European Commission

Analysis – in the light of the European Union acquis – of ILO up to date Conventions

- Annex "C 138 Minimum Age Convention" -

Employment, Social Affairs and Inclusion

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Report prepared by:

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SUMMARY	
Convention	**C138 - Minimum Age Convention, 1973 (No. 138)**
Subject	• Regulates the minimum age at which children can work with a view to ensuring the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons (Article 1).
Member State uptake	• One hundred and sixty five states have ratified the Convention, **including all Member States**: • **Austria (**18 Sep 2000; *minimum age specified: 15 years*); **Belgium** (19 Apr 1988; *minimum age specified: 15 years*); **Bulgaria** (23 Apr 1980; *minimum age specified: 16 years*); **Cyprus** (02 Oct 1997; *minimum age specified: 15 years*); **Czech Republic** (26 Apr 2007; *minimum age specified: 15 years*); **Denmark** (13 Nov 1997; *minimum age specified: 15 years*); **Estonia** (15 Mar 2007; *minimum age specified: 15 years*); **Finland** (13 Jan 1976; *minimum age specified: 15 years*); **France** (13 Jul 1990; *minimum age specified: 16 years*); **Germany** (08 Apr 1976; *minimum age specified: 15 years*); **Greece** (14 Mar 1986; *minimum age specified: 15 years*); **Hungary** (28 May 1998; *minimum age specified: 16 years*); **Ireland** (22 Jun 1978; *minimum age specified: 16 years*); **Italy** (28 Jul 1981; *minimum age specified: 15 years*); **Latvia** (02 Jun 2006; *minimum age specified: 15 years*); **Lithuania** (22 Jun 1998; *minimum age specified: 16 years*); **Luxembourg** (24 Mar 1977; *minimum age specified: 15 years)*; **Malta** (09 Jun 1988; *minimum age specified: 16 years*); **Netherlands** (14 Sep 1976; *minimum age specified: 15 years*); **Poland** (22 Mar 1978; *minimum age specified: 15 years*); **Portugal** (20 May 1998; *minimum age specified: 16 years*); **Romania** (19 Nov 1975; *minimum age specified: 16 years*); **Slovakia** (29 Sep 1997; *minimum age specified: 15 years*); **Slovenia** (29 May 1992; *minimum age specified: 15 years*); **Spain** (16 May 1977; *minimum age specified: 16 years*); **Sweden** (23 Apr 1990; *minimum age specified: 15 years*); **United Kingdom** (07 Jun 2000; *minimum age specified: 16 years*).
Relevant EU *acquis* engaged	• C138 falls under the ILO category on child labour and engages the EU chapter on social policy. • C138 engages Article 32 of the EU Charter on Fundamental Rights. • C138 engages Articles 4(2)(b) and 153(1)(a) TFEU. • C138 engages: - Council Directive 94/33/EC on the protection of young people at work
Summary of compatibility analysis	• C138 is wholly compatible with the EU *acquis*. • Directive 94/33/EC is more stringent than the Convention on the working minimum age in the context of the societal economic and educational development (Convention Article 2(4)); the scope of economic sectors to which provisions protecting young people at work apply (Convention Article 4(1)).
Assessment of	• C138 falls wholly within shared competence.

external competence		
Ranking criteria	**Compatibility: Compatible** **Valued added to the EU *acquis*: Low** **Importance to the EU: Medium** **Importance to the ILO: Medium**	
Implications	***Compatibility***	There are **no significant compatibility concerns**. This means that the EU can promote ratification.
	Competence	C138 falls wholly within shared competence.
	Priority	**Medium**

SUBSTANTIVE ANALYSIS:

Convention Provisions	**EU *acquis* engaged by Convention's provisions, and relevant EU instruments**	**Compatibility of Convention's provisions with relevant EU standard**	**External competence in relation to the Convention's provisions**
Considering that the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour, and			
Article 1 Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise	EU Charter of Fundamental Rights Article 32 The employment of children is prohibited. The minimum age of admission to employment may not be	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.

progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.	lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and expect for limited derogations. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education. Council Directive 94/33/EC on the protection of young people at work Article 1 1. Member States shall take the necessary measures to prohibit work by children. They shall ensure, under the conditions laid down by this		

	Directive, that the minimum working or employment age is not lower than the minimum age at which compulsory full-time schooling as imposed by national law ends or 15 years in any event. 3. Member States shall ensure in general that employers guarantee that young people have working conditions which suit their age. They shall ensure that young people are protected against economic exploitation and against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardize their education.		
Article 2 1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission	See above.	**Compatible regulation**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.

to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.			
2. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.	No relevant *acquis*.		
3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.	See above.		
4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently	Articles 151 and 153(a) TFEU	**Directive more stringent than the Convention, but compatible regulation.** The Directive does not permit Member States to	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum

developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.		lower the minimum working age to 14 for reasons of societal economic or educational development.	requirements.
5. Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation a statement--	Articles 151 and 153(a) TFEU	**Directive more stringent than the Convention, but compatible regulation.** See above.	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.
(a) that its reason for doing so subsists; or	Articles 151 and 153(a) TFEU	**Directive more stringent than the Convention, but compatible regulation.** See above.	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.
(b) that it renounces its right to avail itself of the provisions in question as from a stated date.	Articles 151 and 153(a) TFEU	**Directive more stringent than the Convention, but compatible regulation.** See above.	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.

