



Council of the
European Union

Brussels, 4 March 2016
(OR. en)

6696/16

**Interinstitutional File:
2016/0062 (NLE)**

JAI 176
FREMP 47
DROIPEN 48
COCON 3
COHOM 23
COPEN 64
EDUC 74
MIGR 42
SOC 133
ANTIDISCRIM 18

PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 4 March 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2016) 109 final

Subject: Proposal for a COUNCIL DECISION on the conclusion, by the European
Union, of the Council of Europe Convention on preventing and combating
violence against women and domestic violence

Delegations will find attached document COM(2016) 109 final.

Encl.: COM(2016) 109 final



EUROPEAN
COMMISSION

Brussels, 4.3.2016
COM(2016) 109 final

2016/0062 (NLE)

Proposal for a

COUNCIL DECISION

**on the conclusion, by the European Union, of the Council of Europe Convention on
preventing and combating violence against women and domestic violence**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1 Background

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Convention No. 210) (the Convention) was adopted by the Committee of Ministers on 7 April 2011. It opened for signature on 11 May 2011. In accordance with its Article 75, the Convention is open for signature and approval by the member States of the Council of Europe, non-member States which have participated in its elaboration and the European Union, and is open for accession by other non-member States under the conditions laid down in Article 76. The Convention was negotiated in the course of six meetings of a specific Ad-Hoc Committee that met between December 2009 and December 2010. The European Union participated, alongside Member States, as an observer in these meetings. Following the tenth ratification by a member State of the Council of Europe, the Convention came into force on 1 August 2014. As of 1 February 2016, twelve EU Member States have ratified the Convention, and twenty-five Member States have signed it.

The Convention was signed, on behalf of the European Union, in accordance with Council Decision (XXX) of [...] ¹, subject to conclusion at a later date.

Violence against women is a violation of their human rights and an extreme form of discrimination, entrenched in gender inequalities and contributing to maintaining and reinforcing them. Equality between men and women is a fundamental value and objective of the European Union, as recognised in the Treaties (Articles 2 and 3 Treaty on European Union (TEU), Article 8 Treaty on the Functioning of the European Union (TFEU)) and the Charter of Fundamental Rights of the European Union (Article 23). The Charter also recognises the right to human dignity, the right to life, and the right to the integrity of the person, and prohibits inhuman or degrading treatment, as well as all forms of slavery and forced labour (Articles 1 to 5 of the Charter). The protection of women against violence is also an obligation under the UN Convention on the rights of persons with disabilities, to which the EU is a party together with its Member States ², and the UN Committee monitoring the implementation of this Convention has recommended the EU's ratification of the Council of Europe Convention as a step towards combating violence against women and girls with disabilities ³.

More generally, the EU is strongly committed to combating violence not only within its borders, but also as part of its international initiatives ⁴.

¹ REFERENCE TO OJ L.

² 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. 35–36.

³ Concluding observations on the initial report of the European Union, CRPD/C/EU/CO/1, 4.9.2015 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fEU%2fCO%2f1&Lang=en

⁴ <http://www.consilium.europa.eu/en/press/press-releases/2015/05/26-fac-dev-council-conclusions-gender-development/>; Council Conclusions, Gender Action Plan 2016-2020, <http://www.consilium.europa.eu/en/press/press-releases/2015/10/26-fac-conclusions-gender-development/>; Council Conclusions on the Action Plan on Human Rights and Democracy 2015 – 2019 <http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf>; EU guidelines on violence

The EU has taken firm positions⁵ on the need to eradicate violence against women and is funding specific campaigns and grass-roots projects to combat it. Existing legislation in the areas of protection of crime victims, children's sexual exploitation and abuse, asylum and migration takes account of the particular needs of victims of gender based violence.

Despite the efforts at both national and EU level, the extent of violence against women is still a matter of serious concern: According to a survey by the Fundamental Rights Agency published in 2014⁶, one in three women in the EU has experienced physical and/or sexual violence since the age of 15, one in twenty women has been raped, 75 % of women in qualified professions or top management have been victims of sexual harassment, and one in ten women has experienced stalking or sexual harassment through new technologies.

