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COVER NOTE

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Committee of the Parties of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, on amendments to the Committee's Rules of Procedure, with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement

Delegations will find attached document COM(2024) 38 final.

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EUROPEAN
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Brussels, 24.1.2024
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2024/0014 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Committee of the Parties of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, on amendments to the Committee's Rules of Procedure, 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 in 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'), in connection with the envisaged adoption of amendments to the Rules of Procedure of the CoP¹ as regards the Committee's composition (Rule 2) and rules on voting (Rules 20, 21 and 25). Amending these rules of procedure became necessary following the European Union's accession to the Istanbul Convention.

2. CONTEXT OF THE PROPOSAL

2.1. The Istanbul Convention

The Istanbul Convention aims to establish 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 Union² and with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement³. Ireland and Denmark are not bound by the Union's exercise of its competence as regards matters related to judicial cooperation in criminal matters, asylum and non-refoulement⁴. All EU Member States have signed the Convention but, as of 10 January 2024, only 22 have ratified the Convention and thus have the right to vote in the Committee of the Parties⁵. There are currently 39 Parties to the Convention, including the EU.

2.2. The Committee of the Parties of the Convention

The Committee of the Parties⁶ is the political body of the Istanbul Convention's monitoring mechanism and is composed of the representatives of the Parties to the Convention. The tasks entrusted to the CoP are listed in Rule 1 of the Rules of Procedure. Pursuant to Article 67(2) of the Convention, the CoP is tasked to elect the members of the Group of Experts on Action against Violence against Women and Domestic Violence ('GREVIO'). In accordance with

¹ Document IC-CP(2015)2, adopted on 4 May 2015.

² 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.

³ 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.

⁴ In accordance with Protocols No 21 and No 22 annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

⁵ Status of ratifications on 10.01.2024: 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).

⁶ [Committee of the Parties - Istanbul Convention Action against violence against women and domestic violence \(coe.int\)](https://www.coe.int/t/e/treaties/Convention+on+Preventing+and+Combating+Violence+Against+Women+and+Domestic+Violence/Committee+of+the+Parties+-+Istanbul+Convention+Action+against+violence+against+women+and+domestic+violence+(coe.int).aspx)

Article 68(12) of the Convention, the CoP may adopt, on the basis of the reports and conclusions of GREVIO, recommendations addressed to State Parties on the implementation of the Convention. It also supervises the implementation of those recommendations once the three-year period for implementation has ended⁷. Moreover, the CoP examines the findings of special inquiries transmitted to it by GREVIO in accordance with Article 68(15) of the Convention. The CoP also elects the members of its bureau – a chair and two vice-chairs.

The Rules of Procedure of the CoP are tailored to the participation of State Parties where each party has one vote: Rule 20 of the Rules of Procedure on voting establishes that “[e]ach member of the Committee shall have one vote” and that the quorum required for decisions of the Committee is “a two-thirds majority of the votes cast”. The same quorum is also required to amend the Rules of Procedure (Rule 25). Rule 21 of the Rules of Procedure provides for specific rules for the election of GREVIO members.

The accession of the EU to the Convention requires certain adjustments to those rules because, in matters falling within its competences, the Union exercises its right to vote with a number of votes equal to that of the Member States bound by the Union’s exercise of its competence and that number will vary depending on the subject matter of the vote.

2.3. The envisaged amendment of the Rules of Procedure of the Committee of the Parties

On 28 August 2023, the Secretariat of the CoP distributed an information document and draft amendments to the Rules of Procedure. Those amendments aim to reflect the implications of the accession of the EU to the Istanbul Convention for the functioning of the CoP, and, in particular, its effects on the provisions on voting. The CoP Secretariat gave State Parties the possibility to comment. Only the United Kingdom sent comments in writing, suggesting some drafting changes.

The EU has been requested by the Secretariat of the CoP to submit its comments to the proposed draft amendments. The amendments to the Rules of Procedure will be discussed and, if possible, adopted at the 16th meeting of the Committee of the Parties on 6 June 2024. Should delegations require more time for discussion, the amendments could also be adopted at the subsequent meeting of the CoP in December 2024.

