



Council of the
European Union

Brussels, 21 May 2024
(OR. en)

9759/24
PV CONS 21
SOC 347
EMPL 200
SAN 270
CONSOM 189

DRAFT MINUTES

COUNCIL OF THE EUROPEAN UNION
(**Employment, Social Policy**, Health and Consumer Affairs)

7 May 2024

1. Adoption of the agenda

The Council adopted the agenda set out in document 9265/24.

2. Approval of 'A' items

(a) Non-legislative list

9267/24

The Council adopted all "A" items listed in the document above, including all linguistic COR and REV documents presented for adoption.

(b) Legislative list (Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

9268/24

Employment and Social Policy

1. Directive on standards for equality bodies (Article 19)

Adoption

approved by Coreper, Part 1, on 26 April 2024



9005/24 + ADD 1-2
10788/1/23 REV 1
+ **REV 1 COR 1**
(de)
+ REV 1 COR 2
+ **REV 1 COR 3**
(da)
SOC

The Council adopted the Council Directive as finalised by the legal/linguistic experts as set out in document 10788/1/23 REV 1 and REV 1 COR 2 (legal basis: Article 19(1) TFEU).
Statements to this item are set out in the Annex.

2. Directive on standards for equality bodies (Article 157)

Adoption of the legislative act

approved by Coreper, Part 1, on 26 April 2024



8954/24
+ ADD 1 REV 2
PE-CONS 92/23
SOC

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with Bulgaria and Hungary voting against and the Czech Republic, Italy and Slovakia abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union, (legal basis: Article 157(3) TFEU).
Statements to this item are set out in the Annex.

Justice and Home Affairs

3. Directive on combating violence against women and domestic violence

Adoption of the legislative act

approved by Coreper, Part 2, on 24 April 2024



9406/24 + ADD 1
PE-CONS 33/24
COPEN

The Council approved the European Parliament's position at first reading and the proposed act has been adopted pursuant to Article 294(4) of the Treaty on the Functioning of the European Union, (legal basis: Articles 82(2) and 83(1) TFEU).

Statements to this item are set out in the Annex.

General Affairs

4. Regulation on establishing the Reform and Growth Facility for the Western Balkans

Adoption of the legislative act

approved by Coreper, Part 2, on 24 April 2024



9405/24 + ADD 1-2
PE-CONS 80/24
ELARG

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with Lithuania and the Netherlands abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union, (legal basis: Articles 212 and 322(1) TFEU).

Statements to this item are set out in the Annex.

Legislative deliberations

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

3. Directive on implementing the principle of equal treatment (Article 19) 9094/24

Policy debate

The Council held a policy debate on the proposed Directive in implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation in areas other than employment (Article 19), on the basis of a Presidency steering note set out in the document above.

Non-legislative activities

4. Conclusions on ‘Economic empowerment and financial independence of women as a pathway to substantive gender equality’ 8957/24

Approval

The Council approved the Conclusions on the Economic empowerment and financial independence of women as a pathway to substantive gender equality as set out in the document above.

5. Women in public life 8947/1/24 REV 1

Policy debate

The Council held a policy debate on the topic of women in public life on the basis of a Presidency steering note set out in the document above, focusing in particular on the under-representation of women in leadership and political decision-making roles in the EU.

Any other business

6. (a) Presidency events 8979/24

**(i) Informal meeting of gender equality ministers
(Brussels, 26-27 February 2024)**

(ii) LGBTIQ+ conference (Brussels, 17 May 2024)

Information from the Presidency

The Council took note of the information provided by the Presidency on the Presidency events.

- (b) **Possible change to the name of the Employment, Social Policy, Health and Consumer Affairs Council configuration** [2] 8814/24
Information from the Presidency

The Council took note of the information provided by the Presidency on the possible change to the title of the Employment, Social Policy, Health and Consumer Affairs Council configuration.

- (c) **Survey on violence against women – state of play** [2] 9233/24
Information from the Commission

The Council took note of the information provided by the Commission on the state of play of the Survey on violence against women.

- (d) **Implementation of the EU’s accession to the Istanbul Convention – state of play** [2] 8980/24
Information from the Presidency and the Commission

The Council took note of the information provided by the Presidency and the Commission on the implementation of the EU’s accession to the Istanbul Convention.

- (e) **Preparation of the Communication on the implementation of the LGBTIQ Equality Strategy 2020-2025 – state of play** [2] 9358/24
Information from the Commission

The Council took note of the information provided by the Commission on the preparation of the Communication on the implementation of the LGBTIQ Equality Strategy 2020-2025.

- (f) **Communication on progress made in implementing the EU anti-racism action plan – state of play** [2] 8981/24
Information from the Commission

The Council took note of the information provided by the Commission on the Communication on progress made in implementing the EU anti-racism action plan.