Gender-based violence has an impact not only on health and well-being but also on women's labour market participation, thereby negatively affecting their economic independence and the economy in general. The European Institute for Gender Equality estimates that gender-based violence against women generates costs in the EU of approximately 226 billion euros per year⁷.

1.2 The objective and content of the Convention

As laid out in **Chapter I** of the Convention, it creates a comprehensive legal framework to protect women and girls against all forms of violence, and prevent, prosecute and eliminate violence against them, including domestic violence. It covers a broad range of measures from datacollection and awareness-raising to legal measures on criminalising different forms of violence against women. It includes measures for the protection of victims and the provision of support services, and addresses the gender-based violence dimension in matters of asylum and migration as well as cross-border elements. The Convention establishes a specific monitoring mechanism in order to ensure effective implementation of its provisions by the Parties.

The Convention defines key terminology used throughout the text. It extends the definition of women to girls under the age of 18. Parties are obliged to condemn all forms of discrimination by ensuring that the principle of equality between men and women is applied in their legal orders, and it is made clear that positive action may be taken. In line with the Convention's nature as a human rights instrument, it obliges all Parties to ensure that state actors refrain from engaging in any act of violence and to exercise due diligence so that acts of violence committed by non-state actors are prevented, investigated and punished, and that reparation be provided for such acts. The Convention explicitly applies in times of peace and in situations of armed conflict. Whereas the Convention establishes binding obligations only in

against women and girls and combating all forms of discrimination against them
<http://www.consilium.europa.eu/uedocs/cmsUpload/16173cor.en08.pdf>

⁵ See for example COM(2010) 491 final, Communication from the Commission on a Strategy for equality between women and men 2010-2015 (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1396540108305&uri=CELEX:52010DC0491>); Council conclusions of 8 March 2010 on the eradication of violence against women in the European Union, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/113226.pdf; Commission staff working document "Strategic engagement for gender equality 2016-2019" SWD(2015) 278 final http://ec.europa.eu/justice/gender-equality/files/documents/151203_strategic_engagement_en.pdf

⁶ <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

⁷ Estimating the costs of gender-based violence in the European Union: Report, 5.12.2014, <http://eige.europa.eu/node/393>

relation to women, its application to all victims of domestic violence, i.e. men and boys too, is encouraged.

Chapter II complements the ‘*three P*’ — Prevention, Protection, and Prosecution — approach of recent Council of Europe instruments with the obligation to put in place integrated policies⁸ and offer a holistic response to the phenomenon, as it recognises that legal measures under the ‘three P’ approach alone will not suffice to eliminate violence against women. This translates into the obligation to put the rights of the victims at the centre of all measures, and to ensure effective cooperation between all relevant actors, i.e. between institutions, agencies, and organisations, and at all levels, i.e. national, regional and local. Non-governmental organisations and civil society need to be recognised as important players and Parties must encourage and support their work. Parties must allocate appropriate financial and human resources to the implementation of integrated policies, measures and programmes to combat and prevent violence, including sufficient funding of non-governmental actors. Moreover, the Convention recognises the pivotal role of systematic and adequate data collection for effective policy-making and monitoring of measures taken by the supervisory mechanism on the basis of robust and comparable data.

A central provision involves the nomination and if necessary the creation of one or more official bodies in charge of the coordination, implementation, monitoring and evaluation of policies and measures, including the coordination of data collection, analysis and dissemination.

Chapter III dovetails the Parties obligations in the area of prevention. In line with the overall thrust of the Convention, the Parties are obliged to take a multifaceted approach, comprising awareness-raising, the inclusion of gender equality and the issue of violence in formal education at all levels through appropriate teaching material and curricula, and extending the promotion of non-violence and gender equality to informal education contexts, sports, culture, leisure and the media. Parties must ensure that appropriate training is provided to professionals dealing with victims and perpetrators. Measures need also to be put in place to provide support and treatment programmes for perpetrators. Media and information technology sectors are to be encouraged to participate in drawing up material and voluntary standards.

