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Third report from the Commission to the Council
on the possibilities and difficulties of ratification by the
Member States of the first list of conventions concluded
within other international organizations

CONTENTS

INTRODUCTION

After having studied the first report by the Commission on the "Possibilities and difficulties of ratification by the Member States of a first list of Conventions concluded by other international organizations" (Doc. SEC(67)4233 final of 6 November 1967), the Council agreed, on 29 February 1968, to re-examine the development of the situation on the basis of a second report by the Commission.

The Commission carried out its task by making use of the Governments' replies to a questionnaire and by seeking information from the ILO and the Council of Europe.

The conclusions of this research were presented in Commission document SEC(72)2147 final of 21 June 1972, which was sent to the Council and the European Parliament. Whereas the Parliament examined the question in a report drawn up for the Committee on Social Affairs and Public Health by Mr Petre (Doc. No 28.972 of 26 February 1973) and expressed an opinion during its meeting of 4 April 1973, the Working Party on Social Questions requested that the Commission document be brought up-to-date by also taking into account the enlargement of the Community.

A third report, whose conclusions are given in the following pages, has therefore been prepared and reflects the situation as at 31.12.1974.

The report is concerned with all the international instruments which were used in the preparation of the first and second reports, including Convention No 118 concerning the equality of treatment of nationals and non-nationals in respect of social security, Convention No 121 concerning benefits in the case of employment injury and the European Code of Social Security and its Protocol. These three instruments were the subject of the first report, but not of the second. The instruments considered are, therefore, the following:

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International Labour Organization

Convention No 103	concerning maternity protection
Convention No 111	concerning discrimination in respect of employment and occupation
Convention No 117	concerning aims and basic standards for social policy
Convention No 118	concerning the equality of treatment of nationals and non-nationals in respect of social security
Convention No 119	recommendations concerning the guarding of machinery
Convention No 120	concerning hygiene in commerce and offices
Convention No 121	concerning benefits in the case of employment injury
Convention No 122	concerning employment policy

Council of Europe

European Social Charter

European Social Security Code and Protocol to the European Social Security Code.

I. Conventions of the International Labour Organization

CONVENTION No 103 - MATERNITY PROTECTION

1. General considerations

This Convention was adopted by the 35th International Labour Conference held in 1952 and came into force on 7 September 1955.

Among the Member Countries of the Community it was ratified by only Luxembourg and Italy, the dates of lodging of the instruments of ratification being 10 December 1969 and 5 May 1971 respectively.

2. Contents of the Convention

The Convention consists of a revision of Convention No 3 adopted by the 1919 Conference at its first meeting. The text of the new instrument repeats the provisions of Convention No 3 enlarging its field of application, however, and more clearly defining a number of principles and being somewhat more flexible.

The Convention applies to all women employed in industry and to non industrial and agricultural work including work at home. Exceptions are authorized for family firms and there are a number of derogations for certain categories of non-industrial and agricultural work.

The instrument lays down 12 weeks maternity leave of which six at least must compulsorily be taken after delivery. It also provides for extension of leave when then birth occurs after the forecast date and in case of illness caused by pregnancy or delivery.

The Convention also provides for cash and medical benefits provided by a system of compulsory insurance or by levy on public funds. It lays down that under no circumstances shall the employer be held personally responsible for the cost of the benefits.

When the benefits in cash provided under a compulsory insurance scheme are assessed on previous earnings they must not be less than two-thirds of those earnings. Time off for breast-feeding is provided for, the duration of which must be established by national legislation.

Finally, the Convention forbids the dismissal of female employees for any reason whatsoever for the duration of their maternity leave or on any date which would make notice of dismissal expire during that leave.

3. Situation in the countries which have not yet proceeded with ratification

BELGIUM

The Belgian Government has stated that it is not in a position to propose to ratify the Convention because of a remaining difference between Belgian law and the standards laid down in the Convention, on two points:

(1) Article 4(6) of the Convention lays down that the cash benefits provided under a compulsory social insurance scheme should not be less than two-thirds of previous earnings. But Belgian law grants a daily allowance of 60% of the salary, the difference between 100% being provided by the employer for 30 days for female employees and for seven days for female workers.

(2) The right laid down in Article 5 of the Convention is not recorded in Belgian law. The latter does not grant the right to one or more breast-feeding breaks. The royal Decree of 24 October 1967, No 40 (Belgian Monitor of 26 October 1967) on female labour, which modifies previous legislation, contained no such provision, the Government, after consulting the National Labour Council, having considered that such a provision would be very difficult to apply considering the existing practice in the country. In order to enable women to exercise this right would require firms to have available adequate premises which met certain criteria as regards hygiene, nurseries, etc. It would be difficult to impose such requirements on small

and medium-sized firms. On the other hand, the extension of maternity leave will enable those mothers who so wish to breast-feed their babies under better conditions.

GERMANY

As is emphasized in the second report of the Commission (SEC (72)2147 final), although the Federal Republic of Germany's legislation corresponds "even more closely with the provisions of Convention No 303" and goes "partly further" than those provisions, although not totally corresponding with them, Germany states once more that the ratification of the Convention is not possible at the moment.

FRANCE

The French Government had considered that ratification of the Convention was impossible because of the fact that French law laid down that the compensation for each day's rest was equal to half a day's basic pay whereas the Convention provides for it to correspond to two thirds. However by Decree No 70-1315 of 23 December 1970 (O.J. of the F.R. of 1 January 1971), the amount of the compensation for each day's rest has been raised to 90% of a day's basic pay, under the general rules, as from 1 January 1971, a decision which has removed the obstacle in question.

NETHERLANDS

Consultations are still proceeding between the different Government departments affected by the ratification of this convention. In the past one of the obstacles to ratification of this Convention was that the Ziektewet (the law on health insurance) laid down a salary ceiling for insurance benefit. But, since the law in question has been amended by removal of the ceiling, this objection no longer exists. Otherwise, the Dutch Government has not modified its position as regards the Convention in question.

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The Dutch Government considers that its national legislation is generally in accordance with the Convention's standards, but an impediment to ratification of the Convention is the fact that in accordance with Article 1638 (y) of Common Law certain benefits given for pregnancy and child birth to women workers who live under the same roof as the employer, are chargeable to the latter. It is questionable, furthermore, whether certain of the Convention's provisions deny additional protection for the interested parties in the form of the employers responsibility. Although the Dutch consider that the conditions obtaining in this respect in the national legislation in force as more advantageous than those laid down in the international Convention, the latter has not been ratified for the reasons stated.

GREAT BRITAIN

The general survey carried out in 1965 by the ILO Committee of experts on the application of conventions and to made recommendations thereon showed that in Great Britain maternity leave is fixed at four weeks by the 1936 Public Health Act and by Article 205 of the Factories Act (1961 digest), but under the terms of legislation on social security (the 1965 and 1971 versions being currently applied), maternity benefits may be granted for 18 weeks, on condition however, that no lucrative employment is undertaken during that period (International Labour Conference, 49th meeting, Geneva, 1965, Report by the Committee of experts, Report III, Part IV, paragraph 105, last sentence, note at the bottom of the page). According to the same source, there is no legislation to protect women against dismissal during pregnancy or confinement. The United Kingdom Government report on which this study is based states: "it is customary to re-engage women workers if they so request; and ... women with families are not usually interested in returning to work" (ibid, paragraph 213).

Great Britain has not ratified this Convention since it considers that the provisions of the social security system in force in the United-Kingdom

are fully adequate to enable women temporarily to leave their employment during the periods considered by the Convention. However, in some respects they differ from the provisions of the Convention. As regards the adaptation of special legal texts, required by Convention No 103, forbidding or restricting the employment or the dismissal of female workers before or after confinement the United Kingdom considers that it has adopted the optimum solution by a more flexible combination: the legal obligations and those in force in trade and industry in respect of female employees generally provide attendant advanced social security services and highly elaborated measures aimed, in cases of maternity, at providing the mother-to-be with advice on health and hygiene.

Since English law and rights do not conform to the provisions of Convention No 103 the Government is not considering ratifying the latter.

IRELAND

The Irish Government considers that it cannot ratify Convention No 103 because its existing legislation lacks the legal basis required by that Convention as regards maternity leave and time off for breast-feeding. Moreover its level of maternity benefits is lower than that laid down in the Convention, which is at least two thirds of the salary.

