Council of the European Union

Brussels, 15 September 2023
(OR. en, bg)

12080/23
ADD 1

Interinstitutional File:
2020/0011(NLE)

SOC 553
EMPL 390
SAN 468
GENDER 168
ANTIDISCRIM 159
FREMP 221
ILO 8

'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.

ANNEX

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 Steps opting for not ratifying the convention.

STATEMENT OF THE REPUBLIC OF 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, including combating violence and harassment in the workplace.

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, could, in the context of the national legal order, be understood in its biological sense only (men and women).

Article 1(1)(b) of Convention No 190 of the International Labour Organization (ILO) provides protection on both grounds of "sex" and "gender", which, in light of the aforementioned judgments of the Constitutional Court, calls into question its conformity with the Bulgarian Constitution and thereby the country's ability to ratify it. Consequently, the Republic of Bulgaria **does not support the Council Decision inviting Member States to ratify the International Labour Organization's Violence and Harassment Convention, 2019 (No. 190)**, in respect of which there is legal uncertainty as to whether or not it creates an obligation to ratify.

The Republic of Bulgaria is also concerned that the adoption of this Decision could affect the competence of Member States to decide independently whether or not to be bound by this Convention in accordance with the ILO's Constitution, which could, in turn, jeopardise the position of Member States in negotiations for the adoption of future ILO Conventions and Recommendations covering matters of shared competence between the Member States and the Union.'

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.