Chapter IV establishes the general principles on the nature of information, support services and protection for victims of violence as well as witnesses. It contains a list of areas in which Parties need to provide for certain measures. These comprise the availability of general support services such as legal and psychological counselling, and specialist services including shelters, cost-free and permanently reachable telephone hotlines, specific medical and forensic support to victims of sexual violence and consideration of the needs of child witnesses. Moreover, measures need to be put in place to encourage reporting of violence by any witness to the commission of acts of violence or person who has reasonable grounds to believe that such an act may be committed or further acts of violence are to be expected, as well as rules on the conditions under which professionals’ reporting of violent acts or expected violent acts does not breach their general obligation to maintain confidentiality.

Chapter V on substantive law identifies those forms of violence that require a criminal law response and requires Parties to cover a number of offences in their criminal law. These

⁸ See the explanatory report to the Convention,
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016800d383a>.

comprise psychological violence through threat or coercion, stalking⁹, physical violence, sexual violence and rape, forced marriage, female genital mutilation, forced abortion/sterilisation, and sexual harassment. Parties must take measures to ensure that ‘honour’ cannot be invoked as a justification for any of these crimes. The Convention obliges Parties to criminalise the aiding, abetting and attempted commission of the offences, as well as causing third persons to commit these crimes, and to provide for adequate and dissuasive sanctions. Final sentences passed already by another Party may be taken into account for determining the sanction. Certain aggravating circumstances need to be provided for in the national legal orders in accordance with the Convention. The Convention also requires Parties to ensure that sufficient civil remedies and compensation from perpetrators are available as well as adequate subsidiary state compensation¹⁰ for victims of the defined offences. Incidents of violence are to be taken into consideration in legal proceedings on custody, visitation rights and safety of children. In procedural terms, the Convention obliges Parties to establish jurisdiction for acts committed in their territory, by one of their nationals or a person with habitual residence in their territory, and endeavour to establish jurisdiction over offences committed against one of their nationals or a person with habitual residence in their territory¹¹. Finally, Parties are not permitted to establish mandatory alternative dispute resolution processes.

Chapter VI addresses procedural law and protection measures during investigations and judicial proceedings. Parties must ensure that law enforcement agencies offer prompt protection to victims, including the collection of evidence and carry out an assessment of the lethality risk and the seriousness of the situation. The availability of firearms to perpetrators needs to be given special attention. Legal orders must provide for the possibility to adopt emergency barring and restraining or protection orders without placing undue financial or administrative burden on the victim. As a general rule, the most severe offences must not be made dependent on a report or complaint filed by the victim¹². In this Chapter, the Convention sets out an open list of measures to protect the rights and interests of victims, including their needs as witnesses at all stages of investigations and judicial proceedings. This includes for example measures to protect them against intimidation and repeat victimisation, to provide early information when perpetrators escape or are released, or to avoid contact between victim and perpetrator to the extent possible. Special needs of child victims and witnesses need to be particularly taken into account. Parties must provide for the right to legal aid. Moreover, the statute of limitation must be construed in such a way as to allow for the efficient initiation of proceedings after a victim has reached the age of majority, for the most serious offences¹³.

Chapter VII takes account of the fact that female migrants and asylum-seekers are particularly vulnerable to gender-based violence and introduces a gender-sensitive understanding of violence in this context. It provides for the possibility of migrant women victims to acquire an autonomous residence status¹⁴. Gender-based violence needs to be

⁹ Parties remain free to only provide for non-criminal sanctions for psychological violence and stalking, see Article 78(3).

¹⁰ Parties may enter a reservation on this obligation, see Article 78(2).

¹¹ Reservations can be entered on several aspects of the related provision, see Article 44.

¹² Parties may however enter a reservation as regards minor offences of physical violence, see Article 78(2).

¹³ Parties are permitted a reservation for the offences of forced marriage, female genital mutilation, and forced abortion/sterilisation. Sexual violence including rape may not be exempted by means of this reservation.

