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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence – General approach – Statements

Delegations will find in the Annex the statements entered by:

- Belgium, Greece, Italy and Luxembourg jointly;
 - the Czech Republic and Estonia;
 - Hungary.
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Joint statement by Belgium, Greece, Italy and Luxembourg for the COREPER and Council minutes on the general approach on the proposal for a directive of the European parliament and the Council on combating violence against women and domestic violence

Belgium, Greece, Italy and Luxembourg strongly support the European Commission's proposal for a directive on combating violence against women and domestic violence. Gender-based violence, and in particular sexual violence, is a scourge that must be addressed in unison. This type of violence has shown to be so entrenched in our society that a national response, already pervasive across Europe, is no longer sufficient. The figures are as worrying as ever and joint action is now required.

We furthermore support the Presidency's compromise text in order to reach a general approach at the JHA Council meeting on 9 June 2023.

However, we strongly regret the lack of political ambition with regard to the criminalisation of the offence of rape. In particular, we do not share the analysis of a number of Member States that the legal basis in the treaties would be inadequate to establish minimum rules on the offence of rape.

In its opinion, the Legal Service of the Council has stated that the “Council could [...] choose to endorse a more extensive reading of the legal basis as regards the notion of sexual exploitation of women and children, on the basis of two aspects [...], namely i) the use of the coordinating conjunction “and” in the description of the area of crime in Article 83(1) TFEU, and ii) the fact that in the Child Sexual Abuse and Sexual Exploitation Directive, the legal basis of “sexual exploitation of children” has been interpreted somewhat extensively and used in order to establish minimum rules concerning an offence where the exploitative element is less present but is rather focused on the use of violence as a form of sexual abuse.” The configuration of society is such that being a woman or a child undoubtedly makes one more vulnerable to sexual violence and constitutes a vulnerability to abuse that can be presumed. This approach justifies reasoning similar to that adopted in the Child Sexual Abuse Directive Article 3, paragraph 5, (iii).

Given the disturbing evolution of gender-based violence in the past decades, these types of crimes are unlikely to significantly decrease without additional EU action. Therefore, we deeply regret this missed opportunity to set minimum rules regarding an effective fight against gender-based violence.

STATEMENT OF THE CZECH REPUBLIC AND ESTONIA

The Czech Republic and Estonia wholeheartedly support the aims of combating violence against women and domestic violence. However, we would like to highlight our concerns about a possible precedent being created with the broad interpretation of the area of *computer crime* within the meaning of Article 83 paragraph 1 of the Treaty on the Functioning of the European Union (“TFEU” or “Treaty”). This provision provides the Union with a competence to establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. The drafters of the Treaty kept in mind the specific need to safeguard the fundamental aspects of national criminal justice systems as is evident from Article 83 paragraph 3 TFEU. This is also underlined in Article 67 paragraph 1 TFEU which explicitly emphasizes the need to respect different legal systems and traditions of the Member States, which reflects the fact that Justice and Home Affairs matters fall within the core area of the sovereignty of the Member States.

The list of so-called *eurocrimes* in Article 83 paragraph 1 TFEU covers eleven areas of crime, which merit a common Union approach due to their particularly serious nature and typical cross-border dimension. This list can be extended only by a unanimous decision of the Council after obtaining consent of the European Parliament. Keeping this in mind, the interpretation of the list of *eurocrimes* should not be interpreted broadly.

At the EU level, there are two legal instruments based on Article 83 paragraph 1 TFEU with reference to the area of computer crime - Directive 2019/713 and Directive 2013/40/EU. Both of these instruments cover offences that can only be committed through the use of technology, where the devices are both the tool for committing the crime and the target of the crime (cyber-dependant crime). The proposal for a Directive on combating violence against women and domestic violence follows a different logic, the technology itself is not necessary to commit a criminal offense but it is used to increase the scale or reach of “traditional” crimes (cyber-enabled crime).

Consequently, if “computer crime” would be interpreted as covering every act that could be perpetrated by means of a computer system, this would vest the European Union with an unlimited competence to criminalise various conduct unrelated to any other area of offences already listed in Article 83 paragraph 1 TFEU only by reference to the fact that such acts can be perpetrated by means of a computer system. This would not only significantly broaden the scope of EU competences, but it might bring about a spill-over effect, because Member States implementing such legislation would have to ensure that their criminal law forms a coherent whole. Therefore, such new offences would most likely be transposed in a technology neutral way which would mean that despite the reference in EU legislation to the offence being committed by means of a computer system, national transposition would expectedly also cover other forms of committing such an offence.

The Article 10 on incitement to hatred is one of these examples. Establishing minimum requirements of incitement to hatred would have been better suited following an agreement to expand the list of *eurocrimes* in Article 83 paragraph 1 TFEU. This would have allowed for a comprehensive overview of the existing *acquis* to ensure that the offences are well formulated, cover the most serious forms of incitement and do not infringe upon the freedom of expression.

Statement by Hungary

Hungary has concerns about the legal basis of the proposal on the Directive on combating violence against women and domestic violence. Article 83 of the Treaty on the Functioning of the European Union provides that “[t]he European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.” This Article lists “computer crime” among the so-called eurocrimes. However, this cannot be construed to mean that the legislative powers established by this Article would extend to the harmonisation of all criminal offences that are committed online or by using computers.
