European Commission

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

- Annex "C78 - Medical Examination of Young Persons (Non-Industrial Occupations) Convention" -

Employment, Social Affairs and Inclusion

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SUMMARY	
Convention	• **C078 - Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)**
Subject	• Provides for the protection and health assessment of young people working in an environments other than industry by providing for regular (Article 2) and free (Article 5) medical examinations, and for a minimum age of 18 (Article 3) and 21(Article 4) in order to undertake certain types of dangerous non-industrial work.
Member State uptake	• Thirty-nine states have ratified C078, of which **twelve are Member States**: • Bulgaria (29 Dec 1949); Czech Republic (01 Jan 1993); France (28 Jun 1951); Greece (28 Aug 1981); Hungary (08 Jun 1956); Italy (22 Oct 1952); Luxembourg (03 Mar 1958); Malta (18 May 1990); Poland (11 Dec 1947); Portugal (23 May 1983); Slovakia (01 Jan 1993); Spain (05 May 1971).
Relevant EU *acquis* engaged	• C078 is classified under the ILO category of protection of young people, and engages the EU chapter on social policy. • C078 engages Articles 4(2)(b) and 153(1)(a) TFEU. • C078 engages: - Council Directive 94/33/EC on the protection of young people at work - Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work
Summary of compatibility analysis	• C078 is entirely compatible with the EU *acquis*. • C078 is more stringent than the *acquis* on the frequency of medical re-examinations for young people (Convention Articles 3-4); that an examination must be carried out by a physician (Convention Article 2(2)); physical and vocational rehabilitation of young people (Convention Article 6); certificates for inspectors (Convention Article 7).
Assessment of external competence	• C078 falls under shared Union and Member State competence.
Ranking criteria	• **Compatibility:** C078 is entirely compatible with the EU *acquis*. • **Value added: High** • C078 would significantly improve the protection afforded to young people through health inspections and contribute to their rehabilitation. • **Importance to the EU and the ILO: High** • C078 concerns the protection of young workers.
Implications	***Compatibilit*** • There are **no significant compatibility concerns**. This means that the EU can promote

	y	ratification.
	Competence	• C078 falls under shared competence, and Member States do not require Council authorisation to ratify it.
	Priority	• **High**

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**
Having decided upon the adoption of certain proposals with regard to medical examination for fitness for employment in non-industrial occupations of children and young persons, which is included in the third item on the agenda of the Session, and			
PART I. GENERAL PROVISIONS ***Article 1*** 1. This Convention applies to children and young persons employed for wages, or working directly or indirectly for gain, in non-industrial occupations.	Council Directive 94/33/EC on the protection of young people at work *Article 2* Scope 1. This Directive shall apply to any person under 18 years of age having an employment contract or an employment	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Directive 94/33/EC:** The Directive sets minimum requirements.

	relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State. 2. Member States may make legislative or regulatory provision for this Directive not to apply, within the limits and under the conditions which they set by legislative or regulatory provision, to occasional work or short-term work involving: (a) domestic service in a privat household, or (b) work regarded as not being harmful, damaging or dangerous to young people in a family undertaking. *Article 3* **Definitons** For the purposes of this Directive: (a)'young person' shall mean any person under 18 years of age referred to in		

	Article 2 (1);		
2. For the purpose of this Convention, the term ***non-industrial occupations*** includes all occupations other than those recognised by the competent authority as industrial, agricultural and maritime occupations.			
3. The competent authority shall define the line of division which separates non-industrial occupations from industrial, agricultural and maritime occupations.			
4. National laws or regulations may exempt from the application of this Convention employment, on work which is recognised as not being dangerous to the health of children or young persons, in family undertakings in which only parents and their children or wards are employed.	*Article 2* **Scope** 1. This Directive shall apply to any person under 18 years of age having an employment contract or an employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State. 2. Member States may	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Directive 94/33/EC:** The Directive sets minimum requirements.

	make legislative or regulatory provision for this Directive not to apply, within the limits and under the conditions which they set by legislative or regulatory provision, to occasional work or short-term work involving: (a) domestic service in a privat household, or (b) work regarded as not being harmful, damaging or dangerous to young people in a family undertaking.		
Article 2 1. Children and young persons under eighteen years of age shall not be admitted to employment or work in non-industrial occupations unless they have been found fit for the work in question by a thorough medical examination.	*Article 6* **General obligations on employers** 1. Without prejudice to Article 4 (1), the employer shall adopt the measures necessary to protect the safety and health of young people, taking particular account of the specific risks referred to in Article 7 (1). 2. The employer shall implement the measures provided for in paragraph	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Directive 94/33/EC:** The Directive sets minimum requirements.

