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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	22 January 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 24 final
Subject:	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

Delegations will find attached document COM(2020) 24 final.

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2020/0011 (NLE)

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

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The proposed Council Decision will enable Member States to ratify the Convention concerning the elimination of violence and harassment in the world of work, which may be cited as the Violence and Harassment Convention, 2019 (No. 190) (hereinafter the Convention), of the International Labour Organization (ILO), for the matters falling under Union competence.

2. CONTEXT OF THE PROPOSAL

As recently highlighted by the #metoo and related movements, violence and harassment in the world of work, including gender-based violence and harassment, are pervasive throughout the world. Prevention efforts need to be enhanced and victims protected.

To address this, the 108th (Centenary) International Labour Conference on 21 June 2019 adopted the ILO Violence and Harassment Convention, 2019 (n°190) together with the Violence and Harassment Recommendation, 2019 (No. 206) (hereinafter the Recommendation).

The Convention is the first international instrument setting out specific, globally applicable standards on tackling work-related harassment and violence and specifying the measures required from states and other relevant actors. The Convention and the Recommendation seek to establish an inclusive, integrated and gender-sensitive approach for the prevention and elimination of violence and harassment in the world of work.

The European Union (EU) is committed to promoting human rights and decent work, including safe and healthy working conditions, equality between women and men and to ending discrimination, both internally and in its external relations.

In the EU, the European Social Partners concluded a "Framework agreement on harassment and violence at work"[1] in 2007, building on the Commission consultation of the European Social Partners concerning violence at the workplace and its effects on health and safety at work[2]. It provides the employers, workers and their representatives an action-oriented framework to identify, prevent and manage problems of harassment and violence at work.

It is in the interest of the EU to promote the implementation of an international instrument to fight violence and harassment in the world of work in line with its internal framework, because the Convention addresses certain areas of Union law and the European Union is not in a position to accede to it. The Convention's substance does not cause concern in the light of the existing EU *acquis*. It is therefore in the interest of the EU that the Convention be ratified by EU Member States. To that aim, and in view of EU competence in the areas addressed by

1 COM (2007) 686.

2 C/2004/5220.

the Convention, it is necessary that any legal impediments at the EU level to the ratification of the Convention by EU Member States be removed.

2.1 Content of the Convention

The contents of the ILO Violence and Harassment Convention, 2019 (No. 190) can be summarised as follows:

The preamble of the Convention:

- Recognises the right of everyone to a world of work free from violence and harassment;
- Recognises that violence and harassment in the world of work can constitute a human rights violation or abuse, and that violence and harassment is a threat to equal opportunities, unacceptable and incompatible with decent work;
- Acknowledges that violence and harassment in the world of work affects a person's psychological, physical and sexual health, dignity, and family and social environment and may prevent persons, particularly women, from accessing, remaining and advancing in the labour market;

Under Part I, definitions, the Convention:

- Sets a single definition for "violence and harassment", covering a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm (Article 1.a);
- Defines gender-based violence and harassment (Article 1.b);
- Establishes, without prejudice to the single definition of "violence and harassment", that violence and harassment may be defined as a single concept or as separate concepts in national laws and regulations (Article 1.2).

Under Part II, scope, the Convention:

- Protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer(Article 2);
- Applies to violence and harassment in the "world of work", which goes beyond the workplace and includes work-related facilities and communications, travel and social activities, as well as employer-provided accommodation and commuting to and from work (Article 3).

Under part III, core principles, ratifying States shall, inter alia:

- Adopt an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work, that includes prohibiting in law violence and harassment (Article 4.2);

- Ensure that relevant policies address violence and harassment (Article 4.2.b);

- Adopt a comprehensive strategy to combat violence and harassment, and ensure access to remedies and support for victims (Article 4.2.c);

- Adopt laws, regulations and policies ensuring the right to equality and non-discrimination in employment, including for vulnerable groups and groups in situations of vulnerability (Article 6).

Under part IV, protection and prevention, ratifying States shall, in particular:

- Adopt appropriate measures to prevent violence and harassment in work contexts (Article 8),

- Adopt laws and regulations requiring employers to prevent violence and harassment by, inter alia, assessing the risks of violence and harassment, providing information, and training to those concerned (Article 9).

Moreover, under part V, enforcement and remedies, ratifying states shall take appropriate measures to ensure easy access to appropriate and effective remedies; recognise the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work; and ensure that workers have the right to remove themselves from a work situation of imminent and serious danger related to violence and harassment (Article 10).

The Convention further includes provisions on guidance, training and awareness raising.

2.2 Union law in the field of violence and harassment in the world of work

Some aspects of the Convention, as supplemented by the Recommendation, involve areas covered by EU law, in particular:

- Article 153(1)(a) and (i) and Article 157 (3) TFEU, according to which the Union shall support and complement the activities of the Member states concerning improvement in the working environment to protect workers' health and safety and equality between men and women with regard to labour market opportunities and treatment at work as well as adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation;

- Framework Directive 89/391/EEC[3], covering all risks for the health and safety of workers at work, including psychosocial risks such as harassment and violence;

[3] Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC) OJ L 183, 29.6.1989, p. 1–8.

