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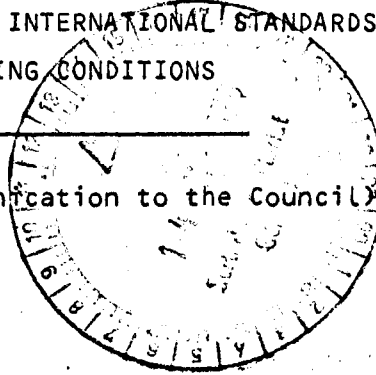
COMMISSION OF THE EUROPEAN COMMUNITIES

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DEVELOPMENT COOPERATION
AND
THE OBSERVANCE OF CERTAIN INTERNATIONAL STANDARDS GOVERNING
WORKING CONDITIONS

(Commission Communication to the Council)



COM(78) 492 FINAL

In its Memorandum (COM(78)47 final of 16 February 1978) on the renewal of the Lomé Convention, the Commission indicated in Chapter II.C.3. "Considerations relating to working conditions" why and how it is contemplating the establishment of a "link between the advantages offered by the Community (particularly in the commercial field) and the observance of certain basic international standards governing working conditions", this link to apply to all the developing countries, including the ACP States.

The policy guidelines proposed in this Communication reflect this concern and the proposed implementing arrangements are dovetailed as far as possible with the procedures that exist or are already envisaged inter alia in the context of the renewal of the Lomé Convention.

I. OBJECTIVES

The objectives of the Community's development cooperation policy must be to promote social progress in the developing countries as much as economic growth. It is therefore important for the Community to ensure that these two objectives are pursued simultaneously in the implementation and application of its development cooperation policy, especially as economic progress of the people concerned is tied to social conditions.

Given the difficult economic and social circumstances in which the countries of the Community find themselves, it is more important than ever, and at the same time more difficult, to convince public opinion in the Community that a cooperation policy is justified. In the field of trade cooperation in particular, the protectionist pressures that are threatening to hamper the industrialization of the developing countries must be resisted.

The establishment of a link between the advantages offered by the Community and the observance of minimum labour standards accomodates these points of concern;

- it helps to guarantee equality of opportunity among the developing countries in the matter of access to the Community market by ensuring that those that apply the international labour conventions are not penalized;
- it is designed to promote the social objectives of development.

II. The choice of standards

The first task of the Commission was therefore to choose from among the vast body of standards covered by the 151 ILO conventions, the minimum labour standards considered as being the most fundamental and to group them together in a text that could serve as a basis for Community action. The basic texts, which forms Annex I, is a self-contained whole with precise definitions, which though derived directly from the ILO instruments, reproduces only their essential features and takes account of the state of legislation and the de facto situation in a large number of developing countries. It takes four labour standards that are considered fundamental, these being proceeded by a statement of general principles (see Annex II for the legal references to the corresponding conventions).

Where the conventions provided for flexibility clauses in the case of the developing countries, allowance has been made for this.

Article 1 (General Principles) is a general statement of intent concerning the implementation of the text as a whole.

Article 2 (Equality of Opportunity and Treatment in employment and of profession) will apply in each State to that State's nationals and is designed to prevent any de jure or de facto discrimination between the various categories of the national population by reference to the criteria listed (*).

Article 3 (Working Hours) relates to a fundamental standard, which is however accompanied by a flexibility clause, establishing a limit on the duration of the working week. It corresponds to the de jure or de facto situation in most countries, even where, for various reasons, they have not ratified the corresponding ILO Convention, which dates back to 1919.

Article 4 (Employment of Children and Adolescents) follows the provisions of the convention in question which were established specifically for the developing countries (**). It also corresponds moreover to the legislation adopted by a large number of developing countries pursuant to Convention No 5 on the minimum age in industry.

Article 4(b) is designed to look after the health and safety of children and adolescents and takes over standards established by three successive ILO conventions.

It would have been possible to adopt as a basis the relevant ILO conventions themselves. However, since the number of ratifications of these conventions by the ILO Member States varies considerably according to their content and date, it became apparent that it would be very difficult to evolve a satisfactory uniform system to monitor the actual application of the standards and the overall context of the relevant conventions.

