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Populist Challenge? Negotiating the EU's Accession to the Istanbul Convention in the Council

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Abstract

According to recent scholarship, populist governments engage in "unpolitics," a repudiation of politics as the process of resolving conflict, including on the level of the EU. We propose that the conditions provided by the Council preparatory bodies, namely constructive negotiation culture, focus on technical details and containment of a negotiation outside of mediatised venues, might hamper the emergence of unpolitics. We test this argument by tracing the process of the EU's accession to the Istanbul Convention on preventing and combatting violence against women and domestic violence, concluded in June 2023. This case study serves as a hard case for our theory because gender equality as a policy area is susceptible to tactics of unpolitics and right-wing populists have employed populist critique of the Istanbul Convention in their domestic contexts. Having analysed multiple data sources, including interviews with negotiators in the Council of the EU, official EU documents, and media coverage, we find little evidence of unpolitics in the case of the Council's negotiation of the EU's accession to the Istanbul Convention. We suggest that decision-making venues such as Council preparatory bodies can mitigate phenomena associated with populism, such as the use of unpolitics tactics in EU decision-making.

Keywords

Council of the European Union; Council preparatory bodies; Istanbul Convention; populism; unpolitics; violence against women

1. Introduction

On 28 June 2023, the EU ratified the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence, known as the Istanbul Convention. The process leading up to this

decision had been cumbersome and lengthy. The negotiations took nine years from the initial proposal for accession (European Commission, 2015) and were deadlocked in the Council of the EU for most of that time. In this article, we ask whether the difficult series of negotiations on this Convention could be explained by the presence of right-wing populist governments and their destructive approach to normal ways of resolving political conflicts, succinctly known as "unpolitics" (Ripoll Servent & Zaun, 2024; Taggart, 2018).

The novel scholarship on populism postulates that populist actors are likely to engage in unpolitics by rejecting traditional forms of consensus-building and compromise-seeking, "perpetuating" crises, and portraying the EU as weak and incapable (Taggart, 2018; Zaun & Ripoll Servent, 2023). This insight has been crucial for scholars who increasingly see populism as an explanation of crises in the EU (cf. Csehi & Zgut, 2021; Foster et al., 2021). Moreover, Ripoll Servent and Zaun (2024) posit that some policy areas, such as gender equality, are prone to unpolitics because populists risk little but gain much from using tactics of unpolitics in these types of negotiations. In line with these theoretical expectations, the negotiation of the EU's accession to the Istanbul Convention should be prone to the deployment of unpolitics by right-wing populist parties in governments. The Convention has served as "a central site of contention over gender equality across Europe" (Krizsán & Roggeband, 2021, p. 30) and became highly salient for right-wing populist parties during domestic ratification procedures. While progressive governments celebrated the Convention as the solution to the problem of gender-based violence, right-wing populists contested the instrument. The Convention became grist to the mill for right-wing populists advocating for lesser involvement of bureaucratic Western elites in national affairs, such as the EU bureaucracy, especially in the sensitive area of gender norms (see Darakchi, 2019 for the case of Bulgaria). Due to the conservative outcry, several countries within the EU are not parties to the Convention as of today (Bulgaria, Czechia, Hungary, Latvia, Lithuania, and Slovakia), while many others experienced high levels of contestation at home (most visibly Poland, whose government considered a withdrawal from the Convention). Therefore, we should observe right-wing populist governments employing unpolitics tactics in the process of the EU's ratification of the Istanbul Convention to show discontent with mainstream ways of doing politics.

We put forward an alternative argument and posit that the culture of the negotiations in the Council preparatory bodies could mitigate the use of unpolitics. To test this expectation, we examine the case of the EU's accession to the Istanbul Convention, where withstanding the pressures of unpolitics should prove difficult due to the high interest of right-wing populist actors in gender equality conventions and the Istanbul Convention specifically. Through analysing interviews with its participants, official EU documents, and media coverage, we find little evidence of unpolitics. Our findings indicate that negotiators' adherence to the negotiation culture of the Council preparatory bodies, the technical nature of the discussions, and the negotiation of the file outside of public political realms all contributed to insulating the process from unpolitics despite potential populist interest in the policy area.

2. Literature Review: Populism, Gender Equality, and the Council of the EU

The study of the process of negotiations of the EU's accession to the Istanbul Convention in the Council of the EU is important for scholarship in three areas: populism and decision-making, populism and anti-genderism, and negotiation culture in the Council. We built on the literature on these topics and considered how their key findings relate to the studied case.

Populism as a "thin-centred ideology" (Mudde, 2004, p. 544), which emphasises the juxtaposition of "the people" and "the elite" and anti-establishment sentiments, has been described as a challenge on many fronts to mainstream and stabilised ways of doing politics. Populists are said to challenge democracy from within (Mény & Surel, 2002) "in a way that is at odds" with the mainstream understanding of politics (Taggart, 2018, p. 81). By employing what Taggart (2018) calls unpolitics, populists reject traditional methods of consensus-building or decision-making and repudiate politics as the process of resolving conflict. Their tactics seek unsettlement rather than settlement and treat politics as a "continuation of war by other means" (Taggart, 2018, p. 82). Recent contributions show that populists use expediently informal practices and procedural rules of the EU, displacing deliberation, compromise, and consensus. Zaun and Ripoll Servent (2023) propose that populist governments are more likely to employ tactics of unpolitics than mainstream governments and find evidence for this argument in the negotiations on refugee distribution. In this case, populist governments blocked the Dublin IV negotiations to showcase their stance on the EU. Scholars argue that, while mainstream governments typically block policies to prevent outcomes they perceive as detrimental to their countries, populists do so to express discontent with the political system as such. As they tend "to nationalise success and Europeanise failure" (Foster et al., 2021, p. 76), populists perpetuate crises and thus generate new demands for populism and Euroscepticism (Kessel, 2015; Mudde & Rovira Kaltwasser, 2018). Following this line of thinking, and given the populist mobilisation around the Istanbul Convention on the domestic level, the negotiations for the EU's accession to the Istanbul Convention are expected to be affected by tactics of unpolitics.