- 2007 European Social Partners "Framework agreement on harassment and violence at work"[4] concluded under Article 138 of the EC Treaty (now Article 155 TFEU), providing employers, workers and their representatives an action-oriented framework to identify, prevent and manage problems of harassment and violence at work;

- EU Strategic Framework on Health and Safety at Work 2014-2020[5] and the Commission Communication on "Safer and Healthier Work for All - Modernisation of the EU Occupational Safety and Health Legislation and Policy"[6] highlighting the importance of improving the prevention against psychosocial risks at the workplace;

- Directive 2006/54/EC addressing the application of the principle of equal treatment and equal opportunities for men and women in employment and occupation, and including provisions on the prohibition of harassment and sexual harassment[7];

- Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation[8];

- Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin[9];

- Council decisions of 11 May 2017 on the signing on behalf of the Union[10] of the Council of Europe Convention on preventing and combating violence against women and domestic violence "The Istanbul Convention"[11] and the pending discussion in the Council on the Union's accession to the Istanbul Convention, which includes provisions on preventing violence against women and domestic violence, including sexual harassment, protecting victims of such violence and punishing perpetrators.

Some aspects of the Convention and the Recommendation are further related to areas covered by Union law in the fields of judicial cooperation and victims' rights[12], migration, asylum and freedom of movement[13], where secondary Union law[14] lays down rights for victims of crime

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4 COM (2007) 686.

5 COM (2014) 332 final.

6 COM/2017/012 final.

7 OJ L 204, 26.7.2006, p. 23-36. Similar provisions are also included in Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services OJ L 373, 21.12.2004, p. 37–43, and in Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ L 180, 15.7.2010, p. 1–6.

8 OJ L 303, 02/12/2000 p. 16–22.

9 OJ L 180, p. 22-26.

10 Council Decision 2017/865 of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence 'with regards to matters related to judicial cooperation in criminal matters, OJ L 131, 20.5.2017, p. 11–12; Council Decision 2017/866 of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence 'with regard to asylum and non-refoulement, OJ L 131, 20.5.2017, p. 13–14.

11 Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Services – n°210, available at https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e.

12 Art.82, 83, 84 and 156 TFEU.

13 Art. 21, Art. 46, Art.78, and Art.79 TFEU.

and their family members to receive appropriate information, support and protection, participate in criminal proceedings and be recognised and treated in a respectful and non-discriminatory manner.

The Convention and the Recommendation also include provisions falling under Member State competence, in particular as regards collective bargaining.

3. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Not applicable.

4. AUTHORISATION TO RATIFY THE CONVENTION IN THE INTEREST OF THE UNION

The Convention addresses certain areas of Union law, such as health and safety at work, equality and non-discrimination, where the degree of regulation has reached an advanced stage.

In accordance with the rules on external competences that have been elaborated by the Court of Justice of the European Union[15], and more specifically on concluding and ratifying ILO Conventions[16], the Member States alone are not in a position to ratify the Convention, as parts of the Convention fall within Union competences pursuant to Article 3(2) TFEU.

However, the EU cannot ratify an ILO Convention, because under the ILO Constitution[17], only States can become parties to such Conventions.

Therefore, the EU institutions and Member states must take the necessary measures to cooperate in ratifying the Convention and in implementing commitments resulting from it[18].

Since 2005, the Council has authorised the Member States to ratify, in the interest of the EU, five ILO Conventions and one ILO Protocol, parts of which fell within areas of EU competence.[19]

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14 Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, OJ L 315, 14.11.2012, p. 57–73.

15 AETR judgment of the ECJ, case 22/70 of 31 March 1971, ECR, 1971, 263.

16 Opinion 2/91 of the ECJ of 19 March 1993, ECR 1993-I, page 1061 on the ILO Chemicals Convention No.170.

17 ILO Constitution, Art 1.2.

18 Opinion 2/91 of the ECJ (ibid), para. 36, 37 and 38.

19 Council Decision of 14 April 2005 authorising Member States to ratify, in the interest 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; Council Decision of 7 June 2007 authorising Member States to ratify, in the interest 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 7 June 2010 authorising Member States to ratify, in the interest of the European Union, the Work in Fishing Convention, 2007, of the International Labour Organization (Convention No 188), OJ 145/12 of 11.6.2010; Council Decision of 28 January 2014 authorising Member States to ratify, in the interest of

The substantive provisions of the Convention do not cause concern in the light of the existing acquis. In line with Article 19(8) of the ILO Constitution, the Convention sets out minimum standards. This means that EU law can be more stringent than the Convention's provisions and vice versa[20].

The proposed Council Decision will therefore authorise the Member States to ratify, in the interest of the EU, those parts of the Convention that fall within areas of EU competence, and recommend them to make efforts to do so by the end of 2022.