The Irish Government states that there has so far been no demand for such legislation because few married women go out to work. Currently 60% of all married women work outside their homes and make up 9% of total female labour.

However, the Irish Government has set up a Committee on the status of women which will examine the possibility of ratification under the studies of the whole field of women's rights.

DENMARK

The Convention has not been ratified by Denmark for the following reasons:

(i) as regards Article 3 of the Convention, which lays down at least six weeks compulsory post-natal leave for all women workers, Danish law does not meet these conditions neither in their areas of application nor for the periods to be covered. The law in force on the general protection of workers in industry, cottage industry, building construction, laboratories, transport and commerce lays down, at Article 37 in respect of maternity leave, that no female worker may be employed on tasks specified by law during the four weeks following confinement without a medical certificate stating that she may do so without injury to her health or to that of her child;

(ii) the two laws on the protection of workers in commerce, service industries, agriculture, forestry and horticulture contain no provisions for maternity leave;

(iii) as regards Article 4 of the Convention - benefits in cash and medical benefits - the Danish Government considers the rules laid down in the law on sickness or maternity grants, according to which, from 1 April 1973, a maternity grant may be given for four weeks, are not "incompatible with the provisions" of the Convention;

(iv) as far as Article 6 of the Convention is concerned, the Danish Government indicates that the legislation in force contains no restriction concerning notice of dismissal during pregnancy.

CONVENTION No 111

DISCRIMINATION IN RESPECT OF EMPLOYMENT AND OCCUPATION

1. General considerations

This Convention was adopted at the 42nd International Labour Conference in 1958 and came into force on 15 June 1960. The following Members of the Community ratified this Convention: Denmark (date of lodging of the instrument of ratification: 22 June 1960), Germany (15 June 1961), Italy (12 August 1963), et the Netherlands (15 March 1973).

2. Contents of the Convention

The Convention lays down that any State having ratified the latter must formulate and apply, by legislative methods and appropriate practices, a policy aimed at promoting equality of opportunity and treatment in respect of employment and occupation in order to remove any discrimination based on race, colour, sex, religion, political views, national ancestry or social origin.

It is interesting to note that as regards national ancestry, the International Labour Bureau has made it clear in a memorandum drawn up at the request of one of its Member States, that this Convention refers to the distinction made between the nationals of a State, on the basis of their national ancestry but does not refer to the distinctions made between the nationals of the State and foreign nationals.

3. Situation in the countries which have not yet ratified the Convention

BELGIUM

The Government is considering ratifying the Convention in the near future. A Bill approving the Convention has been submitted to the Minister for Foreign Affairs and, for opinion, to the Council of State. The tabling of this Bill

before the Legislative Assembly seems to have been delayed by the dissolution of the latter and by the subsequent legislative elections.

FRANCE

The instrument is still being examined at Governamental level. There are however certain problems of a legal order, which the Government is very closely studying. In French law and regulations there are, in effect provisions which prescribe certain time lags before entering public office, being called to the bar or holding a ministerial position. The question of whether these provisions are of a discriminatory nature or not has not yet been fully clarified.

LUXEMBOURG

The Council of State gave its Opinion in December 1970 on the Bills amending the Common Law as regards the legal status of married women, voting on which must take place before the ratification of Convention No 111. They have been placed before the Chamber of Deputies.

GREAT BRITAIN

The conservative Government published a green book according to which new legislation was required in the United Kingdom to remove sex discrimination in private employment.

Ratification of this Convention was, however, delayed because of recruitment difficulties for certain positions in the Civil Service. However, ratification is confidently expected.

IRELAND

Ireland has not ratified this Convention. The Irish Government states that the "only obstacle" to ratification is that its position in respect to female labour does not exactly coincide with the provisions of the Convention. However, the Irish Government states that it is prepared to re-examine its

position in the light of the recommendations of the Committee on the status of women.

In this respect it should be noted that Ireland ratified the European Social Charter and accepted the obligations arising from Article 1, paragraph 2, which include the removal of any discrimination in employment. In its conclusions III on the implementation of the Charter, the Committee of Independant Experts on the European Social Charter took note in 1973 that the Committee on the status of women made recommendations to the Irish Government on the position of women in the Civil Service.

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CONVENTION No 117

AIMS AND BASIC STANDARDS FOR SOCIAL POLICY

1. General considerations

This Convention was adopted at the 46th meeting of the International Labour Conference in 1962 and came into force on 23 April 1964.

Among the Community Countries, Ireland alone ratified this Convention (date of lodging of the instrument of ratification: 27 December 1966).

2. Contents of the Convention

This Convention is the revision of Convention No 82 on social policy in the non-metropolitan territories adopted by the 30th International Labour Conference in 1947.

As was made clear in its preamble, it was adopted mainly to enable its continued application and ratification by the independant States.

The Conventions lays down a list of principles aimed at promoting social progress. These principles are primarily concerned with:

(i) The improvement of living standards by a series of measures consisting in the careful study of the causes and effects of the population movements in the national territory's interior and in the increase in agricultural production capacity by a better use of the cultivable land;

(ii) the treatment of migrant workers and their families;

(iii) the fixing of workers wages eith by collective agreements negotiated between the trade unions representing the workers concerned and the employers or orgenizations of employers, or by determining minimum wage rates;

(iv) non-discrimination;

(v) education and vocational training.

3. Situation in the countries which have not yet ratified the Convention

BELGIUM

Although the Government had already stated that the examination of the equivalence between the provisions of its national legislation and that of the Convention was almost completed, this examination had been suspended especially as the ratification of the Convention held little interest for Belgium.

GERMANY

The German Government is of the opinion that, because of its specific nature, this Convention is not suitable for ratification by the Member States of the Community.

FRANCE

The French Government's position has not changed since the last report which showed that the ratification of this Convention , which is aimed primarily at the non-metropolitan territories, is deemed to be of little interest for France because the French Overseas Departments and Territories have basic standards for social policy, which are either identical with those of the metropolis or very close to the latter. France having ratified Convention No 82[1], the French Government considers this Convention devoid of all interest, because, in its view, there is no discrimination in France.

LUXEMBOURG

Ratification is not contemplated, for this Convention has no direct interest for social policy in Luxembourg.

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[1] Convention concerning social policy is non-metropolitan territories.

NETHERLANDS

The ratification of this instrument clashes with the Dutch situation in so far as expropriation of agricultural land is concerned, which runs counter to the provisions of the Convention. To make it possible for the latter to be ratified would require bringing back into force a law which has been abrogated since 1 January 1963. Moreover there is no provision in Dutch law for a maximum advance of salary, nor are there rules on the method of reimbursing the latter, as are laid down in the Convention.

GREAT BRITAIN

Great Britain, considering that this Convention is expressly provided for the newly independent States, reaffirmed on 24 November 1972 the point of view which it expressed in the 1962 White Paper, which is that since the Convention is not destined to be applied in the developed countries or to the non-metropolitan territories, the question of its ratification does not arise for the United Kingdom.

IRELAND

The ratification of this Convention is not being considered by Ireland, since it only deals with erstwhile colonial territories.

DENMARK

This Convention has not been ratified by Denmark, for the Government considers that the provisions on salaries, etc., are incompatible with the principles for fixing wages and salaries in force in the country.

CONVENTION No 118

EQUALITY OF TREATMENT OF NATIONALS AND NON NATIONALS IN RESPECT OF SOCIAL SECURITY

1. General considerations

This Convention was adopted at the 46th International Labour Conference held in 1963 and came into force on 25 April 1954. Among the Member Countries of the Community it was ratified by: The Netherlands (date of lodging of the instrument of ratification: 3 July 1964), Ireland (26 November 1964), Italy (5 May 1967), Denmark (17 June 1969), Germany (19 March 1971) and France (13 May 1974).

It should be made clear that only the Netherlands and Italy fully ratified the Convention, whereas the other countries declined to accept one provision or another of this Convention as is shown below:

(i) Ireland: branch c (maternity benefits), d (disability benefits), e (old age benefits), f (widows and orphans benefits) and g (benefits for accidents at work and occupational deseases);

(ii) Denmark: branch c (maternity benefits), d (disability benefits), e (old age benefits), f (widows and orphans benefits) and i (family benefits);

(iii) Germany: branch d (disability benefits), e (old age benefits), f (widows and orphans benefits), and i (family benefits);

(iv) France: branch e (old age benefits), and h (unemployment benefits).