Article 3 1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.	*Article 3* (a) 'young person' shall mean any person under 18 years of age referred to in Article 2 (1); *Article 7* **Vulnerability of young people — Prohibition of work** 1. Member States shall ensure that young people are protected from any specific risks to their safety, health and development which are a consequence of their lack of experience, of absence of awareness of existing or potential risks or of the fact that young people have not yet fully matured.	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.
2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers	See above.	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.

and workers concerned, where such exist.			
3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.	See above.	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.
Article 4 1. In so far as necessary, the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited		**Directive more stringent than the Convention, but compatible regulation:** The Directive does not allow the exclusion of certain categories of work from the scope of measures that protect young people at work.	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.

categories of employment or work in respect of which special and substantial problems of application arise.			
2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.	No relevant *acquis*.		
3. Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of	See Convention Article 3.	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.

this Article.			
Article 5 1. A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.	Articles 151 and 153(a) TFEU	**Directive more stringent than the Convention, but compatible regulation.** The Directive does not permit limitations of the scope of its application reasons of societal economic or educational development.	**Union and Member State shared competence as to international agreements than engage EU social policy:** Social policy is an area of Union and Member State shared competence under Article 4(2)(b) TFEU.
2. Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.	Articles 151 and 153(a) TFEU	**See above.**	**Union and Member State shared competence as to international agreements than engage EU social policy:** Social policy is an area of Union and Member State shared competence under Article 4(2)(b) TFEU.
3. The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and	Articles 151 and 153(a) TFEU	**See above.**	**Union and Member State shared competence as to international agreements than engage EU social policy:** Social policy is an area of Union and Member State shared competence under Article 4(2)(b) TFEU.

plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.			
4. Any Member which has limited the scope of application of this Convention in pursuance of this Article-- (a) shall indicate in its reports under Article 22 of the Constitution of the International Labour Organisation the general position as regards the employment or work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention;	No relevant *acquis*.		
(b) may at any time formally	No relevant *acquis*.		

extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.			
Article 6 This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of--	*Article 4* **Prohibition of work by children** 1. Member States shall adopt the measures necessary to prohibit work by children. 2. Taking into account the objectives set out in Article 1, Member States may make legislative or regulatory provision for the prohibition of work by children not to apply to: See below.	**Compatible regulation:** The Directive also allows children to work at school.	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.
(a) a course of education or training for which a school or training institution is primarily responsible;	See Convention Article 7 below.		**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.

(b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or	b) children of at least 14 years of age working under a combined work/training scheme or an in-plant work-experience scheme, provided that such work is done in accordance with the conditions laid down by the competent authority;	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.
(c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.	See Convention Article 7 below.	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.
Article 7 1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is--			
(a) not likely to be harmful to their health or development; and	Article 4(2) (c) children of at least 14 years of age performing light work other than that covered by Article 5; light work other than that covered by Article 5 may, however, be performed by	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.

	children of 13 years of age for a limited number of hours per week in the case of categories of work determined by national legislation.		
(b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.	2. Member States shall by legislative or regulatory provision lay down the working conditions for children in the cases referred to in paragraph 1 and the details of the prior authorization procedure, on condition that the activities: (i) are not likely to be harmful to the safety, health or development of children, and (ii) are not such as to be harmful to their attendance at school, their participation in vocational guidance or training programmes approved by the competent authority or their capacity to benefit from the instruction received. *Article 7* **Vulnerability of young**	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.

