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**NOTE**

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| From: | Presidency |
| To: | Delegations |
| Subject: | Declaration concerning the competence of the European Union with regard to matters governed by the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) |

During the discussions in the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP WP) on the two draft Council decisions regarding the conclusion on behalf of the European Union of the Istanbul Convention, the FREMP WP also agreed at technical level on the text of an EU declaration of competence regarding matters covered by this Convention. This text is set out in the Annex to this Note.

The text of the EU declaration of competence regarding matters covered by the Istanbul Convention, after revision by the lawyer-linguists, will be submitted to the approval of the Council at the time of the adoption of the decisions on the conclusion, following receipt of the consent of the European Parliament.

**ANNEX**

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**Declaration concerning the competence of the European Union with regard to matters governed by the Council of Europe Convention on preventing and combating violence against women and domestic violence**

1. The European Union (hereafter 'the Union') hereby declares the specific areas of its competences in the matters covered by the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter 'the Convention'), at the time of its accession to the Convention.

2. In accordance with Articles 3 and 4 of the Treaty on the Functioning of the European Union **(**TFEU**)**, in some matters the Union has exclusive competence and in other matters competence is shared between the Union and its Member States. For all matters in respect of which no competence has been conferred to the Union, the Member States remain solely competent.

3. The Union has exclusive competence to accept the obligations set out in the Convention with respect to its own institutions and public administration, within the scope of Article 336 TFEU[1].

4. In other matters covered by the Convention where EU rules have been adopted– namely as regards:

- action to combat discrimination, in particular based on sex,
- action regarding the coordination of diplomatic or consular protection of citizens of a non-represented EU Member State in a third country,
- action on matters of asylum, subsidiary protection, temporary protection, and immigration,
- judicial cooperation in civil and criminal matters and police cooperation,
- equality between women and men with regard to labour market opportunities and treatment at work and in matters of employment and occupation,

[1] Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community.

the Union has exclusive competence to enter into this Convention only to the extent that provisions of the Convention may affect common rules or alter their scope within the meaning of Article 3(2) TFEU. When Union rules exist but there is no risk of affectation, in particular as may be the case where Union law establishes minimum standards, the Member States have competence, without prejudice to the competence of the Union to act in this field.

In particular, the scope of Union rules may be affected or altered by international commitments where the latter fall within an area already largely covered by such rules. When assessing whether an area is already largely covered by Union rules, account must be taken, in particular, not only of Union law as it now stands in the sphere concerned, but also of its future development, insofar as that is foreseeable at the time of that analysis. The extent of the Union's competence must be assessed on the basis of a comprehensive and detailed analysis of the relationship between the Convention and the precise provisions of each measure of Union law.

For that purpose a list of relevant acts adopted by the Union appears in the Annex hereto.

5. The Union's accession to the Convention which concerns the matters falling within its exclusive competence, is without prejudice to the Member States' competence as regards the ratification, acceptance or approval of the Convention, for matters falling within their national competences.

6. The scope and exercise of Union competence are, by their nature, subject to continuous development. Where appropriate, the Union will complete or amend this declaration.

7. In accordance with Article 77 of the Convention, the Union would like to specify that the Convention shall apply, with regard to the competence of the Union, to the territories in which the EU Treaties are applied and under the conditions laid down, in particular in Article 52 of the Treaty on European Union and Article 355 TFEU thereof.

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**ANNEX**

I. The relevant secondary legislation referred to in point 4 of this declaration are the acts listed below. The competence of the Union ensuing from those acts is exclusive only insofar as the conclusion of the Convention may affect common rules contained in these acts or alter their scope.

Cooperation in criminal matters and police cooperation

- Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters, OJ L 181, 29.6.2013, p. 4;
- Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, OJ L 337, 16.12.2008, p. 102;
- Directive 2011/99/EU on the European protection order, OJ L 338, 21.12.2011, p. 2;
- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, p. 1-11;
- Council Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings, OJ L 220, 15.8.2008, p. 32;
- Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, OJ L 335, 17.12.2011, p. 1-26;
- Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, OJ L 315, 14.11.2012, p. 57–73;
- Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, OJ L 26, 31.1.2003, p. 41;
- Directive 2004/80/EC relating to compensation of crime victims, OJ L 261, 6.8.2004, p. 15;
- Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States, OJ L 93, 7.4.2009, p. 23;

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- Directive (EU) 2019/884 of the European Parliament and of the Council of 17 April 2019 amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA, OJ L 151, 7.6.2019, p. 143–150;

- Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA, OJ L 150, 20.5.2014, p. 93 111;

- Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA PE/37/2018/REV/1, OJ L 295, 21.11.2018, p. 138–183;

- Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53–114.

Asylum and migration

- Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, OL L 348, 24.12.2008, p. 98;
- Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011, p. 9;
- Directive 2013/32/EU on common procedures for granting and withdrawing international protection, OJ L 180, p. 60;

- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings, OJ L 261, 6.8.2004, p. 19;

- Directive 2003/86/EC on the right to family reunification, OJ L 251, 3.10.2003, p. 12;

- Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30.6.2009, p. 24;

- Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, p. 96;

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- Directive 2004/38/EC on the right of citizens of the Union and of their family members to move and reside freely within the territory of the Member States, OJ L 158, 30.4.2004, p. 77;

- Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44.

Data protection

- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88;

- Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89–131;
- Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

Consular protection

- Directive (EU) 2015/637 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries, OJ L 106, 24.4.2015, p. 1.

Equality and non-discrimination

- Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values Programme and repealing Regulation (EU) No 1381/2013 of the European Parliament and of the Council and Council Regulation (EU) No 390/2014, PE/23/2021/INIT, OJ L 156, 5.5.2021, p. 1 20;

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- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006, p. 23-36;
- Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ L 180, 15.7.2010, p. 1–6;
- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004, p. 37–43;
- Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, OJ L 188, 12.7.2019, p. 79–93;
- Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (2010/48/EC), OJ L 23, 27.1.2010, p. 35.

Statistics

- Regulation (EU) 2019/1700 of the European Parliament and of the Council of 10 October 2019 establishing a common framework for European statistics relating to persons and households, based on data at individual level collected from samples, amending Regulations (EC) No 808/2004, (EC) No 452/2008 and (EC) No 1338/2008 of the European Parliament and of the Council, and repealing Regulation (EC) No 1177/2003 of the European Parliament and of the Council and Council Regulation (EC) No 577/98 (Text with EEA relevance), OJ L 261l, 14.10.2019, p. 1–32.

Others

- Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities PE/33/2018/REV/1, OJ L 303, 28.11.2018, p. 69–92;
- Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27. 10. 2022, p. 1 – 102.

II. In addition to the aforementioned acts, the following acts shall also be taken into account, insofar as they represent possible future developments of Union law:

- Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, COM (2022) 105 final;
- Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse, COM (2022) 209 final.

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