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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence

- General approach
- Statement

Delegations will find in the Annex the statement entered by Poland.

Poland, fully respects the right to equal treatment of women and men, constantly strives to eliminate all forms of violence against women and domestic violence likewise to strengthen the protection of victims. Simultaneously, Poland does not support the adoption of the general approach to the entire draft Directive of the European Parliament and the Council on combating violence against women and domestic violence in the current wording and procedure.

In view of the opinion of the Council Legal Service, The Polish Government believes that the appropriate procedure for the adoption of the aforementioned draft Directive would be, initially, the adoption of a Council decision to extend the catalogue of eurocrimes under the procedure laid down in Article 83(1) par. 3 TFEU. The proposed harmonisation refers to offences that are difficult to classify in this group. Indeed, not all the offences indicated in the proposal can be considered to be clearly covered by the notion of 'sexual exploitation of women and children' or 'computer crime'.

Furthermore, it should be recalled that the attempt to extend the list of offences under Article 83(1) TFEU to include a new offence of "hate speech", as envisaged in the draft Council Decision COM (2021) 777, had not been successful. European Union law does not use the concept of hate crime, and the proposed Article 10 can be considered as a circumvention of the Treaty's unanimity procedure and confirms comments on the incorrect legal basis of this draft Directive.

At the same time, it should be noted that Articles 2 and 3(3) of the Treaty on European Union, Article 10 of the Treaty on the Functioning of the European Union and Article 23 of the EU Charter of Fundamental Rights refer explicitly to equality between women and men and do not use the term 'gender', but “sex”. The concept of 'gender' does not have a definition in EU fundamental law, and thus remains vague and ambiguously understood in the Member States. Therefore, Poland reserves itself to interpret the term "gender", used in the text of the Proposal, as identical with the unambiguous and well-established in the law of the European Union term "sex".

In the opinion of Poland, this initiative is another example of an attempted violation of the unanimity voting rule and seeks to extend EU competences without amending the Treaties of the European Union. Poland unequivocally disapproves this type of practice. Accordingly, Poland will seek to eliminate the obligations derived from Directive if adopted, by appropriate national mechanisms entailing an examination of the constitutionality of the Council's and Parliament's interpretation of the Treaties of the European Union, in the scope of depriving Poland the possibility not to agree in accordance with the unanimity voting rule in Article 83(1) par. 3 TFEU. Therefore, in Poland's consideration it constitutes an ultra vires action of the European Union institutions which cannot bind the Member States.