2. Content of the Convention

The Convention guarantees not only equality of treatment of nationals and non-nationals but the payment of benefits abroad and the maintenance of rights which are in process of acquisition. As regards this last aspect, the Convention is restricted to the affirmation of the principle, making it incumbent on the States which have ratified the Convention to regulate the application by means of bilateral or multilateral agreements or by any other appropriate arrangements (Art. 7, 8 and 9).

The Convention is applicable to all the branches of social security, but may be ratified partially for one or more branches (Art. 2).

The Convention ensures equality of treatment for nationals of the Member States where the Convention is in force, whether they are resident in these States or not, even if the Convention has not been ratified for the same number of branches or for the same branches by the States in question. If therefore aims to ensure equality of treatment between nationals of States whose social security legislation has not reached the same stage of development (the case of the legislation of the Member States of the European Communities and the Associated States). As a retaliatory measure (or as a means of pressure) equality of treatment may be waived for a given branch of Social Security in respect of the nationals of a Member States which had not ratified the Convention for that branch although its legislation included such a branch (Articles 3 and 4).

In principle no distinction is made between benefits whether they are granted under contributory or non-contributory schemes. However, equality of treatment without a residence condition may be subject to a condition related to the length of residence before the request for non-contributory benefits (Art. 4).

Apart from equality of treatment, the Convention provides for the payment abroad of benefits in cash (disablement, old age, widows and orphans, death grant - accidents at work and occupational diseases) (Art. 5) and family benefits (Art. 6) under conditions to be fixed by agreement.

Finally, the Convention establishes the principle of totalling the insurance, employment or residence periods for acquiring, maintaining and recovering the rights and for calculating the benefits (Art. 7).

3. Situation in the Countries which have not yet proceeded to ratification

BELGIUM

The Belgian Government has stated that under present circumstances this Convention cannot yet be ratified by Belgium.

As a matter of fact, although certain disagreements between Belgian legislation and certain of the Convention's provisions have been settled, the condition of residence in Belgium for children to be eligible for family allowance has been maintained.

However, Article 6 of the Convention makes clear that the sending abroad of family allowances must be ensured "within limits and under conditions to be fixed by common agreement between the interested parties". However, under either bilateral conventions or derogations granted by the Minister to nationals of specified countries, family allowances are exportable within certain limits in the relations with most of the States supplying labour.

The Belgian Government fears that the total export of family allowances granted by derogation by the competent Minister to Belgian nationals resident in countries with which conventions have been concluded providing for reduced rates to be exported by those countries' nationals, will no longer be possible until an agreement has been reached with the Government of that country in application of Article 6 of the Convention.

Moreover, the Belgian Government points out that the concept of equality of treatment defined at Articles 5, 7 and 8 of the Convention has still not yet been given an interpretation which can be accepted by Belgium.

LUXEMBOURG

The procedure for ratification has not yet been started. A study is under way on the implications of Article 5 concerning the transfer abroad of certain social security benefits. The text of Article 5, in fact provides for

the transfer of contributory and non-contributory benefits, but Luxembourg legislation will only permit the transfer of the non-contributory portion and then only with government authority.

UNITED KINGDOM

Although the British Government agrees with the principle of migrant workers maintaining their rights it does not accept the principle of a multi-national convention, preferring on the contrary the conclusion of bilateral Conventions on the question.

CONVENTION No 119

THE GUARDING OF MACHINERY

1. General considerations

This Convention was adopted by the 47th International Labour Conference held in 1963 and came into force on 21 April 1965. It was ratified only by Italy (date of lodging of the instrument of ratification: 5 May 1971) among the Member Countries of the Community.

2. Contents of the Convention

This Convention stipulates that the sale, hiring or disposal by any other means and the exposure of machines, certain dangerous parts of which are not provided with appropriate protective devices, must be forbidden by national legislation or prevented by equally effective measures.

The dangerous parts areprotrudingmoving parts or the transmission systems. This prohibition shall apply to those who sell or hire the machines as well as to the manufacturers.

On the other hand, as regards the use of the machines, the Convention extends the prohibition to the users, in other words to the area of operation of the machines.

This prohibition applies in equal measure to the employers and the workers. The implementation of the provisions laid down in the said Convention must be verified by appropriate inspection services.

3. Situation in the countries which have not yet proceeded to ratification

BENELUX

The question seems to raise the same problems in these three countries which deliberately intend to coordinate the ratification of this Convention with that of the Benelux Convention which provides a uniform law on dangerous

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machines and was signed in March 1970. However, considerations of a political nature seem recently to have led the Benelux countries temporarily to suspend the harmonization of their legislation (Benelux Ministers for Foreign Affairs' meeting in November 1973). With this reservation, Convention No 119 could be ratified by Luxembourg within approximately two years.

DENMARK

Denmark should ratify this Convention in the coming months.

GERMANY

The German Government is examining the possibility of shortly transmitting a Bill to the legislative body.

FRANCE

The French Government states that ratification requires an amendment to the Employment Code, which will take place at the time of an overall amendment. It considers that the differences between French legislation and the provisions of the Convention are purely ones of form, and that in the present state of the administrative machinery, the regulations conform to the spirit of the Convention.

GREAT BRITAIN

The British Government has stated its intention of amending, on the basis of the report (Robens report) of the Committee on Safety and Health at work (1970-1972), the existing legislation in order to make possible the ratification of this Convention. However, it would seem that the Government has recently nominated a new Committee on Safety and Health at work and is considering merging and placing all the works inspection services under the same administrative authority. This development would therefore delay the preparation and the adoption of the regulations enabling the Convention in question to be ratified. The prospects of ratification in due course remain

hopeful.

IRELAND

The Irish Government states that the existing legislation lays down for industry all the required provisions to protect the workers from dangerous machines; however, as regards the other sectors of the economy, it provides for none of the exceptional measures of research and verification envisaged by the Convention.

The Irish Government will examine the possibility of ratification, only after completion of the current revision of the legislation on the safety, health and well-being of workers.

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CONVENTION No 120

HYGIENE IN COMMERCE AND OFFICES

1. General considerations

This Convention was adopted by the International Labour Conference at its 48th meeting in June 1964. It came into force on 29 March 1966.

It was ratified by: the United-Kingdom (date of lodging of the instrument of ratification: 21 April 1967), Denmark (17 June 1970), Italy (5 May 1971), France (6 April 1972) and Germany (5 December 1973).

2. Content of the Convention

The provisions of this Convention require legislation to apply certain general principles in respect of health protection and hygiene at work in commercial establishments and in the establishments, institutions or administrations where the employees are carrying out mainly office work. The principles are especially concerned with general sanitation, lighting, ventilation, facilities for washing and sitting down, protection against dangerous substances, against noise and vibration, and with the installation of infirmaries at first aid posts.

Moreover, by ratifying the Convention, the States undertake, to the extent that national conditions so allow and make it desirable, to give effect to the provisions of Recommendation No 120 which accompanies the Convention or to equivalent provisions.

The application of the standards which give effect to the Convention, and, if need be, to the Recommendation must be ensured by adequate inspection services.

3. Situation in the countries which have not yet proceeded to ratification

BELGIUM

The Ministry of Labour is currently drafting a Bill to ratify the Convention.

The impediment is the fact that the general Regulation for protection of labour, particularly Title II concerning hygiene at work as well as the safety and health of workers does not apply to family firms (Art. 28) and, therefore, does not conform to the Convention.

The Belgian Government is considering ratifying the Convention but specifically excluding family firms, in accordance with the procedure laid down at Article 2.

LUXEMBOURG

In the absence of sufficiently precise information it must be assumed that the examination of this Convention is still at the technical stage. A first examination had disclosed that nearly all the general standards set forth in the Convention were applied by Luxembourg.

Grand Ducal Order of 28 August 1924, on the prescriptions concerning the health and safety of employees in industrial and commercial entreprises sets forth the various principles stated in part 2 of the Convention, with the exception, however, of that of the obligation to reduce noise and vibration by appropriate and practicable measures.

Furthermore, the question of the application of the Convention to family firms has still to be thoroughly examined.

