

# COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL  
ON THE RATIFICATION BY THE COMMUNITY OF INTERNATIONAL  
CONVENTIONS DRAWN UP BY THE INTERNATIONAL LABOUR ORGANIZATION  
INCLUDING CONVENTION No 153 CONCERNING HOURS OF  
WORK AND REST PERIODS IN ROAD TRANSPORT, 1979

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In June 1979 the annual Conference of the ILO adopted a Convention on hours of work and rest periods in road transport. This Convention covers matters that fall within the Community's jurisdiction.

The problem therefore arises as to how the Community can exercise the powers it has in this field.

#### I. Basic Data

These are, according to the Commission's departments, as follows :

- a) in accordance with Community law, the Member States of the European Community may no longer ratify international conventions relating to matters that come within the scope of the Community's powers. Only the latter may "conclude" such conventions. That is the case, for example, with regard to Convention No 153 of the International Labour Organization concerning hours of work and rest periods in road transport adopted by the Conference of the ILO in June 1979. This convention relates to matters which are all governed by "common rules" adopted by the Community (Regulation (EEC) No 543/69 of 25 March 1969, as subsequently amended)<sup>1</sup>;

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<sup>1</sup>The codified version of this regulation was published in OJ C 73 of 17 March 1979.

- b) Membership of the ILO is restricted to States (ILO Constitution, Article 1 (2)) and the international conventions adopted by the ILO are open to ratification only by the States belonging to the organization.
- c) The ILO's Constitution lays down in precise terms the obligations of the Member States of the ILO with regard to conventions adopted by the latter.

When an international convention is adopted at an ILO Conference, as in the case of Convention No 153 :

- the convention is communicated by the International Labour Office to all the Member States of the ILO for ratification (ILO Constitution, Article 19 (5)(a));
- each of the Member States undertakes, within a period of one year from the closing of the session of the Conference (the period may be extended to 18 months in exceptional circumstances) to bring the convention "before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action" (ILO Constitution, Article 19 (5) (b)).

According to the official interpretation laid down by the ILO<sup>1</sup>, the "competent authority" means the body empowered to legislate in respect of the questions to which the convention relates. The obligation imposed on the Member States to bring the convention before the "competent authority" involves the submission to that authority of express proposals, stating the grounds on which they are based, for acceptance or rejection of the convention as appropriate. These proposals may take different forms depending on the relevant constitutional systems. They may embodied, for example, in the preamble of a draft law approving a convention or in documents or reports of a different nature such as, for example, United Kingdom White Papers.

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<sup>1</sup> See Annex I: "Memorandum concerning the obligation to submit conventions and recommendations to the competent authorities" (Article 19 of the ILO's Constitution) (this document exists only in English and French). See also the article by Mr Nicolas Valtikos, Head of the Department of International Standards at the International Labour Office entitled "L'Organisation Internationale du Travail et les Parlements", published in the Bulletin Interparlementaire (1969, No 1, p. 16 et seq.).

- The Member States must inform the Director-General of the International Labour Office of the measures taken to bring the convention before the "competent authority", with particulars of the authority regarded as competent, and of the action taken by it (ILO Constitution, Article 19 (5) (c)).
- A Member State which obtains the consent of the authority must communicate the formal ratification of the convention to the Director-General and take such action as may be necessary to make effective the provisions of such convention (ILO Constitution, Article 19 (5) (d)).
- Any convention so ratified shall be communicated by the Director-General of the International Labour Office to the Secretary-General of the United Nations for registration in accordance with the provisions of Article 102 of the Charter of the United Nations (ILO Constitution, Article 20). The record<sup>of</sup>/ratifications supplied by the Member States of the ILO is communicated by the Director-General of the International Labour Office to the Secretary-General of the United Nations.
- Each of the Member States of the ILO must make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of conventions to which it is a party (ILO Constitution, Article 22).
- Each Member State of the ILO must communicate to the national organizations representing employers and workpeople the information and reports which it is obliged to forward to the Director-General of the International Labour Office (ILO Constitution, Article 23 (2)).
- The Director-General must lay before the Conference of the ILO a summary of the information and reports communicated to him by the Members of the Organization (ILO Constitution, Article 23 (1)).

