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'I/A' ITEM NOTE

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

Subject: Draft DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA **(first reading)**
- Adoption of the legislative act
= Statements

Hungary has requested that the following statement be entered in the Council minutes

Hungary attaches fundamental importance to the clear division of competences between the European Union and the Member States as laid down in the Treaties. The principle of conferral, as enshrined in Article 5 TEU, remains the cornerstone of the EU legal order and must be fully respected in both legislative and non-legislative acts. Hungary underlines that nothing in this Directive can be interpreted as establishing a precedent affecting the allocation of competences between the Union and its Member States beyond what has been conferred to the European Union by the Treaties, nor can it prejudice the assessment of whether the Union has competence to act in a given area. The allocation of competences must always be determined strictly on the basis of the Treaties. Any interpretation of this Directive suggesting an extension of Union competences beyond what has been conferred by the Member States in the Treaties would be unacceptable.

We recall that 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 and in the Charter of Fundamental Rights of the European Union as a fundamental value and right. Furthermore, Article 10 and 19 TEU, alongside Article 21 of the Charter identify, inter alia, ‘sex’ as a specific ground for discrimination, which shall be prohibited. In line with these and its national legislation, Hungary interprets the concept of ‘gender’ as reference to ‘sex’ in this Directive.

Italy has requested that the following statement be entered in the Council minutes

La materia dello “stato e capacità delle persone” rientra nelle competenze esclusive degli Stati Membri e, per l’effetto, all’Unione europea non è attribuita una competenza legislativa su di essa (art. 5 TUE). Ne consegue che il concetto di “genere” delle persone rientra nelle competenze esclusive dell’Italia: l’UE non può né definirlo, né regolarlo. Il concetto di “*gender identity*”, pertanto, sarà interpretato in conformità al diritto nazionale che distingue il genere in base al sesso biologico (maschile o femminile) e così il relativo diritto all’identità.

Per gli stessi motivi, il termine “*intersectional discrimination*” verrà interpretato, in coerenza con il diritto nazionale, in termini di “discriminazione multipla”.

L’Italia riconosce nel proprio ordinamento la possibilità per le donne di accedere all’interruzione della gravidanza. La questione oggetto dell’odierna dichiarazione non è, quindi, di “merito” ma di “metodo”. Questa materia, infatti, è una competenza esclusiva degli Stati Membri e, pertanto, l’Italia deplora che una simile menzione sia stata inserita in un atto legislativo dell’Unione in mancanza di attribuzione di competenza e senza base giuridica.

Courtesy translation in English

Matters relating to the status and legal capacity of natural persons fall within the exclusive competence of the Member States and, accordingly, no legislative competence has been conferred upon the European Union in this field (Article 5 TEU). It follows that the concept of “*gender*” falls within the exclusive competence of Italy: the EU is neither empowered to define it nor to regulate it. Consequently, the notion of “*gender identity*” shall be interpreted in conformity with national law, which distinguishes gender on the basis of biological sex (male or female), and accordingly regulates the corresponding right to identity.

For the same reasons, the term “*intersectional discrimination*” will be interpreted, in accordance with national law, as referring to “*multiple discrimination*”.

The Italian legal system recognises the possibility for women to access to the termination of pregnancy. The issue addressed in the present declaration is therefore not one of substance but of competence and procedure. This matter falls within the exclusive competence of the Member States. Italy therefore deplores the inclusion of such a reference in a legislative act of the EU in the absence of a conferral of competence and without an appropriate legal basis.

Malta has requested that the following statement be entered in the Council minutes

Malta welcomes all efforts that further strengthen victims’ rights. In this regard, Malta broadly welcomes the compromise package. However, Malta maintains its objection to the reference to abortion in the recitals.

Reference to abortion undermines the national competence of the Member States in relation to healthcare and their respective national healthcare system, and such overreach is nothing short of a violation of the principles of subsidiarity and proportionality.

In addition, the co-legislators have not agreed to operative provisions detailing specific treatments for victims of sexual violence, including but not limited to abortion.

The purpose of recitals is to set out concise reasons for the chief provisions of the enacting terms¹. The reference in the recital is thus meant to complement and inform the interpretation of the relevant provision on access to sexual and reproductive rights.

The recitals are the place where the institutions must demonstrate to have acted within the limits of their competences, that the objectives of the proposed action cannot be sufficiently achieved by the Member States and that Union action does not exceed what is necessary to achieve the objectives of the Treaties. Recitals are therefore crucial to an act's validity. This has been consistently confirmed by the CJEU. The recital in question therefore fails the test of Article 296 TFEU.

This could give rise to the creation of a precedent in suggesting that Member States would be subject to the Commission's evaluation of the implementation of the relevant national legal provisions which make the right to abortion legally accessible therein.

Malta will therefore abstain despite being fully precluded from the obligation to transpose and implement EU legislation on abortion by virtue of Protocol No 7 of the Act concerning the conditions of accession of the Republic of Malta².

Slovakia has requested that the following statement be entered in the Council minutes

The Slovak Republic takes note of the final compromise text of the Directive amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

The Slovak Republic remains fully committed to strengthening the rights, support and protection of victims of crime and to combating all forms of violence and discrimination. In this regard, the Slovak Republic wishes to recall its position concerning the inclusion of the term "gender identity" in Articles 22 and 23 of the Directive.

¹ Guideline 10 of the Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union Legislation

² https://eur-lex.europa.eu/eli/treaty/acc_2003/act_1/pro_7/sign/eng

Article 12 of the Constitution of the Slovak Republic prohibits discrimination and guarantees equal rights to all persons. While fully committed to the protection of all victims without discrimination, the Slovak Republic does not consider it necessary to single out or emphasise separately the concept of “gender identity”, as the protection afforded by the Directive applies equally to all victims.

The Slovak Republic further recalls that, pursuant to Article 52a of the Constitution of the Slovak Republic (Constitutional Act No. 255/2025 Coll.), the Slovak constitutional framework recognises the biologically determined sex of a man and a woman. Following the constitutional amendments adopted in 2025, the Slovak legal order recognises objective biological reality as the sole determining factor for legal categorisation at the state level. The Slovak Republic recalls that the Directive does not establish an autonomous definition of this concept under EU law and that its implementation remains within the competences of the Member States. The interpretation and application of the term “gender identity” will therefore be carried out in accordance with the constitutional order and national legislation of the Slovak Republic.

Furthermore, with regard to Recital 13 and the reference to sexual and reproductive healthcare services, the Slovak Republic recalls that the European Union does not possess a general competence in the field of healthcare policy. In accordance with Article 168(7) TFEU, the definition of health policy and the organisation and delivery of health services and medical care remain the responsibility of the Member States.

The Slovak Republic therefore understands the relevant provisions of the Directive as fully respecting the competences of the Member States and as not creating any new obligations beyond those provided for under the Treaties and national constitutional frameworks. In light of the above, the Slovak Republic will abstain from the vote while remaining committed to the protection of victims’ rights.