The final decision on possible ratification will be taken in relation to the Benelux Convention in this field, which was signed in March 1970.

NETHERLANDS

A law, which will shortly be placed before Parliament, will amend Article 9 of the law on safety (veilighedswet). A preliminary draft has been drawn up which will be submitted for opinion to different authorities, including the Economic and Social Council.

All the same, the procedure for ratification of this Convention has not yet been started.

IRELAND

Ireland has not ratified this Convention. The Irish Government considers that its existing legislation is in agreement with the main provisions of this Convention. As regards the idea of underground premises, premises without windows and the prevention of noise, amendments to the legislation in force are required to enable the Convention to be ratified. The Irish Government will take this question into consideration during the current revision of the legislation on labour.

CONVENTION No 121

BENEFITS IN THE CASE OF EMPLOYMENT INJURY

1. General considerations

This Convention was adopted by the International Labour Conference at its 48th meeting in June 1964. It came into force on 28 July 1967.

Among the Member States of the Community it was ratified by: The Netherlands (date of lodging of the instrument of ratification: 2 August 1966), Ireland (9 June 1969), Belgium (22 Aprile 1970), Germany (1 March 1972) and Luxembourg (24 July 1972).

2. Content of the Convention

The purpose of the Convention is to guarantee benefits to those suffering accidents at work or from occupational diseases and it defines those who are so protected and the contingencies covered.

The Convention's field of application includes all salary and wage earners in the private and public sectors (Art. 4). Where they are eligible for equivalent benefits, seamen and Civil Service employees may be excluded from the Convention's application (Art. 3). Furthermore the application may not apply to certain work, such as temporary work, work in the home, family firms (Art. 4).

The contingencies covered are as follows: sickness, incapacitation, total or partial loss of earning capacity, and loss of means of existence on the death of the breadwinner (Art. 5).

Each Member State must specify the type of accident at work conferring entitlement to benefits (Art. 7) and establish a list of occupational diseases including at least those listed in the table annexed to the Convention, or include a general definition of occupational diseases in its legislation, or establish a list and complete the latter with a general definition (mixed system) (Art. 8).

Guaranteed benefits are medical treatment (Art. 9, 10 and 11), and cash benefits (Art. 13, 14, 15, et seq.) which must be at least, for a standard benefit (i.e. for a benefit defined by the Convention in respect of certain family expenditure), a percentage, fixed by the Convention, either of the worker's previous wages or of a type Q labourer's wages.

Moreover, the Member States are required to take accident prevention measures and are responsible for the rehabilitation and re-employment of the disabled (Art. 26).

The table of occupational diseases annexed to the Convention consists of 15 diseases.

3. Situation in the countries which have not yet proceeded to ratification

DENMARK

The Danish Government has stated that ratification of this Convention calls for considerable amendment of Danish legislation, particularly as regards accidents on the way to work. So far such amendment has not taken place.

FRANCE

The main difficulty is that France could not accept as a whole the list of professional diseases attached to the Convention, for the list does not accord with the spirit of French law. The French Government has stated that some harmonization between the tables of occupational diseases of the French system and the list attached to the Convention has already been effected. Decrees No 72 - 1010 of 2 November 1972 and No 73 - 215 of 23 February 1973 have produced large amendments to the tables of occupational diseases annexed to French legislation: 15 new tables have been added to the existing 48 tables and 11 tables have been revised either by substitution or addition of new provisions.

The French Government considers that complete harmonization requires new comprehensive studies which will shortly be undertaken. The Committee for industrial hygiene has entrusted a new programme of work to the specialized working parties responsible for preparing the revision and the extension of the current tables. Under these circumstances, in the near future the tables of occupational diseases will be extended.

ITALY

The Ministry of Labour and Social Security is at present examining the possibility of ratifying the Convention.

The main difficulties invoked are the provisions of the field of application. Because some groups of workers who are not exposed to risks are excluded from the Italian legislation in respect of accidents at work and occupational diseases, whereas the Convention's field of application covers all salary and wage earners. This involves the majority of employees.

UNITED KINGDOM

The United-Kingdom would have preferred that Conventions No's 17, 18 and 42 had been brought up-to-date in a more flexible manner and which would give the countries ratifying Convention No 121 the possibility of improving their national legislation.

On the other hand Convention No 121 contains even more complex and detailed provisions that the above mentioned Conventions.

The British Government has shown that English legislation accords with the basic provisions of Convention No 121, and that it has not yet been possible to ratify the latter either because of its lack of flexibility or because of doubts on the interpretation of some of its provisions.

CONVENTION No 122

EMPLOYMENT POLICY

1. General considerations

This Convention was adopted by the International Labour Conference at its 48th meeting held in 1964 and came into force on 15 July 1966.

It was ratified by all the Community's Members Countries except Luxembourg, i.e.: the United Kingdom (date of lodging of the instrument of ratification: 27 June 1966), Ireland (20 June 1967), The Netherlands (9 January 1967), Belgium (8 July 1969), Denmark (17 June 1970), Italy (5 May 1971), Germany (17 June 1971) and France (5 August 1971).

2. Content of the Convention

The Convention aims to develope and apply an active policy designed to promote full productive and freely chosen employment in order to stimulate economic growth and development, to raise living standards, to meet manpower requirements and to solve the problems of unemployment and under employment. It also lays down that employers' and workers' representatives should be consulted on employment policy in order fully to take account of their experience and their views, that there should be close collaboration between them in the establishment of those policies and in order that they should seek support for them.

3. Situation in the country which has not yet proceeded to ratification

LUXEMBOURG

The Convention has already been examined in view of ratification by stages. Although it can be stated that Luxembourg's employment policy has the same aims as the Convention, certain difficulties have been encountered in the exact delimitation of the formal obligations resulting from Article 1, and particularly from Article 2 of the Convention. Luxembourg has already

had full employment for many years and the question now is one of form, whether new measures should be taken to apply Article 2 and, if need be, to determine the nature of those measures.

In the previous report, it was stated that the question of ratification of Convention No 122 would be reconsidered as soon as the Bill on the organization, the operation and the responsabilities of the national labour administration had finally been drawn up. This Bill was placed before Parliament and its adoption is expected in the coming months.

The ratification of Convention No 122 was delayed by the last legislative elections and should take place at any moment.

II. Instruments of the Council of Europe

EUROPEAN SOCIAL CHARTER

1. General considerations

The European Social Charter approved by the Council of Ministers of the Council of Europe was ready for signing by the Member States of that organization on 18 October 1971 in Turin. It came into force on 26 January 1965.

It was ratified by the following Member States of the Community: the United Kingdom (date of lodgings of the instrument of ratification: 11 July 1962), Ireland (7 October 1964), Germany (27 January 1965), Denmark (3 March 1965), Italy (22 October 1965) and France (9 March 1973).

It should be emphasized that Italy alone ratified the whole Charter, while the other countries could not accept one provision or another of the Charter as shown in the following list:

(i) United-Kingdom:
Article 2 (1) (length of a working day and working week); Article 4 (3) (equal pay for men and women); Article 7 (1) (minimum working age), Article 7 (5) (equitable pay for young workers and apprentices) and Article 7 (7) (paid holidays for young workers); Article 8 (2) (prohibition of dismissal during maternity leave), and Article 8 (3) (breaks for mothers who breast-feed); Article 12 (2) (satisfactory level of social security arrangements), Article 12 (3) (improvements in social security arrangements), and Article 12 (4) (equality of treatment between nationals and non-nationals).

(ii) Ireland:
Article 4 (3) (equal pay for men and women); Article 7 (1) (minimum working age), Article 7 (7) (paid holidays for young workers) and Article 7 (9) (medical supervision of young workers); Article 8 (2) (prohibition of dismissal during maternity leave) and Article 12 (3)

(breaks for mothers who breast-feed); Article 11 (1) and (2) (health protection); Article 12 (2) (satisfactory level of social security arrangements).

(iii) Germany:

Article 4 (4) (length of notice to be given on leaving employment); Article 7 (1) (minimum working age); Article 8 (2) (prohibition of dismissal during maternity leave) and Article 8 (4) (Regulations in respect of night work and prohibition of dangerous, dirty or heavy work female labour); Article 10 (4) (the right to vocational training).