## II. Proposals for resolving the problem

The problem lies in reconciling the different elements set out above as to enable the Community, without infringing Community law or amending or altering the rules and procedures of the ILO, to "ratify" international labour conventions when their subject-matter comes within the scope of its powers. This is so particularly in the case of Convention No 153.

This question has been examined by the Commission's departments in conjunction with the relevant departments (international standards department, legal service) of the International Labour Office in informal discussions with representatives of the latter's departments.

1.- The representatives of the International Labour Office pointed out that they were quite prepared to acknowledge that, in the case of a convention such as Convention No 153, the "competent authority" within the meaning of Article 19 (5) (b) was the Community since, in any event, the main concern of the International Labour Office was that ILO conventions should be effectively applied by the "competent authorities" and the power to "legislate" on the subject undoubtedly belonged to the Community.

The representatives of the International Labour Office also pointed out that they had no objections to the competent institutions of the Community communicating to the Director-General of the International Labour Office the measures taken to implement the Convention and to their notifying their "acceptance" of the Convention by the Community, in its own name.

Nor were there any objections to all or some of the annual reports provided for in Article 22 of the ILO Constitution being communicated by the Community, on condition that an arrangement could be worked out whereby these reports would be submitted to professional organizations representing employers and workpeople.

However, the representatives of the International Labour Office stated that under the present constitution of the ILO, whose membership is restricted to States, the convention adopted by the ILO could be communicated only by the International Labour Office to the States. Thus Convention No 153 was communicated by the International Labour Office on 6 August 1979 to Member States of the Community, but not to the Community itself. The representatives of the International Labour Office pointed out moreover, that the undertaking to bring the convention before the "competent authority", pursuant to Article 19 (5) (b) of the ILO Constitution, should be communicated by the Member States to the International Labour Office.

Finally, the International Labour Office's representatives informed the Commission's representatives that the International Labour Office would be obliged to register the conventions accepted by the Community under the headings for ILO documents concerning the Member States of the Community (registration of ratifications in the ratification tables kept by the International Labour Office, publication of ratifications in the official bulletins of the International Labour Office, notification of ratifications to the Secretariat-General of the United Nations (Article 20 of the ILO Constitution)).

2.- On the basis of these considerations, the contacts established by the Commission's departments with the departments of the International Labour Office have held out the prospect of finding an ad hoc solution which would be acceptable to both sides. The solution is as follows :

- a) By way of reply to the International Labour Office's communication of the conventions coming within the scope of the Community's powers, particularly Convention No 153, the Member States of the Community would send to the Director-General of the International Labour Office an identical letter informing him that the power to ratify and implement these conventions had been transferred by the Member States to the EEC under the Treaty and that, consequently, the conventions would be submitted to the competent institutions of the Communities for the purposes specified in Article 19 (5) (b) (c) and (d) of the ILO Constitution. The letter would also state that the competent institutions of the Communities would notify the International Labour Office of action taken by them regarding such "submission".

- b) The Community would notify the Director-General of the International Labour Office of the Community's acceptance in its own name<sup>1</sup> of the conventions, such acceptance being regarded as equivalent to ratification, as provided for in Article 19 (5) (d).
- c) The instruments of acceptance by the Community would be registered under the headings for each of the Member States of the Communities, but such registration would refer, in a footnote, to the fact that such decisions were communicated by the Community in pursuance of a transfer of powers effected in accordance with the EEC Treaty. This footnote would be set out in the ratifications table kept by the International Labour Office, in the record of ratifications contained in the International Labour Office's official bulletin and in notifications of ratification to the United Nations<sup>2</sup>.

### III. Proposed procedures

1. The Commission requests the Council to approve the solutions set out above.  
As far as Convention No 153 is concerned, the Council is requested to decide that, in order to comply with the provisions of Article 19 (5)(b) and (c) of the ILO Constitution (see draft letter - Annex II), the Member States should send an identical letter without delay to the Director General of the International Labour Office informing him that the power to ratify and implement this and other conventions has been transferred to the Community.  
This letter is without prejudice to any subsequent decision by the Community authorities regarding the ratification or otherwise of Convention No 153.
2. The Commission will shortly forward a communication to the Council on the conclusion of Convention No 153.

