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Legal Issues and International Labour Standards Section

LILS

FOR INFORMATION

Promotion of the ratification of the Instrument for the Amendment of the Constitution of the International Labour Organisation, 1997

Summary: This document provides information to promote the ratification of the 1997 Instrument for the Amendment of the Constitution of the International Labour Organisation.

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Related documents: GB.297/LILS/2.

1. This document presents information on the ratification of the 1997 Instrument for the Amendment of the Constitution of the International Labour Organisation. It provides an update to the last document submitted to the Governing Body in November 2006,¹ including information on the ratification status and promotional efforts.

Status of ratifications

2. To enter into force, the 1997 Amendment must be ratified or accepted by two-thirds of ILO member States, including at least five of the ten Members of chief industrial importance. As there are currently 185 member States, the 1997 Amendment needs to be ratified by 124 of them.
3. Since the last report to the Governing Body in November 2006, 33 new ratifications have taken place. As of 30 January 2014, 122 ratifications or acceptances have been registered, including seven from Members of chief industrial importance. A complete list is provided in Appendix II.
4. *Only two further ratifications are required for the 1997 Amendment to enter into force.*

Promotional efforts

5. The Office has continued its efforts to promote ratification of the 1997 Instrument of Amendment. It maintains a promotional web page,² containing the text of the Instrument, an explanatory brochure with questions and answers, a sample format for an Instrument of Ratification or Acceptance of the 1997 Instrument of Amendment, and a list of member States which have ratified the 1997 Instrument and those which have not yet ratified it. An updated version of the text of the information brochure is attached as Appendix I.
6. The Office continues to distribute the brochure on the 1997 Amendment and to meet with Government delegations with a view to promoting the ratification of the Instrument. It seizes the opportunities afforded by ILO meetings, in particular the International Labour Conference, the Governing Body and the ILO Regional Meetings, and held dedicated information sessions to promote ratification at the 12th African Regional Meeting, the 15th Asia and the Pacific Regional Meeting and Ninth European Regional Meeting.
7. As additional measures, the Office has been undertaking targeted promotional activities with new candidate member States, advising them on the ratification of the 1997 Instrument of Amendment in direct contacts and information materials. Furthermore, the Office is in the process of publishing a new brochure on becoming an ILO Member, which includes a substantial section on the Instruments for the Amendment of the ILO Constitution. The brochure reminds States wishing to become Members of the ILO that they should also consider ratifying or accepting the 1986 and 1997 Instruments of Amendment, and provides all the necessary information for them to do so.

¹ GB.297/LILS/2.

² <http://www.ilo.org/public/english/bureau/leg/news/1997ratification.htm>.

Appendix I

Questions and answers on the Instrument of Amendment to the ILO Constitution, 1997

What does the Instrument of Amendment provide?

The Instrument provides for a new paragraph 9 to article 19 of the Constitution, the article which governs the adoption of Conventions and Recommendations and Members' obligations in their respect. The new paragraph is drafted as follows:

By a majority of two-thirds of the votes of delegates present, the Conference, acting on a proposal of the Governing Body, may abrogate any Convention adopted in accordance with the provisions of this article if it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization.

This provision empowers the International Labour Conference to terminate the legal effects for the Organization of international labour Conventions which it judges obsolete or without purpose in respect of the objectives of the Organization.

How was the instrument of amendment adopted?

After in-depth discussions at its 265th (March 1996) and 267th (November 1996) Sessions, the Governing Body decided to place on the agenda of the 85th Session (1997) of the International Labour Conference the question of an amendment to the Constitution with a view to empowering the Conference to abrogate any obsolete Convention, as well as related amendments to the Standing Orders of the Conference. After examination and approval by the Standing Orders Committee, the Instrument of Amendment was submitted to final record vote by the Conference on 19 June 1997, and was adopted with a majority of 381 votes in favour, three against and five abstentions.

The constitutional amendment has therefore been subject to in-depth consideration within the principal organs of the ILO and has obtained near-unanimous tripartite support at all stages.

What is the aim of the Instrument of Amendment?

The constitutional amendment is part of a series of initiatives taken by the Organization to reinforce the relevance, impact and coherence of its normative system. By allowing the abrogation of certain Conventions, the constitutional amendment answers a question almost as old as the Organization itself: what to do with international labour Conventions that are ineffective or outdated?

While it has always been possible to adopt new, better suited Conventions on subjects already covered by existing Conventions, the Constitution does not provide a means of dealing with outdated Conventions. Conventions adopted after 1929 provide that any Member ratifying a Convention revising another Convention automatically denounces the earlier text. However, that does not solve the problem of obsolete Conventions adopted before 1929, nor that of Conventions that have become obsolete without a revised Convention having been adopted, nor that where such a Convention has been adopted but has not been ratified by all parties to the earlier Convention.