The formula adopted makes it possible to draw up a Community basic text which refers directly to the ILO international conventions governing certain minimum working conditions (***).

(*) The expression "national origin", as used in Article 2 of Annex I, refers to those that have acquired the status of national by naturalization.

(**) Artisanal firms are not covered by the convention in question; it expressly excludes agricultural, family or small firms whose production is intended for the local market and which do not regularly employ paid workers.

(***) See Annex II.

The standards adopted in the basic text can be considered to represent a minimum. Certain business and labour circles in the Community would like the Community to go further in this direction by considering other basic standards covering working conditions, notably those relating to the fixing of a minimum wage, trade-union freedom, negotiating rights and questions of health and safety at work.

The Commission considers that it should be possible to examine this possibility at a later date in the light of the experience gained in implementing the present arrangements, account also being taken of other developments stemming from the Community's initiative.

It is reasonable to think that by giving priority to the observance of standards which directly affect people (age, non-discrimination, working hours) the Community's action will have significant political scope and will thus accelerate a trend that is already apparent. The reference to the ILO conventions and the cooperation requested of the International Labour Office will also help towards this end. It is true that none of the conventions to which the standards adopted refer has yet been ratified by all ILO member states, but their ratification is not a decisive factor: after adoption by the annual conferences of the ILO, their purpose is to provide an impetus for economic and social development in all countries and they constitute the basis for the adoption of standards and the provision of technical assistance by the ILO, which have produced remarkable results both in the industrialized countries and in the developing countries, even the poorest (1).

Furthermore, the Director-General and the Department of Standards of the International Labour Office have noted with interest the Commission's stated intention in this field and have supplied all the necessary information on international labour standards and the procedures relating thereto.

(1) See "International work standards", ILO, 1978.

III. ROLE OF THE INTERNATIONAL LABOUR OFFICE

The application of the arrangements for implementing the principles contained in this communication requires the cooperation of the International Labour Office. Since this text derives directly from the corpus of ILO conventions and other international instruments whose application is monitored by the ILO, the Community intends to request that organization to use (1) its own monitoring procedures and machinery for the application of conventions, irrespective of whether certain countries have or have not ratified the ILO conventions in their entirety (see Annex III, page 1, last paragraph).

Although the International Labour Office's control over the application of the international conventions does not extend to real sanctions, it nevertheless exerts considerable moral pressure on the States concerned. It may be noted in this connection that there are between seventy-five and a hundred cases each year where the ILO's monitoring organs are able to express their satisfaction with measures taken by governments to introduce the necessary changes in their national legislation or practice as a result of previous observations by the monitoring organs in question regarding the extent to which the legislation or practice of the country concerned was in accordance with the provisions of a ratified convention.

Furthermore, a resolution adopted by the ILO Conference in 1977 urgently asks Member States to bear in mind the need to adjust aid policy, so far as possible, vis-a-vis States in respect of which it is established, following examination by the relevant ILO organs, that they are regularly violating basic human rights and social and trade union rights. The concrete effects of controlling the application of standards adopted by the Community would not therefore involve a new departure for the Governing Body of the International Labour Office (2).

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- (1) Subject to the prior agreement of the Governing Body of the ILO. There are two precedents in this field: the agreement expressed by the Governing Body of the International Labour Office for controlling the application of the "International pact in respect of economic, social and cultural rights" as asked for by the UN (ECOSOC) and the "European social security code" asked for by the Council of Europe.
 - (2) This organization has for some years been concerned with the definition of equitable labour standards in the context of international trade: the International Labour Office devoted a detailed study to this subject between 1971 and 1973 - following an intervention from President Senghor - and the Director-General has already dealt with it in his report at the 58th session of the ILO Conference (1973).

IV. Scope of the arrangements

The Community's development cooperation policy is not aimed solely at the economic development of the countries receiving aid but also at their social progress. Accordingly, the preamble of the Lomé Convention expressly links the two terms (1).