¹⁴ Parties may enter a reservation on Article 59 on residence status, see Article 78(2).

recognised as a form of persecution and the assessment of refugee status has to be approached with a gender-sensitive understanding. Moreover, gender-sensitive asylum procedures need to be put in place by the Parties. This Chapter also deals with the respect of the *non-refoulement* principle with regard to victims of violence against women.

Chapter VIII is dedicated to ensuring international cooperation between Parties shall cooperate in the implementation of the Convention and make use of relevant regional and international cooperation instruments. Parties need to ensure that claims can be brought in the victim's country of residence for crimes committed in the territory of another Party. In situations where a person is at immediate risk of violence, Parties should inform one another, so that protection measures can be taken. This Chapter includes the obligation to process personal data in accordance with the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (No. 108).

Chapter IX sets up the mechanism for monitoring the implementation of the Convention. An independent group of experts ('GREVIO')¹⁵ (consisting of 10 up to a maximum of 15¹⁶ members) is to be set up that shall be composed of independent and highly qualified experts who are nationals of the Parties¹⁷. The election procedure has been defined by the Committee of Ministers¹⁸. The GREVIO members are elected by the Committee of the Parties.

The Parties report to GREVIO, which may also carry out more specific inquiries and country visits. GREVIO submits draft reports to the Parties for comments. Final reports and conclusions are sent to the Party concerned and the Committee of the Parties. The latter may decide to adopt recommendations addressed to the Party concerned. GREVIO can also adopt general recommendations. National parliaments shall be invited to participate in the monitoring work. GREVIO works in accordance with its Rules of Procedure¹⁹.

The Committee of the Parties is composed of the representatives of the Parties to the Convention. It elects the GREVIO members. It shall meet when requested to do so by one third of the Parties, the President of the Committee of the Parties, or the Secretary General of the Council of Europe.

Chapter X clarifies that the Convention does not affect obligations of the Parties under other international instruments, and that Parties are free to conclude other international agreements on the matters covered by the Convention to supplement or strengthen its provisions.

Chapter XI sets out the procedure for making amendments to the Convention. Parties that are not members of the Council of Europe shall be consulted on these amendments.

Chapter XII contains the final clauses. These include the clarification that the Convention is without prejudice to more favourable provisions of internal or binding international law, a clause on dispute resolution and the provisions pertaining to signing, ratification, entry into

¹⁵ Group of Experts on action against Violence against women and domestic violence.

¹⁶ These five additional Members will be appointed following the 25th ratification.

¹⁷ No two members may be nationals of the same Party.

¹⁸ Resolution CM/Res(2014)43 on rule on the election procedures of the members of the Group of Experts on action against Violence against Women and Domestic Violence (GREVIO), 19.11.2014, <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Res%282014%2943&Language=lanFrench&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

¹⁹ Adopted by GREVIO at its first meeting, 21.-23.9.2015, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048358b>.

force, and accession by States that are not members of the Council of Europe. The Convention is explicitly open for signature by the European Union (Article 75(1)) and subject to ratification, acceptance or approval, for which the necessary instruments are to be deposited with the Secretary General of the Council of Europe. Any State and the EU may, upon signing or ratifying the Convention, specify the territorial application. Reservations are possible on a limited number of provisions and this for a (renewable) period of five years.

The Convention is complemented by an **Appendix** laying down the privileges and immunities enjoyed by GREVIO members (and other members of delegations) during country visits undertaken in the exercise of their functions.

1.3 Policy goal of the EU for conclusion of the Convention

The Convention's approach is fully in line with the Union's multifaceted approach to the phenomenon of gender-based violence and the thrust of measures in place through internal and external EU policies. The conclusion of the Convention would send a strong political message about the EU's commitment to combating violence against women, create coherence between its internal and external action, as well as complementarity between national and EU levels, and reinforce its credibility and accountability towards its international partners. It would also consolidate the EU's action targeting violence against women by achieving a more coordinated approach internally and giving it a more effective role in international fora.

