

Governing Body

337th Session, Geneva, 24 October–7 November 2019

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Institutional Section

INS

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SECOND ITEM ON THE AGENDA

Agenda of future sessions of the International Labour Conference

Addendum: Proposals for the withdrawal of the Fee-Charging Employment Agencies Convention, 1933 (No. 34), and the abrogation of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)

1. It is recalled that in placing proposals for the abrogation or withdrawal of international labour instruments on the agenda of the International Labour Conference, the Governing Body follows up the recommendations made by the Standards Review Mechanism Tripartite Working Group (SRM TWG). The decision of the Governing Body on the placement of any proposed abrogation and withdrawal on the agenda of one of the future sessions of the Conference is taken at the same session at which it considers the report of the relevant meeting of the SRM TWG.¹
2. At its fifth meeting, held from 23 to 27 September 2019, the SRM TWG, while acknowledging the classification of the Fee-Charging Employment Agencies Convention, 1933 (No. 34), as an outdated instrument, recommended that the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), be considered to have the classification of an outdated instrument.
3. The SRM TWG further recommended that the Governing Body consider: (i) the withdrawal of Convention No. 34 in 2021 by placing an item to this effect on the agenda of the 110th

¹ [GB.331/INS/2\(Add.\)](#); [GB.331/PV](#), para. 28; [GB.328/INS/3\(Add.\)](#); and [GB.328/PV](#). On one occasion, the Governing Body considered the recommendations of the Special Tripartite Committee established under the Maritime Labour Convention, 2006, as amended, to which the SRM TWG referred the review of maritime instruments: [GB.334/INS/2/1](#), paras 20–26; and [GB.334/PV](#), para. 42.

Session of the Conference; and (ii) the abrogation or withdrawal of Convention No. 96 in 2030 by placing an item to this effect on the agenda of the 119th Session of the Conference.

4. When the Conference adopted at its 85th Session (1997) an amendment to the ILO Constitution empowering the Conference to abrogate a Convention in force, the Conference also amended its Standing Orders to permit it to withdraw Conventions that had never entered or were no longer in force, as well as Recommendations. In line with article 19(9) of the Constitution, the Conference may abrogate a Convention “if it appears that it has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization”. Abrogation and withdrawal are subject to the same procedural guarantees, in terms of the Conference majority required, the consultation process and the timelines for submission to the Conference. An item on the abrogation or withdrawal does not require the establishment of a technical committee as the Conference may decide to refer the examination of the matter, in the first instance, to the Selection Committee.
5. The abrogation or the withdrawal of an international labour instrument results in the definitive elimination of all legal effects arising out of that instrument between the Organization and its Members. Abrogated and withdrawn instruments are removed from the ILO’s body of standards and their full text is no longer reproduced in any official collection (printed or electronic) of ILO Conventions and Recommendations. All that remains is their full title and number, and the reference to the session and year of the Conference at which the decision of abrogation or withdrawal was taken. To date, ten international labour Conventions have been abrogated and seven international labour Conventions and 39 international labour Recommendations have been withdrawn.
6. The procedure concerning the placing on the Conference agenda of an item on abrogation or withdrawal provides, among other things, that the Office places before the Governing Body a report containing all relevant information regarding the abrogation or withdrawal of the instrument(s) concerned. As the SRM TWG has already conducted an examination of these instruments, the appendix to the present document provides a summary of the information presented by the Office to these bodies and the resulting recommendations and serves as the above-mentioned report for the Governing Body.
7. With respect to timing, under article 45 bis of the Standing Orders of the Conference, the Office is required to communicate to the governments, so that it reaches them at least 18 months before the session of the Conference at which the item is to be discussed, a short report and questionnaire inviting their views on the issue. Concretely, in the case of Convention No. 34, if the Governing Body decides to place the question of its withdrawal on the agenda of the 110th Session (2021) of the Conference, the Office is required to communicate to all governments, so that it reaches them at least 18 months before the session of the Conference, that is by January 2020, a short report and questionnaire inviting their views on the issue. If the Governing Body decides to place the question of the abrogation of Convention No. 96 on the agenda of the 119th Session (2030) of the Conference, the Office is required to communicate to all governments, so that it reaches them at least 18 months before the session of the Conference, that is by January 2029, a short report and questionnaire inviting their views on the issue.
8. Should the Governing Body wish to proceed with the abrogation and withdrawal of the above-mentioned instruments, this addendum provides a revised version of the draft decision in paragraph 24 of GB.337/INS/2.

