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NOTE

From: Presidency
To: Delegations

Subject: Code of Conduct laying down the arrangements regarding the exercise of rights and obligations of the European Union and Member States under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)

As referred to in the two draft Council decisions on the conclusion on behalf of the European Union of the Istanbul Convention¹, a Code of Conduct laying down the internal arrangements regarding the exercise of rights and obligations of the Union and Member States under the Convention ("Code of Conduct") has been drawn up between the Council, the Member States who are party to the Convention and the Commission.

The Code of Conduct has been discussed at technical level in parallel to the discussions on the text of the draft Council decisions on the conclusion on behalf of the European Union of the Istanbul Convention. The text which is set out in the Annex was submitted to the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP WP) on 10 October 2022. At that meeting, the Presidency concluded that the text had received enough support.

¹ 5514/23 and 5523/23

The text of the Code of Conduct, after revision by the lawyers-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.

Code of Conduct laying down the internal arrangements regarding the exercise of rights and obligations of the European Union and Member States under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

Recalling that on 13 June 2017 the European Union (“the Union”) signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (“the Convention”) for matters falling within the exclusive competence of the Union, namely in matters relating to judicial cooperation in criminal matters, to asylum and non-refoulement;²

As both the Union and its Member States have competences in the fields covered by the Convention, there is a need for a code of conduct setting out internal arrangements between the Union and the Member States who are party to the Convention (“Member States”) in respect of the Convention;

Recalling that these arrangements shall be applied in full respect of the principle of mutual sincere cooperation provided for in Articles 4(3) and 13(2) TEU so as to enable the Union and the Member States to achieve coherent, comprehensive and unified external representation in relation to the Convention;

Recalling that these arrangements do not affect the distribution of competences between the Union and its Member States or the allocation of powers between the institutions in accordance with the EU Treaties and are without prejudice to the procedure for establishing Union positions set out in Article 218(9) TFEU;

Recalling that the scope and exercise of Union exclusive competences as referred to in article 3(2) TFEU are by their nature subject to continuous development;

² Council Decision (EU) 2017/865 of 11 May 2017 on the signing, 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, OJ L 131 of 20.5.2017, p. 11; Council Decision (EU)2017/866 of 11 May 2017 on the signing, 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 asylum and non-refoulement, OJ L 131 of 20.5.2017, p. 13.

Bearing in mind that the requirement of unity of the external representation of the Union and of the Member States in accordance with the EU Treaties and the case-law of the Court of Justice of the European Union applies also at the stage of implementation of international obligations;

THE FOLLOWING CODE OF CONDUCT is drawn up between the Council, the Member States and the Commission

1. Nature and scope of the Code of Conduct

- 1.1. This Code of Conduct ("the Code") sets out the internal arrangements for cooperation between the Union and the Member States on various aspects of the implementation of the Convention. This Code of Conduct is therefore intended as a practical internal tool to enable the Union and the Member States to achieve a coherent, comprehensive and unified external representation with regard to the Convention.
- 1.2. Without prejudice to the general duty of mutual sincere cooperation, the Code will apply to the participation in the Committee of the Parties under the Convention and in the monitoring mechanism carried out by the Group of Experts on Action against Violence against Women and Domestic Violence ("the GREVIO").
- 1.3. The Code also lays down the principles of the functioning of the co-ordinating body in accordance with Article 10 of the Convention as well as of the fulfilment of and cooperation concerning the reporting obligations incumbent on the Union and the Member States under the Convention, as concerns their respective competences.

2. Fora for coordination

- 2.1. Without prejudice to the procedure of Article 218(9) TFEU, all issues related to the preparation of meetings and exercise of the Union's rights under the Convention shall be dealt with by the competent preparatory bodies of the Council with all efforts being made to reach an agreement in a spirit of mutual sincere cooperation. The competent Council preparatory body is the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons ("FREMP"). The Chair of FREMP will inform and liaise with the Chairs of other working parties as necessary.
- 2.2. Where no agreement can be reached in FREMP, including for reasons relating to disagreement on the distribution of competences, the matter shall be submitted without undue delay to COREPER and, where necessary, to the Council in due time before the relevant meeting or deadlines set under the Convention.
- 2.3. Where necessary, coordination meetings shall take place in Strasbourg. The purpose of such meetings is to complement and adapt Union or common positions to the meeting context, without substantially altering existing positions.