**(g) EU candidate for the elections to the United Nations
Committee on the Rights of Persons with Disabilities**
Information from the Commission

[2] 9256/24

The Council took note of the information provided by the Commission on the EU candidate for the elections to the United Nations Committee on the Rights of Persons with Disabilities.

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- [1]** First reading
 - [C]** Item based on a Commission proposal
 - [S]** Special legislative procedure
 - [2]** Public debate proposed by the Presidency (Article 8(2) of the Council's Rules of Procedure)
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Statements to the legislative "A" items set out in doc. 9268/24**Ad "A" item 1:** **Directive on standards for equality bodies (Article 19)**
*Adoption***STATEMENT BY AUSTRIA**

“Austria fully supports the objectives of the proposed Directives to strengthen the protection against discrimination and to improve the support for victims of discrimination.

Austria emphasizes that the proposed Directives set minimum standards for equality bodies. Austria already has a well-functioning best-practice system in the field of equal treatment and anti-discrimination that has proven its worth for decades. In order to preserve effective and long-established national structures, there should be flexibility in implementing these Directives. Effective institutions and efficient mechanisms shall continue to exist within this new framework.”

STATEMENT BY GERMANY

“We agree with the general approach on the Directive, subject to the following interpretation:

1. We appreciate the fact that, during the negotiations at the Council Working Party meeting, the Commission assured us that we can also implement Article 8 exclusively by means of an alternative dispute resolution procedure in which the defendant must participate. To that end, the equality body, at the request of a person claiming discrimination, will examine and decide on the case on the basis of the information provided to it, taking into account the reversal of the burden of proof. Germany interprets Article 8 as meaning that the requests for information are not compulsorily enforced, but that the defendant will be made aware of the reversal of the burden of proof.
2. We also appreciate the fact that Germany can prohibit equality bodies from publishing private or company data in the context of the summaries referred to in Article 9.

At the Council Working Party meeting, the Commission also assured us that we would have the possibility of implementing Article 10(3), point (a) in such a way that ‘competent entities’, i.e. recognised anti-discrimination associations in Germany, would be able to initiate proceedings on behalf of victims and thus provide judicial support to those affected by discrimination. This will ensure effective judicial support for those affected by discrimination.”

STATEMENT BY BULGARIA

“The Republic of Bulgaria reaffirms its commitment to ensuring equality and combating discrimination as fundamental values of the European Union. The country therefore supports the establishment and implementation of a strong legal framework for applying the principle of equal opportunities and equal treatment of women and men, in particular the objectives of the *Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU*. Establishing minimum requirements for the functioning of equality bodies will improve their effectiveness, ensure their independence and provide timely and effective protection for victims of discrimination.”

At the same time, however, during the negotiations on the proposal for a Directive, changes were made to the text that are unacceptable to the Republic of Bulgaria.

In 2018, the Bulgarian Constitutional Court adopted a decision stating that the Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence (‘Istanbul Convention’) promotes legal concepts related to the notion of gender that are incompatible with the main principles of the Constitution of the Republic of Bulgaria.

In 2021, the Constitutional Court further clarified that the term ‘sex’ used in the Constitution, should, in the context of the national legal order, be understood in its biological sense only (men and women).

Therefore, in line with the abovementioned judgments of the Constitutional Court, the Republic of Bulgaria declares that it cannot accept either the concept of gender or the gender approach of the Istanbul Convention or other documents that differentiate between ‘sex’ as a biological (women and men) category and ‘gender’ as a social construct. Consequently, the Republic of Bulgaria cannot accept the extension of the definition of ‘victim’ in Article 6 and Recital 23 with an indicative list of characteristics including gender: gender, gender identity, gender expression or sex characteristics.

For these reasons, the Republic of Bulgaria does not support the text of the *Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU*.”

STATEMENT BY GERMANY

“We agree with the general approach on the Directive, subject to the following interpretation:

1. We appreciate the fact that, during the negotiations at the Council Working Party meeting, the Commission assured us that we can also implement Article 8 exclusively by means of an alternative dispute resolution procedure in which the defendant must participate. To that end, the equality body, at the request of a person claiming discrimination, will examine and decide on the case on the basis of the information provided to it, taking into account the reversal of the burden of proof. Germany interprets Article 8 as meaning that the requests for information are not compulsorily enforced, but that the defendant will be made aware of the reversal of the burden of proof.
2. We also appreciate the fact that Germany can prohibit equality bodies from publishing private or company data in the context of the summaries referred to in Article 9.
3. At the Council Working Party meeting, the Commission also assured us that we would have the possibility of implementing Article 10(3), point (a) in such a way that ‘competent entities’, i.e. recognised anti-discrimination associations in Germany, would be able to initiate proceedings on behalf of victims and thus provide judicial support to those affected by discrimination. This will ensure effective judicial support for those affected by discrimination.”

