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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving the gender balance among directors of listed companies and related measures **(first reading)**
- Adoption of the Council's position at first reading and of the statement of the Council's reasons
= Statements

Statement by Bulgaria

The Republic of Bulgaria attaches great importance to the promotion and protection of human rights. The country is, and will remain, dedicated to its human rights commitments.

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 basic principles of the Bulgarian Constitution. Furthermore, in 2021, the Constitutional Court further clarified that the concept of 'sex' used in the Constitution, in the context of the national legal order, should be understood in its biological sense only (men and women).

Recognising the importance of the issue, the Republic of Bulgaria is not opposed to adopting the draft Directive on improving the gender balance between directors of companies listed on stock exchanges; however, in line with the abovementioned Constitutional Court decisions, **it states that, in connection with the references to the term ‘gender’ in the Directive, the Republic of Bulgaria understands it in its biological sense only.**

Statement by Germany

The Federal Republic of Germany interprets the Directive in such a way that the current German legal situation falls within the scope of the suspension clauses and that as a result Germany will not be required to transpose the Directive into national law once the suspension clauses have been invoked.

Statement by Hungary

Hungary considers initiatives to promote equal opportunities and equal treatment between women and men to be of the utmost importance, and therefore we generally support the aim of the proposed Directive to strengthen women's participation at all levels of decision-making, including in the economic sphere. Hungary recognizes 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 the international law. For these reasons, the expression ‘gender equality’ will be interpreted by Hungary as equality between women and men, the expression ‘gender balance’ will be interpreted by Hungary as balance between women and men, in accordance with Articles 2 and 3 of the Treaty on the European Union and Article 8 and Article 157 paragraph 3 of the Treaty on the Functioning of the European Union. In connection with the above, the remaining expressions containing the term ‘gender’ will be interpreted by Hungary as sex, in accordance with Article 10, Article 19 paragraph 1 and Article 157 paragraphs 2 and 4 of the Treaty on the Functioning of the European Union.

Furthermore Hungary declares that the Commission’s Communication on ‘A Union of Equality: Gender Equality Strategy 2020-2025’ referred to in the Directive should be interpreted with due regard to the national competences and the specific circumstances in each Member State.

Moreover, Hungary believes that the final text of the proposal does not take into account the fact that the Member States have very different situations when it comes to the proportions of women on boards in the companies concerned, and should therefore achieve very different levels of progress within the timeframe of the proposal. We believe that the degree of progress should have been better taken into account when applying the suspension clause.

Hungary believes that the final agreement among the co-legislators sacrifices too much of the suspension clause. The text has not kept the core elements of the suspension clause and, in addition, with the modified deadlines, the clause has been rendered meaningless. The penalties constitute an excessive interference in national law, thereby undermining the autonomy and flexibility of the Member States. The current formulation of Article 5 also imposes binding legal obligation to achieve the objectives. The final agreement also failed to satisfactorily address the concerns regarding the principles of subsidiarity and proportionality, and the need to appropriately take into consideration the different company and corporate laws of EU Member States. Consequently, Hungary is not in the position to support the adoption of this Directive.

Statement by Poland

Equality between women and men is enshrined in the treaties of the European Union as a fundamental right. Poland ensures equality between women and men within the framework of the Polish national legal system in accordance with international human rights treaties and within the framework of the fundamental values and principles of the European Union. For these reasons, Poland will interpret the expression ‘gender equality’ as equality between women and men, and the expression ‘gender balance’ as balance between women and men, in accordance with Articles 2 and 3 of the Treaty on European Union and Articles 8 and 157(3) of the Treaty on the Functioning of the European Union. In view of the above, Poland will interpret other expressions containing the term ‘gender’ as referring to ‘sex’, in accordance with Article 10, Article 19(1) and Article 157(2) and (4) of the Treaty on the Functioning of the European Union.