3. Union positions, common positions and coordinated positions

3.1. The Union institutions and the Member States will ensure close cooperation in the implementation of the Convention, bearing in mind the principles of mutual sincere cooperation and subsidiarity and the need to respect the respective competences of the Union and the Member States.

a) Union positions

3.2. On matters falling within the Union's exclusive competence, including in particular, as mentioned in Council Decision (EU) 2023/5514 and Council Decision (EU) 2023/5523, certain provisions of the Convention relating to judicial cooperation in criminal matters, asylum and non-refoulement, as well as the Union's institutions and public administration, the Union will aim at elaborating Union positions.

b) Common positions

3.3. Where the Union and the Member States are called upon to take a position pursuant to point 1.2. of the Code on a matter where certain elements fall under the Union's exclusive competence and certain elements fall under the Member States' competence, the Union and the Member States will aim at elaborating common positions.

c) Coordinated positions

3.4. On matters falling within the competence of the Member States, the Member States will aim at elaborating coordinated positions, whenever it is deemed appropriate.

4. Speaking and voting

a) Speaking in cases of agreed Union, common or coordinated positions

4.1. Union positions are delivered by the Commission on behalf of the Union. Member States remain free to take the floor with interventions that are aligned with the Union position, in particular in order to strengthen and support it.

4.2. Common positions referred to in point 3.3. are delivered on behalf of the Union and the Member States by the Commission and the Presidency, or a Member State appointed by the Presidency, acting in close cooperation. The Commission, on the one hand, and the Presidency or the Member State appointed by the Presidency, on the other, may agree that one of them shall deliver the common position on behalf of the Union and the Member States. The Commission and Member States may take the floor to strengthen and support the common position.

4.3. Coordinated positions will be expressed on behalf of the Member States by the Presidency or, if necessary, by a Member State, as appointed by the Presidency, or by the Commission with the agreement of all Member States present.

b) Voting in cases of agreed Union, common or coordinated positions

4.4. The Commission, on behalf of the Union, will exercise the Union's voting rights on the basis of Union positions.

4.5. Where the Union and the Member States are called upon to vote on a matter referred to in point 3.3., and where the right to vote on such a matter must be exercised by either the Union or the Member States, the Commission and the Presidency, or a Member State appointed by the Presidency, shall agree in advance who shall exercise the right to vote on the basis of a common position. Such agreement shall be based on the main focus of the matter at hand.

4.6. Member States will exercise their voting rights on the basis of coordinated positions wherever applicable.

c) Speaking and voting in cases of no Union, common or coordinated positions

4.7. Where no agreement on a Union, common or coordinated position can be reached, Member States may speak and vote on matters falling within their competence on condition that the position is coherent with Union policies and in conformity with Union law. The Commission may speak and vote on matters falling within the Union's competence to the extent necessary to defend the Union policies pre-established by the Council and the acquis.

5. Procedure regarding the Union's candidates for election as GREVIO members

5.1. The Commission shall establish a transparent selection procedure for the Union candidates in accordance with the procedure established by the Committee of Ministers of the Council of Europe under Article 66(5) of the Convention. The Commission will inform FREMP about the details of the selection procedure prior to its application.

5.2. On the basis of this procedure, the Commission shall carry out the selection process.

Prior to submitting the list of Union candidates to the Secretary General of the Council of Europe, the Commission's selection for the Union candidates shall be endorsed by Coreper.

5.3. A simplified procedure shall also be established for the renewal of the mandate of an elected expert nominated by the Union.

6. Nomination of representatives to the Committee of the Parties

The Commission shall designate its representative for the Committee of the Parties and inform FREMP thereof.