	1 on the basis of an assessment of the hazards to young people in connection with their work. The assessment must be made before young people begin work and when there is any major change in working conditions and must pay particular attention to the following points: (a) the fitting-out and layout of the workplace and the workstation; (b) the nature, degree and duration of exposure to physical, biological and chemical agents; (c) the form, range and use of work equipment, in particular agents, machines, apparatus and devices, and the way in which they are handled; (d) the arrangement of work processes and operations and the way in which these are combined (organization of work);		

	(e) the level of training and instruction given to young people. Where this assessment shows that there is a risk to the safety, the physical or mental health or development of young people, an appropriate free assessment and monitoring of their health shall be provided at regular intervals without prejudice to Directive 89/391/EEC. The free health assessment and monitoring may form part of a national health system.		
2. The medical examination for fitness for employment shall be carried out by a qualified physician approved by the competent authority and shall be certified either by a medical certificate or by an endorsement on the work permit or in the workbook.	Articles 151 and 153(a) TFEU	**Convention more stringent than the Directive, but compatible regulation:** The Directive does not stipulate that the health assessment must be carried out by a qualified physician.	**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 document certifying fitness for employment may be issued--			
(a) subject to specified conditions of employment;	Articles 151 and 153(a) TFEU	**Convention more stringent than the acquis, 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.
(b) for a specified job or for a group of jobs or occupations involving similar health risks which have been classified as a group by the authority responsible for the enforcement of the laws and regulations concerning medical examinations for fitness for employment.	Articles 151 and 153(a) TFEU	**Convention more stringent than the acquis, 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.
4. National laws or regulations shall specify the authority competent to issue the document certifying fitness for employment and shall define the conditions to be observed in drawing up and issuing the	Articles 151 and 153(a) TFEU	**Convention more stringent than the acquis, 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.

document.			
Article 3 1. The fitness of a child or young person for the employment in which he is engaged shall be subject to medical supervision until he has attained the age of eighteen years.	See Convention Article 2(1).	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Directive 94/33/EC:** The Directive sets minimum requirements.
2. The continued employment of a child or young person under eighteen years of age shall be subject to the repetition of medical examinations at intervals of not more than one year.	See Convention Article 2(1).	**Convention more stringent than the Directive, but compatible regulations:** While Directive 94/33/EC provides for the continued examination of the health of young people where the work might pose a risk to their health, it does not provide for at least annual re-examination.	**Union and Member State shared competence as to international agreements that engage Directive 94/33/EC:** The Directive sets minimum requirements.
3. National laws or regulations shall--			
(a) make provision for the special circumstances in which a medical re-examination shall be required in addition to the annual examination or at more frequent intervals in	Articles 151 and 153(a) TFEU	**Convention more stringent than the Directive, but compatible regulations:** 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.

order to ensure effective supervision in respect of the risks involved in the occupation and of the state of health of the child or young person as shown by previous examinations; or			
(b) empower the competent authority to require medical re-examinations in exceptional cases.	Articles 151 and 153(a) TFEU	**Convention more stringent than the Directive, but compatible regulations:** 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.
Article 4 1. In occupations which involve high health risks medical examination and re-examinations for fitness for employment shall be required until at least the age of twenty-one years.	See Convention Article 2(1).	**Convention more stringent than the Directive, but compatible regulations:** While Directive 94/33/EC provides for the continued examination of the health of young people where the work might pose a risk to their health, it does not provide for re-examination for workers above the age of 18.	**Union and Member State shared competence as to international agreements that engage Directive 94/33/EC:** The Directive sets minimum requirements.
2. National laws or regulations shall either specify, or empower an appropriate authority to	See Convention Article 2(1).	**Convention more stringent than the Directive, but compatible regulations:**	**Union and Member State shared competence as to international agreements that engage Directive 94/33/EC:**