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

The amendments to the Rules of Procedure proposed by the CoP Secretariat can be summarised as follows:

- The current quorum of two-thirds of the votes cast in the general rule on voting (Rule 20) would be maintained but supplemented by two new elements. As a first element, the CoP Secretariat proposes a clause of non-additionality, whereby and depending on the distribution of competences, it would be either the EU or its Member States which are entitled to vote on a particular question. In case the Union would vote, this vote would have a weight equivalent to the number of EU Member States which are Parties to the Convention. As a second element, the CoP Secretariat proposes a “double majority” meaning that a simple majority of the State Parties to the Convention which are not EU Member States would be required to vote in favour of a decision for it to be valid, as part of the necessary two-thirds of the votes cast rule.

⁷ See 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.

- As regards the election of GREVIO members, the current quorum of “at least a majority of the votes cast” (Rule 21, paragraph 9) would be maintained. Each member of the Committee would have one vote for the purpose of electing GREVIO members. The principle of non-additionality would not apply, meaning that the Union would have an “additional vote” to elect GREVIO members, on top of the individual vote of each EU Member State that is a Party to the Convention. As regards decisions to request the withdrawal of one or more candidates who do not meet the requirements for membership of GREVIO (Rule 21, paragraph 4), the current quorum of a two-thirds majority of the votes cast would also be maintained but supplemented by the requirement of a double majority.
- As regards amendments to the Rules of Procedure (Rule 25), the current quorum of two-thirds of the votes cast would be maintained but supplemented by the requirement of a double majority.

It is proposed that the EU agrees with the general approach of the CoP Secretariat for the amendment of the Rules of Procedure but makes a number of adjustments as described below.

Firstly, it is proposed that the EU accepts the inclusion of a “non-additionality” clause in Rule 20, paragraph 1, of the Rules of Procedure, subject to certain adjustments which are necessary to reflect the fact that the Union has acceded to the Istanbul Convention with regard to its own institutions and public administration, on the one hand, and with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement, on the other hand, taking into account the special position of Denmark and Ireland.

Accordingly, in matters within its competence, the Union should exercise its right to vote with a number of votes equal to the number of those of its Member States which are Parties to the Convention and which are bound by the Union’s exercise of its competence. Where the Union exercises its right to vote, the Member States which are Parties to the Convention and which are bound by the Union’s competence in the matter to be voted upon, shall not vote, whereas the Member States that are not bound by the Union’s competence can vote separately. Conversely, the Union shall not exercise its right to vote in cases where all of its Member States which are Parties to the Convention are entitled to exercise theirs.

The “non-additionality” principle is in line with established practice as regards other Council of Europe conventions to which the EU has acceded⁸.

Secondly, it is proposed that the EU accepts the inclusion of a “double majority” requirement in Rule 20, paragraphs 3 and 5, of the Rules of Procedure, as suggested by the CoP Secretariat, subject to certain adjustments taking into account the special position of Denmark and Ireland, and limited to situations where the Union participates in a vote.

The purpose of the “double majority” requirement in Rule 20 is to introduce a more balanced and equitable weighting of all Parties to the Convention and to counterbalance the fact that the EU already has a simple majority in the CoP in terms of votes. It is aimed at providing reassurance to the non-EU State Parties that their positions will continue to matter at the CoP despite the EU’s accession and that they will not be ‘outweighed’ by the EU and its Member States voting as one bloc.

⁸ See: The European Convention for the Protection of Animals during International Transport (Revised), (ETS No. 193); Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS No. 150); European Convention on Transfrontier Television (ETS No. 132); and Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104).

The requirement of a double majority would mean that, when the EU participates in a vote, the usual quorum (i.e. 2/3 of the votes cast) would be supplemented by a requirement of a simple majority of the votes cast by the other Parties to the Convention. Those other Parties to the Convention include non-EU State Parties, and, where relevant, EU Member States which are not bound by the Union's exercise of its competence.

