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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION authorising Member States to become party, in the interest of the European Union, to the Council of Europe Convention on an Integrated Safety, Security, and Service Approach at Football Matches and Other Sports Events (CETS n°218)

Delegations will find attached document COM(2018) 247 final.

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Proposal for a

COUNCIL DECISION

**authorising Member States to become party, in the interest of the European Union,
to the Council of Europe Convention on an Integrated Safety, Security, and Service
Approach at Football Matches and Other Sports Events
(CETS n°218)**

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

The present proposal concerns the decision authorising Member States to sign and ratify, in the interest of the European Union, the Council of Europe Convention on an Integrated Safety, Security, and Service Approach at Football Matches and Other Sports Events ('CETS n°218' or 'the Convention').

2. CONTEXT OF THE PROPOSAL

2.1. Background

On 29 May 1985, 39 people were killed and hundreds injured during violent confrontations between football fans at the European Cup final at the Heysel stadium in Brussels. In the wake of that disaster, the Council of Europe drew up the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (CETS n°120) ('Convention n°120'). Convention n°120 focused on preventing, deterring and responding to incidents of violence and misbehaviour inside or within the vicinity of stadiums. Convention n°120 entered into force on 1 November 1985 and has been ratified by 41 Parties, including most Member States of the European Union.

In December 2013, the Committee of Ministers of the Council of Europe concluded, in the light of a study on the merits and desirability of updating Convention n°120, that the latter had become outdated: its content – in particular the primary emphasis on security measures – was found to be inconsistent with experience and good practices and out of step with more recent recommendations of the Convention's Standing Committee. The Committee of Ministers therefore instructed the Standing Committee to revise Convention n°120. Rather than revising it, the Standing Committee decided to work on a new text. That work resulted in CETS n°218.

2.2. The Convention

CETS n°218 aims to provide a safe, secure and welcoming environment at football matches and other sports events (Article 2). The Convention distinguishes between 'safety measures', 'security measures' and 'service measures' (Article 3).

The Convention requires the Parties to adopt 'an integrated, multi-agency and balanced approach towards safety, security and service' (Article 2(a)), that is to say, an approach based on the notion that 'safety, security and service measures at football matches and other sports events invariably overlap, are interrelated in terms of impact, need to be balanced and cannot be designed or implemented in isolation' (Article 3(f)).

The Convention requires the Parties to ensure national and local co-ordination arrangements for the purpose of developing and implementing a multi-agency integrated approach to safety, security and service (Article 4). The Parties are required to take various measures with a view to ensuring safety, security and service inside sports stadiums (Article 5); for example, they must ensure that stadiums' operating arrangements make provision for effective liaison with the police and with emergency services and other partner agencies, and incorporate policies and procedures on matters such as racist or discriminatory behaviour (Article 5(5)).

The Parties are furthermore required to encourage all relevant agencies and stakeholders to work together to create a safe, secure and welcoming environment in public places outside stadiums (Article 6). The Parties must ensure that relevant agencies develop contingency and emergency plans (Article 7) and they must encourage all agencies to engage proactively with supporters and local communities (Article 8).

With respect to policing, Article 9 of the Convention requires the Parties to ensure that ‘policing strategies are developed, regularly evaluated and refined’, which take account of good practices and are consistent with the integrated approach to safety, security and service; the Parties must also ensure that the police work in partnership with relevant stakeholders.

With respect to prevention and sanctioning, Article 10 of the Convention requires the Parties to ‘take all possible measures’ to reduce the risk of incidents of violence and disorder and to ensure, in accordance with national and international law, that ‘effective exclusion arrangements, appropriate to the character and location of risk’ are in place to deter and prevent such incidents. The Parties are also required to ‘co-operate in seeking to ensure that individuals committing offences abroad receive appropriate sanctions’ (Article 10(3)) and to ‘consider empowering the judicial or administrative authorities responsible to impose sanctions on individuals who have caused or contributed to incidents of football-related violence and/or disorder, with the possibility of imposing restrictions on travel to football events held in another country’ (Article 10(4)).