STATEMENT BY HUNGARY

“Hungary believes in upholding the values of a cohesive, peaceful and democratic society, based on the equality of all individuals without discrimination on any grounds. That is guaranteed by the Fundamental Law, and the Hungarian Equal Treatment Act which provides horizontal and comprehensive legal protection in the field of non-discrimination.

Hungary recognizes and promotes equality between men and women in accordance with the Fundamental Law of Hungary and the primary law, principles and values of the European Union, as well as commitments and principles stemming from international law. Equality between women and men is enshrined in the Treaties of the European Union as a fundamental value. In line with these and its national legislation, Hungary interprets the concept of ‘gender’ as reference to ‘sex’ and the concept of ‘gender equality’ as ‘providing equal chances and opportunities for women and men’ in the proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU.”

STATEMENT BY AUSTRIA

“Austria fully supports the objectives of the proposed Directives to strengthen the protection against discrimination and to improve the support for victims of discrimination.

Austria emphasizes that the proposed Directives set minimum standards for equality bodies.

Austria already has a well-functioning best-practice system in the field of equal treatment and anti-discrimination that has proven its worth for decades. In order to preserve effective and long-established national structures, there should be flexibility in implementing these Directives. Effective institutions and efficient mechanisms shall continue to exist within this new framework.”

Ad "A" item 3:

Directive on combating violence against women and domestic violence
Adoption of the legislative act

STATEMENT BY AUSTRIA, CROATIA, CYPRUS, FINLAND, GREECE, ITALY, LATVIA, LUXEMBOURG, POLAND, ROMANIA, SLOVENIA, SPAIN AND SWEDEN

“We welcome the agreement on the Directive on combating violence against women and domestic violence and wish to declare the following.

According to the Fundamental Rights Agency (FRA), 1 in 20 women in the EU over the age of 15 have been raped. Non-consensual sex is an extremely serious violation of individuals’ sexual integrity and must be prevented and combated with full force at all levels, including at EU level. Austria, Croatia, Cyprus, Finland, Greece, Italy, Latvia, Luxembourg, Poland, Romania, Slovenia, Spain and Sweden therefore regret that the Directive does not include the criminal offence of rape based on the lack of consent. The fact that the Directive contains requirements for education in terms of consent is, however, a step in the right direction.

Nevertheless, even without a consent-based provision on rape, it has been of utmost importance for us to ensure that the Directive is adopted as soon as possible, as it contains other crucial elements. No specific legal instrument has up until now addressed violence against women and domestic violence at EU level. This Directive is therefore a milestone for international standards in this field. The Directive provides much-needed comprehensive responses, incorporating prevention, protection, support for victims and prosecution for a range of criminal offences which constitute violence against women and domestic violence.

We are convinced that this Directive will provide a forceful contribution to the safety and security of women all across the EU.”

STATEMENT BY BULGARIA

“The Republic of Bulgaria attaches great importance to the promotion and protection of fundamental rights, an important part of which is the equality between women and men. We are and will remain dedicated to the principles and values of the European Union as enshrined in the Treaties.

The Republic of Bulgaria is strongly committed to combatting domestic violence and violence against women. The Bulgarian government and civil society are actively engaged in preventing such forms of violence and in providing protection and support to their victims. We consider the proposal for a directive of the European Parliament and of the Council on combating violence against women and domestic violence (hereinafter “the Directive”) as important milestone in combating violence against women and girls, protecting victims and punishing offenders that will support the EU Member State to advance their national legislation.

However, in 2018, the Constitutional Court of the Republic of Bulgaria adopted a decision stating that the Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”) promotes legal concepts that intend to differentiate between “sex” as a biological (women and men) category and “gender” as a social construct. In 2021, the Constitutional Court adopted another decision clarifying that the notion “sex” used in the Constitution could only be regarded in the sense of its biological determination.

In light of the abovementioned decisions, the Republic of Bulgaria declares that the term “gender” used in the Directive and any of its derivative terms are understood as encompassing only the male and female sex in their biological meaning. The Republic of Bulgaria also declares that it does not accept the concept of “gender” and the “gender-based” approach, as defined in the Istanbul Convention.

Lastly, the Republic of Bulgaria will only accept the translation in Bulgarian of the term “gender” as “пол” in the text of the Directive.”

STATEMENT BY HUNGARY

“Hungary recognises and promotes equality between men and women in accordance with the Fundamental Law of Hungary and the primary law, principles and values of the European Union, as well as commitments and principles stemming from international law. Equality between women and men is enshrined in the Treaties of the European Union as a fundamental value. In line with these and its national legislation, Hungary interprets the concept of ‘gender’ as reference to ‘sex’ and the concept of ‘gender equality’ as ‘providing equal chances and opportunities for women and men’ in the *Directive combating violence against women and domestic violence*.”