The literature on gender equality politics in Europe makes links between populism and anti-genderism, the mobilisation against progressive gender and sexuality norms or the so-called "gender ideology" (Bergmann et al., 2024; Graff & Korolczuk, 2022; Kováts, 2018; Paternotte & Kuhar, 2018). It highlights that contestations of gender equality policies by right-wing populist actors are at the core of their ideology (Reinhardt, 2023), with some researchers referring to gender as a "symbolic glue" (Kováts & Põim, 2015) and an "umbrella term for the rejection of the (neo)liberal order" by this political wing (Grzebalska et al., 2017). The linkages between populism and anti-genderism have also been observed on the level of EU institutions, most notably the European Parliament (EP). In 2013, the Estrella Report on Sexual and Reproductive Health and Rights was watered down in an alternative resolution that was described as "void," as it did not contain any specific position on the topic but rather repeated content already present in the Treaty on the Functioning of the European Union (Santos & Geva, 2022, p. 491). This resulted from "intense and unprecedented" populist resistance, manifesting as issue polarisation, abuse of procedural rules, and compromise rejection (Santos & Geva, 2022, p. 476). The use of opposition strategies to progressive gender equality policies by populists in this venue, such as issue bending and references to gender ideology, have become more outspoken and bolder over time (Kantola & Lombardo, 2021). The study of the debates in the EP on the EU's accession to the Istanbul Convention shows acute polarisation between its proponents and opponents (Berthet, 2022). Some MEPs' rhetoric mirrored the arguments in anti-gender mobilisations, particularly prominent in Central and Eastern European member states. These mobilisations on the domestic level of ratification have vehemently opposed the Convention on an unprecedented scale, viewing it as a tool for promoting "gender ideology" and as a foreign/Western imposition on "traditional values" (Acar & Popa, 2016; Darakchi, 2019; Krizsán & Roggeband, 2018, 2021). Although the literature shows a link between populism and tactics of unpolitics and gender equality policies (more specifically, the Istanbul Convention), including in the context of the EU's accession, we lack knowledge about how these dynamics change depending on the institutional context. The right-wing populist parties driving anti-gender

mobilisations in the EP, such as the Polish Law and Justice and the Hungarian Fidesz, also influence the proceedings of the Council due to their position in their respective governments. At the same time, the Council has legislative power equal to the EP's or stronger in certain procedures, including in the ratification of the Istanbul Convention, due to the latter's status as an international agreement. However, the Council of the EU remains a blind spot, as the scholarship lacks studies on opposition to gender equality policies in this venue (Abels, 2021), not least because of the infamous difficulty of accessing its behind-closed-doors negotiations (Naurin & Wallace, 2008). As a result, we know little about the impact of right-wing populist parties on the style and nature of the discussion on gender equality in the Council and whether it differs depending on the institutional context.

The third body of scholarship we address concerns the Council of the EU. This literature makes firm claims that the Council, on all its levels, ministerial, ambassadorial (COREPER), and technical (preparatory bodies), is ruled by a web of informal practices (Kleine, 2013), proceeds by a high degree of consensus (Hayes-Renshaw et al., 2006; Novak, 2013; Puetter, 2014, 2022; Warntjen, 2010), and is characterised by the socialisation of member state negotiators into the everyday negotiation culture of the Council (Lewis, 2005). "No" votes are rare as they happen only if governments enjoy little leeway on EU affairs or feel the need to show their opposition to a Council decision towards national audiences (van Gruisen & Crombez, 2019). The Council itself works under two main negotiation modes: bargaining and deliberation (Warntjen, 2010). Its many preparatory bodies, from the COREPER to working parties, reconcile conflicting national interests using a continual process of negotiation and consensus-seeking (Hayes-Renshaw, 2017). Their work is also characterised by a distinct decision-making style, involving diffuse reciprocity, thick trust, mutual responsiveness, a consensus reflex, and a culture of compromise (Lewis, 2000). This is especially relevant for working party negotiators who meet significantly more often than their COREPER counterparts (Hayes-Renshaw & Wallace, 2006). The element of socialisation in the professional environment of the EU accounts for the willingness to cooperate and the sense of striving for a common goal among negotiators. Counsellors have been described as "benefit[ting] immensely" from being in Brussels (Nilsson & Siegl, 2010, p. 65) and as feeling as though they can talk to each other openly about the issues at hand (Maricut, 2016). Altogether, the Council negotiation culture seemingly ensures the settlement of competing interests through recourse to "normal" ways of doing politics. We consider the negotiation of the EU's accession to the Istanbul Convention to be insightful for scholars of the Council of the EU. Given the high potential of this procedure to be susceptible to unpolitics tactics, the case presents itself as a test for the resilience of the Council negotiation culture.

3. Theoretical Framework: Unpolitics and Council Preparatory Bodies

As previously signalled, we arrive at two contradictory theoretical expectations about unpolitics in the negotiations on the accession of the EU to the Istanbul Convention. On the one hand, the scholarship on populism and specifically unpolitics creates an expectation that populist actors would engage in norm transgression and adopt a destructive approach to politics (Ripoll Servent & Zaun, 2024). On the other hand, the literature on the negotiation culture in the Council and its preparatory bodies suggests that a constructive and technical style is to be expected. We suggest a resolution of this theoretical puzzle with an integrated theory of unpolitics in Council preparatory bodies.