It is therefore only right that the Community should want to attach to the commercial, financial and technical assistance that it gives certain conditions designed to promote the social ends of development.

- At the level of financial and technical cooperation the principle will be applied in the execution of the projects and programmes financed by the Community institutions.
- Application of this principle to trade cooperation will have the effect of establishing a link between the trade preferences granted autonomously by the Community to certain developing countries, together with the preferential trade arrangements written into the association agreements, and the beneficiary countries' observance of the minimum labour standards (set out in the basic text which forms Annex I).

(1) "Resolved to intensify their efforts together for the economic development and social progress of the ACP States".

The Community will have to comply with two preoccupations when applying the principle:

- (a) that of maintaining a fair balance between the aims pursued and the repercussions for the countries concerned. With the active collaboration of the International Labour Office, the particular circumstances of the least developed countries will have to be taken into account and could sometimes result in delaying the effective application of the conventions which they have ratified (1);
- (b) that of avoiding the impression that the proposed arrangements are inspired by protectionism. This is one reason why the Commission proposes that its preferential advantages in the framework of its cooperation and development policy should be dependent upon compliance with the minimum standards adopted, although this would not apply to access to the Community market of products coming from developing countries. It must be made absolutely clear that in carrying out the Commission's proposal, the Community's aim will be to help countries benefiting from its cooperation to base their economic growth on conditions which are compatible with social progress.

The Commission's proposal is far from being part of a protectionist trend. It will in fact strengthen the support of Community business and labour for an open development cooperation policy by reserving preferences for the many countries who are trying to base their economic growth on conditions which are compatible with social progress. Nor should exceptions be made for the few cases where under-development is used to justify inhuman working conditions.

(1) Among the countries which the ILO Conference Committee placed on its "Special list" in 1977 because of serious failures in their obligations, the following poor countries have since complied with the rules and are no longer on the list in 1978: Upper Volta, Mauritania, Central African Empire. This shows that the standards are useful and effective.

This principle will have to be implemented by the Community vis-a-vis all countries in receipt of its aid as follows:

- on a contractual basis under the preferential cooperation agreements;
- on the initiative of the Community, in the application of its generalized preferences scheme. This could be done on the occasion of the review scheduled for 1980, after information in the appropriate international forums (UNCTAD, GATT, OECD), on the selection of standards which the Community consider fundamental and on the method of application.

In any event, these measures cannot be implemented by the Community in the framework of the generalized preferences scheme - as the Commission has indicated in its first communication on the renewal of the Lomé Convention - until the Community takes decisions of principle regarding all the countries concerned.

V. Implementing procedures and arrangements

(a) In trade

The principles and scope of the arrangements for implementing the minimum standards set out in the basic text will be the same for all developing countries but the procedures will differ according to the context in which the Community has to act - unilateral (GSP) or contractual (Lomé Convention or Mediterranean agreements).

- i. The Commission, acting on its own initiative or at the request of a Member State, on being informed of an infringement of the standards adopted will ask the International Labour Office - without prejudice to the use of the Commission's own on-the-spot information resources - to verify this information (see Annex III on the ILO's procedures and practice).
- ii. Where appropriate, the Commission, with the approval of the Council, will initiate consultations with the developing country or countries concerned to find a solution acceptable to the parties concerned.
- iii. Failing such a solution, persistent non-compliance with the minimum standards and any injury suffered by the Community Member States will oblige the Community to take the necessary measures.

In the case of countries with which the Community has concluded preferential cooperation agreements, these measures will be taken pursuant to the safeguard clauses written into the agreements, the said clauses possibly being adapted for this purpose. Where the injury is due essentially to non-compliance with the minimum standards adopted, it is understood at Community level that these measures cannot go beyond the temporary withdrawal of the exemption from customs duties and charges having equivalent effect accorded by the cooperation agreements under the heading of trade cooperation. Where appropriate, such withdrawal could be confined to the products of one or more sectors of production if it were apparent that the non-compliance with the minimum standards involved only certain products or sectors.

Naturally, at the outset the Community will clarify precisely for the countries concerned what range of standards it considers as fundamental, the violation of which, by virtue of damages sustained, may lead to the invocation of safeguard clauses.