	people — Prohibition of work 2. Without prejudice to Article 4 (1), Member States shall to this end prohibit the employment of young people for: (a) work which is objectively beyond their phyiscal or psychological capacity; (b) work involving harmful exposure to agents which are toxic, carcinogenic, cause heritable genetic damage, or harm to the unborn child or which in any other way chronically affect human health; (c) work involving harmful exposure to radiation; (d) work involving the risk of accidents which it may be assumed cannot be recognized or avoided by young persons owing to their insufficient attention to safety or lack of experience or training; or (e) work in which there is a risk to health from extreme cold or heat, or from noise		

	or vibration. Work which is likely to entail specific risks for young people within the meaning of paragraph 1 includes: — work involving harmful exposure to the physical, biological and chemical agents referred to in point I of the Annex, and — processes and work referred to in point II of the Annex. 3. Member States may, by legislative or regulatory provision, authorize derogations from paragraph 2 in the case of adolescents where such derogations are indispensable for their vocational training, provided that protection of their safety and health is ensured by the fact that the work is performed under the supervision of a competent person within the meaning of Article 7 of Directive 89/391/EEC and provided that the protection afforded by that Directive is		

	guaranteed.		
2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.	See relevant articles above.	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.
3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.	*Article 8* **Working time** 1. Member States which make use of the option in Article 4 (2) (b) or (c) shall adopt the measures necessary to limit the working time of children to: (a) eight hours a day and 40 hours a week for work performed under a combined work/training scheme or an in-plant work-experience scheme; (b) two hours on a school day and 12 hours a week for work performed in term-time outside the hours fixed	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.

	for school attendance, provided that this is not prohibited by national legislation and/or practice; in no circumstances may the daily working time exceed seven hours; this limit may be raised to eight hours in the case of children who have reached the age of 15; (c) seven hours a day and 35 hours a week for work performed during a period of at least a week when school is not operating; these limits may be raised to eight hours a day and 40 hours a week in the case of chidren who have reached the age of 15; (d) seven hours a day and 35 hours a week for light work performed by children no longer subject to compulsory full-time schooling under national law. 2. Member States shall adopt the measures necessary to limit the working time of adolescents		

	to eight hours a day and 40 hours a week. 3. The time spent on training by a young person working under a theoretical and/or practical combined work/training scheme or an in-plant work-experience scheme shall be counted as working time. 4. Where a young person is employed by more than one employer, working days and working time shall be cumulative. 5. Member States may, by legislative or regulatory provision, authorize derogations from paragraph 1 (a) and paragraph 2 either by way of exception or where there are objective grounds for so doing. Member States shall, by legislative or regulatory provision, determine the conditions, limits and procedure for implementing such derogations.		
4. Notwithstanding the provisions of paragraphs 1	**Prohibition of work by children**	**Directive more stringent than the Convention, but**	**Union and Member State shared competence as to international**

and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.	1. Member States shall adopt the measures necessary to prohibit work by children. 2. Taking into account the objectives set out in Article 1, Member States may make legislative or regulatory provision for the prohibition of work by children not to apply to: (a) children pursuing the activities set out in Article 5; (b) children of at least 14 years of age working under a combined work/training scheme or an in-plant work-experience scheme, provided that such work is done in accordance with the conditions laid down by the competent authority; (c) children of at least 14 years of age performing light work other than that covered by Article 5; light work other than that covered by Article 5 may, however, be performed by children of 13 years of age for a limited number of	**compatible regulation:** The Directive absolutely prohibits work by children under 13.	**agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.

	hours per week in the case of categories of work determined by national legislation.		
Article 8 1. After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.	*Article 4* **Prohibition of work by children** 2. Taking into account the objectives set out in Article 1, Member States may make legislative or regulatory provision for the prohibition of work by children not to apply to: (a) children pursuing the activities set out in Article 5; *Article 5* **Cultural or similar activities** 1. The employment of children for the purposes of performance in cultural, artistic, sports or advertising activities shall be subject to prior authorization to be given by the competent authority in individual cases. 2. Member States shall by legislative or regulatory	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.

	provision lay down the working conditions for children in the cases referred to in paragraph 1 and the details of the prior authorization procedure, on condition that the activities: (i) are not likely to be harmful to the safety, health or development of children, and (ii) are not such as to be harmful to their attendance at school, their participation in vocational guidance or training programmes approved by the competent authority or their capacity to benefit from the instruction received. 3. By way of derogation from the procedure laid down in paragraph 1, in the case of children of at least 13 years of age, Member States may authorize, by legislative or regulatory provision, in accordance		

	with conditions which they shall determine, the employment of children for the purposes of performance in cultural, artistic, sports or advertising activities. 4. The Member States which have a specific authorization system for modelling agencies with regard to the activities of children may retain that system.		
2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.	See Convention Article 6(3) on working time.	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.
Article 9 1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.	Articles 151 and 153(a) TFEU	**Convention more stringent than the Directive, but compatible regulation.**	**Union and Member State shared competence as to international agreements than engage EU social policy:** Social policy is an area of Union and Member State shared competence under Article 4(2)(b) TFEU.

2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.	*Article 18* This Directive is addressed to the Member States.	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Council Directive 94/33/EC:** The Directive sets minimum requirements.
3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.		**Convention more stringent than the Directive, but compatible regulation.**	
Final provisions **Article 10 – 18**			

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