It is true that certain measures introduced over the years have diminished the practical consequences of the accumulation of revising and revised texts. Thus, the Governing Body decided that a certain number of Conventions should be *classified as dormant* (that is, they should in principle no longer occasion reports on their

implementation under article 22 of the Constitution), or *shelved* (that is, classified as dormant and no longer published). However, these measures do not eliminate all the constitutional effects of obsolete Conventions, which may in particular still give rise to representations or complaints under articles 24 and 26 of the Constitution.

The abrogation of obsolete Conventions involves their removal from the ILO's body of standards. It therefore satisfies legal requirements and constitutes a practical and effective method for updating this body of standards which, it should not be forgotten, currently comprises no less than 184 Conventions (five Conventions have been withdrawn). The normative system could therefore be re-centred on those Conventions which make a useful contribution to accomplishing the objectives of the Organization. The relevance, impact and coherence of the system as a whole would consequently be enhanced.

What procedural guarantees surround abrogation?

The decision to abrogate a Convention is hedged by procedural conditions which aim to ensure that no Convention is abrogated without very wide tripartite support. The principal conditions are as follows:

- The proposal to abrogate a Convention must be initiated by the Governing Body. Under article 12bis of the Standing Orders of the Governing Body, the decision to place an item on the agenda of the Conference concerning the abrogation of a Convention must, as far as possible, be reached by consensus or, where this is not possible, by a four-fifths majority of members of the Governing Body. This last condition is not required under the procedure for the adoption of a Convention.
- At least 18 months before the session of the Conference, the Office must communicate to all governments a brief report as well as a questionnaire requesting governments to indicate their position regarding the envisaged abrogation, after consultation with the most representative employers' and workers' organizations. The Office then draws up the report containing the final proposal submitted to the Conference on the basis of the replies received (article 45bis of the Standing Orders of the Conference).
- After discussing the proposed abrogation, the Conference decides by consensus or, where this is not possible, by a preliminary vote requiring a two-thirds majority, to submit the proposal to a final vote. Such a qualified majority is not required at this stage for the adoption of a Convention.
- As for the adoption of a Convention, a proposed abrogation requires a two-third majority of votes from delegates present to pass.

The abrogation procedure is thus similar to the procedure for the adoption of a Convention. However, certain conditions are more restrictive in abrogation, and therefore provide greater protection of tripartite consensus.

Which Conventions might be abrogated?

According to the terms of the constitutional amendment of 1997, a Convention may be abrogated if "it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization". It is for the Governing Body and then for the Conference to decide whether this substantive condition is fulfilled.

On the basis of the work of its Working Party on Policy regarding the Revision of Standards, the Governing Body has already identified seven Conventions which could opportunely be abrogated:

The Night Work (Women) Convention, 1919 (No. 4);

- The Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15);
- The Protection against Accidents (Dockers) Convention, 1929 (No. 28);
- The Night Work (Women) Convention (Revised), 1934 (No. 41);
- The Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60);
- The Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67);
- The Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91).

What exactly is the effect of abrogation of a Convention?

The use of the term “abrogation” in the context of the constitutional amendment of 1997 must not give rise to errors, in particular resulting from the different uses of the term within national legal systems. The effect of the abrogation of a Convention within the meaning of the 1997 amendment is to eliminate definitively all legal effects arising out of the Convention between the Organization and its Members. Thus, Members that have ratified the Convention are no longer obliged to submit reports under article 22 of the Constitution and can no longer be subject to representations (article 24) and complaints (article 26) for non-observance of the Convention. For its part, the Organization is no longer obliged to undertake any activities in respect of the abrogated Convention. In particular, its supervisory bodies are not required to examine the implementation of the Convention. The Office will also cease to publish the text of the Convention and the official information regarding its ratifications and denunciations. Electronic archiving will nevertheless be maintained for historical purposes.

While an abrogated Convention thus ceases to be an *ILO* Convention, nothing prevents those member States that have ratified it (and which might oppose its abrogation) from considering that they remain bound *inter se* by its provisions. But they may no longer call on the ILO to supervise observance and maintain the procedural obligations in respect of Conventions which no longer serve its objectives, and assume the resulting costs.

Furthermore, the abrogation of a Convention in no way implies that Members must revoke the legislative or other measures taken to give effect to the provisions of the Convention internally.

Has the Conference not already withdrawn Conventions? What is the difference between the withdrawal and the abrogation of a Convention?

At its 88th Session (2000), the International Labour Conference did in fact withdraw five Conventions: Nos 31, 46, 51, 61 and 66.

The withdrawal of Conventions was provided for by an amendment to the Standing Orders of the Conference that was adopted at the same time as the constitutional amendment of 1997. In accordance with article 45bis of the Standing Orders of the Conference, while abrogation applies to Conventions *in force*, withdrawal is possible for Conventions which are *not in force* as well as for Recommendations.

It was considered that the Conference did not require formal constitutional authorization to *withdraw* a Convention that was not in force since in this instance, as in the case of a Recommendation, there are no constitutional obligations between Members or between the Organization in respect of its Members. The constitutional amendment of 1997 on the abrogation of obsolete Conventions therefore only concerns Conventions *in force*.

The principal effect of withdrawing a Convention is to prevent it from entering into force by closing it to ratification. As with abrogated Conventions, the Office also stops publishing the text of the Convention and the official information concerning it.