2. LEGAL ELEMENTS OF THE PROPOSAL

2.1 EU competence to conclude the Convention

Whereas the Member States remain competent for substantial parts of the Convention, and particularly for most of the provisions on substantive criminal law and other provisions in Chapter V to the extent that they are ancillary, –the EU has competence for a considerable part of the provisions of the Convention, and should therefore ratify the Convention alongside Member States.

The Union has competence particularly in the area of anti-discrimination and gender equality under Article 157 TFEU, which is relevant under Chapter I and, in relation to sexual harassment — covered by Article 40 of the Convention — in matters on employment and occupation and access to and supply of goods and services, and competence as well as secondary legislation under Articles 82 and 84 TFEU for measures in Chapter IV and Chapter VI which deal with protection and support for victims and investigation, prosecution, procedural law and protective measures. As far as sexual exploitation of women and children is concerned, Article 83(1) TFEU provides a legal basis for action. The EU is competent for certain matters in the areas of asylum and migration which are the subject of Chapter VII of the Convention under Articles 78 and 79 TFEU. Residence status of mobile EU nationals and their third-country spouses, as well as the status of third-country nationals who are long-term residents and their spouses, is a matter of EU competence in accordance with Articles 18, 21, 46, 50, 78 and 79 TFEU. As regards aspects of consular protection (see Article 18(5) of the Convention), EU competence follows from Article 23 TFEU. Finally, the Union has competence under Articles 81 and 82 TFEU on cross-border civil and criminal matters,

which is relevant for measures included in Chapter VIII on international cooperation²⁰. This chapter also includes obligations on data protection, which is an area falling under Union competence in accordance with Article 16 TFEU.

The Union has adopted abundant legislation in most of these areas: sexual harassment in matters of employment and occupation and access to and supply of goods and services,²¹ rights, support and protection of crime victims in the context of criminal proceedings, including investigation and prosecution²², asylum and migration as well as the residence status of third-country nationals,²³ cross-border cooperation in civil and criminal matters²⁴, substantive criminal law provisions for the protection of children (which are, as regards girls, covered by the scope of the Convention)²⁵, provisions regarding audiovisual media services on the protection of minors, prohibition of discrimination in commercial communications and incitement to hatred based, among other things, on sex,²⁶ and data protection.²⁷ There is also

²⁰ See for example Paragraph 329 of the Explanatory Report to the Convention, informing that Article 62(2) of the Convention is based on Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ L 82, 22.3.2001, p. 1).

²¹ 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 372, 21.12.2004, p. 37; Directive 2006/54/EC 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, OJ L 204, 26.7.2006, p. 23; Directive 2010/41/EU 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, OJ L 180, 15.7.2010, p. 1.

²² 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.

²³ Relevant secondary legislation includes 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 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98; 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 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 2013/33/EU laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, p. 96, Directive 2013/32/EU on common procedures for granting and withdrawing international protection, OJ L 180, p. 60; see also 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 and 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.

²⁴ Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters, OJ L 181, 29.6.2013, p. 4; 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 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; 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; Council Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA, OJ L 93, 7.4.2009, p. 33; 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.

²⁵ 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 2010/13/EU (Audiovisual Media Services Directive), OJ L 95, 15.4.2010, p. 1.

Union legislation on aspects of Member States' cooperation on EU citizen's consular protection²⁸.

Obligations also result from the UN Convention on the Rights of Persons with Disabilities, to which the EU and its Member States are Contracting Parties.²⁹ This Convention requires in its articles 6, 7, 15 and 16 the State Parties to the extent of their competences to ensure that women and children with disabilities enjoy equal rights and that disabled persons are protected against exploitation, violence and abuse.

To the extent that the Convention may affect or alter the scope of these common rules, the Union is exclusively competent pursuant to Article 3(2) TFEU. This is, for example, the case as regards matters pertaining to the residence status of third-country nationals and stateless persons, including beneficiaries of international protection, as far as it is covered by Union legislation, and the examination of applications for international protection, and also as regards the rights of crime victims. Even if many of the existing provisions referred to above are minimal rules, it cannot be ruled out that, in the light of recent case law, some of them may also be affected or their scope altered.

