



EUROPEAN COMMISSION

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*Mr Stanisław Karczewski
Marshal of the Senat
Ul. Wiejska 6
PL – 00-902 WARSAW*

*cc. Mr Marek Rocki
Chair of the Foreign and
European Affairs Committee
Senat
Ul. Wiejska 6
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Dear President,

The Commission would like to thank the Senat for its Opinion on the 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 {COM(2016) 109 final} and the Proposal for a Council Decision 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 {COM(2016) 111 final}.

The accession of the European Union to the Council of Europe Convention on preventing and combating violence against women and domestic violence ('the Convention') is part of the Commission's endeavour to further harness the European Union's political and legal action in the combat of gender-based violence which affects predominantly women.

The Commission would like to explain its position on the five aspects raised in the Opinion of the Senat as follows:

The Commission proposed that the Union should become party to the Convention against the background of the considerable prevalence of violence against women across the European Union. A survey carried out by the Agency for Fundamental Rights in 2014 bears witness to this¹. A recent Eurobarometer published in November 2016² underlines the need to act, in the light of perceptions in all Member States, towards behaviour that is criminalised in all Member States. Violence against women is incompatible with the founding values of the

¹ <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

² <http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/search/violence/surveyKy/2115>

Union, which include respect for human dignity and human rights, non-discrimination and equality between men and women (Article 2 of the Treaty on European Union (TEU)). The Union is obliged to pursue the realisation and promotion of this value in all its activities (Article 8 of the Treaty on Functioning of the European Union (TFEU)). The Commission therefore takes the view that Article 6 of the Convention on gender-sensitive policies is in line with the Union's political aims and foundations. It equally considers that Article 18 of the Convention, which contains the general obligations for Parties to the Convention in the area of protection and support, reflects fundamental values, emanating from the Treaties and the Charter of Fundamental Rights of the European Union, namely Articles 1 to 6, 21, 23, and 24 thereof. The Convention, in Article 49(2), obliges parties to a gender-tailored approach in supporting victims and protecting them from any further acts of violence, which the Commission considers in tune with these fundamental values.

While sharing the Union's values, the Convention is a holistic and pragmatic instrument, which is considered apt to serve as an overarching framework for the Union and its Member States for their existing policy and legal action against violence against women. The Convention's aim is the effective elimination of abject forms of violence against women, including behaviour such as rape, forced abortion and sterilisation, female genital mutilation, the criminalisation of which falls under Member States' competence.

The Commission has proposed accession also for legal reasons. The Union has enacted considerable legislation in areas covered by the Convention. For some of these areas, the Commission considers that the Union is exclusively competent for concluding an international agreement, a view that was confirmed during the ongoing negotiations in Council. Accordingly, the signing and conclusion, by the EU, is necessary alongside the ratification by the Union's Member States.

The Commission concurs with the view of the Senat that the Convention bundles actions in a number of areas and requires a multi-level approach. The explanatory memorandum details the areas under the Convention for which the Union has competence. Nevertheless, in accordance with the case-law of the Court of Justice of the European Union, where a Convention serves a multiple purpose, the proposed instrument must be based on the main or predominant component.³ This is the area of protection of victims (Article 82(2) TFEU) and related promotional action for crime prevention (Article 84 TFEU). The Commission wishes to recall that the determination of legal bases is still subject to the agreement in Council and interrelated with the scope of accession. As regards the area of education referred to in the Senat's opinion, the Commission draws the attention of the Senat to the complementary nature of Union action in these areas, with full respect of the responsibility of Member States for the content of teaching (Article 165 TFEU).

The Commission cannot comment on the views of the Senat on the compatibility of the Convention's rules regarding the combat of stereotyping with the Republic of Poland's constitutional provisions, but wishes to underline that stereotypes are widely recognised as an important root cause for inequalities, and reflected by perceptions and tolerance of societies of violence against women.

³ C-377/12, Commission v Council, paragraph 34.

Regarding the effects of an accession by the European Union to the Convention the Commission recalls that the Convention can only have an impact on the Union's legal order to the extent of the Union's accession, which is itself limited to the area of existing Union competences in accordance with the principle of conferral of powers. It follows from Article 216(2) TFEU that, within these limits, the provisions of the Convention will become part of the Union's legal order and binding upon Member States and its institutions and therefore also amenable to the Court of Justice's interpretation.

As regards the work of the monitoring body (Group of Experts on Action against Violence against Women and Domestic Violence - GREVIO) referred to by the Senat, this body is obliged, in accordance with Article 66(1) of the Convention, to work on the basis of the obligations emanating from the Convention. Despite the non-binding character of GREVIO's findings, the Union would be obliged to take its recommendations into consideration in so far as they pertain to the implementation of provisions covered by the scope of accession.

The points made above are based on the initial proposal presented by the Commission in accordance with the procedures under Article 218(5) and (6) TFEU involving both the European Parliament and the Council.

The Commission hopes that the clarifications address the issues raised by the Senat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Věra Jourová
Member of the Commission*