

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

RATIFICATION PROCEDURE FOR THE ILO CONVENTION CONCERNING
SAFETY IN THE USE OF CHEMICALS AT WORK

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SAFETY IN THE USE OF CHEMICALS AT WORK**

Communication from the Commission to the Council

1.1 By its decision of 30 November 1989 on the International Labour Conference negotiations on safe use of chemicals at work, the Council had decided that the Community would participate in the negotiations of the International Labour Conference in Geneva with a view to the adoption by the ILO of a convention and recommendation on this subject. This decision was in accordance with an agreement between the Commission and the Council, reached in December 1986, with regard to the procedure to be followed for the preparation, negotiation and adoption of ILO conventions. Under the terms of this agreement, in matters falling within the "exclusive competence" of the Community, it would be for the Commission to put forward a joint position on behalf of the Community at the negotiating stage, in accordance with Article 228 of the EEC Treaty.

The Commission has thus negotiated the Convention and Recommendation in question on behalf of the Community in accordance with the Council's decision of 30 November 1989.

1.2 Convention No 170 and Recommendation No 177 concerning safety in the use of chemicals at work were adopted by the ILO Annual Conference in June 1990.

1.3 The ILO's Constitution provides for a specific ratification procedure, namely:

- The Members of the ILO are (individual) States [ILO Constitution, Article 1(2)] and the conventions adopted by the ILO are open to ratification only by ILO Members.
- The Constitution of the ILO sets out in detail the obligations of its Members in respect of the conventions and recommendations it adopts. These principally entail their submission to the competent authority and ratification.

1.4 When an international convention concerns matters falling within the competence of the Community, the Community alone, according to Community law, is empowered to ratify such conventions.

1.5 A means has been found of reconciling the different obligations under the ILO Constitution with those under Community law, which should enable the Community to ratify international labour conventions falling within its competence.

This procedure has already been submitted to the Council in respect of Convention 153 concerning hours of work and rest periods in road transport and Convention 162 concerning safety in the use of asbestos.

A. Submission to the competent authority

When an ILO Conference has adopted an international convention or recommendation, the instruments are communicated by the International Labour Office to all the ILO Members for ratification [ILO Constitution, Articles 19 (5)(a) and (6)(a)].

Each Member undertakes that it will, within a period of one year at most from the closing of the session of the Conference (extendable up to 18 months in exceptional circumstances), 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) and (6)(b)].

Members must inform the Director-General of the International Labour Office of the measures taken to bring the convention before the said competent authority, with particulars of the authority in question and its decisions [ILO Constitution, Articles 19 (5)(c) and (6)(c)].

According to the ILO's official interpretation⁽¹⁾, the competent authority means the authority with legislative powers in matters pertaining to the convention. The obligation on Member States to bring conventions and recommendations before the "competent authority" includes supplying the latter with specific reasoned proposals concerning the appropriate action in respect of these instruments and, in the case of a convention, recommending acceptance or rejection. These proposals can take various forms according to the constitutional system in force.

(1) Referred to in an article by Mr Nicolas Vaiticos entitled "The International Labour Organization and National Parliaments" which appeared in the Inter-Parliamentary Bulletin (1969, No. 1, p. 16 et seq.).

In the case of conventions falling within the competence of the Community, the Member States of the Community must in this case forward a letter to the Director-General of the International Labour Office as soon as possible and within a period of one year at most from the closing of the Conference session to the effect that by virtue of the Treaty establishing the EEC and its implementing procedures, the competent authorities within the meaning of Articles 19 (5)(b) and (6)(b) of the ILO Constitution are the competent

Community Institutions and that the convention has therefore been submitted to these institutions. The letter must also state that the competent Community Institutions will inform the International Labour Office of their action in respect of the convention submitted.

In the context of the Convention and Recommendation on safety in the use of chemical substances at work, this procedure was described in the Commission staff working paper SEC(91)575. A draft letter was appended.

Discussion of the text of the letter to be sent to the International Labour Office revealed a difference of opinion at this stage as to whether the Community had exclusive or concurrent competence in relation to the Convention and Recommendation in question. The delegations of the Member States were nonetheless able to agree on the text of a letter to be sent to the International Labour Office. The Commission remains of the opinion that Community competence in this matter is exclusive and that under the terms of Articles 5 and 228 of the EEC Treaty, the Member States should assist the Community in performing its function and refrain from any action in contradiction with it.

As regards the content of the reasoned proposals to be brought before the competent authorities before any decision is taken in respect of a convention or recommendation, Article 5(1) of Convention No 144 (1976) concerning tripartite consultations on international labour standards stipulates that the competent authority must take the decision in the light of the results of tripartite consultation between public authorities and employers' and workers' organizations.

In order to comply with Convention 144, the Commission therefore considers that the views expressed by workers' and employers' organizations at national level on a convention brought before the Community should be communicated to the Commission by the Member States before the Commission submits a proposal concerning the convention to the Council.

Governments must carry out these consultations within a reasonable period. The Member States must subsequently forward the results of consultation to enable the Commission to submit to the Council as early as possible a proposal on the action to be taken following submission to the "competent authority".

B. Ratification

According to the ILO Constitution, a Member which has obtained the consent of the competent authority must communicate the formal ratification of the convention to the Director-General of the International Labour Office and take such action as may be necessary to make effective the provisions of the convention [ILO Constitution, Article 19 (5)(d)].

All conventions thus ratified are communicated by the Director-General of the International Labour Office to the Secretary-General of the United Nations to be registered in accordance with the provisions of Article 102 of the United Nations Charter [ILO Constitution, Article 20]. The extent of ratification by the ILO Members is communicated by the Director-General of the International Labour Office to the Secretary-General of the United Nations.

Every ILO Member 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] and send a copy to the national organizations [Article 23 (2)].

Since the Convention on the safety in the use of chemical substances at work relates to matters falling within the exclusive competence of the Community, the procedure is as follows.

As regards ratification, following consultation by the Member States with national employers' and workers' organizations, the Commission will transmit to the Council a communication concerning the possible conclusion of the Convention. It is for the Council to decide whether the Convention should be accepted on the basis of this proposal.

If the decision is positive, the Community would inform the Director-General of the International Labour Office of acceptance of the Convention by the Community. To enable the Director-General of the International Labour Office to register this acceptance as in good and due form, the Member States would simultaneously inform the ILO that, in view of acceptance by the Community, ratification was in order as provided for in Article 19 (5)(d) of the ILO Constitution.

CONCLUSION

The Council is therefore asked to agree the procedure described above and to decide that:

1. the Member States, having sent to the International Labour Office as quickly as possible the letter on submission to the Community institutions of the Convention and Recommendation on the safety in the use of chemical substances at work, shall consult their social partners to ascertain the views of national employers' and trade union organizations on action to be taken in respect of the instruments concerned, including, where appropriate, ratification of the Convention, and inform the Commission as early as possible of the results of consultation;

2. If it is decided to accept the Convention, the Member States shall inform the Director-General of the International Labour Office that acceptance of the Convention by the Community alone constitutes ratification as provided for in Article 19 (5)(d) of the ILO Constitution.