2.2 Legal basis for the proposed Council Decision

It is established case law that the choice of legal basis for an EU measure must rest on objective factors that are amenable to judicial review; these include the aim and the content of the measure³⁰. If examination of an EU measure reveals that it serves a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely that required by the main or predominant purpose or component. By way of exception, if it is established that the measure pursues several objectives which are inseparably linked without one being secondary and indirect in relation to the other, the measure must be founded on the various corresponding legal bases³¹.

The legal bases under the Treaty on the Functioning of the European Union which are of relevance here are: Article 16 (data protection), Article 19(1) (sex discrimination), Article 23 (consular protection for citizens of another Member State), Articles 18, 21, 46, 50 (free movement of citizens, free movement of workers and freedom of establishment), Article 78 (asylum and subsidiary and temporary protection), Article 79 (immigration), Article 81 (judicial cooperation in civil matters), Article 82 (judicial cooperation in criminal matters), Article 83 (definition of EU-wide criminal offences and sanctions for particularly serious crimes with a cross-border dimension), Article 84 (non-harmonising measures for crime

²⁷ Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.95, p. 31; Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, OJ L 350, 30.12.2008, p. 60.

²⁸ 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.

²⁹ 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.

³⁰ C-377/12, Commission v Council, paragraph 34.

³¹ Ibid, paragraph 34.

prevention), and Article 157 (equal opportunities and equal treatment of men and women in areas of employment and occupation).

Taken as a whole, although the Convention has several components, its predominant purpose lies in the prevention of violent crimes against women, including domestic violence, and the protection of victims of such crimes. It therefore appears appropriate to base the Decision on the competences of the Union under Title V TFEU and in particular on Article 82(2) and Article 84 thereof. The provisions of the Convention on other matters are ancillary or, for example for data protection, incidental to the measures that constitute the focus of the Convention³². As a consequence, for the EU to exercise its competences over the entirety of the Convention and excluding elements over which it would have no competence, the main legal bases are Article 82(2) and Article 84 TFEU.

2.3 Conclusion

It follows from the existence of inter-linked competences conferred on the Union and of competences not conferred on the Union, that both Member States and the Union shall become Parties to the Convention. As the competences are inter-linked, the Commission considers that it is appropriate to also establish arrangements between the Commission and the Member States for the implementation and monitoring mechanisms provided by the Convention (Coordinating body under Article 10, reporting and data collection obligations towards the group of experts (Article 11(3), and Articles 66 to 70 of the Convention).

³² The fact that an element may be ancillary does not mean that there is no exclusive Union competence over that element. The legal basis for the Union rules is, in itself, irrelevant in determining whether an international agreement affects those rules: the legal basis of internal legislation is determined by its principal component, whereas the rule which may possibly be affected may be merely an ancillary component of that legislation. The purpose of the exclusive competence of the Union is primarily to preserve the effectiveness of Union law and the proper functioning of the systems established by its rules, independently of any limits laid down by the provision of the Treaty on which the institutions base the adoption of such rules (Opinion 1/03, EU:C:2006:81, paragraph 131).

Proposal for a

COUNCIL DECISION

on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence

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(6)(a), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament³³,

Whereas:

- (1) In accordance with Council Decision [XXX] of [...] ³⁴, the Council of Europe Convention on preventing and combating violence against women and domestic violence ('the Convention') was signed on [...], subject to its conclusion at a later date.
- (2) The Convention, to which ... countries, including Member States, are Parties, is the first international instrument aiming to eliminate violence against women, including girls under the age of 18, as a root cause of persisting inequality between men and women, by setting up a comprehensive framework of legal and policy measures to prevent violence against women and protect and assist victims of such violence. The Convention entered into force on 1 April 2014. In accordance with Article 75 of the Convention, the European Union may become a Party to the Convention.
- (3) The Convention creates a comprehensive and multifaceted legal framework to protect women against all forms of violence. It seeks to prevent, prosecute and eliminate violence against women and girls and domestic violence. It covers a broad range of measures, from data collection and awareness-raising to legal measures on criminalising different forms of violence against women. It includes measures for the protection of victims and the provision of support services, and addresses the gender-based violence dimension in matters of asylum and migration. The Convention establishes a specific monitoring mechanism in order to ensure effective implementation of its provisions by the Parties.
- (4) The conclusion of the Convention by the European Union contributes to the realisation of equality between men and women in all areas, which is a core objective and value of the Union to be realised in all its activities in accordance with Articles 2 and 3 of