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<sup>1</sup>This would be for the Council to decide on a proposal from the Commission.

<sup>2</sup>The question of the "competent authorities" for the purpose of forwarding to the International Labour Office the annual reports provided for in Article 20 of the ILO Constitution still requires further study, particularly in relation to any sharing between the Community and its Member States of the responsibility for supplying information to the International Labour Office in connection with these reports.

**INTERNATIONAL LABOUR OFFICE**

**MEMORANDUM CONCERNING THE OBLIGATION  
TO SUBMIT CONVENTIONS AND RECOMMENDATIONS TO  
THE COMPETENT AUTHORITIES .**

**Article 19 of the Constitution  
of the International Labour Organisation**



# INTERNATIONAL LABOUR OFFICE

## MEMORANDUM CONCERNING THE OBLIGATION TO SUBMIT CONVENTIONS AND RECOMMENDATIONS TO THE COMPETENT AUTHORITIES

### Article 19 of the Constitution of the International Labour Organisation

*Paragraphs 5, 6 and 7 of article 19 of the Constitution of the International Labour Organisation, concerning the obligation to submit to the competent authorities the Conventions and Recommendations adopted by the Conference, are as follows:*

" 5. In the case of a Convention—

- (a) the Convention will be communicated to all Members for ratification;
  - (b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action;
  - (c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;
- .....

6. In the case of a Recommendation—

- (a) the Recommendation will be communicated to all Members for their consideration with a view to effect being given to it by national legislation or otherwise;
  - (b) each of the Members undertakes that it will, within a period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the closing of the Conference, bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action;
  - (c) the Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Recommendation before the said competent authority or authorities with particulars of the authority or authorities regarded as competent, and of the action taken by them;
- .....

7. In the case of a federal State, the following provisions shall apply:

- (a) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;
- (b) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces or cantons rather than for federal action, the federal government shall—
  - (i) make, in accordance with its Constitution and the Constitutions of the states, provinces or cantons concerned, effective arrangements for the reference of such Conventions and Recommendations not later than 18 months from the closing of the session of the Conference to the appropriate federal, state, provincial or cantonal authorities for the enactment of legislation or other action;

- (ii) arrange, subject to the ..... of the state, provincial or cantonal governments concerned, for periodical consultations between the federal and the state, provincial or cantonal authorities with a view to promoting within the federal State co-ordinated action to give effect to the provisions of such Conventions and Recommendations;
- (iii) inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring such Conventions and Recommendations before the appropriate federal, state, provincial or cantonal authorities with particulars of the authorities regarded as appropriate and of the action taken by them;

..... "

*In order to facilitate the presentation in a standardised manner of information requested, as well as the preparation of the summary of information which the Director-General of the International Labour Office is required to submit to the Conference, in accordance with article 23 of the Constitution of the International Labour Organisation, the Conference, at its 36th Session, requested the Governing Body of the International Labour Office to establish a memorandum setting out the various points on which information is to be supplied. In accordance with this request, and without prejudice to the authority of the International Court of Justice under article 37 of the Constitution, the Governing Body of the International Labour Office has drawn up the following memorandum.*

Members are requested to take into account the points given below and to supply information in reply to the questions listed at the end of this memorandum.

If the Committee of Experts or the Conference Committee on the Application of Conventions and Recommendations has requested additional information or has made an observation on the measures taken to submit Conventions and Recommendations to the competent authorities, please supply the information asked for or indicate the action taken by your Government to settle the points in question.