In the context of the GSP, the Community will take identical measures on an autonomous basis.

(b) In the field of technical and financial assistance

The Community institutions (Commission and EIB) will see to it that due account is taken of social aspects (1), notably of compliance with the minimum labour standards, in the execution of projects and programmes.

(1) Article 53 (1) of the Lome Convention:

"1. The Community shall appraise projects and programmes in close collaboration with the ACP States and any other beneficiaries. The technical, social, economic, trade, financial, organizational and management aspects of such projects or programmes shall be reviewed systematically."

VI. Cooperation procedure between the EEC and the ILO

After establishing the basic text setting out the minimum standards which it considers to be fundamental, the Community would have to seek with the help of the International Labour Office ways of checking that the standards laid down in the basic text are effectively applied. However, it should be specified that while it is for the International Labour Office to judge whether the standards adopted in the basic text are being applied, responsibility for the application of the arrangements lies with the Community, acting on a proposal from the Commission. The Commission must continue to determine the importance of the complaints and infringements notified to it before requesting the International Labour Office to carry out a check. Even if non-observance of the minimum labour standards were confirmed by the International Labour Office, the Community would still be the judge of whether it was appropriate to put the arrangements into operation.

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The Commission requests the Council to approve these guidelines. At the appropriate time, it will put forward proposals for their technical implementation, both in the context of the renewal of the Lomé Convention and in the other areas of application of the Community's development cooperation policy.

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MINIMUM LABOUR STANDARDS

1. GENERAL PRINCIPLES

States will take action using the full resources available to them - both by their own efforts and via international assistance and cooperation, particularly economic and technical - to secure the implementation of the principles established in this text by all appropriate means, including in particular the adoption of legislative measures.

2. NON-DISCRIMINATION IN THE MATTER OF EMPLOYMENT AND OCCUPATION

States will take measures designed to promote on their territory equality of opportunity and treatment in the matter of employment and occupation so that all discrimination based on race, colour, sex, religion, national origin or social origin is eliminated.

3. WORKING HOURS IN INDUSTRY

States will take measures to ensure that a limit is set to the number of hours worked ; this should not exceed 48 hours per week, except in the case of the necessary derogations, a full list of which should be established.

4. EMPLOYMENT OF CHILDREN AND ADOLESCENTS

- a) States will take measures to secure the effective abolition of child labour and to establish 14 years as the minimum age for taking up employment or work.

These measures do not affect artisanal undertakings; nor do they affect agricultural, family or small-scale undertakings producing for the local market which do not employ paid workers on a regular basis.

- b) In addition to the minimum age for taking up employment in general, legislation must fix the age below which children and adolescents must not be employed or engaged in dangerous or insalubrious work or be employed or work at night.

MINIMUM LABOUR STANDARDS : LEGAL REFERENCES

All the articles making up the basic text have their legal source either in the ILO Conventions that have entered into force - i.e. after the minimum number of ratifications by the Member States has been reached - or in the United Nations International Covenant on Economic, Social and Cultural Rights (1976) (the International Labour Office was instructed by ECOSOC to help monitor the implementation of the Covenant), or lastly in the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977), which was unanimously adopted by the Governing Body of the International Labour Office.

More specifically, the articles making up the basic text (Annex I : MINIMUM LABOUR STANDARDS), refer :

- for Article 1 : to the Covenant, Article 2 I)
- for Article 2 : to Convention No III, Article 1 a), and to the Declaration on Multinational Enterprises, etc.. para. 21
- for Article 3 : to Convention No I, and to the Covenant, Article 7 d)
- for Article 4a : to Convention No 5, and to Convention No 138, Article 2 para. 4 (*)
- for Article 4b : to Convention No 79 to Convention No 90, Article 3 I) and to Convention No 138, Article 3 I).

(*) Article 2, para. 4 of Convention No 138 contains the special provisions of the Convention relating to developing countries.