The central theoretical claim of Zaun and Ripoll Servent (2023) is that populist governments are more likely to resort to unpolitics than mainstream governments and that they do so by rejecting Council decision-making

rules and traditional means of securing compromise and using EU non-decisions to perpetuate the perception of the EU as being in crisis. In their later contribution, the researchers refined this approach by specifying that the likelihood of populists employing these tactics depends on the policy area under discussion as well as the venue of the negotiations. Ripoll Servent and Zaun (2024) classify policy areas along the lines of gains and risks, stating that the likelihood of unpolitics is the highest for files where populists can gain a lot but risk little. Ripoll Servent and Zaun (2024) also consider that the venue in which decision-making takes place matters for the employment of unpolitics. They state that while certain fora, such as the Council, may provide populists with options to ascertain their commitment to serving the will of their people or block decisions, others, such as the EP, are easier to use as public tribunes for the mediatisation of the issue.

We contend with the theoretical expectation that policy areas and decision-making venues produce differentiated conditions for the emergence of unpolitics. Nevertheless, the development of this theory is needed to formulate predictions for the case at hand. Considering the previous literature on EU decision-making, we argue that a more conclusive claim can be made about the Council preparatory bodies as a venue. The culture of Council preparatory bodies should preserve "normal" ways of doing politics and discourage unpolitics. First, the preparatory level should provide a constructive negotiation culture characterised by the everyday forging of decisions through deliberation, bargaining, consensus, and compromise, a practice reinforced by the socialisation of national negotiators into the practices of negotiation in this environment. Second, negotiations in these bodies tend to be very detailed, legalistic, and technocratic. Thus, negotiations in preparatory bodies should attract little public interest, making them unlikely props for populist mobilisation. Third, while behind-the-closed-door negotiations do not provide possibilities for mediatisation, populist governments are also unlikely to capitalise on their role in the Council as representatives of their people, given the little interest that the public has in the technical level of EU decision-making compared to, for example, at a ministerial level. The claim about the insulating role of the Council preparatory bodies rests on the condition that the negotiations are contained on a technical level and are not shifted to more public and political venues.

Moreover, it presupposes that a plausible populist capture of bureaucracy (Lequesne, 2021) does not reach the level of a Council preparatory body, as in that case, the negotiators would have to be more committed to a populist style of doing politics than to the Council negotiation culture. As it is stabilised and routinised, the culture of Council preparatory bodies should trump the expectations regarding unpolitics related to policy areas, as the behaviour of negotiators should be consistent regardless of the substance of the negotiations. In line with this integrated theory, we expect to observe a few traces of unpolitics in the Council preparatory bodies, including in the empirical case of the negotiation of the EU's accession to the Istanbul Convention.

4. Methods and Data

To assess the integrated theory developed in Section 3, we employ a case study research design and conduct a process tracing (Bennett & Checkel, 2014) of the negotiation of the EU's accession to the Istanbul Convention from 2015 to 2023. The EU's accession to the Istanbul Convention serves as a hard case for our theory and, therefore, a proper test of its validity. Our previously proposed integrated theory of unpolitics in the Council preparatory bodies states that this type of venue should insulate decision-making from tactics of unpolitics. However, the substance of the studied case makes this expectation less likely. First, the Istanbul Convention has been politically salient for right-wing populists on the domestic levels of ratification. Second, in general,

gender equality is a policy area where populist unpolitics is expected to be more likely. Ripoll Servent and Zaun (2024) identify gender equality as a policy area susceptible to unpolitics as it provides opportunities to mobilise on issues important to their voters, such as cultural and identity claims, creating high gains for populists. At the same time, it is a low-risk policy area as a non-decision causes no immediate or evident harm to populists because, for example, a policy problem can be addressed domestically.

We reconstruct the process in question through analysis of various sources of data: EU official documents, interviews, and media coverage. In the course of the consideration of the EU's accession to the Istanbul Convention, several publicly available documents were produced, including Council decisions, country statements to the decisions, the ruling of the Court of Justice, and the analysis of the Council Legal Service (see Supplementary File). The negotiation itself could only be reconstructed based on interview accounts as negotiations in the Council preparatory bodies occur behind closed doors, are not protocoled, and are primarily based on internal documents. We based our analysis on 12 interviews with representatives of EU member states, most of them from the Fundamental Rights, Citizens Rights, and Free Movement of Persons (FREMP) working party in charge of the technical level of the EU's accession to the Convention or otherwise informed about the process, e.g., because of their responsibility for gender equality policy area. We also included three interviews with representatives of other institutions involved in the process. Our final data source is media coverage of the EU's accession to the Istanbul Convention, explicitly focusing on the media outlets in countries with right-wing populist governments during the Convention negotiations (see Supplementary File). We systematically searched for articles, editorials, and opinion pieces related to the topic in selected newspapers of each country of interest to collect media data (see Supplementary File for a complete list and an expanded methodology).

The interview material was analysed as follows to verify the plausibility of our theoretical expectation regarding the insulating role of the Council preparatory bodies. The first part of the analysis consisted of coding evidence and counterevidence of tactics of unpolitics in our material. The subcategories included rejection of formal and informal norms of EU decision-making, rejection of compromise, and public rejection of the EU as a policy-making venue. The second part of the analysis consisted of coding evidence and counterevidence for the Council's insulating role. We developed three subcategories: constructive negotiation culture, technocratic nature of negotiation, and containment of the Convention away from mediatised venues. Additionally, we analysed the media coverage of the EU's accession to the Convention to determine how it was presented and whether it was manipulated for political gain by right-wing populist governments, specifically focusing on any recurring themes or patterns that could help us understand how populist actors perpetuate the crisis and politicise the issue at a domestic level.

