



Re: Istanbul Convention and EU Accession to it – Problem Analysis

Domestic violence is still a sad reality in Europe. It produces victims, often women and girls, and needs to be addressed in an efficient and impactful manner. A thorough analysis of the possible EU accession to the Istanbul Convention leads to the conclusion that the accession would remedy very little, but bring with it a large set of new problems, regarding both content and competence. The most efficient way to address the problem of domestic violence is the strengthening and full implementation of the mechanisms in place and the existing obligations under international and national law.

This document summarizes and refers to the arguments elaborated in depth in the attached memorandum.

On substance:

- The Istanbul Convention codifies a controversial and non-consensual definition of ‘gender’ as a social construct that is independent of biological reality. This contradicts the existing definition in international law (the Rome Statute of the International Criminal Court), and would impact EU acquis on equality between men and women, whose meaning would be modified following the ratification. Denying the existence of the natural differences between the two sexes has profound legal implications regarding the exact meaning and scope of ‘gender’ policies, freedom of religion, and the duty of professional secrecy (see paragraphs 22-39). This is also admitted by Commissioner Jourova in her answer to a parliamentary question: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-005912&language=EN>.
- The Convention seeks to fight against and eradicate any ‘tradition based on stereotyped gender roles.’ The binary view of mankind and of marriage, held by all major religions, may be stigmatized as a ‘tradition based on stereotyped gender roles’ and thus something that should be opposed in teaching materials or school curricula under the Convention.
- The Istanbul Convention infringes on the right of parents to be the primary educators of their children (Article 2 Protocol 1 of the European Convention on Human Rights). Once a country ratifies the Istanbul Convention, the definition of gender as a social construct is binding. This will further limit the right of parents to oppose controversial school classes and curricula that teach gender as ‘social sex’ to children (see paragraphs 28-35).
- GREVIO, the monitoring mechanism established by the Istanbul Convention, has the potential of undermining the institutional balance as defined in the Treaty on European Union and the Treaty on the Functioning of the European Union (see paragraphs 49-59). The establishment of GREVIO as a mechanism monitoring EU law would undermine the

exclusive position of the CJEU to review the legality of EU acts and, more generally, the autonomy of EU law.

- The Istanbul Convention stereotypically portrays men and boys as perpetrators of violence (see paragraphs 40-48).

On procedure:

- The proposed legal bases for the Decisions which will lead to EU accession are manifestly incorrect. The European Commission erroneously advanced Art. 82 (2) TFEU as a basis for the Council Decisions that would lead to EU accession to the Istanbul Convention. However, Art. 82 (2) cannot serve as a legal basis for *any* Decision, since it clearly authorizes the EU to adopt *directives only* and not any other legal instruments (paragraphs 84 et seq. and paragraphs 105 et seq.). The legal basis could be challenged by an action for annulment before the Court of Justice of the European Union.
- If EU accession is successful, the provisions of the Istanbul Convention would lead to a prohibited harmonization of the laws and regulations of the Member States in the field of crime prevention (see paragraphs 108-109); victims' rights (particularly EU *acquis* which understands gender equality as equality between men and women) with the area of anti-discrimination.
- EU accession to the Istanbul Convention would violate the principle of legal certainty: the Decisions lack a clear delineation of competences between the EU and its Member States and employ vague and novel terminology. As a consequence, Member States would ultimately be unable to identify and fulfil the obligations incumbent upon them (see paragraphs 168-169).
- EU accession to the Istanbul Convention would violate the principle of proportionality (see e.g. paragraphs 177-182). Art. 3 (6) TEU states that '[t]he Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.' The EU's competence, in this case, only partially overlaps with the scope of the Istanbul Convention.
- The condition of necessity for the EU to accede the Istanbul Convention has not been proven.

Proposed wording for a reservation / interpretative declaration regarding EU accession

The European Union declares that it accedes to the Convention within the limits of its competences.

The European Union declares that the definition of 'gender' provided by Article 3 of the Convention shall be interpreted and understood (without prejudice to / subject to / in line with) the ordinary and commonly understood meaning to be given to that term, referring to the two sexes, male and female, within the context of the society, in accordance with the Report of the Fourth World Conference on Women and the Rome Statute of the International Criminal Court.