specify, the occupations or categories of occupations in which medical examination and re-examinations for fitness for employment shall be required until at least the age of twenty-one years.		See above.	The Directive sets minimum requirements.
Article 5 The medical examinations required by the preceding articles shall not involve the child or young person, or his parents, in any expense.	Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work 5. Measures related to safety, hygiene and health at work may in no circumstances involve the workers in financial cost.	**Compatible regulation.**	**Union and Member State shared competence as to international agreements that engage Directive 89/391/EEC:** The Directive sets minimum requirements.
Article 6 1. Appropriate measures shall be taken by the competent authority for vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or to have	Articles 151 and 153(a) TFEU	**Convention more stringent than the acquis, 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.

physical handicaps or limitations.			
2. The nature and extent of such measures shall be determined by the competent authority; for this purpose co-operation shall be established between the labour, health, educational and social services concerned, and effective liaison shall be maintained between these services in order to carry out such measures.	Articles 151 and 153(a) TFEU	**Convention more stringent than the acquis, 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.
3. National laws or regulations may provide for the issue to children and young persons whose fitness for employment is not clearly determined--	Articles 151 and 153(a) TFEU	**Convention more stringent than the acquis, 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.
(a) of temporary work permits or medical certificates valid for a limited period at the expiration of which the young worker will be required to undergo re-examination;	Articles 151 and 153(a) TFEU	**Convention more stringent than the acquis, 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.
(b) of permits or certificates requiring	Articles 151 and 153(a) TFEU	**Convention more stringent than the acquis,**	**Union and Member State shared competence as to international**

special conditions of employment.		**but compatible regulation.**	**agreements than engage EU social policy:** Social policy is an area of Union and Member State shared competence under Article 4(2)(b) TFEU.
Article 7 1. The employer shall be required to file and keep available to labour inspectors either the medical certificate for fitness for employment or the work permit or workbook showing that there are no medical objections to the employment as may be prescribed by national laws or regulations.	Articles 151 and 153(a) TFEU	**Convention more stringent than the acquis, 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 shall determine--	Articles 151 and 153(a) TFEU	**Convention more stringent than the acquis, 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.
(a) the measures of identification to be adopted for ensuring the application of the system of medical examination for fitness for employment to children and young	Articles 151 and 153(a) TFEU	**Convention more stringent than the acquis, 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.

persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried on in the streets or in places to which the public have access; and			
(b) the other methods of supervision to be adopted for ensuring the strict enforcement of the Convention.	Articles 151 and 153(a) TFEU	**Convention more stringent than the acquis, 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.
PART II. SPECIAL PROVISIONS FOR CERTAIN COUNTRIES *Not relevant*			
PART III. FINAL ARTICLES ***Article 10*** Nothing in this Convention shall affect any law, award, custom or agreement between employers and workers which ensures more favourable conditions than those provided by this Convention.	See Convention Articles that engage the *acquis*.	**Compatible regulation.**	See Convention Articles that engage the *acquis*.

Articles 11 – 18 ***Final provisions***			

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This annex is part of "Analysis – in the light of the European Union acquis – of ILO up to date Conventions", a study that aims at providing an analysis of ILO Conventions in the light of the EU acquis and at providing a ground for promoting the ratification of ILO conventions by Member States. For this purpose, the study provides a review of literature and legal doctrine in order to develop an adequate methodology: focusing on division of competences, compatibility of ILO provisions with Union acquis, and consequences for ratification of these instruments by Member States. It provides as well a detailed analysis of each of the up-to-date ILO instruments in light of the EU acquis, and an aggregation of this analysis in an accessible summary. The promotion of the ratification of international labour standards by Member States is an essential part of the Decent Work Agenda, to which all Member States have subscribed at international level.

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