Where the Union participates in a vote with a number of votes equal to the number of its Member States which are Parties to the Convention, the double majority requirement would mean that for a decision to be validly adopted, a two-thirds majority shall have been reached where the Union's vote (equal to 22 votes) is supported by a simple majority of the votes cast by the 16 non-EU State Parties to the Convention. Where the Union participates in a vote with a number of votes equal to the number of its Member States which are Parties to the Convention and which are bound by the Union's exercise of its competence in the areas of judicial cooperation in criminal matters, asylum and non-refoulement, a two-thirds majority shall have been reached where the Union's vote (equal to 20 votes) is supported by a simple majority of the votes cast by the 16 non-EU State Parties to the Convention plus Denmark and Ireland.

Thirdly, as regards the specific rules for the election of GREVIO members, it is proposed that the Union accepts the addition in Rule 21, paragraph 7, of the Rules of Procedure, as drafted by the CoP Secretariat, according to which each member of the Committee shall have one vote. Since Rule 20 and hence the principle of non-additionality does not apply in the context of Rule 21 (Rule 21, paragraph 1), the EU will have one vote in addition to the individual vote of each EU Member State that is a Party to the Convention. As regards the proposed amendment to supplement Rule 21, paragraph 4, of the Rules of Procedure on decisions to request the withdrawal of one or more candidates for GREVIO by a requirement of a double majority, the Union should accept such requirement, taking into account the exceptional character of such decisions. In such case, the simple majority, supplementing the required two-thirds majority, will be established on the basis of the votes cast by representatives of Parties other than the EU and its Member States, as also suggested in the written comments submitted by the UK.

Fourthly, as regards Rule 25 on amendments to the Rules of Procedure, it is to be noted that such decisions are to be taken by a two-thirds majority of the votes cast, whereby each Party to the Convention shall have one vote as provided for in Rule 20, paragraph 1, first subparagraph. For the reasons set out above, the Union should accept the addition of a double majority requirement as proposed by the CoP Secretariat, subject to certain adjustments. In particular, it should be clarified that the principle of non-additionality as provided for in Rule 20, paragraph 1, as amended, does not apply to Rule 25. Moreover, the simple majority, supplementing the required two-thirds majority, is to be established in the same manner as in Rule 21, paragraph 4.

Fifthly, it is proposed that the EU suggests that the reference to the European Union should be deleted from the list of representatives in Rule 2.2.b of the Rules of Procedure that are allowed to participate in the meetings of the Committee of the Parties without the right to vote or the defrayal of expenses. The rule is obsolete since the European Union is now a full Member of the CoP.

The proposed amendments to the Rules of Procedure of the CoP to be submitted to the CoP Secretariat are set out in the Annex to the present decision.

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’*⁹.

4.1.2. Application to the present case

The Committee of the Parties is a body set up by the Istanbul Convention. The amendments to the rules of procedure which the Committee of the Parties is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 67(3) of the Convention. The envisaged act does not supplement or amend the institutional framework of the Convention. 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 amend the Rules of Procedure of the CoP to address the implications of the Union’s accession to the Istanbul Convention for the functioning of the Committee. 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 Union¹⁰ and with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement¹¹. The EU accession to the Istanbul Convention was split into two separate

⁹ 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.

¹⁰ 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.

¹¹ 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

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 legal basis for the present decision concerns matters related to judicial cooperation in criminal matters, asylum and non-refoulement. This legal basis includes provisions in the areas of judicial cooperation in criminal matters (Article 82(2) and Article 84 TFEU) and 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 82(2), Article 84 and Article 78(2).

4.3. Conclusion

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

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.