ILO PROCEDURES AND PRACTICE CONCERNING THE MONITORING AND APPLICATION OF
INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS

Since a link is to be established between Community aid and development cooperation and compliance with certain minimum labour standards derived from ILO conventions and since it is proposed to call on the cooperation of the ILO to monitor the effective application of those standards, it is important to know the procedures and practice followed by the ILO in this field, in which it has considerable resources and long and valuable experience.

a) Provisions in the ILO Constitution

Articles 19, 22, 23, 24, 26 and 35 of the ILO Constitution indicate precisely how an international labour convention adopted by the Conference is to be submitted for ratification by the national parliaments and also states precisely the obligations of the Member States, namely :

- Each Member State undertakes to provide the International Labour Office with an annual report on the measures adopted by it to implement the conventions to which it has acceded.

These reports are drawn up in the form indicated by the Governing Body and must contain the details requested by that Body.

- Even if the convention has not been ratified by the competent national authority, the Member State must still submit reports at appropriate intervals - as decided by the ILO Governing Body - on its legislation and practice concerning the question covered by the convention, specifying the extent to which it has implemented or will implement the provisions of the convention and setting out the difficulties preventing or delaying its application.

- . A Member State, or employers' or workers' representative organization, may bring a complaint or lodge a protest against another Member State which, in their view, is not applying in a satisfactory way a convention which it has ratified. (In the case of formal complaints, the State bringing the complaint must also have ratified the convention in question).

b) Resources available to the ILO

- A Committee of Experts on the Application of Conventions and Recommendations - made up of independent experts - has a whole arsenal of means enabling it to obtain precise information on the legislative situation and in particular on the practices in the various Member States, whether or not they have ratified the conventions in question.
- This Committee of Experts receives the annual reports drawn up by the States and supplemented by :
 - . the reports of the labour inspection services, stating the number of inspection visits, the infringements against national legislation and the penalties imposed ;
 - . the statistical yearbooks published in the countries ;
 - . the observations of employers' or workers' organizations ;
 - . the collections of legal or administrative decisions ;
 - . the reports on direct contacts ;
 - . the reports of missions undertaken in the field of technical cooperation, and
 - . all other official publications.
- . At the present time detailed reports drawn up by reference to a number of criteria must be supplied every year, every two years or every four years depending on the convention and the importance of the question covered.

- The report established by the Committee of Experts is submitted to the Annual Tripartite Conference ; a working committee - also tripartite - questions the representatives of the Member States - Ministers of Labour or their delegates - on the situations brought to light by the report and on their intentions with regard to them.
- In the event of serious repeated failure on the part of a Member State to carry out its obligations under one or more conventions, the Committee of the Conference may place that State on a "special list" ; despite its purely moral force, the Member States fear the list and do their utmost to keep off it.

By way of example, the Committee of the 197 Conference placed the following countries on the special list :

Afghanistan, Benin, Costa Rica, United Arab Emirates, Guatemala, Guinea, Jordan, Laos, Malawi, Malta, Nepal, Tanzania, Chad.

- In addition to the resources referred to above, the ILO can also call on supplementary means of investigation to deal with special situations :
 - enquiries - questioning governments, employers' or workers' organizations on a specific problem ;
 - an on-the-spot Committee of enquiry (e.g. Portugal, Angola and Mozambique in 1961 and Chile in 1974) ;
 - examination of complaints by the Tripartite Committee on Freedom of Association, and the Investigation and Conciliation Committee, concerning the infringement of trade union rights - these complaints can be examined whether or not the Government has ratified the corresponding conventions (Japan, Greece, Lesotho, Chile) ;
 - establishment of study groups to study particular situations in detail ;
 - the direct contact procedure, which is used for the joint examination (International Labour Office-Government) of obstacles to the ratification or application of any given convention (Portugal, Singapore, Malaysia, the Andean Pact countries, Jordan, Uruguay, Bolivia, the Dominican Republic, Liberia)

c) Conclusion

As can be seen, the ILO has established a procedure and machinery enabling it to monitor continuously the extent to which the international labour conventions adopted by the Conference have been ratified by the national Parliaments and to what extent they are actually being applied.

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