Article 11 of the Convention is entitled ‘international co-operation’. It obliges the Parties to set up a National Football Information Point (NFIP) to act as the designated sole conduit for exchanging all information and intelligence regarding football matches with an international dimension and for arranging other matters of international police co-operation (Articles 11(2) to (4)). The text of Articles 11(2) to (4) was inspired by, and uses the terminology of, Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension.

The final clauses of the Convention deal with signature (Article 16), entry into force (Article 17), accession by non-member States of the Council of Europe (Article 18), effects of the Convention in relation to Convention n°120 (Article 19), territorial application (Article 20), denunciation (Article 21), and notifications (Article 22). These clauses are ‘essentially based’ on the Model Final Clauses for Conventions and Agreements concluded within the Council of Europe of February 1980 and on the final clauses of Convention n°120.

2.3. Existing Union law and policy in the area

The Union has adopted a number of measures regarding police cooperation and the exchange of police information. With respect, specifically, to police cooperation and exchange of police information on the subject-matter of safety and security at football matches, the Union has adopted Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension.¹ Council Decision 2002/348/JHA was based on Article 30(1)(a) of the Treaty on the European Union, currently Article 87(1) of the Treaty on the Functioning of the European Union (TFEU), as well as on Article 34(2)(c) of the Treaty on the European Union (TEU), repealed.

Council Decision 2002/348/JHA requires each Member State to ‘set up or designate a national football information point of a police nature’ (NFIPs), which ‘shall act as the direct, central

¹ OJ L 121, 8.5.2002.

contact point for exchanging relevant information and for facilitating international police cooperation in connection with football matches with an international dimension' (Article 1). The Council Decision specifies the tasks of the NFIPs (Article 2), the police information that shall be exchanged between them (Article 3) and the procedure for communication between NFIPs (Article 4). Council Decision 2007/412/JHA of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension² added provisions on periodic national football disorder assessments (Article 2(6)) and forms for exchange of information (Article 3(4)).

Council Decision 2002/348/JHA is referred to in a Council Resolution of 17 November 2003 on the use by Member States of bans on access to venues of football matches with an international dimension³ and in the EU Football Handbook⁴. The Handbook, which was first adopted in June 1999 and last updated in November 2016, contains detailed recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, including guidance on the exchange of police information and on the role and tasks of NFIPs.

2.4. Reasons for the proposal

While the Convention contains provisions in the area of police cooperation (87 TFEU), it also fits more generally with the Union's policy objectives in relation to sporting issues (Article 165 TFEU). According to Article 165(3) TFEU the Union and the Member States have to foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe. The EU incentive measures, including support for projects under the sport chapter of the Erasmus+ programme, supporter awareness campaigns and sporting sanctions are not enough to address the problems of acts of violence and discrimination occurring at the periphery of sport competitions. Insofar as this is a public order issue, national public authorities have supplemented these initiatives with preventive activities and targeted coercive measures. This is a complex task because of the international nature of certain matches and the differences that exist between the relevant provisions and practices related to the maintenance of order, safety and security in the different EU Member States. More cooperation between the different stakeholders in the fight against violence and discrimination of all kinds is necessary. Law enforcement actions must be better coordinated and the EU can facilitate this process, in particular by supporting the Council of Europe Convention.

The EU itself cannot become a party to the Convention. This is because the Convention refers exclusively to 'States' or 'State Parties' and does not contain any wording allowing the EU or other regional integration organisations to become a party to it.

Nevertheless, the EU has adopted both general and specific measures regarding cooperation and exchange of police information that apply to the subject-matter of safety and security at football matches with an international dimension, as well as detailed, recently updated recommendations on how to apply those measures.

² OJ L 155, 15.6.2007, p. 76.

³ OJ C 281, 22.11.2003, p. 1.