Proposal for a

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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), Article 84 and Article 78(2), 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) 2023/1075¹², with regard to institutions and public administration of the Union, and by Council Decision (EU) 2023/1076¹³, 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. To date, there are 39 Parties to the Convention, including the Union and 22 Member States.
- (2) The Committee of the Parties is the political body of the monitoring mechanism of the Istanbul Convention. Pursuant to Article 67(3) of the Convention, the Committee of the Parties has drawn up its own Rules of Procedure. Those rules provide that each Party to the Convention has one vote. The accession of the Union to the Convention requires certain adjustments to those rules in order to determine the modalities for the Union exercising its voting rights as Party to the Convention.
- (3) In August 2023, the Secretariat of the Committee of the Parties proposed certain amendments to the Rules of Procedure to reflect the impact of the Union's accession on the functioning of the Committee and has asked State Parties and the Union to submit drafting suggestions with a view to adopting the amendments in 2024. The amendments are to be discussed and, if possible, adopted at the 16th meeting of the Committee of the Parties on 6 June 2024.

¹² 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.

¹³ 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.

- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Committee of the Parties, as the amendments to the Rules of Procedures will be binding on the Union.
- (5) According to the draft amendments proposed by the Secretariat of the Committee of the Parties, the rules on quorum for the adoption of the Committee's decisions as provided for in the Rules of Procedure would be maintained but supplemented by some new requirements. The Union should support those amendments to the Rules of Procedure, subject to certain adjustments reflecting the scope of the Union's accession to the Istanbul Convention.
- (6) As regards the general rule on voting in Rule 20 of the Rules of Procedure, the Secretariat of the Committee of the Parties proposes to include a non-additionality clause according to which it would be either the Union or its Member States which are entitled to vote on a particular matter. The principle of non-additionality is already incorporated in other Council of Europe Conventions to which the Union has acceded and should also be accepted in the present case. However, the wording of the clause should be adapted to the fact that the Union exercises its right to vote with a number of votes which will vary depending on the subject-matter of the vote.
- (7) As regards the general rule on voting in Rule 20 of the Rules of Procedure, the Secretariat of the Committee of the Parties also proposes to include a requirement of double majority meaning that a decision will only be adopted with a majority of two-thirds of the votes cast if it is supported by a simple majority of the votes cast by State Parties to the Convention which are not Member States of the Union. Such requirement would counterbalance the fact that the Union has a simple majority in the Committee of the Parties in terms of votes, thereby addressing possible concerns by third State Parties as to the weight of the Union's vote. The Union should accept the double majority requirement, provided that it applies only where the Union participates in a vote and its wording is adapted to the fact that the Union exercises its right to vote with a number of votes which will vary depending on the subject-matter of the vote.
- (8) As regards the specific rules for the election of members of the Group of Experts on Action against Violence Women and Domestic Violence ('GREVIO'), the Union should accept the proposed amendment providing for one vote for the Union in addition to the individual vote of each Member State. As regards more specifically decisions to request the withdrawal of one or more candidates who do not meet the requirements for membership of GREVIO, the Secretariat of the Committee of the Parties proposes to apply a double majority requirement. Taking into account the exceptional character of such decisions, the Union should accept such requirement meaning that the two-thirds majority of the votes cast, as required for such decisions, should include a simple majority of the votes cast by representatives of Parties other than the Union and its Member States.
- (9) As regards amendments to the Rules of Procedure which are to be adopted by a two-thirds majority of the votes cast, with each Party to the Convention having one vote, the Union should accept the addition of a double majority requirement as proposed by the Secretariat of the Committee of the Parties, subject to clarifying that the principle of non-additionality does not apply here.
- (10) As regards the Rule of Procedure listing the participants which are not members of the Committee of the Parties, the reference to the European Union should be deleted since it has become obsolete.

- (11) The position of the Union within the Committee of the Parties should therefore be based on the attached draft amendments to the Committee's Rules of Procedure.
- (12) 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, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (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 the Union's behalf in the Committee of the Parties, established under Article 67 of the Convention, with regard to the adoption of amendments to the Rules of Procedure of the Committee of the Parties, which are to be discussed and adopted at one of the meetings of the Committee of the Parties in 2024, shall be based on the amendments to the Rules of Procedure as set out in the Annex.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*