

Thursday 4 April 2019

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Seeking an opinion from the Court of Justice relating to the EU accession to the Convention on preventing and combating violence against women and domestic violence

European Parliament resolution of 4 April 2019 seeking an opinion from the Court of Justice on the compatibility with the Treaties of the proposals for the accession by the European Union to the Council of Europe Convention on preventing and combating violence against women and domestic violence and on the procedure for that accession (2019/2678(RSP))

(2021/C 116/02)

The European Parliament,

- having regard to the Commission proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (COM(2016)0109),
 - having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence, which opened for signature in Istanbul on 11 May 2011 (hereafter ‘Istanbul Convention’),
 - having regard to Council Decision (EU) 2017/865 of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters ⁽¹⁾,
 - having regard to Council Decision (EU) 2017/866 of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to asylum and non-refoulement ⁽²⁾,
 - having regard to its resolution of 12 September 2017 on the proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence ⁽³⁾,
 - having regard to Article 218(11) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 108(6) of its Rules of Procedure,
- A. whereas the Istanbul Convention is based on a holistic, comprehensive and coordinated approach that places the rights of the victim at the centre, by addressing the issues of violence against women and girls and gender-based violence, including domestic violence, from a wide range of perspectives, and providing for measures such as the prevention of violence, the fight against discrimination, criminal law measures to combat impunity, victim protection and support, the protection of children, the protection of women asylum seekers and refugees, and better data collection and awareness-raising campaigns and programmes, including in cooperation with national human rights and equality bodies, civil society and NGOs;
- B. whereas in its resolution of 12 September 2017 Parliament called for a broad EU accession to the Istanbul Convention without any limitations; whereas violence against women is an obstacle to equality between women and men, which is one of the EU’s founding values and aims, as laid down in Articles 2 and 3 of the Treaty on European Union, and whereas the EU has overall competence to protect fundamental rights;

⁽¹⁾ OJ L 131, 20.5.2017, p. 11.

⁽²⁾ OJ L 131, 20.5.2017, p. 13.

⁽³⁾ OJ C 337, 20.9.2018, p. 167.

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- C. whereas on 13 June 2017 the Istanbul Convention was signed on behalf of the European Union on the basis of two Council decisions adopted on 11 May 2017, one with regard to asylum and non-refoulement, based on Article 78(2) of the TFEU in conjunction with Article 218(5) thereof, and the other with regard to matters related to judicial cooperation in criminal matters, based on Articles 82(2) and 83(1) of the TFEU, in conjunction with Article 218(5) thereof;
- D. whereas legal concerns were raised by the two committees involved in this procedure as regards the necessity of the split into two decisions and as regards the legal basis chosen by the Council; whereas Parliament's Legal Service was asked to give an opinion on these specific questions;
- E. whereas Rule 108(6) of Parliament's Rules of Procedure aims to incorporate into the Rules the provisions of Article 218(11) of the TFEU;
- F. whereas Article 218(11) of the TFEU, on the basis of standing case-law of the Court of Justice, allows the Court to rule both on the compatibility of the agreement with the Treaties and on issues of competence and procedure for the conclusion of the agreement by the Union;
1. Takes the view that there is legal uncertainty as to whether the accession to the Istanbul Convention as proposed by the Council is compatible with the Treaties, in particular as regards the choice of the appropriate legal basis for the decisions on the signing and on the conclusion by the European Union of the convention, and as regards the possible split into two decisions on the signing and on the conclusion of the convention as a consequence of that choice of legal basis;
 2. Considers that, given the above questions as regards the choice of legal basis and the split into two decisions, there is also legal uncertainty as regards the compatibility with the Treaties of the practice of a 'common accord' by the Council in its decision-making, which is applied in addition to or alternatively to the relevant decision-making procedure in the Treaties, and, in this context, as regards the application of the principle of sincere cooperation in the light of the expressed objective of the Union to conclude the Istanbul Convention;
 3. Decides to seek an opinion from the Court of Justice on the compatibility with the Treaties of the proposed accession of the EU to the Istanbul Convention and the procedure for that accession;
 4. Instructs its President to take the necessary measures to obtain such an opinion from the Court of Justice and to forward this resolution, for information, to the Council and the Commission.
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