STATEMENT BY SLOVAKIA

“Slovak Republic welcomes a compromise reached with the European Parliament on the Directive on combating violence against women and domestic violence. In our view, this is an important step forward in the common fight against violence against women. In this context, Slovak Republic wishes to recall its position that the term “gender” within this directive shall be translated as “sex”, particularly within definitions of victims, in line with national legislation in the fields of criminal law, victims’ rights and discrimination. In cases where context demands the use of the Slovak equivalent for “gender” the appropriate translation shall be used, such as in terms “gender roles”, “gender stereotypes”, “gender equality” or “gender-based violence”.”

STATEMENT BY ESTONIA

“Estonia wholeheartedly supports 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 on 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.

Another example we would like to highlight, is the Article 7 on cyber harassment, more specifically point (c) of this Article, which establishes minimum rules on the unsolicited sending of an image, video or other similar material depicting one’s genitals to another person (*cyberflashing*). Although only intentional cases of cyberflashing are criminalised, where receiving such material is likely to cause serious psychological harm to the receiver, it is still questionable whether cyberflashing should be harmonised at the EU level. It is difficult to interpret cyberflashing as a particularly serious crime with cross border dimension in the meaning of Article 83 TFEU. Regulating cyberflashing at the EU level is an example of unjustified overcriminalisation.”

Ad "A" item 4: **Regulation on establishing the Reform and Growth Facility for the Western Balkans**
 Adoption of the legislative act

JOINT STATEMENT BY THE EUROPEAN PARLIAMENT AND THE COUNCIL

“The European Parliament and the Council take note of the declaration of the European Commission on reporting. Without prejudice to the prerogatives of the budgetary authority under the Treaties, the European Parliament and the Council intend to review the nomenclature of the Facility, for instance on appropriations per beneficiary, to ensure appropriate political and budgetary scrutiny. The European Parliament and the Council invite the European Commission to give this statement due consideration, as appropriate, in the preparation of the Draft Budget 2025.”

STATEMENT BY BULGARIA

“Bulgaria recognises and promotes equality between women and men in accordance with the Constitution of the Republic of Bulgaria and the national legislation, in line with the principles and values of the European Union as enshrined in the Treaties, and the commitments and principles arising from the international law.

In line with the abovementioned and its domestic legislation, Bulgaria interprets the concept of ‘gender’ as reference to ‘sex’ (male/female) and the concept of ‘gender equality’ as ‘providing equal chances and opportunities for women and men’ in the Regulation on establishing the Reform and Growth Facility for the Western Balkans.”

STATEMENT BY HUNGARY

“Hungary recognises and promotes equality between men and women in accordance with the Fundamental Law of Hungary and the primary law, principles and values of the European Union, as well as commitments and principles stemming from international law. Equality between women and men is enshrined in the Treaties of the European Union as a fundamental value. In line with these and its national legislation, Hungary interprets gender as providing equal chances and opportunities for women and men. In line with these and its national legislation, Hungary interprets the concept of ‘gender’ as reference to ‘sex’ and the concept of ‘gender equality’ as ‘providing equal chances and opportunities for women and men’ in the Regulation on establishing the Reform and Growth Facility for the Western Balkans.”

STATEMENT BY THE REPUBLIC OF LITHUANIA

“The Republic of Lithuania supports European integration of the Western Balkans. Merit-based and qualitative enlargement process guides the aspirants through the preparation for a fully-fledged membership.

In the discussions on the Regulation on establishing Reform and Growth Facility for the Western Balkans the Republic of Lithuania has consistently supported ensuring an active role of the Council in the governance of the Facility. Taking into consideration that the compromise text of the Regulation offers a rather limited role for the Council, the Republic of Lithuania abstains in the voting on the proposed text.”

STATEMENT BY THE COMMISSION on full budgetary transparency on budgetary matters in the framework of the Western Balkans Facility

“Recognising the importance for the European Parliament and Council to be in a position to discharge their responsibility as budgetary authorities in a well-informed manner, the Commission will make available to the budgetary authority information on budgetary commitments and payments both affected and planned under the Western Balkans Facility per beneficiary on a bi-monthly basis.”

STATEMENT BY THE COMMISSION on the potential implications of joint declaration by the European Parliament and the Council on the budgetary nomenclature for the Western Balkans Facility

“The Commission takes note of the statement by the European Parliament and the Council on the budgetary nomenclature for the Reform and Growth Facility for the Western Balkans which could potentially affect the implementation of the Facility. In any case, it would unduly interfere with the proper conduct of the budgetary procedure. The Commission considers that this should not constitute a precedent.”