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Subject: Proposal for a COUNCIL DECISION authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation with regard to matters related to judicial cooperation in criminal matters
Proposal for a COUNCIL DECISION authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation with regard to matters related to social policy
- *Adoption*

Delegations will find attached draft statements to be entered in the Council Minutes.

STATEMENT BY THE CZECH REPUBLIC

"The Czech Republic fully supports the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation.

This being so, the Czech Republic continues to have doubts as to the existence of EU exclusive competence in the field cover by the Protocol, in particular bearing in mind the wording of Art 82(2) and Art 153(2) TFEU (both provisions allowing the European Parliament and the Council to establish minimum rules or requirements) as well as the Opinion 2/91 in which the Court of Justice of the EU concluded specifically in the ILO context that the provisions of an international agreement are not of such a kind as to affect rules adopted by the EU, when both the agreement and the EU legislation set out minimum standards."

STATEMENT BY IRELAND

"Ireland wishes to underline that it fully supports the Protocol of 2014 to the Forced Labour Convention of the International Labour Organisation.

Ireland wishes to make clear however that it considers that the Council Decision authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation as regards Articles 1 to 4 of the Protocol with regard to matters related to judicial cooperation in criminal matters only applies to areas falling within exclusive EU competence insofar as the Protocol may affect EU common rules."

STATEMENT BY THE UNITED KINGDOM

"The United Kingdom wishes to record its support for the Protocol of 2014 to the Forced Labour Convention, 1930, and to place on record its intention to ratify the Protocol.

The United Kingdom wishes to record its view that there is no exclusive external competence for the Union arising from the Protocol in respect of the subject matter referred to in the *Council Decision authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation with regard to matters related to judicial cooperation in criminal matters*. Accordingly, there was no requirement for the Member States to be authorised to this extent to ratify the Protocol in the interests of the Union. Accordingly, Member States should have been able to consider ratification of the Protocol in their own right.

Further, the United Kingdom considers that the draft *Council Decision in relation to matters related to judicial cooperation in criminal matters*, being a measure proposed pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, is subject to Protocol (No. 21) to the Treaties on the position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice.

Accordingly, the United Kingdom does not consider that it is automatically bound, as suggested by Recital (9), to participate in the Council Decision simply on account of its participation on Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

As a result, the United Kingdom will not exercise its right under Protocol 21 to opt in to the *Council Decision authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation with regard to matters related to judicial cooperation in criminal matters*."

STATEMENT BY THE REPUBLIC OF MALTA

"The Republic of Malta fully supports the content of the 2014 Protocol to the Forced Labour Convention, 1930, of the International Labour Organisation and intends to ratify it.

The Republic of Malta however has strong legal and procedural concerns with these two proposed Council decisions authorising Member States to ratify the ILO Protocol.

The Republic of Malta does not consider that there exists exclusive EU competence arising from the areas covered by the Protocol, given that both Articles 82(2) and 153(2) TFEU allow the European Parliament and Council to establish minimum standards and taking into account Opinion 2/91 in which the Court concluded specifically in the ILO context that the provisions of an international agreement are not of such a kind as to affect rules adopted by the EU, when both the agreement and the EU legislation set out minimum standards. Therefore this raises questions about the necessity and appropriateness of having the proposed Council decisions. Moreover, the Republic of Malta also regrets the lack of detailed analysis by the Commission on the distribution of competences to justify the need for these decisions and the lack of clarity in the final text outlining the extent of the competences being exercised (exclusive or shared).

Furthermore, the Republic of Malta is still not convinced on the appropriateness of the use of Article 218(6) TFEU as a procedural legal base given that Article 218 (6) TFEU specifies that the Council, "on a proposal by the negotiator," may adopt a decision concluding agreements between the Union and international organisations. When a negotiator is nominated, this has to be done by decision of the Council as provided for in Article 218 (3) TFEU second clause of the sentence. In relation to the above-mentioned Protocol, no mandate for the negotiation and adoption of the Protocol at the 103rd International Labour Conference was given by means of a Council Decision. Therefore Article 218 (6) TFEU is at best questionable as a procedural legal basis.

Notwithstanding the abovementioned legal concerns, in view of the importance of the Protocol which Malta fully supports, the Republic of Malta has decided to abstain from voting on these Decisions."

STATEMENT BY THE FEDERAL REPUBLIC OF GERMANY, JOINED BY THE HELLENIC REPUBLIC, HUNGARY AND ROMANIA

"The Commission presented two proposals for Council Decisions authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation for those parts that fall within the competences of the Union (1) in accordance with Article 153(1)(a) and (b) TFEU or (2) in accordance with Article 82(2) TFEU. Article 218(6) (a) (v) TFEU is named as the procedural legal basis for the Council Decisions.

The Federal Republic of Germany underlines the legal and political significance of the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation. It explicitly supports the aims of the instruments and the ratification of the Protocol by all Member States also in the interest of the Union and the call on Member States to ratify, and it will initiate the ratification process in Germany as soon as possible.

However, there are divergent legal opinions about the underlying procedural norms that could not yet be resolved. From the German point of view Article 218(6) TFEU which is used as the procedural basis does not qualify for this purpose. However, because of the legal and political significance of the Protocol the Federal Republic of Germany is ready to endorse the presented proposals and to disregard the procedural concerns outlined in its written comment of 23 October 2014. The Federal Republic of Germany therefore endorses the present Decision notwithstanding its legal opinion concerning the interpretation of Article 218(6) TFEU.

The Federal Government wishes to seize this opportunity to explore, together with the Member States and the European Commission, viable ways of reconciling the procedural interests of the EU Member States as autonomous constituents of the ILO on the one hand and of the European Union as the guardian of the *acquis communautaire*, on the other."