(iv) Denmark:

Article 2 (1) (length of the working day or week) and Article 2 (4) (compensation for dangerous or dirty work); Article 4 (3) (equal pay for men and women); Article 4 (4) (length of notice to be given on leaving employment) and Article 4 (5) (limitations on retentions on salaries and wages); Article 7 (children's and adolescents' right to protection); Article 8 (2) (prohibition of dismissal during maternity leave); Article 8 (3) (breaks for mothers who breast-feed) and Article 8 (4) (Regulations in respect of night work and prohibition of dangerous, dirty or heavy work for female workers); Article 19 (the right of migrant workers and their families to protection and assistance).

(v) France:

Article 2 (4) (compensation for dangerous and dirty work); Article 13 (2) (safeguarding the political and social rights of those having insufficient means and receiving therefore appropriate social and medical assistance).

2. Content of the Charter

The Charter establishes a number of principles which are generally considered as fundamental for an European social policy. Each of these principles is accompanied by an indication of a number of means to be applied in order to make this application effective.

.../...

These principles include in particular the right for all to work, the workers' right to fair working conditions, to safety and hygiene at work, the right to fair remuneration, the right of workers and employers to associate freely within international organizations for the protection of their interests, to collective negotiation of their conditions of employment, including the right to strike. The Charter also recognizes children's and adolescents' right to special protection from the physical and moral dangers to which they are exposed, the right of women workers in case of maternity and of other women workers in appropriate cases, to special protection at work, the right for all workers to appropriate means of guidance and vocational training. Among the principles established by the Charter, are also found the right of workers to social security, to social and medical assistance and to qualified social services; any disabled person has the right to vocational training and to vocational and social re-adaptation. Finally it contains the protection of the family as the basic unit of society, of the mother and child and of migrant workers and their families.

3. Situation in the countries which have not yet proceeded to ratification

BELGIUM

The Belgian Government intends speedily to complete the procedure started by the previous Government, which had already given its agreemento to laying before the Parliament the Bill approving ratification.

LUXEMBOURG

Following the opinion given by the Council of State, an inter-ministerial Committee has been instructed to prepare a report for the Government, which is about to be completed.

THE NETHERLANDS

The Bill on ratification is still under study in the Second Chamber of the States General.

EUROPEAN CODE OF SOCIAL SECURITY AND PROTOCOL TO THE EUROPEAN CODE OF SOCIAL SECURITY

1. General considerations

The European Code of Social Security and the Protocol thereto were ready for signature by the Member States of the Council of Europe on 16 April 1964. They came into force on 17 March 1968.

It should be made clear that ratification of the Protocol is reserved only for the States which have accepted the obligations deriving from at least eight of the parts among those numbered II to X in the Code.

The situation as regards ratification by the Member States of the Community is as follows:

(i) have ratified the code and its Protocol: The Netherlands (date of lodging of the instrument of ratification: 16 March 1967), Luxembourg (3 April 1968), Belgium (13 August 1969) and Germany (27 January 1971);

(ii) have ratified the Code alone: the United Kingdom (date of lodging of the instrument of ratification: 12 January 1968), Ireland (16 February 1971) and Denmark (16 February 1973);

(iii) Italy has not ratified the Code dispite having signed it. France has not signed this instrument.

It should be made clear that the United Kingdom, Ireland and Denmark have not ratified the code in its entirety.

(i) The United Kingdom has not accepted parts VI (benefits for accidents at work or occupational disease), VII (family benefits), VIII (maternity benefits), IX (disability benefits) and X (widows and orphans benefits);

(ii) Ireland. Parts II (medical care), VI (benefits for accidents at work or occupational disease), VIII (maternity benefits) and IX (disability benefits);

(iii) Denmark. Parts III (sickness benefits) and X (widows and orphans benefits).

2. Contents of the Convention and its Protocol

The purpose of the Code is to produce between the countries of Europe sufficient equivalence of social levels and the charges resulting therefrom

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while stimulating the development of social security in the Member Countries and possibly giving greater mobility to labour. The levels of social security must be fixed under conditions such that the differences existing from one country to another do not produce imbalance in competitive capacity thus hindering the trend towards the economic unity of Europe.

The Code was prepared using ILO Convention 102 (1952) as a basis. The text of the Code is that of the Convention, amended on certain points when an improvement was deemed possible. The general raising of the Code's level is obtained by insisting, for ratification, on a greater number of branches than for Convention 102.

The fact of being able to ratify the code will imply not only the existence of a given level of social security but also a certain equivalence of charges.

This equivalence is obtained by not giving the same value to all the branches and by insisting that the whole of the chosen branches represent a certain number of points. These points are awarded on the basis of the field of application and the minimum rate of benefits laid down by Convention 102.

The old age branch, the benefits for which constitute the heaviest financial load and which is of prime social significance, is worth 3 points.

The medical care branch which in cost and importance comes immediately after old age, is worth 2 points.

One point is awarded for each of the other seven branches.

The total weighting of a social security system which included the 9 branches of Convention 102 and met the minimum requirement of the latter would be 12 points.

In order to ratify the Code a country would have to obtain 6 points, which is possible if the minimum conditions of Convention 102 are satisfied, in one of the following cases:

.../...

(i) either for 6 branches among the following:

sickness-benefit,
unemployment,
accidents at work,
family allowances,
maternity,
disablement,
widows and orphans,

(ii) or for sickness care and 4 of the above branches,

(iii) or for old age and 3 of the above branches,

(iv) or for old age, sickness care and one of the above branches.

If the conditions for ratification of the Convention are compared with those of the Code, it will be seen that on the basis of the above points system a country can ratify Convention No 102 by obtaining only 3 points.

The Code therefore establishes a higher level than the minimum standard.

In order to give the code dynamism and to turn it into an instrument of social progress, it has attached to it a Protocol which establishes a higher European level of social security.

Like the Code, the Protocol is based on Convention 102, but whereas the Code has been obtained by quantitatively raising Convention 102's level (a greater number of "points" is required for its ratification) the Protocol is the result of both quantitative and qualitative improvement of Convention 102. The level of standards is raised by increasing the severity of the conditions to be satisfied both as regards their field of application and the level of the benefits, and by making the standards apply to a larger number of branches than for Convention 102 and for the Code. The Protocol requires the standards to be applied to 8 branches instead of the 6 laid down in the Code (since old age insurance counts for 3 points and medical care for 2).

.../...

3. Situation in the countries which have not yet procedeed to ratification

FRANCE

The French Government has stated that ratification of the Code and its Protocol is being very carefully examined by the competent technical departments, in order to ascertain if such ratification is possible under French Law.

ITALY

The Italian Government has advised that a Bill ratifying the Code has been submitted to the Council of Ministers for approval.

.../...

III. Conclusions by the Commission

General remarks

1. It is apparent that to begin with, at the reference date of the third report, many more Member States of the Community have ratified the Code and its Protocol than at the reference dates of the two previous reports.

For, if only the six original countries of the Community are considered, the number of ratifications for all the instruments considered has risen from 11 ad the reference date of the first report to 21 at that of the second report and finally to 34 at the reference date of this third report.

Taking the Nine into account, and considering the 11 international instruments with which this report is concerned, Germany and Italy have ratified 8, Denmark and the Netherlands 6, Ireland 5, and Belgium, France, Luxembourg and the United Kingdom 4.

2. Nevertheless, the Commission feels that, despite the efforts of the Member States, this situation cannot be considered as entirely satisfactory, and it deplores the delays in ratifying legal instruments which occured between 1952 and 1964.

In the light particularly of the arguments advanced by the Governments of the Member States the Commission wonders whether the obstacles raised are not caused by over concern with formalism. In this respect, it considers that the political will to contribute to the development of the international right to work should guide the Member States and stimulate them tirelessly to seek all means to overcome possible technical and legal difficulties.

This Protocol will also implie that, in all cases where ratification of a convention clashes with divergent national legislation, the Government

concerned must examine with an open mind the possibility of adoption of that legislation, by considering the obstacles to ratification in their broadest sense, even if the field concerned seems narrow and of secondary importance, and giving up only for reasons which are quite unsurmontable.

