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'A' ITEM NOTE

From:	General Secretariat of the Council
To:	Council
Subject:	Proposal for a COUNCIL DECISION authorising Member States to ratify, in the interest of the European Union, the Violence and Harassment Convention, 2019 (No. 190) of the International Labour Organization - Statements by Austria, Bulgaria, Czech Republic, Hungary and Lithuania

Delegations will find attached statements by Austria, Bulgaria, Czech Republic, Hungary and Lithuania on the abovementioned subject in view of the (Agriculture and Fisheries) Council meeting on 18 September 2023. The statements will be entered into the minutes of the Council meeting.

STATEMENT BY AUSTRIA

1. In principle, Austria emphasizes its legal view that the Council's decision inviting Member States to ratify the relevant international convention does not create an obligation.
2. EU Member States are autonomous constituents of the ILO. A ratification obligation contradicts the principle of tripartism enshrined in the ILO Constitution and the ILO Convention 1976 (No. 144) ratified by all EU Member States.
3. Austria takes note of the European Commission's assurances that she will refrain from legal steps against Member States opting for not ratifying the convention.

ИЗЯВЛЕНИЕ НА РЕПУБЛИКА БЪЛГАРИЯ

„Република България отдава голямо значение на утвърждаването и защитата на правата на човека. Страната е и ще продължи да бъде отдадена на ангажиментите си в областта на правата на човека, включително на борбата с насилието и тормоза на работното място.

През 2018 г. Конституционният съд на Република България прие решение, в което се посочва, че Конвенцията на Съвета на Европа за превенция и борба с насилието над жени и домашното насилие („Истанбулската конвенция“) утвърждава правни концепции, свързани с концепцията за „gender“ които са несъвместими с основните принципи на Конституцията на България. Освен това през 2021 г. Конституционният съд допълнително поясни, че понятието „пол“ (англ. „sex“), използвано в Конституцията, в контекста на националния правов ред, следва да се разбира само в неговия биологичен смисъл (мъже и жени).

Разпоредбата на чл. 1, ал. 1, б. „б“ от Конвенцията № 190 на Международната организация на труда (МОТ) предоставя закрила едновременно и по двата признака „sex“ и „gender“, което предвид посочените решения на Конституционния съд поставя под въпрос съответствието ѝ с българската Конституция, а с това и възможността на страната да я ратифицира. Поради това Република България **не подкрепя Решението на Съвета, приканващо държавите членки да ратифицират Конвенцията за насилието и тормоза, 2019 г. (№ 190) на Международната организация на труда**, за което има правна неяснота дали създава или не задължение за ратификация.

Също така, Република България изразява притеснения, че приемането на това решение би могло да окаже влияние върху компетентността на държавите членки да преценяват самостоятелно дали да бъдат обвързани или не от тази конвенция в съответствие с Устава на МОТ, което би могло да застраши позициите на държавите членки в преговорите за приемане на бъдещи конвенции и препоръки на МОТ, обхващащи въпроси от споделена компетентност на държавите членки и Съюза.”

STATEMENT BY CZECH REPUBLIC

The Czech Republic wishes to recall its position expressed on numerous occasions during the negotiations of the current, as well as previous Council Decisions allowing, inviting or authorizing the EU Member States to ratify the Conventions and Protocols of the International Labour Organisation (ILO). The Czech Republic has consistently interpreted these Council Decisions as measures that do not carry an obligation to ratify the international conventions in question. Rather, they are seen as instruments to facilitate the possibility of ratification, while also upholding the principle of full respect for the EU Member States as independent constituents of the ILO. In this context, each EU Member State retains its discretion in initiating the ratification process, solely guided by its national decision-making, without being subjected to measures concerning Treaty violations.

The Czech Republic insists on the need for an explicit confirmation that would allow EU Member States to ratify voluntarily the Violence and Harassment Convention No. 190 of the ILO within their national jurisdiction. Without this premise and in the absence of a clear legal interpretation at the Coreper meeting on 19 July 2023, the Czech Republic is not in a position to support the Council Decision authorising Member States to ratify the Violence and Harassment Convention 2019 (No. 190) of the International Labour Organisation and abstains from voting.

The Czech Republic takes note and appreciates the Commission's affirmations, expressed on multiple occasions, to maintain the existing practice concerning this and all previous Council Decisions that it will not take steps to enforce the ratification of the ILO Conventions by EU Member States.

STATEMENT BY HUNGARY

Hungary, taking into account the Council Legal Service's advice provided during the course of negotiations, would like to reiterate its legal view that there is no legal necessity to adopt a Council decision in order to allow Member States to ratify the Violence and Harassment Convention, 2019 (No. 190) of the International Labour Organization (hereinafter: ILO Convention 190), because the Convention does not entail any exclusive EU competence. We note that the acts of seven Member States who have already ratified the Convention also *de facto* confirm that conclusion.

Without prejudice to the above, Hungary also takes note of the Commission's multiple verbal statements that it will not take steps to enforce the ratification of the Convention by Member States even if a Council decision is adopted in this regard.

Finally, Hungary notes with regret the procedure leading to the adoption of the Council decision in question. In this regard we recall that the Coreper concluded at its meeting of 31 May 2023, to recommend to the Council to approve a statement to be entered into its minutes, whereby the Council notes that the required qualified majority cannot be reached for the adoption of the proposed Council decision. It is regrettable that the conclusions of the Coreper meeting have not been followed up.

STATEMENT BY LITHUANIA

1. Taking in to consideration established practice of the European Commission with the previous Council Decisions regarding conventions and protocols of the International Labour Organisation (ILO), Lithuania supports the Proposal for a Council Decision inviting Member States to ratify the Violence and Harassment Convention, 2019 (No.190) of the ILO.
2. Lithuania strongly believes that adoption of this Council Decision will help to keep all EU Member States act in unity, support the objectives of future Conventions and play a key role for their adoption in the ILO tripartite body.
3. At the same time, Lithuania understands and emphasizes the position expressed during negotiations that this and previous Council's decisions do not create an obligation to ratify the relevant international convention as the EU Member States are autonomous constituents of the ILO, while this Council's decision is required at the European Union to be in line with the *acquis Communautaire*.