*In the course of the 36th Session of the International Labour Conference, the Committee on the Application of Conventions and Recommendations, in its report which was adopted unanimously by the Conference, strongly endorsed "the views expressed by the Committee of Experts in its report: in paragraph 46 (a) which describes in full the extent of the obligation to submit; paragraph 46 (b), setting out the nature of the competent authority; paragraph 46 (c), indicating the desirable manner in which submission should take place; paragraph 46 (d), stating the period within which this obligation should be discharged; paragraph 46 (e), describing the special obligations of federal States; and paragraph 46 (f), affirming the obligation to communicate to the representative organisations of employers and workers the information sent to the Director-General of the International Labour Office". At subsequent meetings, the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Conventions and Recommendations stressed, in their reports, certain other points relating to the submission of Conventions and Recommendations to the competent authorities. Several extracts from the reports in question are given below.*

#### I. NATURE OF THE COMPETENT AUTHORITY

"The expression 'competent authority' means the body empowered to legislate in respect of the questions to which the Convention or Recommendation relates, i.e. as a rule, the Parliament. The Committee is aware that in certain cases the power to legislate may be conferred on the governmental organ vested with executive power or the power to ratify, either because the national Constitution does not provide for the separation of powers, or in virtue of constitutional provisions which empower the executive to legislate in certain matters, or as a result of a general or special delegation of powers granted by Parliament to the Government. The Committee therefore considers it necessary for the Government of a State Member to indicate on each occasion, with regard to each Convention or Recommendation, what authority is regarded as competent."<sup>1</sup>

<sup>1</sup> I.L.O.: Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19 and 22 of the Constitution), Report III, Part IV, International Labour Conference, 36th Session, Geneva, 1953 (Geneva, 1953), p. 11, paragraph 46 (b).

## II. EXTENT OF THE OBLIGATION TO SUBMIT

- (a) "Conventions and Recommendations must be submitted to the competent authorities in all cases and not only when the ratification of a Convention appears possible or when it is deemed advisable to give effect to the provisions of a Recommendation." <sup>1</sup>
- (b) "The Committee considers it appropriate to reiterate that a clear distinction ought to be drawn between 'submission' and 'ratification'. The former constitutes an obligation of a general character established by the Constitution of the I.L.O. It does not, however, imply the obligation to propose that a Convention be ratified or a Recommendation accepted. Accordingly, governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities." <sup>2</sup>

## III. FORM OF SUBMISSION

- (a) "The obligation to submit the decisions of the Conference to the competent authority cannot be regarded as satisfactorily performed if the Government, when reporting to Parliament on the activities of its delegation to the Conference, merely appends the text of the decisions of the session without making any proposal." <sup>3</sup>
- (b) "The submission of Conventions and Recommendations to these authorities should always be accompanied or followed by a statement or proposals setting out the Government's views as to the action to be taken on the instruments." <sup>4</sup>
- (c) "The essential points to bear in mind are: (a) that at the time of or subsequent to the submission of Conventions and Recommendations to the legislative authorities, governments should either indicate what measures might be taken to give effect to these instruments, or propose that no action should be taken or that a decision should be postponed; and (b) that there should be an opportunity to take up the matter for debate within the legislature." <sup>5</sup>

## IV. TIME LIMITS

"In virtue of the formal provisions of article 19, the submission of Conference decisions to the competent authorities must be effected within one year or, in exceptional circumstances, not longer than 18 months from the close of the session of the Conference. The Committee wishes to stress that this provision applies not only to non-federal but also to federal States; in the case of the latter, the period of 18 months is applicable only in respect of Conventions and Recommendations which the federal Government considers to be appropriate for action by the constituent states, provinces or cantons. In order that it may be possible to ascertain that States Members have respected the prescribed time limits, the Committee considers that it would be advisable for the date on which the decisions of the Conference had been submitted to the competent authorities to be indicated in the communication to the Director-General." <sup>6</sup>

## V. OBLIGATIONS OF FEDERAL STATES

"As regards federal States, the Committee wishes to point out that, under article 19 of the Constitution, paragraph 7 (b) (i), whenever action by the constituent states, provinces or cantons is considered 'appropriate', the Government must make effective arrangements for the reference of Conventions and Recommendations adopted by the Conference to the 'appropriate authorities' of the constituent states, provinces or cantons for the enactment of legislation or other action." <sup>7</sup>

<sup>1</sup> I.L.O.: *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19 and 22 of the Constitution)*, Report III, Part IV, International Labour Conference, 36th Session, Geneva, 1953 (Geneva, 1953), p. 11, paragraph 46 (a).

<sup>2</sup> *Ibid.*, 40th Session, Geneva, 1957 (Geneva, 1958), p. 9, paragraph 58.