What form should the instrument of ratification of the Instrument of Amendment take?

Ratification (or acceptance) is the expression by a member State of its consent to be bound by the constitutional amendment. This consent must therefore be expressed by the representative or representatives of the State having the power to bind the State in its external relations.

Acceptance, mentioned in article 36 of the Constitution as an alternative to ratification, is in every way equivalent to ratification. The choice between the two instruments depends on the constitutional order of the Member concerned.

Why is action needed?

There is consensus within the Organization and its constituents that there is a need to reinforce the relevance, impact and coherence of the ILO's normative system, which is one of the Organization's principal means of action. In the 95 years of its existence, the ILO has adopted 189 Conventions, of which the majority, at one time or another, have made a useful contribution to achieving the objectives of the ILO. But a certain number of these are clearly outdated and have become obsolete in the face of important changes that have affected the world of work during this period.

In 1995, the Governing Body again decided to examine all ILO instruments with a view to identifying updating requirements. Its Working Party on Policy regarding the Revision of Standards completed this examination in March 2002 after seven years' work. Its recommendations, adopted by the Governing Body, foresee among other matters the abrogation of certain Conventions. However, the instrument of constitutional amendment making this possible is still not in force, almost 17 years after its adoption, due to an insufficient number of ratifications.

It is however essential for the credibility of the Organization that it should have the means of updating its body of standards and of concentrating its normative action on the Conventions which currently contribute to the achievement of its objectives. The maintenance of obsolete Conventions among the ILO Conventions, which are the global reference for labour standards, is damaging to the clarity and legibility of the Organization's body of standards as a whole, and cannot fail but to diminish its impact.

Appendix II

Ratification/acceptance status (at 30 January 2014)

A. *Member States which have ratified/accepted the 1997 Instrument of Amendment to the ILO Constitution* (by region)

Africa

Algeria	Ethiopia	Nigeria
Benin	Guinea	Seychelles
Botswana	Guinea-Bissau	South Africa
Burkina Faso	Libya	South Sudan
Cabo Verde	Malawi	Togo
Cameroon	Mauritania	Tunisia
Comoros	Mauritius	Zambia
Congo	Morocco	Zimbabwe
Egypt	Mozambique	
Eritrea	Namibia	

Americas

Antigua and Barbuda	Dominican Republic	Peru
Argentina	Ecuador	Saint Kitts and Nevis
Barbados	Guatemala	Saint Vincent and the Grenadines
Brazil	Guyana	Suriname
Canada	Jamaica	Trinidad and Tobago
Chile	Mexico	
Cuba	Nicaragua	
Dominica	Panama	

Europe

Albania	Hungary	Poland
Austria	Iceland	Portugal
Azerbaijan	Ireland	Romania
Belgium	Israel	San Marino
Bosnia and Herzegovina	Italy	Serbia
Bulgaria	Latvia	Slovakia
Croatia	Lithuania	Slovenia
Cyprus	Luxembourg	Spain
Czech Republic	Malta	Sweden
Denmark	Moldova, Republic of	Switzerland
Estonia	Montenegro	Tajikistan
Finland	Netherlands	Turkey
France	Norway	United Kingdom

Asia and the Pacific

Afghanistan	Kuwait	Saudi Arabia
Australia	Lao People's Democratic Republic	Singapore
Bahrain	Lebanon	Solomon Islands
Bangladesh	Malaysia	Sri Lanka
Brunei Darussalam	Mongolia	Syrian Arab Republic
Cambodia	Nepal	Thailand
China	New Zealand	United Arab Emirates
Fiji	Oman	Vanuatu
India	Pakistan	Viet Nam
Japan	Philippines	Yemen
Jordan	Qatar	
Korea, Republic of	Samoa	

B. Member States which have not yet ratified/accepted the 1997 Instrument of Amendment to the ILO Constitution (by region)

Africa

Angola	Gambia	Sao Tome and Principe
Burundi	Ghana	Senegal
Central African Republic	Kenya	Sierra Leone
Chad	Lesotho	Somalia
Côte d'Ivoire	Liberia	Sudan
Democratic Republic of the Congo	Madagascar	Swaziland
Djibouti	Mali	Tanzania, United Republic of
Equatorial Guinea	Niger	Uganda
Gabon	Rwanda	

Americas

Bahamas	El Salvador	Saint Lucia
Belize	Grenada	United States
Bolivia, Plurinational State of	Haiti	Uruguay
Colombia	Honduras	Venezuela, Bolivarian Republic of
Costa Rica	Paraguay	

Europe

Armenia	Kazakhstan	Turkmenistan
Belarus	Kyrgyzstan	Ukraine
Georgia	Russian Federation	Uzbekistan
Germany	The former Yugoslav Republic of Macedonia	
Greece		

Asia and the Pacific

Indonesia

Iran, Islamic Republic of

Iraq

Kiribati

Maldives

Marshall Islands

Myanmar

Palau

Papua New Guinea

Timor-Leste

Tuvalu