³³ OJ C [...], [...], p. [...].

³⁴ OJ L

the Treaty on European Union, Article 8 of the Treaty on the Functioning of the European Union and Article 23 of the Charter of Fundamental Rights of the European Union. Violence against women is a violation of their human rights and an extreme form of discrimination, entrenched in gender inequalities and contributing to maintaining and reinforcing them. By committing to the implementation of the Convention, the Union confirms its engagement to combating violence against women within its territory and globally, and reinforces its current political action and existing substantial legal framework in the area of criminal procedural law that is of particular relevance for women and girls.

- (5) While the Member States remain competent for the criminalisation of a number of violent forms of behaviour against women in their national substantive criminal law as required by the Convention, the Union has competence covering most of the provisions of the Convention and has adopted an extensive set of rules in these areas. In particular, the Union has adopted rules on the rights of crime victims, notably Directive 2012/29/EU of the European Parliament and of the Council³⁵. The Convention also addresses the needs of female migrants and persons seeking asylum or complementary and subsidiary protection by imposing a gender-specific perspective in these areas, in which a comprehensive body of Union legislation already exists.
- (6) The Union has exclusive competence to the extent that the Convention may affect common rules or alter their scope.
- (7) The Convention should complement existing rules and contribute to a coherent interpretation of Union legislation. As a result of the conclusion of the Convention, the Union should participate in the implementation and monitoring activities under the Convention.
- (8) Both the Union and its Member States have competence in the fields covered by the Convention. The Union and the Member States should therefore become Parties to it, so that together they can fulfil the obligations laid down by the Convention and exercise the rights invested in them in a coherent manner.
- (9) Ireland and the United Kingdom are bound by Directive 2012/29/EU and are therefore taking part in the adoption of this Decision.
- (10) 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.
- (11) The Convention should be approved on behalf of the Union,

³⁵ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315 of 14.11.2012, p. 57).

HAS ADOPTED THIS DECISION:

Article 1

The Council of Europe Convention on preventing and combating violence against women and domestic violence is hereby approved on behalf of the Union.

The text of the Convention is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to the deposition of the instrument of approval provided for in Article 75(2) of the Convention in order to express the consent of the Union to be bound by the Convention.

Article 3

With respect to matters falling within the Union's competence and without prejudice to the respective competences of the Member States, the Commission shall perform the role of the coordinating body in accordance with Article 10 of the Convention and fulfil the reporting obligations under Chapter IX of the Convention.

Article 4

1. With respect to matters falling within the Union's competence, the Commission shall represent the Union at meetings of the bodies created by the Convention, in particular the Committee of the Parties referred to in Article 67 of the Convention. In particular, the Commission shall select, propose and participate in the nomination of experts to the Group of experts on action against violence against women and domestic violence ('GREVIO'), on behalf of the Union.
2. As the Convention covers also competences not conferred on the Union, the Commission and the Member States shall cooperate closely, in particular as far as questions of monitoring, reporting, voting arrangements and the functioning of the coordinating body referred to in Article 10 of the Convention are concerned. They shall determine in advance the appropriate arrangements for this as well as for the representation of the respective positions at meetings of the bodies created by the Convention. These arrangements shall be laid down in a Code of Conduct to be agreed, if possible, before the deposition of the instrument of formal confirmation on behalf of the Union.

Article 5

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*³⁶.

³⁶ The date of entry into force of the Convention for the European Union will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Done at Brussels,

*For the Council
The President*