5. Results: Council Preparatory Bodies and the Istanbul Convention

In this section, we present the results of our analysis. To explain the background of the negotiations, we first discuss the constellation of participants (populist and mainstream governments) and their positions on the EU's accession to the Istanbul Convention (Section 5.1), then we discuss the main stages of the process leading to the ratification (Section 5.2). Later, we present the analysis of traces of unpolitics in the case study (Section 5.3) and evidence for the insulating role of the Council preparatory bodies (Section 5.4).

5.1. Right-Wing Populist Governments in the Negotiations

As the negotiations for the EU's accession to the Istanbul Convention spanned over nine years, it is only natural that they took place under various configurations of governments in the Council of the EU. We identified 15 member states that, during the negotiations (2015–2023), had populist parties in their governments (see Supplementary File for a detailed analysis of the populist parties in government and their positions on the Istanbul Convention). The character of populist governments during the negotiations, including their ideology, position in government, length of time in power, and position on the Istanbul Convention, varied significantly. Some populist parties were in government for a short time throughout negotiations, were only minor partners or supporting parties in government, and/or had ambivalent positions on the EU's accession to the Istanbul Convention—e.g., Freedom Party of Austria (FPÖ), Croatian Bridge (MOST), Czech Action of Dissatisfied Citizens (ANO), Danish People's Party (DF), and The Independent Greeks (ANEL). We did not expect to observe unpolitics in the Council due to the influence of these parties, as their power and interest in the Convention should have been limited.

On the other hand, some populist parties in government, from the centre to the radical left of the ideological spectrum, favoured the ratification (Italian Five Star Movement [M5S], Greek Syriza, and Spanish Podemos). We also did not expect to see unpolitics in the Council due to the influence of these parties since, on the domestic level, as discussed in Section 2, populist discourse about the Convention was associated with the opposition to this instrument and right-wing ideology. Although theoretically, we do not claim that right-wing populists are more likely to use unpolitics than left-wing populists, in this particular case study, we could expect more obstructive behaviour from right-wing populist governments. Consequently, our focus in the analysis and the strongest expectation of tactics of unpolitics is on non-ambiguously right-wing populist governments which were in power for a prolonged period and opposed the Istanbul Convention, namely the governments of Bulgaria, Poland, and Hungary. A certain anomaly is the government of Slovakia, which, although led by the left-wing populist Direction-Social Democracy (SMER) for most of the negotiations, was firmly against the Istanbul Convention and is, therefore, also the focus of our analysis.

In the last phase of the negotiations, the leadership on the "in favour" side of the EU's accession to the Istanbul Convention was predominantly assumed by mainstream governments, including those in France, Germany, and the Netherlands. These governments were often part of a "like-minded majority" of "progressive" member states that consistently supported the accession process (Interviews 6 and 10, mainstream governments). However, it is noteworthy that some member states within this majority expressed ambivalence at times, particularly due to procedural issues that arose during the negotiations, as we discuss in more detail in Section 5.3. This underscores the complexity of navigating the accession process and the diverse perspectives within the EU.

5.2. The Sequence of the Negotiations

The EU's ratification of the Convention was the accession of a supranational organisation to an international treaty and followed a complicated process. Due to the division of competencies between the EU and its member states, the scope of the EU's accession to an international agreement is contingent on its exclusive competence in the domain covered by its provisions. Therefore, it is not uncommon for the EU to become a party to so-called mixed agreements, treaties which are ratified and implemented by both the EU and its

member states (Craig & De Búrca, 2020). International agreements have to go through two steps of adoption: signature and conclusion. The Council is the main decision-making body for ratifying international agreements by the EU. It makes separate decisions on the signature and conclusion of the EU to a treaty, acting in principle by qualified majority voting. The decisions are taken with the consent of the EP (Treaty on the Functioning of the European Union, 2007, Article 218). In practice, until the decisions on the EU's accession to the Istanbul Convention, the Council had employed the principle of common accord to decisions on the conclusion of international agreements, meaning that the decisions are not made until there is a consensus in the Council. While this informal principle made the EU's accession to international agreements cumbersome, it was employed due to political and logistical considerations. Member states regarded it as controversial and impractical to bind the EU to external obligations without the commitment of all EU countries. The main stages in the EU's adoption of the Istanbul Convention are summarised in Figure 1.