3. The information supplied to the Commission by the Member States has not always enabled the latter to have a clear picture of the situation and in particular of the reasons which would justify the non-ratification of this or that convention. Some Governments sent detailed and precise information, others laconic and incomplete information. It is for this reason that the Commission emphasizes that it can bring no valid contribution to solving the problems on the subject except to the extent that it is given sufficiently precise and complete information.

4. The Commission confirms the statements it made in the previous report, when it said "with the exception of certain efforts made by Benelux, the Member States took no active part in coordinating the international labour conventions, whether they are adopted by the ILO or by the Council of Europe".

The Commission notes that certain Member States have ratified the European Social Charter but, on the other hand, have not ratified the conventions giving specific rulings on questions which are part of the entire Social Charter, such as the eight ILO Conventions, which are the subject of this report.

For this reason, the attention of the Member States should be drawn to the fact that they should undertake practical and consistent steps to create a line of Community social policy which could lead to the harmonization of the social systems and to the establishment of similar social provisions as laid down in Article 117 of the Treaty of Rome.

The Commission accordingly hopes that this report will be the starting point of measures of coordination designed to produce a common policy for ratification of international conventions.

.../...

PARTICULAR REMARKS

The examination of the Member States replies leads the Commission to make the following specific remarks:

CONVENTION No 103

The fact that two Community countries (Luxembourg and Italy) should find it possible to ratify this Convention shows that it is possible to adapt national social legislation to the standards of the Convention.

The last report emphasized that as regards France, which had come closer to the standards of the Convention by increasing the daily allowance for rest to 90% of a day's pay basic, there would seem to be no further impediment to ratification. However, at the reference date of this report, the Convention in question had not been ratified by that country. All the other countries have expressed reservations as regards ratification. In this respect the Commission has this to say:

The Belgian Government maintains two points:

1. That the Convention lays down benefits in cash (to be provided under a compulsory insurance system) equivalent to two thirds of previous pay, whereas Belgian legislation grants a daily allowance of 60% of wage or salary.

   However, although Belgian legislation fixes the daily allowance at 60% of wage or salary, for limited periods it makes the employer bear the difference between 60% and 100% of the wage or salary.

   It is clear that Belgian legislation thus imposes on a number of Belgian employers a charge that the other Community employers do not have to meet and which is contrary to international standars. This being the case, it is questionable whether it is not in Belgium's own interest to change the existing system.

2. that the right (Art. 5 of the Convention) of a mother to interrupt her work for the purpose of breast-feeding her child would be difficult to apply. It should be noted in particular that work breaks for breast-feeding are essential both for practical and social reasons and that the Convention only goes so far as to require the establishment by legislation of the minimum duration of the breaks for breast-feeding and the number of the latter, but does not actually fix that duration nor the number of breaks.

The German Government's position remains unchanged, the greates impediment still being the difference between German legislation on the subject and Article 4 (8) of the Convention.

On this point two observations can be made:

1. the prohibition, laid down in Article 4, paragraph 8, which makes the employer personally responsible for the cost of benefits payable to the woman it employs does not affect all benefits, but only those in the paragraphs preceding paragraph 8 (points 1 to 7 of Article 4) (see memo prepared by the International Labour Office at the request of the Austrian Government, on 14 May 1962 - O B Vol XLV of 3 July 1962 - page 259);

2. According to the legal provisions in force in Germany (Art. 1 of the law on continuing paying salaries, Art. 616 of the Civil Law, Art. 63 of the Commercial Code and 133 (c) of the Code of trades), the total salary must continue to be paid by the employer to the working mother in case of illness before or after the schedule for protection. This regulation is valid irrespective of the fact that the working mother comes under a sickness insurance scheme or not, and irrespective of the fact that the illness is caused or not by the consequences of pregnancy. Payment of these costs, which falls to the employer, by the Bund or the sickness funds, as laid down in the Convention in Article 4 (8) is still not possible.

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Based on these observations, it seems that the only difference still existing between the Convention and German legislation consists in the employer's obligation in case of illness caused by pregnancy or delivery.

In the case of employees whose salary is above the ceiling for affiliation, the employer's obligations are a substitute for those of the sickness-insurance funds, or, in the case of insured female workers or employers, are supplements to the sickness insurance benefits which only represent 65% of the salary.

Under these conditions, the Commission considers recommending to the German Government that it attempts to resolve this incompatibility with the Convention, in order to make ratification possible. Furthermore, the Commission wishes to emphasize that, given that the benfits granted in Germany are already greater, in part, than those required by the Convention and the periods of protection longer, the German Government will not wish to maintain regulations which in imposing on employers heavier financial charges for female employees, could cause discrimination of treatment vis à vis women by reducing employment of the latter.

The impediment against ratification for the Netherlands Government is still the claimed incompatibility between Article 1638 (y) of the Dutch Civil Code and Article 4 (8) of the Convention.

The question is whether the prohibition laid down in the Convention against making the employer responsible for the benefits payable in case of pregnancy and delivery, should be considered as an absolute prohibition and whether therefore the Convention forbids making the employer directly responsible for additional protection supplemental to the minimum protection laid down. To be more specific the question which arises in the Netherlands

is whether the provision of Art.1638 (y)[1] of the Common Law which, under certain conditions, makes the employer responsible for the medical care of workers living under his roof, would be an impediment to ratification.

Since there is no stage provided for in Dutch legislation for giving the right to maternity benefits, and since it seems unlikely that workers living under the same roof as the employer are receiving a salary above the ceiling for affiliation which exists for benefits in kind, the likelihood of the women affected receiving additional protection in accordance with the above mentioned provisions of Common Law seems limited to the case where the law on sickness funds would not provide for completely free benefits in kind as laid down at para 3 of Art. 4 of the Convention (pre-natal, childbirth and post-natal care given by a qualified midwife or by a doctor, as well as admission to hospital if necessary).

Without prejudice to the possibility of making use of derogations in cases where it was found that the workers to which Art.1638 (Y) of Common Law applies were engaged in work referred to at Art. 7 of the Convention

.../...

1. Para y of Art. 1638 reads as follows:

"When a worker who lives under the roof of an employer is the victim of an accident or falls sick, and so long as the work contract remains in force (for a maximum duration of six weeks), the employer must ensure that the worker receives adequate medical care and assistance, to the extent that care and assistance are not actually provided under other arrangements. He will have the right to have the cost of this care reimbursed by the worker, but, as regards the first four weeks expenditure, this reimbursement will be claimable only if the illness or accident are the result of a fault, committed intentionally by the worker or of an infirmity about which, at the time of his being taken on, the worker deliberately provided false information to his employer. Any provision whose purpose is to free the employer from these obligations, or to limit their effect, shall be nul and void".

(agricultural work, domestic work in private households) it would be useful to give a remainder of the interpretations given to Art. 4 (8) of the Convention.

In a memorandum sent to the Dutch Government on 2 July 1959, in reply to a request on the scope of Art. 4 (8) of the Convention, the Director-General of the International Labour Office stated:

"... the Convention constitues an aggregate of minimum obligations and each State is naturally free to adopt additionally any provisions which might appear useful: however such provisions must not run counter to the obligations established by the Convention. It is for each State to decide, in the light of all local circumstances and in conformity with the procedure stablished by the ILO for the examination of the reports on ratified conventions whether the payment of a salary or part of a salary by the employer and the allocation by the latter of certain medical care, under a broader system which was concerned not only with maternity alone and which simply completed a system which complied with that laid down by the Convention, constitute, "the due benefits" under the terms of Article 4 of the Convention" (O.J. Vol XVII, No 7, 1959 - page 409).

The ILO Group of experts for the application of conventions and recommendations examined the question in the overall study it made in 1965 on maternity protection, by referring to the countries where maternity benefits were granted under a system of compulsory insurance or by levy on public funds and where concurrently there was a general provision, for example in Common Law, in the Commercial Code etc. which provided that, in certain cases of force majeure (sickness or absence from work for reasons outside the control of the workers), the employer must:

.../...

(a) pay the salary of the worker concerned irrespective of sex, provided that equivalent benefits are not provided by the existing social security system or that the amount of the said benefits is less than the salary;

(b) provide the worker in question with the necessary medical care if such should be the case.

It therefore seems that in such cases the general clauses which covered not only maternity but which were additional to a system which was in conformity with that laid down in the conventions considered would be outside the context of these conventions; consequently, given that the conventions in question constitue a set of minimum obligations, each State which ratifies them is free to adopt additionally any provision which it deemed necessary so long as such provision did not run counter to the obligation established by those conventions.

