scope should be acceptable, as the overall number of conclusions are likely to be reduced compared to GREVIO's baseline evaluation reports, given that the thematic report only addresses nineteen Articles of the Convention.

In addition, a minor change in the proposal is that it explicitly states that the CoP may choose not to take further supervisory steps after receiving written reports on the implementation of the recommendations, to avoid overlap with future evaluation rounds by GREVIO. This address concerns raised by Parties regarding overlapping monitoring processes, as they have had to manage both baseline and thematic evaluations simultaneously. This should also be acceptable, given the need to streamline procedures and reduce the burden on Parties.

Another minor change is that it is explicitly stated that the CoP invites the Party to continue the dialogue on progress with GREVIO. This should also be acceptable as such dialogue is voluntary and may be helpful for the Party in question.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (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*'[12].

4.1.2. Application to the present case

The Committee of the Parties is a body set up by the Istanbul Convention. The draft decision which the Committee of the Parties is called upon to adopt constitutes an act having legal effects as it will determine the procedure for the adoption and the supervision of the implementation of recommendations to Parties based on the thematic evaluation round in the area of judicial cooperation in criminal matters, which may affect the interpretation of relevant provisions of the Convention in the future, and are therefore capable of decisively influencing the content of Union law. 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 those 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

The main objective of the envisaged act is to set the procedures to enable the CoP to adopt recommendations to Parties based on GREVIO's new thematic evaluation reports. The thematic evaluation round concerns Parties' implementation of provisions of the Convention which relate to judicial cooperation in criminal matters, such as matters relating to protection and support of victims of violence against women and domestic violence. 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

[12] 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.

Union[13]and with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement[14]. The EU 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 in relation to the envisaged act is to be split into two parallel decisions.

The envisaged act pursues objectives in the area of judicial cooperation in criminal matters (Article 82(2) and Article 84 TFEU) which are inseparably linked without one being incidental to the other. Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Article 82(2) and Article 84 TFUE.

4.3. Conclusion

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

[13] 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. 1–3.

[14] 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. 4–6.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular 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) 2023/1075[15], with regard to institutions and public administration of the Union, and by Council Decision (EU) 2023/1076[16], with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement, insofar as they fall within the exclusive competence of the Union, 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. In accordance with Article 68(3) of the Convention, the subsequent evaluation procedures following GREVIO's initial baseline evaluation procedure, shall be divided into rounds, which are referred to as GREVIO's thematic evaluation rounds. Pursuant to Article 68(11) of the Convention, GREVIO is to adopt its report and conclusions concerning the measures taken by the Party concerned to implement the relevant provisions of the Convention. Based on the GREVIO reports, the Committee of the Parties to the Convention may adopt recommendations addressed to the Party concerned, in accordance with Article 68(12) of the Convention.

(3) The first thematic evaluation round, entitled "Building Trust by Delivering Support, Protection and Justice" was launched in 2022 and will run from 2023 to 2031. It

[15] 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. 1–3.

[16] 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. 4–6.

addresses 19 specific provisions of the Convention[17] and concerns Parties' implementation of provisions of the Convention which relate to judicial cooperation in criminal matters, such as matters relating to protection and support of victims of violence against women and domestic violence.

(4) In September 2024, the Secretariat of the Committee of the Parties shared a draft decision on the recommendations to be adopted by the Committee of the Parties in light of GREVIO's reports adopted as part of its first thematic round of evaluation [IC-CP(2024)10], which provides for a procedure for the adoption of recommendations and their subsequent supervision by the Committee of the Parties and contains a model recommendation. The draft decision is to be discussed and, if possible, adopted at the 17th meeting of the Committee of the Parties on 17 December 2024.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Committee of the Parties as the envisaged act will determine the procedure for the adoption and the supervision of the implementation of recommendations addressed to Parties with regard to matters related to judicial cooperation in criminal matters. Those recommendations will be 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) According to the draft decision, the recommendations should be limited to the most pressing concerns identified by GREVIO in its reports. These include shortcomings that GREVIO considers requiring immediate action, where it uses the verb "urges", as well as those issues that GREVIO believes should be remedied in the near future, indicated by the verb "strongly encourages", covering all chapters of the Convention.

(7) As regards the supervision, the draft decision provides that the Committee of the Parties should supervise the implementation of these recommendations by requesting the Party to submit a written report on the measures taken within a 3-year period after the adoption of the recommendations. The Committee of the Parties may thereafter choose to not take any further steps in its supervision to avoid overlap with any future evaluation rounds by GREVIO.

(8) Lastly, the draft decision provides that the recommendations should recommend the Party to implement the remaining, less urgent proposals from GREVIO, as a way to endorse GREVIO's conclusions in their entirety, and to invite the Party to a continued dialogue with GREVIO.

(9) It is proposed that the Union agrees with the draft decision, as the suggested procedure aligns with the baseline evaluation procedure which has been effective and ensures effective implementation of all provisions chosen for the thematic evaluation, while avoiding overlapping monitoring processes.

(10) The position of the Union within the Committee of the Parties should therefore be to support the adoption of the draft decision in document IC-CP(2024)10, including the proposed model recommendation in its Appendix I.

(11) In order to allow for the necessary flexibility during the meeting of the Committee of the Parties, it should be provided that minor changes to the draft decision may be agreed without further decision of the Council.

[17] Articles 7, 8, 11, 12, 14, 15, 16, 18, 20, 22, 25, 31, 48, 49, 50, 51, 52, 53 and 56 of the Istanbul Convention.

(12) Ireland is not bound by Council Decision (EU) 2023/1076 and is therefore not taking part in the adoption of this Decision.

(13) 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 behalf of the Union at the 17th meeting of the Committee of the Parties, established under Article 67 of the Convention, shall be to support the adoption of the decision on the recommendations to be adopted by the Committee of the Parties in light of GREVIO's reports adopted as part of its first thematic round of evaluation [IC-CP(2024)10], including the proposed model recommendation in its Appendix I.

Article 2

Minor changes to the draft decision IC-CP(2024)10, including its Appendix 1, may be agreed to by the representatives of the Union at the Committee of the Parties without further decision of the Council.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President