7. Co-ordinating body

- 7.1. The Commission shall function as the Union's co-ordinating body in accordance with Article 10 of the Convention for matters of the Convention falling under exclusive Union competence, without prejudice to the respective competences of the Member States, and without prejudice to the allocation of powers between the institutions in accordance with the EU Treaties and the autonomy of the institutions of the Union in matters relating to their respective activities.
- 7.2. Member States will nominate one or more co-ordinating bodies in accordance with Article 10 of the Convention, and notify the Commission of a single contact point for the purpose of the Convention representing their co-ordinating body or bodies.
- 7.3. The Commission and the Member State's contact points will inform each other of notifications or information requests from the Council of Europe or any other State Party to the Convention. For this purpose, the Commission will provide a single-entry point for notifications or information by Member States' contact points and ensure the distribution of the information to all Member States' co-ordinating bodies through the national contact points.
- 7.4. If necessary, on its own initiative or at the request of a Member State's co-ordinating body or contact point, the Commission will organise coordination meetings with Member States' co-ordinating bodies and/or contact points, as relevant.

8. GREVIO monitoring mechanism

a) Reporting

- 8.1. Reports of the Union and of its Member States submitted to GREVIO will cover their respective competences. In so far as the exclusive competences of the Union and the competences of the Member States are interlinked, the Union and the Member States shall fulfil the reporting obligations as laid down by the Convention and exercise their reporting obligations in a coherent and complementary manner. Union reports shall, wherever possible, refer to Member States' reports to avoid double reporting.

The Union reports shall set out the extent of the Union's exclusive competences for the implementation of the provisions of the Convention covered by the reporting exercise. This information shall be provided in sufficiently clear and explicit terms in order to allow GREVIO and the Committee of the Parties – when they evaluate the measures giving effect to the provisions of the Convention – to fully take into account the fact that the Union is only acceding to the Convention as concerns its exclusive competences and that the other provisions of the Convention will be implemented by the Member States under their own competence.

The same transparency as concerns the respective competences of the Union and of the Member States shall be ensured in general by the Commission in its interactions with the organs established by the Convention, in the context of the monitoring of the implementation of the Convention.

- 8.2. The Member States shall closely cooperate with the Commission as regards the provision of information that is necessary to fulfil the reporting requirements on Union acquis with regard to the Convention, drawing on existing information collected as part of their reporting obligations under the Convention.
- 8.3. In line with the duty of mutual sincere cooperation, the Commission shall, in due time before the submission of the report, present the report to FREMP for information. Member States will submit to FREMP for information a copy of their respective reports, if possible, before submission to GREVIO.
- 8.4. The Commission and Member States will also share with each other answers to questions received from GREVIO and comments on GREVIO's findings and recommendations during the reporting process. For this purpose, the Commission will provide a single-entry point for Member States and ensure the distribution of the information to all Member States.
- 8.5. Member States and the Commission will inform each other through FREMP in advance about the content of oral presentations in GREVIO and in the Committee of the Parties, if possible.
- 8.6. The Commission and the Member States shall discuss in FREMP the follow up to any GREVIO report, conclusions, or where appropriate, recommendations of the Committee of Parties, related to the Union report.

b) Meetings with GREVIO and country visits

- 8.7. Member States may request the Commission to provide an expert to become a part of their delegation, and the Commission may request Member States to provide experts for the Union's delegation.

c) Parliamentary involvement

- 8.8. The Commission will submit GREVIO reports on the implementation of the Convention by the Union to the European Parliament in the spirit of Article 70(2) of the Convention.

9. Generation of statistics required under the Convention

9.1. Union-wide statistics are an element to be delivered by the Union under the reporting obligations.

9.2. To the extent possible, the Union reporting shall use data generated at Union level and rely, as to data assembled by Member States' statistical institutes and research bodies, on the data reported by Member States to GREVIO. For the sake of obtaining the most accurate picture of prevalence of violence, it is important that Member States, the Commission and other Union bodies cooperate closely to the extent which is necessary to enable the Union to fulfil its reporting obligations.

10. Review

The Council, Member States or the Commission can request the revision of this Code of Conduct, in particular, taking account of experience gained during its operation.

11. Publication of the Code of conduct

This Code of conduct will be published in the Official Journal of the European Union (OJ) section C.
