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'A' ITEM NOTE

From:	General Secretariat of the Council
To:	Council
Subject:	COUNCIL DECISION on the position to be taken on behalf of the European Union within the Committee of Ministers of the Council of Europe on the Draft Recommendation on equality and artificial intelligence - <i>Adoption</i> - <i>Statements</i>

Delegations will find in the annex a statement by the BG delegation and a statement by the HU delegation in relation to the abovementioned Council Decision.

Statement by the Republic of Bulgaria**Council Decision on the position to be taken on behalf of the European Union on the draft Recommendation of the Committee of Ministers of the Council of Europe on equality and artificial intelligence**

The Republic of Bulgaria attaches great importance to the promotion and protection of human rights and reaffirms its commitment to ensuring equality and combating discrimination as fundamental values of the European Union.

In 2018, the Bulgarian Constitutional Court adopted a decision stating that the Council of Europe's Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention') promotes legal concepts related to the notion of 'gender' that are incompatible with the fundamental principles of the Bulgarian Constitution. Moreover, in 2021 the Constitutional Court further clarified that the notion of 'sex' used in the Constitution should, in the context of the national legal order, be understood in its biological sense only (men and women).

Bulgaria recognises the need to examine the impact of artificial intelligence ('AI') systems, their potential to promote equality, including gender equality, and the risks they can pose to non-discrimination in the context of the Union's legal framework. At the same time, the draft Recommendation of the Committee of Ministers of the Council of Europe on equality and artificial intelligence contains terms that are incompatible with the fundamental principles of the Constitution of the Republic of Bulgaria. In accordance with the abovementioned decisions by the Constitutional Court, the Republic of Bulgaria declares that it cannot accept the use of gender-related terminology within the meaning of the Council of Europe's Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention') or any other document that seeks to distinguish between 'sex' as a biological category (women and men) and 'gender' as a social construct. As a result Bulgaria will interpret the gender-related terminology used in the Recommendation of the Committee of Ministers of the Council of Europe on equality and artificial intelligence within the meaning of the biological understanding of sex (women and men).

In view of the above, and considering that the Recommendation is not legally binding on the Member States of the Council of Europe, but will be able to produce legal effects for the European Union as set out in recital 6 of the Council Decision, the Republic of Bulgaria has voted to abstain in the adoption of the **Council Decision on the position to be taken on behalf of the European Union on the draft Recommendation of the Committee of Ministers of the Council of Europe on equality and artificial intelligence**.

STATEMENT BY HUNGARY
ON THE COUNCIL DECISION ON THE EU POSITION ON THE DRAFT
RECOMMENDATION OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF
EUROPE ON EQUALITY AND ARTIFICIAL INTELLIGENCE

Hungary does not agree with the adoption of the Council Decision on the position to be taken on behalf of the European Union on the Draft Recommendation of the Committee of Ministers of the Council of Europe on equality and artificial intelligence for the following reasons.

First of all, Hungary deems that the need for a Council decision based on Article 218(9) TFEU as procedural legal basis is not justified. Hungary cannot concur with the conclusion in recital (6) that the draft Recommendation would be capable of producing legal effects in the context of the implementation of the AI Act, where it would be capable of decisively influencing Union legislation, especially if the Recommendation will not recommend measures that would exceed the obligations on providers and deployers of AI systems established under the AI Act, which is a prerequisite for the approval of the Recommendation on behalf of the Union pursuant to Article 1 of the Council Decision. Furthermore, Hungary considers that neither the case law of the Court of Justice does support such a conclusion by analogy. We recall in this regard that the AI Act does not impose a specific obligation to apply specific Council of Europe recommendations, and the general references to international standards to be taken into account in Articles 40(3) and 56(1) of the AI Act cannot, in light of the judgement in case C-399/12, be construed as conferring on the Recommendation the capacity to decisively influence and have direct impact on any (future) EU legislation. Therefore, Hungary does not believe that the draft Recommendation constitutes an act having legal effects within the meaning of Article 218(9) TFEU.

Furthermore and without prejudice to the above, Hungary does not agree with the use of Article 114 TFEU as substantive legal basis concerning the draft Recommendation. The aim of the draft Recommendation is to promote equality, including gender equality as well as to prevent and combat all forms of discrimination in the context of AI systems, which would give rise primarily to Article 19 TFEU as relevant legal basis. We believe that the partial coincidence in the personal and material scope of the draft Recommendation and the AI Act, as referred to in recital (7), cannot justify per se the use of same legal basis (i.e. Article 114 TFEU) in both instances. While Article 114 TFEU serves the legal basis for the AI Act due to the centre of gravity principle, the latter Act has a much more comprehensive scope and a different primary purpose compared to the draft Recommendation. More specifically, the primary objective of the AI Act is to improve the functioning of the internal market and promote the uptake of human-centric and trustworthy artificial intelligence (AI), while the aim of promoting equality and anti-discrimination is purely incidental in the context of ensuring fundamental rights. Consequently, the AI Act contains a wide range of measures, from which only a few of them coincide in its scope with the draft Recommendation. Therefore, Hungary deems that the centre of gravity test would imply a different legal basis for the draft Recommendation as in case of the AI Act.

Moreover, Hungary maintains its reservation on the text of the draft Recommendation as referred to in Article 1 of the Council Decision (GEC/ADI-AI(2024)7rev6, October 2025) in so far as it contains references falling under national competences, or inconsistent with or excessive to the obligations under the AI Act and other relevant EU acquis. We recall, in particular, that Hungary recognises and promotes equality between men and women in accordance with the Fundamental Law of Hungary and the primary law, principles and values of the European Union, as well as commitments and principles stemming from international law. Equality between women and men is enshrined in the Treaties of the European Union as a fundamental value. In line with these and its national legislation, Hungary interprets the term ‘gender’ as reference to ‘sex’ and the concept of ‘gender equality’ as ‘providing equal chances and opportunities for women and men’. Therefore, Hungary preserves its right to establish its position on matters falling under national competences and elements of the draft Recommendations, which are inconsistent or exceed the obligations under the AI Act and other relevant EU acquis, or otherwise go beyond the language agreed in the context of Union legislation on AI systems.