Accordingly, the Commission considers that the legal problems raised by the Dutch Government are of little practical interest and, in any case, fail to justify the non-ratification of the Convention.

The Danish Government considers that it cannot ratify Convention No 103 because of the essential difference between the latter's rules and national legislation.

In this respect the following should be noted:

(a) Article 7 of Convention No 103 authorizes the States which ratify it to provide, by a statement accompanying ratification, for derogations from the application of the Convention, in particular for certain categories of non-industrial work and for work on farms, subject to these States' obligation to provide in their annual reports on the application of the

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Convention, information on the measures taken or planned to give full effect to the Convention as regards the points which were the subject of the derogations.

(b) Even as regards leave during pregnancy or after delivery, the Danish provisions do not conform with Article 6 of the Convention.

Generally speaking, the Danish Government states that as regards medical and cash benefits, the law of 1 April 1973 on sickness and maternity allowances, gives a maternity allowance during 4 weeks, which is close to the standards fixed by the Convention.

The Commission hopes that Denmark will be able to amend the provisions of its legislation as soon as possible in order to meet the aim fixed by Convention nr. 103.

As for Great Britain, the Commission emphasizes that, even if in fact the regulations on maternity leave enable women to cease work "during the periods considered by the Convention" and even if, as regards the restrictions on dismissal before and during childbirth, Great Britain has adopted "an optimum solution by a more flexible combination", it would require a very small effort on the part of the British Government to align the relevant legislation with the provisions of the Convention in order thus to produce legislative uniformity in this field of Labour Law, by not taking into account solely the problems of commerce and industry.

The Irish Government states that it is not at present in a position to ratify the Convention, since its legislation on the subject does not provide the legal basis required by Convention No 103. Nevertheless in the framework of the studies carried out by the Commission on the status of women,

.../...

Ireland will examine the possibility of ratification.

The Commission has the following comments on the subject:

(a) Convention No 103 does not fix the minimum rate of benefits in cash, Article 4 (2) stipulates that the latter must be "fixed by national legislation in such a fashion that they are adequate fully to maintain the woman and her child under good hygienic conditions and at a reasonable living standard". The Convention only sets the minimum level of these benefits when the latter are established on the basis of previous earnings, which does not seem to be the case in Ireland, where the relevant benefits must represent at least two-thirds of previous earnings (Art. 4 (6)).

(b) It considers, moreover, that the argument used according to which such legislation has never been called for because only 6% of married women go out to work, is invalid since the question of pregnancy and child birth does not affect married women only and that, taking a modern view of the question, Article 2 of the Convention understands the term "woman" to apply to any person of the female sex, married or not, and by the term "child", any child born in or out of wedlock.

Furthermore, while recognizing the great strides made by the Irish Government through the studies carried out by the Committee on the Status of Women, the Commission hopes to see rapid changes in Irish legislation in the direction indicated by Convention No 103.

In view of the above, the Commission hopes that the Member States will be willing to adapt their legislation to the standards fixed by the Convention with a view to establishing equality which will remove the possibility of discrimination between workers of different sex, because of the unfavourable situation of women as regards employment opportunities, brought about by the possibility of pregnancy.

CONVENTION No 111

This Convention has been ratified by Germany, Italy, The Netherlands and Denmark. The situation is as follows for the other five Member States.

The Commission hopes that the ratification procedure will be taken up without delay by Belgium and be successfully concluded rapidly.

As regards France, it is clear that, as regards the temporary prohibitions in respect of naturalized subjects to exercise certain professions (ministerial office, officers of the court, Article 81 of the Code on nationality), the ILO Group of experts for the application of conventions and recommendations during its examination of the scope of the Convention's clause, according to which the distinctions "founded on the qualifications required for a specified job" are not considered as discriminations (Art. 1 (2) and the occasion to note that, in the case of this type of provision "it is possible that the certainty of a durable and definitive attachment of the incumbent to his new nationality may be taken into consideration in this respect" (International Labour Conference - 53rd session - report III - Part IV - page 2065).

The Commission hopes that in Luxembourg the Chamber of Deputies will at any moment pass the Bills amending Common Law as regards the legal status of married women, amendments which are a prerequisite for ratification of the Convention.

The Commission hopes, moreover, that Great Britain and Ireland, after removal of the present impediments, will be able to proceed to ratification. In this respect, it should be made clear that the overall studies carried out in 1963 and 1971 by the ILO Committee of experts for the application of conventions and recommendations show that the Convention No 111 merely requests the countries concerned to pursue their national policy "by methods adapted to national circumstances and usages" and does not insist that they take measures which, in certain fields, would not be adapted to those circumstances and usages.

In view of the above, the Commission feels compelled to insist that each of the five named Governments make every effort speedily to ratify this Convention, which regulates a very important sphere for the provision of true equality between workers within the Community.

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CONVENTION No 117

As has been stated in the previous report, having regard to the very specific character of this Convention and having regard to the fact that most Member States, including the new States, have little interest in it, the Commission does not feel that it should insist on ratification.

CONVENTION No 118

This Convention has been ratified by six Member Countries of the Community, excluding Belgium, Luxembourg and the United Kingdom.

It should be made clear that in the relations between the Member States of the Community the equality of treatment, sending benefits abroad and totalising the accumulated benefit rights are ensured by Regulations No's 1408/71 (1) and 574/72 (2) as regards paid workers. Ratification of the Convention would, on the other hand, constitute progress in respect of social security arrangements for independent workers : it would constitute for the States the requirements to institute a system of preservation of rights, an obligation they could meet either by preparing and adopting an appropriate Community instrument, or by signing and ratifying the European Convention on Social Security drafted by the Council of Europe.

The ratification of Convention No 118 would additionally tend to ensure equality of treatment for nationals of third countries - an ever increasing number of whom live and work in the Community countries - and would provide an incentive to coordination of the bilateral conventions between the Member States and third countries.

As regards the difficulties which might prevent ratification of the Convention by Belgium, it should be noted that it is up to the States which ratify the Convention to specify, in a statement accompanying ratification - in accordance with Article 2 - the social security branches for which they accept the Convention's obligations. A State for which, because of a given branch, application of the Convention would raise difficulties, is evidently not compelled to accept the Convention's obligations in respect of that branch.

As regards family benefits, Article 6 of the Convention compells garanteeing family allowance benefit to the nationals of the Member States

(1) O.J. of the European Communities L 149 of 5 July 1971 .../...
(2) O.J. of the European Communities L 74 of 27 March 1972

concerned and of the nationals of all the other Member States having accepted the Convention's obligations for the said branch, in respect of children living in one of these Member States, "under the conditions and limits to be fixed by common agreement between the Member States concerned". Consequently, limits may be fixed to the amount of family allowances so paid. To the extent that family allowances were to be paid without limit for children living outside the Member States this can be the result of an internal decision and does not require agreement with the other Member States which have accepted the Convention's obligations for the family allowances branch. On the other hand, a Member State, which granted unilaterally the benefit of family allowances without restriction to its own nationals living abroad, could not avail itself of Article 6 of the Convention to fix limits for the payment of family allowances to nationals of the other Member States for their children in the same situation, for, in accordance with Article 4, it must (if it has accepted the Convention's obligations for the family benefits' branch) ensure for all the Member States having ratified the Convention, whether the latter have or have not accepted the obligations of the said branch, equality of treatment without the condition of residence on its own territory.

It should finally be emphasized that, if Articles 5, 7 and 8 apply only to the extent of acceptance of the Convention's obligations, in respect of one or more branches of social security on which they have a bearing, the obligations which they impose on the States having ratified the Convention are not of equal meaning. Article 5 compels the taking of necessary measures to ensure payment of disablement, old age and widows and orphans pensions, death benefits and pensions for accidents at work and occupational diseases where the recipient lives abroad. Articles 7 and 8 simply compel the conclusion of conventions with the other Member States concerned in order to ensure payment of the other benefits in case of residence abroad and the

.../...

safeguarding of rights in course of acquisition in the different branches of social security. When referring to the "interested" Member States, the Convention does not necessarily insist that conventions be concluded between all the Member States which have accepted the Convention's obligations for the same branches; account is taken of the extent of the migratory flows between the latter. On the other hand, efforts must be made in good faith to conclude with these Member States conventions giving effect to the provisions of the Convention. The only undertaking which Articles 7 and 8 imply for the States which have ratified the Convention is to make every effort to conclude agreements which will ensure the safeguarding of rights. They have, however, every freedom to establish the methods used in these agreements, especially as in accordance with Article 9 of the Convention, the Member States may depart from the Convention under specific arrangements, provided that they safeguard the rights under conditions which "on the whole" are no less favourable than those laid down in this Convention.