Revised draft decision concerning the agenda of future sessions of the International Labour Conference

9. *The Governing Body decided to:*

- (a) *place on the agenda of the 109th Session of the Conference (2020) an item related to:*
 - (i) *decent work and the social and solidarity economy for a human-centred future of work (general discussion); or*
 - (ii) *skills and lifelong learning (general discussion);*
- (b) *place on the agenda of the 110th Session (2021) of the Conference an item related to:*
 - (i) *the withdrawal of the Fee-Charging Employment Agencies Convention, 1933 (No. 34); and*
 - (ii) *decent work and the social and solidarity economy (general discussion); or*
 - (iii) *a just transition of the world of work towards environmentally sustainable economies and societies for all (standard-setting discussion or general discussion);*
- (c) *place on the agenda of the 119th Session (2030) of the Conference an item on the abrogation of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96); and*
- (d) *request the Office to take into account the guidance provided in preparing the paper for the 338th Session (March 2020) of the Governing Body.*

Appendix

Fee-Charging Employment Agencies Convention, 1933 (No. 34)

Related instruments: The Fee-Charging Employment Agencies Convention, 1933 (No. 34), requires the abolition of fee-charging employment agencies conducted with a view to profit, within three years. Fee-charging employment agencies not conducted with a view to profit were subject to regulation. The Convention was revised by the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96). This Convention introduces a dual regulatory policy by which member States ratifying Convention No. 96 may either choose to accept the optional Part II, which is largely similar to the approach of Convention No. 34, providing for the progressive abolition of employment agencies with a view to profit, conditional on the establishment of public employment services, and the regulation of other employment agencies, or accept the new optional Part III, which provides for the regulation of fee charging employment agencies, including those conducted with a view to profit. Convention No. 96 was itself revised by the Private Employment Agencies Convention, 1997 (No. 181), and the Private Employment Agencies Recommendation, 1997 (No. 188), which led to the introduction of a single regulatory policy.

Ratifications: Convention No. 34 has received a total of 11 ratifications. It has been closed to further ratifications since 18 July 1951, the date on which Convention No. 96 entered into force. Convention No. 34 has been denounced by ten member States. Since 2008, it has had only one ratification (Chile) and is, therefore, no longer in force.

Remarks: The regulatory approach to employment agencies has changed considerably since the adoption of Convention No. 34 in 1933 and has led to the adoption of two revising Conventions, namely Convention No. 96 in 1949 and Convention No. 181 in 1997. In 1996, on the recommendation of the Cartier Working Party, the Governing Body “shelved” Convention No. 34 with immediate effect, considering that it no longer corresponded to current needs and had become obsolete. Convention No. 34 has thus been closed to new ratifications for 68 years, it has been shelved for 23 years and is no longer subject to full supervision. No representations or complaints under articles 24 and 26 of the Constitution have been filed since Convention No. 34 was shelved.¹

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)

Related instruments: Convention No. 181 and its accompanying Recommendation No. 188 revised Convention No. 96 and marked the development of a new regulatory approach. These instruments recognize the role played by private employment agencies in the operation of the labour market. Convention No. 181 provides a broader scope for the regulation of private employment agencies than Convention No. 96 and takes into account newer developments in the sector and national circumstances.²

Ratifications: Convention No. 96 has received a total of 23 ratifications and 19 denunciations. Since Convention No. 181 came into force in 2000, Convention No. 96 has been closed to new ratifications. Ratification of the revising Convention No. 181, involves the “automatic” denunciation of Convention No. 96.

¹ See the notes prepared for the SRM TWG at its second and fifth meetings: SRM/TWG/2019/Technical note 1.1. and SRM/TWG/2019/Technical Note 3.

² See SRM/TWG/2019/Technical Note 3.

Remarks: On the recommendation of the Cartier Working Party, the Governing Body placed Convention No. 96 in the category of “other instruments”, namely instruments which are no longer fully up to date but which remain relevant in certain aspects. It encouraged member States to consider ratifying Convention No. 181 which revised Convention No. 96. To date, Convention No. 181 has received 34 ratifications and was last ratified in 2018.