



Council of the
European Union

Brussels, 25 May 2023
(OR. en, it)

9252/23
ADD 1

LIMITE

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FREMP 139
DROIPEN 66
COCON 31
COHOM 104
COPEN 144
EDUC 159
MIGR 161
SOC 311
ANTIDISCRIM 46
STAT 9

'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	<ul style="list-style-type: none">– Council Decision on the conclusion of the Istanbul Convention with regard to institutions and public administration of the Union– Council Decision on the conclusion of the Istanbul Convention with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement <p>Adoption</p> <ul style="list-style-type: none">– Code of conduct laying down the internal arrangements regarding the exercise of the rights and obligations of the European Union and Member States under the Istanbul Convention– Declaration concerning the competence of the European Union regarding matters governed by the Istanbul Convention <p>Approval</p> <p>= Statements</p>

The following statements will be entered in the Council minutes.

Statement by the delegation of Bulgaria

The Republic of Bulgaria attaches great importance to the promotion and protection of human rights and fundamental freedoms, an important part of which is the equality between women and men. We are and will remain dedicated to the principles and values of the European Union, as enshrined in the Treaties.

The Republic of Bulgaria is strongly committed to combatting domestic violence and violence against women. The Bulgarian government and civil society are actively engaged in preventing such forms of violence and in providing protection and support to their victims.

In 2018, the Constitutional Court of the Republic of Bulgaria adopted a decision stating that the Council of Europe's Convention on Preventing and Combatting Violence against Women and Domestic Violence ("Istanbul Convention") promotes legal concepts, that intend to differentiate between "sex" as a biological (women and men) category and "gender" as a social construct. In 2021, the Constitutional Court of the Republic of Bulgaria adopted another decision clarifying that the notion "sex" used in the Constitution could only be regarded in the sense of its biological determination.

Therefore, in light of the abovementioned decisions of the Constitutional Court, the Republic of Bulgaria cannot support the two proposed draft Council decisions on the conclusion of the Istanbul Convention.

The Republic of Bulgaria reiterates its strong position against EU accession to the Istanbul Convention in the absence of common accord among Member States. We believe that such an approach would lead to legal challenges for the EU and for the EU Member States in the process of implementation of the Convention. Furthermore, the State reiterates its position that is under no obligation to report to the GREVIO expert group concerning the implementation of the Istanbul Convention on its territory, nor agrees to have third parties report on its behalf.

Statement by the delegation of Hungary

Hungary recognizes 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 the international law. Furthermore, equality between women and men is enshrined in the Treaties of the European Union as a fundamental value. Hungary is also committed to fighting against violence against women. Hungary remains convinced that it is not the ratification of a convention, but the tangible results of Government actions that make prevention and combating violence against women and domestic violence a reality.

The National Assembly of Hungary has adopted a resolution in May 2020 proclaiming that it opposes the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence by Hungary because it wishes to avoid including the definition of ‘gender’ or the corresponding perspective of the Convention into the Hungarian legal system, and also because the provisions of the Convention on granting asylum on the grounds of sex/gender are contrary to the political aims of Hungary in this respect and to the Hungarian legal framework supporting that aim.

The above referred resolution of the National Assembly called on the Hungarian Government not to support the accession of the European Union to the Istanbul Convention and therefore Hungary is not in a position to support the accession of the European Union to that Convention. The Hungarian Government considers that in the present case the competences of the Member States and of the Union are inextricably linked. Therefore, the European Union should not accede to the Convention before all its Member States have ratified the Convention at national level.

Hungary stresses that the abandonment of the practice of ‘common accord’ would have consequences that go well beyond the accession to the Istanbul Convention. Hungary recalls that the Opinion of the Court of Justice of the European Union did not exclude the possibility of waiting for the ‘common accord’ of the Member States. Hungary stresses that abandoning the practice of common accord will adversely affect the Union's ability to meet its international commitments and will weaken political ownership, which has always been an important consideration in the decision-making process regarding EU external relations.

Statement by the delegation of Italy

Italy shares the position expressed on 20 February 2023 by Cyprus, France, Germany, Greece, Ireland, Malta, Slovenia and Spain as regards remaining ‘firmly attached to the practice of “common accord” for the accession by the European Union to mixed agreements exercised in full compliance with the requirements and within the limits of the procedure laid down in Article 218(2), (6) and (8) TFEU’.

Italy reaffirms the importance of the European Union acceding to the Convention, ‘considering the specific circumstances with respect to the consensus in favour of the fight against violence against women’, and in order to ensure its full implementation, including in areas in which the European Union has exclusive competence.

In that regard, and also with reference to Opinion 1/19 of the Court of Justice, Italy reaffirms that accession by the European Union to the Convention is limited to the areas of exclusive competence laid down in the legal bases of the decision, in accordance with the principle of conferral enshrined in the Treaties.

Statement by the delegation of Poland

Poland is dedicated to the fight against violence against women and domestic violence, aiming to reduce this phenomenon and ensure equal standards of protection for all victims. Simultaneously, Poland objects the accession of the European Union to the Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011.

The Polish Government considers that legal grounds of the decision to sign and to conclude the Convention should be equivalent. Otherwise, this would mean that the Union has signed the Convention to a different scope and wants to be bound by it to a different extent. Furthermore, factual reasons such as inconsistencies within the Istanbul Convention or the ideological approach presented, support the above position. It should be noted, in particular, that the Convention has not been ratified by all states of the European Union. Accordingly, it is not appropriate for the European Union to accede to the Convention until all its Member States have ratified it at national level.

It should be emphasized that the European Union accession to the Istanbul Convention only as an exclusive competence of the EU makes it unsuitable for Articles 82(2) and 84 TFEU to provide a legal basis for the Council's decision to bind itself to that Convention on behalf of the EU. The rules introduced under Article 82(2) TFEU must take into account the differences between the traditions and legal systems of the Member States. However, the Istanbul Convention imposes a different perception of traditional social institutions. Moreover, Article 84 TFEU allows the adoption of measures to promote and support the activities in the field of crime prevention. This provision clearly excludes any harmonisation of laws and regulations, hence the selection of a specific measure must guarantee flexibility for Member States.

Possible adoption of the proposed decisions will constitute a significant precedent involving the abandonment of the existing practice of a 'common accord' of all Member States in the sphere of international agreements concluded by the European Union. The above violates the fundamental principles of the EU and consequently leads to the granting of exclusive powers to the Union with regard to decision-making process in the EU's external relations and to the creation of international obligations, against the will of the Member States.

In the event of further proceedings in this regard, whereas there is a lack of unanimity, Poland reserves the possibility to exempt itself from individual obligations through the use of appropriate national mechanisms. It should be emphasised that there is a case (ref. K 11/20) pending before the Constitutional Tribunal of Poland at the motion of the Prime Minister, in which the provisions of the Istanbul Convention and the procedure for its ratification by Poland are questioned.

Statement by the delegation of Slovakia

Given the position of the Slovak parliament on the EU accession to the Istanbul Convention, Slovakia does not agree with the two draft Council decisions on the conclusion of the Istanbul Convention on behalf of the European Union.

Having regard to Opinion 1/19, we regret that the practice of « common accord » for the accession by the European Union to mixed agreements exercised in full compliance with the requirements and within the limits of the procedure laid down in Article 218(2), (6) and (8) TFEU, was not observed in case of the accession to the Istanbul Convention, which creates negative precedence for future accessions to mixed agreements.