As regards Luxembourg's difficulties it should be pointed out that Article 5 of the Convention enables the payment abroad of non-contributory benefits to be subject to the conclusion of the international or multinational conventions provided for by the application of Article 7. This derogation, which is authorized by para 2 of Article 4, applies however, only to non-contributory benefits in the sense of Article 2 (6a) of the Convention.

As regards the United Kingdom, although it is good to note that the British Government accepts the principle of maintaining the rights acquired by migrant workers, it is regrettable that the Convention has not yet been ratified. The experience that the United Kingdom will gain on the application of Community arrangements for social security in respect of migrant workers will undoubtedly be very useful in helping to overcome the reservations and difficulties existing in that country in respect of ratification of the Convention in question.

.../...

CONVENTION No 119

In view of the importance of this Convention, which has, however, been ratified by only one country, the Commission is deeply concerned about this state of affairs, and considers that it is its duty to insist that the Member States reconsider their positions in a spirit of Community interdependance.

As regards the Benelux countries, the Commission hopes to see the comparative examinations between the Benelux Convention and this Convention taken up again for purposes of coordination, and to see the political impediments removed which led to these three countries suspending the harmonization of their legislation on dangerous machines.

As for France, since the differences between the existing national regulations and the provisions of the Convention are purely ones of form, the Commission wonders whether ratification of this Convention would be possible, withouth having to wait for a possible amendment to the Labour Code, which will be a lengthy process.

The Commission hopes that ratification of the Convention by Germany and Denmark will shortly take place.

The Commission hopes that the United Kingdom Government, will carry out its intention to amend the existing legislation and proceed to ratification of Convention No 119.

It should be noted that for Ireland the provisions laid down in the Convention are not "exceptional measures", in view of the present state of the technical trend in all fields of work. Moreover, it should be pointed out that Article 17 of the Convention allows the restriction, by a statement attached to ratification, of its application to certain sectors of economic activity considered as making heavy use of machinery.

The Commission hopes, however, that after revision of the legislation as regards the safety, health and well-being of workers, the Irish Government will be able to ratify the Convention.

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CONVENTION No 120

This Convention has been ratified by five of the Member Countries of the Community.

As regards Belgium and Luxembourg, the Commission once again emphasizes that the difficulties that these two countries take into account on the subject of family enterprises could be overcome because of the flexible nature of the Convention, so long as the competent authorities consult the workers and employers organizations on the exclusion of these enterprises in accordance with Article 2 of the Convention. Whilst on the subject, it should be remembered that Sweden ratified the Convention, but excluded family enterprises from its application, on the basis of Article 2, and that the ILO Committee of experts raised no objection to that exclusion.

In the specific case of Belgium, the Commission expresses the hope that the ratification procedure undertaken by the Government will speedily be successfully concluded.

Since Ireland states that in its broad lines the existing legislation accords with the provisions of the Convention, the Commission hopes that the regulations relating to underground premises or those without windows and for the prevention of noise, will be revised as soon as possible, in order that the legislation in this field should be uniform within the Community.

As regards The Netherlands, the Community expresses the hope that the planned legislative measures are carried out so that ratification may proceed without further delay.

The Commission hopes to see the four named States taking internal measures which will enable the Convention to be ratified.

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CONVENTION No 121

This Convention has been ratified by five of the Member States of the Community and the Commission considers duty bound to insist that the other four States take measures which will make ratification of the Convention possible.

As regards Denmark, it is very difficult for the Commission, for lack of sufficiently precise and complete information, to assess the extent of the amendments to Danish legislation which the ratification of the Convention would call for. Nevertheless, the Commission hopes that these amendments will shortly be dealt with appropriately by the Danish Government.

As regards France, it should be recalled that Article 8 of the Convention does not require the adoption as a whole of the list of occupational diseases; it requires that the national list should contain at least those diseases listed in the table attached to the Convention.

Moreover, the same Article provides that the definition of occupational diseases may be accompanied by "prescribed conditions", in other words according to Article 1 (a) by conditions "determined by or in pursuance of national legislation".

It should be noted that Conventions 17, 18 and 42, concerned with accidents at work and occupational diseases, revised by Convention 121, have been ratified by France.

The list of occupational diseases annexed to Convention 121 includes four which do not appear on the list of Convention 42. These diseases (caused by carbon disulfide, manganese, chromium and beryllium) are all recognized in France.

France's ratification of this Convention seems according to the Commission to be held up by minor considerations.

As regards the difficulties mentioned by Italy, it should be noted that the exclusion of the majority of employees from the field of application of Italian legislation in respect of accidents at work and occupational diseases, appears to be a big gap in protection. Of course paragraph 2 of Article 6 of

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the Convention authorizes exceptions on condition that not more than 10% of total salary and wage earners are excluded. The statistics published by the International Labour Office (Labour statistics yearbook, the cost of social security) show, however, that the number of workers covered is less than 90% of the total number of salary and wage earners.

The British Government has indicated that lack of flexibility or difficulties of interpretation of certain of the Convention's provisions are impediments to ratification of the instrument. It would be useful if the British Government could state precisely to which of the Convention's provisions it refers, which would enable the Commission to be in a position, if need be to make suggestions.

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CONVENTION No. 122

Luxembourg is at present the only Community country which has not yet ratified this Convention.

While emphasizing that Luxembourg's labour policy has the same aims as the Convention, the Commission notes that in so far as the difficulties mentioned by the Luxembourg Government are concerned, Article 2 of the Convention lays down certain principles of general procedure for the determination and the application of measures to be adopted in order to attain the aims stated in Article 1. The Convention requires each State to pursue these aims by "methods adapted to national conditions and customs" (Art. 1 (3)), but leaves each State to decide the technical standards to be adopted in order to attain the aims of the Convention.

Since the Luxembourg Government states that the main aim of the Convention has already been attained, it seems that no additional measures are required provided that those taken previously in order to maintain full employment are regularly reviewed (Art. 2 (a)).

Accordingly the Commission expresses the earnest hope that Luxembourg will ratify the Convention.

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- 92 -

EUROPEAN SOCIAL CHARTER

EUROPEAN CODE OF SOCIAL SECURITY AND PROTOCOL THERETO

Six Member Countries of the Community have ratified the European Social Charter. Twelve years after its signature it is still being studied by the three other States.

The Commission's firm hope is that the procedure started by the Belgian Government will continue and be shortly completed and that the Luxembourg Government will be able quickly to start the later phases of the required procedures, on the basis of the report that an interministerial Committee has been instructed to submit to it. It regrets the slow progress made on the question in the Netherlands.

Seven Member Countries of the Community have ratified the European Code of Social Security (only four States have also ratified the Protocol).

The Commission hopes that the results of the studies which the competent departments in France are undertaking will be successful and consequently lead decisively to ratification of this instrument. It expresses the wish, as an impartial body, that it will be possible for Italy to complete the necessary procedure.

Without entering into the deep considerations which have prevented speedy ratification of these two instruments, it is clear that two points stand out:

(a) in certain cases, the non-conformity of national legislation with the standards set by the Charter have frequently been invoked in the past;

(b) the slowness of the procedures delays giving effect to the moral obligation accepted when signing the instrument.

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SUMMARY TABLE OF RATIFICATIONS AT 31.12.1974

	B	D	DK	F	Ir	I	L	N	UK
Convention 103						X	X		
" 111		X	X			X		X	
" 117						X			
" 118		X	X	X	X	X		X	
" 119						X			
" 120		X	X	X		X			X
" 121	X	X			X		X	X	
" 122	X	X	X	X	X	X		X	X
European Social Charter		X	X	X	X	X			X
European Code of social Security	X	X	X		X		X	X	X
Protocol	X	X					X	X	