International Labour Organisation (ILO) Convention of 1990 concerning Safety in the Use of Chemicals at Work (Convention No 170): authorisation for Member States to ratify

2012/0320(NLE) - 20/11/2012 - Preparatory document

PURPOSE: the authorisation of Member States to ratify, in the interests of the European Union, the Convention concerning Safety in the Use of Chemicals at Work, 1990, of the International Labour Organisation (Convention No 170).

PROPOSED ACT: Council Decision.

BACKGROUND: the Chemicals Convention No.170 was adopted at the 77th Session of the International Labour Conference on 25 June 1990 and entered into force on 4 November 1993. The purpose of the Convention is the **prevention and reduction of chemically induced illnesses and injuries at work, and the Convention shall also enhance the protection of the general public and the environment**.

As of June 2012, the Chemicals Convention No.170 has been ratified by 17 State parties to the ILO. It is among the ILO Conventions that have been classified by the ILO as up to date and are therefore actively promoted.

The European Union (EU) is committed to promote the decent work agenda, both internally and in its external relations. Labour standards are a core element of the concept of decent work. The ratification of ILO Conventions by Member States thus sends an important signal as to the coherence of the Union's policy in improving labour standards worldwide. It is therefore necessary that any legal impediments for ratification by Member States be removed at the level of the EU for such Conventions, the substance of which does not cause concern in the light of the existing Union *acquis*.

Shared competences: in accordance with the rules on external competences that have been elaborated by the Court of Justice of the European Union, and more specifically as regards the conclusion and ratification of the Chemicals Convention No.170, **Member States are not in a position to autonomously decide on the ratification of the Convention without prior authorisation by the Council**, because parts of the Convention fall under Union competence. At the same time, **the European Union as such cannot ratify any ILO Convention,** because only States can be parties thereto.

If the subject-matter of an agreement or contract falls in part within the competence of the Union and in part within that of the Member States, the Union institutions and the Member States must therefore take all the necessary measures in order to best ensure cooperation in the ratification of the Convention and in the implementation of commitments resulting from that Convention.

With reference to the Chemicals Convention No 170, the Court had already stated in 1993, that the degree of regulation on classification, packaging and labelling of dangerous substances and preparations had reached an advanced stage, to the point where Member States were no longer able to act sovereign in the external sphere in this regard. Since then, the related Union *acquis* has been further developed and consolidated. The area is mainly governed by Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures, hereinafter "the Regulation". The Regulation implements at Union level the Globally Harmonised System of Classification and Labelling of Chemicals

("the GHS") developed by the United Nations. The Union legislation, which is based on Article 114 TFEU, is much more detailed than the general principles established in the Chemicals Convention No 170. There is no contradiction between the general principles established in the Convention and the Regulation.

There is no inconsistency in the approach taken under the rules on the safety and health of workers between the Convention and the minimum requirements under the Union *acquis* in this area.

The aim of this proposal is therefore to authorise Member States to ratify, in the interests of the Union, those parts the Chemicals Convention No 170 that fall under Union competence.

IMPACT ASSESSMENT: no impact assessment was undertaken.

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union in conjunction with Article 218 (6) (a) (v) and Article 218(8), first subparagraph thereof.

CONTENT: this proposal will permit Member States to ratify the ILO's Convention No 170 of 1990 concerning safety in the use of chemicals at work.

Main parts of the Convention: the Convention is subdivided into parts of which the main ones deal with the following:

- scope and definitions;
- general principles;
- classification systems and related measures;
- obligations of employers and the duties of workers respectively;
- workers' rights, including the right of the workers to remove themselves from a dangerous situation while remaining protected against undue consequences when exercising their rights; communication duties involved in exporting towards importing ILO Member States.

The main provisions of the Convention cover: (i) the establishment of evaluation of chemicals,(ii) the obtaining of information by employers from their suppliers, (iii) the provision of information to workers, the need for appropriate preventive measures, and (iv) the establishment of protective programmes for workers.

BUDGETARY IMPLICATION: the proposal has no impact on the EU's budget.