Since the negotiations of the Istanbul Convention in the Council of Europe, the EU expressed its willingness to conclude the treaty. Consequently, the Istanbul Convention, adopted in 2011 and entered into force in
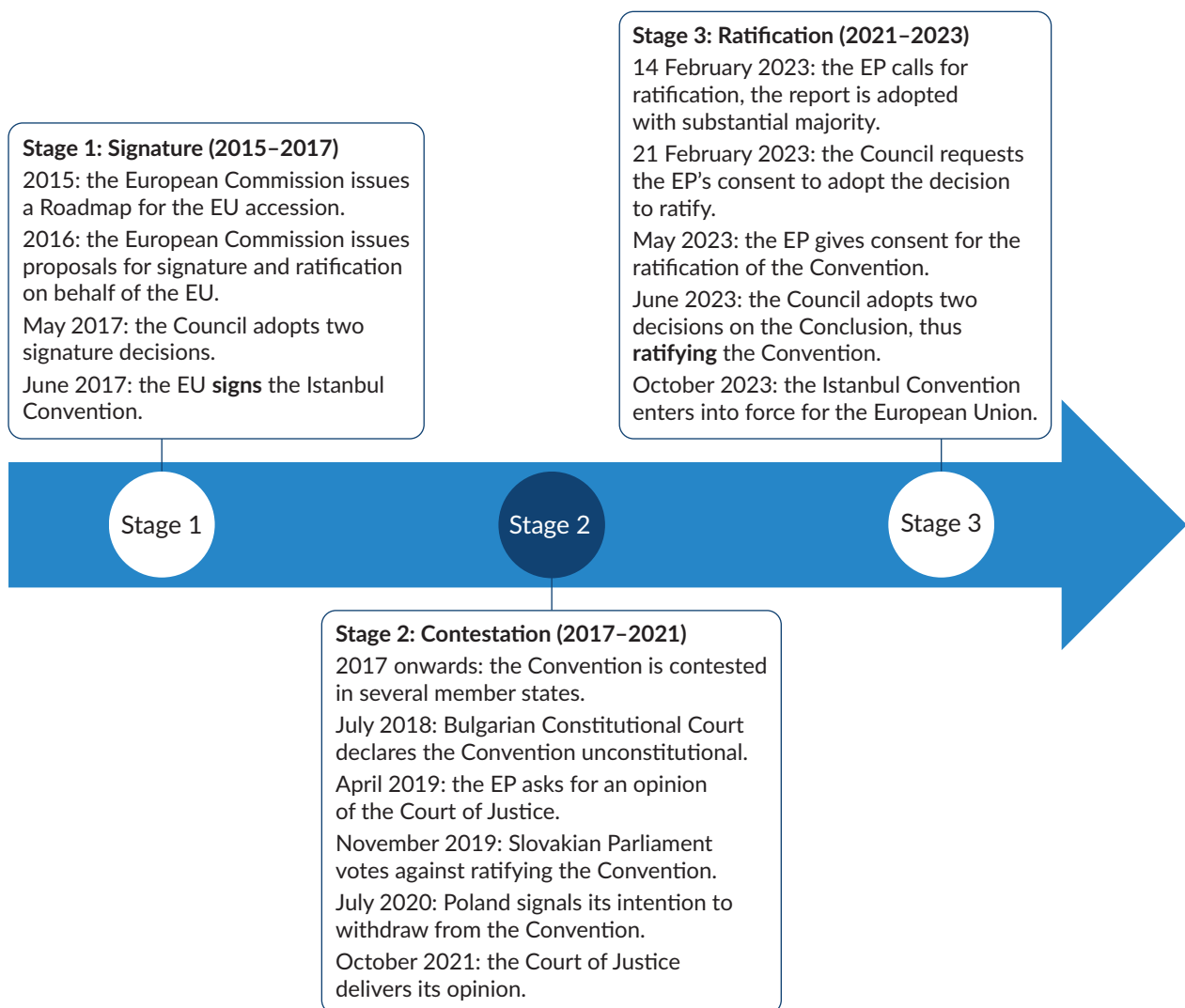
Stage 3: Ratification (2021–2023)

14 February 2023: the EP calls for ratification, the report is adopted with substantial majority.

21 February 2023: the Council requests the EP's consent to adopt the decision to ratify.

May 2023: the EP gives consent for the ratification of the Convention.

June 2023: the Council adopts two decisions on the Conclusion, thus **ratifying** the Convention.

October 2023: the Istanbul Convention enters into force for the European Union.

Stage 1: Signature (2015–2017)

2015: the European Commission issues a Roadmap for the EU accession.

2016: the European Commission issues proposals for signature and ratification on behalf of the EU.

May 2017: the Council adopts two signature decisions.

June 2017: the EU **signs** the Istanbul Convention.

Stage 2: Contestation (2017–2021)

2017 onwards: the Convention is contested in several member states.

July 2018: Bulgarian Constitutional Court declares the Convention unconstitutional.

April 2019: the EP asks for an opinion of the Court of Justice.

November 2019: Slovakian Parliament votes against ratifying the Convention.

July 2020: Poland signals its intention to withdraw from the Convention.

October 2021: the Court of Justice delivers its opinion.

Stage 1 · Stage 2 · Stage 3

Figure 1. Timeline of the negotiation of the EU's accession to the Istanbul Convention.

2014, included a clause allowing the EU to become its party. The accession to the Convention has been a goal of several consecutive Commissions. In 2015, the Commission adopted the roadmap for EU accession to the Istanbul Convention, detailing the procedures. In 2016, it put forward the proposals for Council decisions on the signature and conclusion of the treaty. After strong opposition from most members of the Council to the full accession of the EU to the Convention, it was decided that the EU would accede only within the scope of its somewhat limited exclusive competencies. Hence, the Council adopted two decisions limiting the EU's signature of the Istanbul Convention to cooperation in criminal matters and asylum and non-refoulement. The decisions have been made concerning the principle of the common accord, meaning that all EU member states were in favour of the signature at this point. The EU signed the Convention a month later, in June 2017. In order to enter into force, the Istanbul Convention still had to go through the second step of adoption.

This initial signature stage was followed by a period of contestation to the Istanbul Convention. On the national level, many states, in parallel to the EU's accession finalising their own domestic ratifications of the Convention, experienced opposition from anti-gender actors, which considered the Istanbul Convention as an undue and secretive imposition of progressive gender and sexuality values by the (Western or European) elites. The misinformation and misunderstandings regarding the scope and content of the Convention were so widespread that the Council of Europe released an official FAQ communication attributing the propagation of false narratives to various religious and ultra-conservative groups (Council of Europe, 2018). In some cases, the positions and arguments of these movements were taken on board by political parties and governments.