<sup>3</sup> *Ibid.*, 36th Session, Geneva, 1953 (Geneva, 1953), p. 11, paragraph 46 (c).

<sup>4</sup> International Labour Conference, 40th Session, Geneva, 1957: *Record of Proceedings* (Geneva, I.L.O., 1958), Appendix VI, p. 659, paragraph 45.

<sup>5</sup> I.L.O.: *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19 and 22 of the Constitution)*, Report III, Part IV, International Labour Conference, 42nd Session, Geneva, 1958 (Geneva, 1958), p. 7, paragraph 43.

<sup>6</sup> *Ibid.*, 36th Session, Geneva, 1953 (Geneva, 1953), p. 11, paragraph 46 (d).

<sup>7</sup> *Ibid.*, paragraph 46 (a).

## VI. COMMUNICATION TO THE REPRESENTATIVE ORGANISATIONS

"Under article 23, paragraph 2, of the Constitution, the information communicated to the Director-General on submission to the competent authorities must be sent also to the representative employers' and workers' organisations."<sup>1</sup>

### Unitary States

- I. (a) Please indicate what authority or authorities are competent in the matter as regards each one of the Conventions and Recommendations on which information is requested.
- (b) Please indicate what is the legislative body according to the Constitution or basic law of your country.
- II. (a) Please indicate the date on which the Conventions and Recommendations were submitted to the competent authorities for the enactment of legislation or other action.
- (b) Please indicate whether, at the time of submitting the Conventions and Recommendations to the legislative body, the Government tabled any proposals in the said body, on the measures which might be taken for the enactment of legislation or other action.
- (c) Please attach the texts or duplicate copies of the document or documents by means of which the Conventions and Recommendations were submitted, and of any proposals which may have been made.
- III. If the competent authority or authorities have taken a decision on the Conventions and Recommendations which were submitted to them, please indicate the contents of the said decision.
- IV. If it has not been possible to submit the Conventions and Recommendations, please indicate the exceptional circumstances which prevented the Government from submitting the said Conventions and Recommendations to the competent authorities within the prescribed date limits.
- V. Please indicate the representative organisations of employers and workers to which the information submitted to the Director-General has been communicated.  
Please state whether you have received from the organisations of employers or workers concerned any observations concerning the effect given, or to be given, to the instrument (or instruments) to which this information relates.

### Federal States

- VI. Please indicate—with regard to each one of the Conventions and Recommendations on which information is requested—whether the federal Government regards them as appropriate under its constitutional system for federal action or whether, on the other hand, it regards them as appropriate in whole or in part for action by the constituent states, provinces or cantons.
- VII. In the former case (federal action) please supply the information requested under "Unitary States" in paragraphs I to V.
- VIII. In the latter case (action in whole or in part by the constituent states, provinces or cantons) please indicate what measures have been adopted with a view to submitting each one of the Conventions and Recommendations on which information is requested to the appropriate federal, state, provincial or cantonal authorities for the enactment of legislation or other action, and supply the relevant information on the authorities considered as appropriate and the measures taken by them.
- IX. Please indicate the representative organisations of employers and workers to which the information submitted to the Director-General has been communicated.  
Please state whether you have received from the organisations of employers or workers concerned any observations concerning the effect given, or to be given, to the instrument (or instruments) to which this information relates.

<sup>1</sup> I.L.O.: *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19 and 22 of the Constitution)*, Report III, Part IV, International Labour Conference, 36th Session, Geneva, 1953, p. 11, paragraph 46 (f).

Dear Sir,

With your letter of 6 August 1979 you enclosed a copy of Convention No 153 concerning hours of work and rest periods in road transport (1979), which was adopted by the International Labour Conference at its sixty-fifth session.

I have the honour to inform you that in the fields covered by this Convention the powers referred to in Article 19(5) of the ILO Constitution have been transferred to the European Economic Community pursuant to the Treaty by which it was established.

The Government ..... has therefore submitted the Convention to the Commission and the Council of the European Communities for the purposes laid down in Article 19(5)(b), (c) and (d) of the ILO Constitution.

The President of the Council of the European Communities will inform you of any action it intend to take after examining the Convention.