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OPINION OF THE LEGAL SERVICE¹

From:	Legal Service
Subject:	Council decision on ILO Convention 190 on violence and harassment – competence of the EU for the ratification of the Convention

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I. INTRODUCTION

1. On 22 January 2020, the Commission tabled a proposal for a Council Decision authorising Member States to ratify, in the interest of the European Union, the Violence and Harassment Convention, 2019 (No. 190) of the International Labour Organization, concerning parts of the convention ('Commission proposal' or 'Proposal').²

¹ This document contains legal advice protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not released by the Council of the European Union to the public. The Council reserves all its rights in law as regards any unauthorised publication.

² COM(2020)24 final. This is the first Union legal act proposed by the Commission with regard to ILO Convention No. 190. The Commission did not present a recommendation to open negotiations on this Convention in the interest of the Union, nor a proposal for a Council decision on its signature. Nevertheless, the Commission acted as a coordinator of the Member States' positions throughout the negotiations. It chaired the internal Union coordination meetings and played an active role in defining the commonly agreed lines to take.

2. The Commission proposal has been discussed in the Working Party on Social Questions on three occasions.³ Following these discussions, the Presidency revised the text⁴, and Coreper discussed it on three occasions.⁵
3. Following a request by some delegations at the Coreper meeting of 18 December 2020, the Presidency invited the Council Legal Service to analyse the competences of the EU in relation to the Violence and Harassment Convention, 2019, No. 190⁶ ('the Convention'), and to identify the legally viable ways forward regarding its ratification. This opinion responds to this request. It takes into account the recent Opinion 1/19 of the Court of Justice on the Istanbul Convention, which has been pending since 2019 and was delivered on 6 October 2021.⁷

II. CONTEXT

4. The International Labour Conference adopted the Convention in June 2019, at its 108th (centenary) session, together with Recommendation No. 206.⁸
5. The Convention is the first international instrument setting out standards to tackle work-related violence and harassment. Its 20 articles are divided into 8 chapters. Chapters I and II define the scope of application, while Chapter III sets out the core principles. The key operative provisions of the Convention are contained in Chapter IV and deal with the protection and prevention of violence and harassment in the world of work. Chapter V provides for measures on enforcement and on remedies. Chapter VI addresses awareness raising, Chapter VII specifies the possible methods of application of the provisions of the Convention, and Chapter VIII contains provisions on its ratification and entry into force.

³ On 4 February, 18 February and 4 March 2020.

⁴ ST 6533/20.

⁵ On 11 March and 9 and 18 December 2020.

⁶ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190

⁷ Opinion of the Court of 6 October 2021, *Istanbul Convention*, 1/19, EU:C:2021:832. See also the CLS Information note in ST 13800/21 of 11 November 2021 concerning that opinion of the Court.

⁸ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R206

6. In October 2019, the Council adopted a set of conclusions promoting the ILO Centenary Declaration and calling upon the Member States and the European Commission
*“to strengthen efforts and take appropriate action in line with the ILO Centenary Declaration, to: (...) eliminate (...) violence and harassment in the world of work.”*⁹
7. At the time of writing, ten ILO Members (two of them being EU Member States) have proceeded to ratify the Convention.¹⁰ The Convention entered into force on 25 June 2021.
8. **DELETED**¹¹

⁹ Council Conclusions on The Future of Work: the European Union promoting the ILO Centenary Declaration, 25 October 2019, ST 13436/1/19 REV 1.

¹⁰ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:3999810.

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9. This opinion analyses whether and to what extent the EU has competence in relation to the Convention and the nature of such EU competence (section III). Based on the outcome of that analysis, this opinion also examines the legally viable options for proceeding with the ratification of the Convention (section IV).

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