As a consequence, and despite the initial uncontested willingness to ratify the Convention, the instrument has not been adopted in six EU countries up to this date (Bulgaria, Czechia, Hungary, Latvia, Lithuania, and Slovakia). At the same time, the Polish government considered withdrawing from the Convention and, in 2020, decided to ask its Constitutional Court for an opinion on the constitutionality of the ratification, which is still pending. In July 2018, the Bulgarian Constitutional Court ruled that the definition of "gender" in the Istanbul Convention contravenes the definition of marriage in the Bulgarian Constitution, forbidding the current and consecutive governments from ratifying the treaty. The domestic constraints to the endorsement of the EU's accession started to be communicated in the FREMP working party in early 2018. Since then, according to several interviewees, the Council has been exploring the possibilities for a consensus decision while, at the same time, the need to adhere to the principle of common accord in the context of the Istanbul Convention was questioned. In April 2019, the EP, strongly supporting the accession and impatient with the Council's hesitations, requested an opinion from the Court of Justice to clarify the appropriate legal basis, the scope of EU accession, and the ratification procedure. Pending the opinion, the FREMP working party halted its negotiations, as is customary in the Council when a negotiation process is being challenged in the Court. In this period, the Commission, under the presidency of Ursula von der Leyen, showed reinvigorated commitment to the Istanbul Convention, referring to it as a "key priority" in its Gender Equality Strategy 2020–2025 (A union of equality: Gender Equality Strategy, 2020, p. 3). Seeing that the negotiations in the Council were blocked, the Commission started its work on a proposal for a Directive on combatting violence against women and domestic violence (Proposal for a Directive of the European Parliament, 2022). In October 2021, the Court of Justice concluded that the appropriate scope of the EU's accession is limited to cooperation in criminal matters and asylum and non-refoulement and that although the Council may choose to wait for a common accord until deciding on the conclusion, it is a political decision and not a legal imperative (European Court of Justice, 2021).

Following the Court's opinion, the FREMP working party resumed its work. However, many member states, including those in favour of the EU's accession, hesitated over whether to depart from the well-established principle of common accord in relation to the Istanbul Convention. Nevertheless, the majority wanted to move forward with the accession and applied the qualified majority voting rule. In February 2023, after finalising the technical work on the accession, the Council requested the consent of the EP, which was granted in May 2023. A month later, the Council adopted two decisions on the conclusion: one on judicial cooperation in criminal matters, asylum, and non-refoulement and the other on institutions and public administration of the Union. The decisions were accompanied by two documents: the Declaration on the EU Competencies and a Code of Conduct, clarifying the division of tasks between the EU and its member states. Several member states voted against the conclusion (Bulgaria, Hungary, Poland, and Slovakia) and adopted statements explaining their positions, while one state abstained (Czechia). Italy, referring to an earlier position of Cyprus, France, Germany, Greece, Ireland, Malta, Slovenia, and Spain, adopted a statement reiterating their attachment to the principle of common accord. In the same month, the EU ratified the Istanbul Convention, which entered into force in this respect in October 2023.

5.3. Traces of Unpolitics

According to the unpolitics theory, we should expect populist governments to break the formal and informal rules of EU policymaking through explicit rejection of procedural norms (Zaun & Ripoll Servent, 2023). We find that, on the contrary, when opposing the EU's accession to the Istanbul Convention, representatives of right-wing populist governments do so within the negotiation norms of the Council. For instance, Interviewee 4 describes themselves as "strong supporters of consensus-based decision-making in the EU" and describes negotiations as "professional and constructive." These governments also expressed a strong commitment to the common accord procedure. They opposed the deviation from this norm, considering it a "dangerous precedent" (Interview 4, right-wing populist government). The pro-Convention majority agreed that the ratification would constitute an exception to the general rule, although one which is important to make in the case at hand (Interviews 2, 6, and 12, mainstream governments). While the judgement of the Court of Justice clarified that the common accord procedure is an informal preference rather than a formal requirement and that, therefore, the Council is free to decide whether it will seek common accord or not, the opposing member states believed that there are political, procedural, and practical imperatives for adhering to the principle of common accord. Opponents highlighted the far-reaching procedural implications: "It's not about our opinions on the content, it's about the procedure and competencies….This decision practically killed the procedure of common accord. From now on, any state can decide to deviate from it in any case" (Interview 14, right-wing populist government).

Before and after the ruling, the hesitation to depart from the common accord procedure was also present among mainstream governments and governments otherwise in favour of ratification. In February 2023, Cyprus, France, Germany, Greece, Ireland, Malta, Slovenia, and Spain released a statement that they remain "firmly attached to the practice of common accord for the accession by the European Union to mixed agreements" yet take into account "the specific circumstances" and salience of this policy area (Council of the European Union, 2023, p. 2). This position was reaffirmed in the interviews, with Interviewee 2 (mainstream government) saying that "the Istanbul Convention doesn't mean that we would have the same position [qualified majority voting over common accord] in other files, but taking into account the importance of this Convention, we do support the accession." While the argument about the strategic use of

rules as a manifestation of unpolitics is plausible, we are cautious about making such interpretations without explicit signals from the pro-Convention member states in either interviews or traces in media or official EU sources. In light of the Court's ruling, all right-wing populist governments recognised the right of the Council to proceed with qualified majority voting, even if they did not agree with the far-reaching procedural implication of this decision or what it meant in the context of the Istanbul Convention specifically (Interviews 4 and 9, right-wing populist governments and Interview 10, mainstream government), in this sense also not contesting the formal rules of EU decision-making.