5. LEGAL BASIS

5.1 Procedural legal basis

Article 218(6) of the Treaty on the Functioning of the European Union (TFEU) applies regardless of whether the Union is a member of the organisation, which adopted the international agreement[21].

5.2 Substantive legal basis

5.2.1 Principles

The substantive legal basis for a decision under Article 218(6) TFEU depends primarily on the objective and content of the international agreement in respect of which the ratification is made in the Union's interest. If the agreement pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(6) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component. With regard to an agreement that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(6) TFEU will have to include, exceptionally, the various corresponding legal bases.

5.2.2 Application to the present case (see also details of Union law currently under 2)

While the Convention also contains elements relating to non-discrimination, judicial cooperation and victims' rights, the main objective and content of the Convention relate to social policy, in particular as regards the improvement of the working environment to protect workers' health and safety (Article 153(1)(a) TFEU) and equality between men and women

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the European Union, the Convention concerning Safety in the Use of Chemicals at Work, 1990, of the International Labour Organization (Convention No 170) (2014/52/EU); Council Decision of 28 January 2014 authorising Member States to ratify, in the interest of the European Union, the Convention concerning decent work for domestic workers, 2011, of the International Labour Organization (Convention No 189) (2014/51/EU); Council Decision (EU) 2015/2071 of 10 November 2015 authorising EU countries to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention (1930), as regards Article 1 to 4 of the Protocol with regard to matters relating to judicial cooperation in criminal matters, OJ L.301 of 18.11.2015; Council Decision (EU) 2015/2037 of 10 November 2015 authorising EU countries to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention (1930), with regard to matters relating to social policy, OJ L.298 of 14.11.2015.

[20] Opinion 2/91 of the ECJ (ibid), para 18.

[21] Opinion 2/91 of the ECJ (ibid) on the Chemicals Convention No.170 and Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

with regard to labour market opportunities and treatment at work (Article 153(1)(i) TFEU), in the fields of which Directives have been adopted under Article 153(2) TFEU, as well as regards the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation under Article 157 (3) TFEU.

The aim and content of the Convention relate to the fight against discrimination under Article 19 in an ancillary manner.

Therefore, the substantive legal basis of the proposed decision is Article 153(2) TFEU in conjunction with Article 153(1)(a), Article 153(1)(i) and Article 157 (3) TFEU.

6 CONCLUSION

The legal basis of the proposed decision should be Article 153(2) TFEU, Article 153(1)(a), Article 153(1)(i) TFEU and Article 157 (3) TFEU, which provide the main legal basis for Union law related to health and safety at work and equality between men and women in employment and occupation in conjunction with Article 218(6) TFEU.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153 (2) in conjunction with points (a) and (i) of Article 153 (1), Article 157(3) and 218(6) (a) (v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) In 2019, in its 108th session the International Labour Conference adopted the International Labour Organization's Convention concerning the elimination on violence and harassment in the world of work, which may be cited as the Violence and Harassment Convention, 2019 (No. 190), ("the Convention").

(2) The Union promotes the ratification of international labour conventions that have been classified by the International Labour Organization as up to date in order to promote decent work for all, health and safety at work and gender equality as well as to combat discrimination.

(3) Some provisions of the Convention are covered by the Union *acquis* in the areas of social policy in accordance with Article 153(2), Article 153 (1)(a) and (i) and Article 157(3) of TFEU as regards health and safety at work and equality between men and women in employment and occupation[22]. Some provisions of the Convention are covered by the Union *acquis* in the field of non-discrimination[23].

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[22] Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC), OJ L 183, 29.6.1989, p. 1–8; Directive 2006/54/EC of 5 July 2006 of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) OJ L 204, 26.7.2006, p. 23-36; as well as Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services OJ L 373, 21.12.2004, p. 37–43, and Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ L 180, 15.7.2010, p. 1–6.

[23] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 02/12/2000 p. 16–22; Council Directive

(4) Therefore, parts of the Convention fall within the competence of the Union and Member States may not enter into commitments in relation to those parts outside the framework of the Union's institutions[24].

(5) The Union cannot ratify the Convention, as only States can be parties thereto.

(6) In this situation, Member States should be authorised to ratify, acting jointly in the interest of the Union, the parts of the Convention falling under Union competence,

HAS ADOPTED THIS DECISION:

Article 1

Member States are authorised to ratify, for the parts falling under the competence conferred upon the European Union in Article 153 (2), 153 (1) (a) and (i) as well as 157 (3) TFEU, the Violence and Harassment Convention, 2019 (No.190) of the International Labour Organization.

Article 2

Member States should take the necessary steps to deposit their instruments of ratification of the Convention with the Director-General of the International Labour Office as soon as possible, preferably by 31 December 2022.

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President

2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22-26.

[24] Opinion 2/91 of the European Court of Justice of 19 March 1993, ECR 1993-I, page 1061, para.26.