



Brussels, 20.11.2012  
COM(2012) 677 final

2012/0320 (NLE)

Proposal for a

**COUNCIL DECISION**

**authorising 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 Organization (Convention No 170)**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

This proposal will enable Member States to legally ratify Convention No 170 concerning Safety in the Use of Chemicals at Work, 1990 of the International Labour Organisation (ILO), hereinafter "the Chemicals Convention No.170" or "the Convention".

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*.

The provisions of the Chemicals Convention No 170 address the following: the establishment of evaluation of chemicals, the obtaining of information by employers from their suppliers, the provision of information to workers, the need for appropriate preventive measures, and the establishment of protective programmes for workers. Part I of the Convention contains provisions on scope and definitions, part II establishes general principles, part III relates to classification systems and related measures, parts IV and V refer to the obligations of employers and the duties of workers respectively, while part VI stipulates 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. Part VII relates to the communication duties involved in exporting towards importing ILO Member States.

In the EU, chemicals safety is an important concern under social, environmental and internal market policies, and is regulated by a body of Union legislation, including:

- Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006<sup>1</sup>;

- Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation

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<sup>1</sup> OJ L351, 31.01.2008, p.1.

(EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC<sup>2</sup>;

- Directive 2004/37/EC of the European Parliament and the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC)<sup>3</sup>;

- Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work (14<sup>th</sup> individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)<sup>4</sup>.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

Not applicable.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

In accordance with the rules on external competences that have been elaborated by the Court of Justice of the European Union<sup>5</sup>, and more specifically as regards the conclusion and ratification of the Chemicals Convention No.170<sup>6</sup>, Member States are not in a position to autonomously decide on the ratification of the Convention without prior authorization 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<sup>7</sup>.

As regards three ILO Conventions adopted over the last decade, parts of which fell under the competence of the Union, the Council has therefore authorized Member States to ratify, in the interests of the Union, those parts falling under Union competence<sup>8</sup>.

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<sup>2</sup> OJ L 396, 30.12.2006, p.1.

<sup>3</sup> OJ L 158, 30.4.2004, p.50.

<sup>4</sup> OJ L 131, 5.5.1998, p.11..

<sup>5</sup> AETR judgment of the ECJ, case 22/70 of 31 March 1971, ECR, 1971, 263; see also Article 3(2) TFEU which codified these principles.

<sup>6</sup> Opinion 2/91 of the ECJ of 19 March 1993, ECR 1993-I, page 1061.

<sup>7</sup> Opinion 2/91 of the ECJ (ibid), para. 36, 37 and 38.

<sup>8</sup> Over the last decade, three Council decisions have been adopted authorising Member States to ratify ILO Conventions: Council Decision of 7 June 2007 authorizing Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organization (OJ L 161/63 of 22.6.2007); Council Decision of 14 April 2005 authorizing Member States to ratify, in the interests of the European Community, the Seafarers' Identity Documents Convention of the International Labour Organization (Convention no 185), OJ L 136/1 of 30.5.2005, and Council Decision of 7 June 2010 authorizing Member States to ratify, in the interests of the

Specifically 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<sup>9</sup>. 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.

It follows from Article 19(8) of the ILO Constitution that the Convention contains minimum standards, which means that national implementation can provide for higher standards than those under the Convention.

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. This means that Union measures can be more stringent than the ILO standards and vice versa.<sup>10</sup>

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.

The proposal is based on Article 218 (6) of the Treaty on the Functioning of the European Union (TFEU), applicable by analogy, in conjunction with Article 114 TFEU, which provides the legal basis for Union legislation on the approximation of laws in the area of classification, labelling and packaging of substances and mixtures.

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European Union, the Work in Fishing Convention, 2007, of the International Labour Organisation (Convention No 188), OJ 145/12 of 11.6.2010.

<sup>9</sup> Opinion 2/91 of the ECJ, para 25 and 26.

<sup>10</sup> Opinion 2/91 of the ECJ, para 18.

Proposal for a

## COUNCIL DECISION

**authorising 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 Organization (Convention No 170)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 in conjunction with Article 218 (6) (a) (v) and Article 218(8), first subparagraph thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament<sup>11</sup>,

Whereas:

- (1) The European Parliament, the Council and the Commission are promoting the ratification of international labour conventions that have been classified by the International Labour Organisation as up-to-date, as a contribution to the European Union's effort to promote decent work for all both inside and outside the Union, of which the protection and improvement of workers' health and safety is an important aspect.
- (2) The rules under part III of Convention No 170 concerning Safety in the Use of Chemicals at Work, 1990 of the International Labour Organisation (ILO), hereinafter "the Convention", are covered to a large extent by Union *acquis* on the approximation of laws, regulations and administrative practices in the area of classification, packaging and labelling that has been developed since 1967 and further consolidated<sup>12</sup>.
- (3) As a consequence, parts of the Convention fall within the competence of the Union, and Member States may not enter into commitments outside the framework of the Union's institutions in relation to these parts<sup>13</sup>.
- (4) The European Union cannot ratify the Convention, as only States can be parties thereto.

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<sup>11</sup> OJ C , , p. .

<sup>12</sup> Regulation(EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, OJ L 353/1 of 31 January 2008.

<sup>13</sup> Opinion 2/91 of the European Court of Justice of 19 March 1993, ECR 1993-I, page 1061, para.26.

- (5) In this situation, Member States and the Union's institutions must cooperate in regard to the ratification of the Convention.
- (6) The Council shall therefore authorise the Member States that are bound by Union law on the approximation of laws, regulations and administrative practices in the area of classification, packaging and labelling to ratify the Convention in the interests of the European Union.

HAS ADOPTED THIS DECISION:

*Article 1*

Member States are hereby authorised to ratify, for the parts falling under the competence conferred upon the Union by the Treaties, the Convention concerning Safety in the Use of Chemicals at Work, 1990, of the International Labour Organization (Convention No 170).

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*