The second unpolitics tenet concerns the rejection of compromise and sticking to the maximum positions (Zaun & Ripoll Servent, 2023). In the complex negotiations surrounding the EU's accession to the Istanbul Convention, the difficulty in finding compromises stemmed primarily from the non-alterable nature of the Convention's content:

> It was very clear that it wasn't an issue we could solve, like we sometimes do, by adding some sentences or creating some constructive ambiguity, because it was already an existing legal text and the question was, is the EU going to accept this by becoming a party to this treaty or not. (Interview 8, mainstream government)

Some mainstream and populist governments considered the adoption of the Directive on Violence Against Women instead of the Convention as an alternative solution to reach the policy goal, as its text was "basically a copy" of the Convention (Interview 7, mainstream government). Member states that opposed the EU's accession to the Convention also voiced their discontent regarding parallel ongoing negotiations of the two documents rather than considering them as alternative or subsequent instruments (Interviews 9 and 14, right-wing populist governments). Responses to this point were varied, with some interviewees recognising its validity (Interviewee 12, mainstream government), while others saw it as a stalling tactic (Interviewee 6, mainstream government). Stalling is not uncommon in Council discussions, and thus, we did not interpret the behaviour of right-wing populist governments as a clear sign of unpolitics.

The third tenet of unpolitics is the use of non-decisions to perpetuate the crisis of European integration and portray the EU as incapable and useless (Zaun & Ripoll Servent, 2023). Based on the media coverage analysis, we find that the cumbersome and extended seven-year negotiation process, including deadlock periods due to procedural and legal disputes, did not serve as a focal point for right-wing populist governments to discredit the EU as a venue for addressing the problem of violence against women. This contrasts with the discourse of some anti-gender actors that could say that the EU's preoccupation with "gender ideology," symbolised by the Istanbul Convention, takes away the focus from the "real" issue of violence against women. Despite arguing that their national legislation may suffice to address the problem, the populist right-wing governments did not use the process of the EU's accession to the Convention to undermine the EU as a political venue for discussing solutions to violence against women. In contrast with the vilified portrayal of the Convention in the context of domestic ratifications, when it was described as a "powerful Western weapon" and an EU attack on heterosexuality (Darakchi, 2019, pp. 1217–1218), the EU's accession did not become a symbol of failure or imposition by Western elites in media coverage or populist narratives. Overall, the coverage of the EU's accession to the Istanbul Convention across member states has been scarce and mainly consisted of short informative news columns reprinting international coverage of critical milestones, such as the delivery of the Court's opinion. Certain right-wing media outlets in Poland, citing Ordo Iuris, an ultra-conservative Polish

Catholic legal organisation and think tank, even portrayed the EU's accession to the Istanbul Convention as a victory because the accession was limited in scope ("Presja ma sens!", 2023).

In sum, we conclude that the negotiations were not characterised by the employment of tactics of unpolitics by right-wing populist governments or other actors, as we do not find evidence of rejection of the formal and informal rules, rejection of compromises, or rejection of the EU as a decision-making forum. We will now analyse whether the containment of Council negotiations within preparatory bodies can account for this fact.

5.4. Council Preparatory Body as a Venue

One of the conjectures we put forward for the lack of unpolitics during the negotiations of the EU's accession to the Istanbul Convention is the constructive negotiation culture on the level of preparatory bodies and the associated socialisation process of member states' representatives. We find evidence for this claim in the studied case. Interviewees from both the pro-Convention majority and the right-wing populist opposition describe a deep understanding that their colleagues, just like them, are bound by instructions from their respective capitals and, therefore, were able to separate the positions they represent from the style of the negotiations (Interviews 8, 10, and 12, mainstream governments and Interviews 4 and 9, right-wing populist governments). To signal that negotiators may want to distance themselves from the message they are bringing to the table, they add "little sentences," such as "my capital instructs me to say" (Interviewee 8, mainstream government). Overall, interviewees believed that the personal and professional relationships they developed were conducive to the constructive and depoliticised character of negotiations, with "implicit cooperation and solidarity" between the negotiators (Interview 12, mainstream government). The atmosphere was characterised as having a constructive spirit, never hostile, even though many acknowledge that the lengthy process and evident polarisation of positions were often frustrating (Interviews 8, 10, and 12, mainstream governments). Despite the lack of interest in the EU's accession, the engagement of right-wing populist government representatives was considered constructive by other negotiators: "They were engaging in the meetings, they were present...and they also contributed towards revising structured content" (Interview 12, mainstream government). Several interviewees contrasted their experiences with those at the UN, which convenes significantly less often and involves less socialisation. They admitted that there the discussions concerning gender equality were often impolite and less productive, while in the EU, negotiators mostly share the same values, even if they have different perspectives (Interviews 4 and 9, right-wing populist governments and Interview 15, non-Council informant).