⁴ Council Resolution of 6 December 2001 concerning a handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, in which at least one Member State is involved; OJ C 022, 24.01.2002, p. 1.

Moreover, the commitments undertaken in Article 11 of the Convention, with respect to national football information points (NFIPs), are liable to affect common rules within the meaning of Article 3(2) TFEU. This is because the obligation to set up or designate NFIPs is already contained in Council Decision 2002/348/JHA, which specifies the tasks of NFIPs and sets out rules for cooperation between them, in particular with respect to exchanging police information. The commitments contained in Articles 11(2) to 11(4) of Convention n°218 coincide almost fully with the obligations contained in Council Decision 2002/348/JHA. Indeed, according to the Explanatory Report to Convention n°218, 'NFIPs were created under European Union Law' and the text of Articles 11(2) to (4) was inspired by, and uses the terminology of, Council Decision 2002/348/JHA.

These circumstances highlight the need for Member States to act within the framework of the EU institutions when undertaking international commitments in the area of cooperation and exchange of police information between Member States, in particular with regard to safety and security at football matches with an international dimension.

Although Article 11(2) to (4) of Convention were based on Council Decision 2002/348/JHA precisely so as to avoid a conflict with EU law, the fact remains that Council Decision 2002/348/JHA provides for a system of cooperation and exchange of police information between Member States in the area of safety and security at football matches with an international dimension by means of a network of authorities established for that specific purpose. The EU alone is in a position to assume the obligation vis-à-vis third countries to continue to apply that system within the EU and to extend its application to the third countries concerned.

Given that the EU itself cannot become a party to CETS n°218, and since the Member States may become a party to that Convention only if so empowered by the EU (Article 2(1) TFEU) it is appropriate to adopt a decision authorising the Member States to sign and ratify the Convention in the interest of the EU.

3. LEGAL BASIS

The proposed Council Decision is based on Article 218(6)(a)(v) and Article 218(8) TFEU, in conjunction with Article 87(1) TFEU, which provides the main legal basis for EU legislation on police cooperation.

Proposal for a

COUNCIL DECISION

authorising Member States to become party, in the interest of the European Union, to the Council of Europe Convention on an Integrated Safety, Security, and Service Approach at Football Matches and Other Sports Events (CETS n°218)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(6)(a)(v) and Article 218(8), in conjunction with Article 87(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament⁵,

Whereas:

- (1) The Convention on an Integrated Safety, Security, and Service Approach at Football Matches and Other Sports of the Council of Europe ('the Convention') has been open for signature and ratification since 3 July 2016.
- (2) The Convention aims to provide a safe, secure and welcoming environment at football matches and other sports events.
- (3) Articles 11(2) to 11(4) of the Convention, with respect to National Football Information Points, may affect common rules or alter their scope within the meaning of Article 3(2) TFEU, as these provisions coincide with the obligations contained in Decision 2002/348/JHA of the Council⁶ concerning security in connection with football matches with an international dimension.
- (4) Union support to the Convention is important for combating violence related to sport events and would complement the efforts already made in this field through support to projects under the sport chapter of the Erasmus+ programme.
- (5) The Union cannot become party to the Convention, as only States can be parties thereto.
- (6) Member States should therefore be authorised to sign and ratify the Convention, acting jointly in the interests of the Union, in respect of those parts falling under the exclusive competence of the Union.

⁵ OJ C , , p. .

⁶ Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension (OJ L 121, 8.5.2002, p. 1).

- (7) The United Kingdom and Ireland are bound by Council Decision 2002/348/JHA, and are therefore taking part in the adoption of this Decision.
- (8) In accordance with Articles 1 and 2 of Protocol n°22 on the position of Denmark, annexed to the Treaty on the European Union and to the TFEU, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

Member States are hereby authorised to become party to the Convention on an Integrated Safety, Security, and Service Approach at Football Matches and Other Sports of the Council of Europe (CETS n°218) in respect of those parts falling under the exclusive competence of the Union.

Article 2

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

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*