The technocratic nature of these negotiations was conducive to insulating the process from the practices of unpolitics. The Istanbul Convention is a unique case within the Council's workings due to its status as an international mixed agreement. The Convention has been described as highly complex, requiring "long technical work" to discuss and draft many supplementary and detailed instruments, such as the Code of Conduct and the Declaration of Competencies (Interview 5, mainstream government). Since the negotiators could not change the text of the Istanbul Convention, the controversial issues, such as the definition of "gender" that was at the core of right-wing populist contestation of the document, were not touched upon. As stated by one of the interviewees, "There was never really a debate on the substance of the Convention. The debate was about which [EU] competencies are covered [by the accession], about exclusive competence, about external competence, and in which areas we should accede" (Interview 15, non-Council

informant). The work focused on "procedural things," such as discussing the Code of Conduct or the details of the accession procedure in cooperation with the Commission, Council General Secretariat, and the Legal Service (Interview 5, mainstream government and Interview 10, right-wing populist government). Other issues that member states were preoccupied with included the distribution of the roles in the Convention's monitoring mechanism, the Group of Experts on Action against Violence against Women and Domestic Violence, which was also "an eminently technical discussion," commented Interviewee 12 (mainstream government). According to this interviewee, this technical focus allowed the representatives of populist right-wing governments to "minimize the issue of gender and not put it at the forefront of their position."

The scarce media coverage on the negotiation of the accession in FREMP confirmed the characteristics of the Council preparatory bodies as non-mediatised venues. The character of the Convention did not allow for a shift of decision-making to a more political venue. Unlike in the case of the talks on refugee distribution (Zaun & Ripoll Servent, 2023), when the conversation moved from the Council to the European Council, the procedure of the EU's accession to the Istanbul Convention did not present such opportunities. FREMP negotiators and Council presidencies were committed to finalising the work at the technical level (Interview 12, mainstream government). As stated by one of the interviewees, taking the Istanbul Convention up to COREPER was a decision that was only made once no one could find reasons for it to stay at a technical level any longer (Interview 15, non-Council informant).

To summarise, the case of the negotiation of the EU's accession to the Istanbul Convention in the Council provides evidence of the mitigating effect of Council preparatory bodies as a venue in relation to the populist use of unpolitics. The stabilised constructive negotiation culture has not been challenged despite the high potential for unpolitics in this context. We find that this result was supported by the technocratic nature of the negotiations and the containment of the Convention on the non-mediatised level. We contend that the evidence for our thesis is even stronger if we compare the character of the negotiation of the EU's accession to the Istanbul Convention in FREMP with the same process in the EP, where the style of the right-wing populist MEPs showed more traces of unpolitics than the style of Council negotiators (see Berthet, 2022 for the analysis of the EP).

6. Conclusion

This study addressed a theoretical puzzle: What should we expect from populist governments in Council preparatory bodies? While on the one hand, populism scholarship suggests that populists are more likely than mainstream governments to use obstructive tactics known as unpolitics (Taggart, 2018; Zaun & Ripoll Servent, 2023), the literature on the Council suggests that negotiators in this venue internalise, among others, consensus-seeking, and compromise as ways of decision-making (e.g., Lewis, 2000, 2005). We proposed an integrated theory based on these two lines of scholarship, which states that the Council preparatory bodies as negotiation venues should insulate the decision-making process from the potential deployment of unpolitics. We tested the plausibility of this argument with the case study of the negotiation of the EU's accession to the Istanbul Convention on violence against women and domestic violence, an instrument highly contested by right-wing populist actors on national levels. We considered it a hard case for our theoretical expectation, given that gender equality is a policy area susceptible to unpolitics (Ripoll Servent & Zaun, 2024). Our empirical investigation revealed limited evidence of the use of unpolitics tactics in the Council.

We consider this finding significant for the literature on populism and anti-gender politics, which have not yet explored the role of Council preparatory bodies in contestations of gender equality. Additionally, it contributes to the scholarship on the Council of the EU as the process of the EU's accession to the Istanbul Convention presents a hard case for the thesis on the socialisation of national negotiators into a constructive negotiation culture. We find it important to place this finding in context. First, based on our research, we can put forward an argument that technocratic venues of decision-making have a certain role in mitigating some of the adverse effects of populism on democracy since technocracy prioritises "depoliticisation, harmonisation, rationalisation and objectification of policymaking" (Kurki, 2011, p. 216). However, this finding should be read in a broader context of the effects of technocracy on democracy, as it also undermines democratic legitimacy in the EU by depoliticising issues, weakening accountability, and alienating citizens (Pastorella, 2016; Scicluna & Auer, 2019). Second, our argument about the role of Council preparatory bodies in anti-gender politics is limited to the style rather than the content of the contestation of gender progressive norms. The Council negotiators were not in a position to change the substance of the decisions of their governments, namely their opposition to the ratification of the Istanbul Convention by the EU. However, the constructive negotiation culture in this Convention is a positive observation about otherwise tense relations between progressive and conservative actors in gender equality politics.

Further research can explore such avenues as examining the employment of unpolitics by populist actors across the ideological spectrum. While our analysis indicates that right-wing populists have refrained from employing unpolitics despite strategically leveraging anti-genderism in diverse national contexts (Reinhardt et al., 2023), the conduct of left-wing populists merits scholarly investigation. Given the exceptional nature of the Convention's ratification as an international mixed agreement, it is pertinent to assess whether our findings extend to other EU decision-making procedures. Delving into specific inter-institutional dynamics within the EU, particularly instances where the ordinary legislative procedure applies and both the EP and the Council function as co-legislators, can shed additional light on the influence of procedures on the deployment of unpolitics. Notably, the negotiation culture of Council preparatory bodies may be influenced by the appointment of negotiators most loyal to populist governments, particularly in high-stakes areas, posing a potential challenge to socialisation in the Council and warranting further investigation (see Juncos & Pomorska, 2024). Although we could not conclude, based on our data, whether individual characteristics of negotiators, such as their political opinions or gender, mattered for their negotiation style, these could be interesting points to study.

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Conflict of Interests

The authors declare no conflict of interests.

Supplementary Material

Supplementary material for this article is available online in the format provided by the authors (unedited).

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