

FIFTH MEETING OF THE SRM TWG

(23-27 SEPTEMBER 2019)

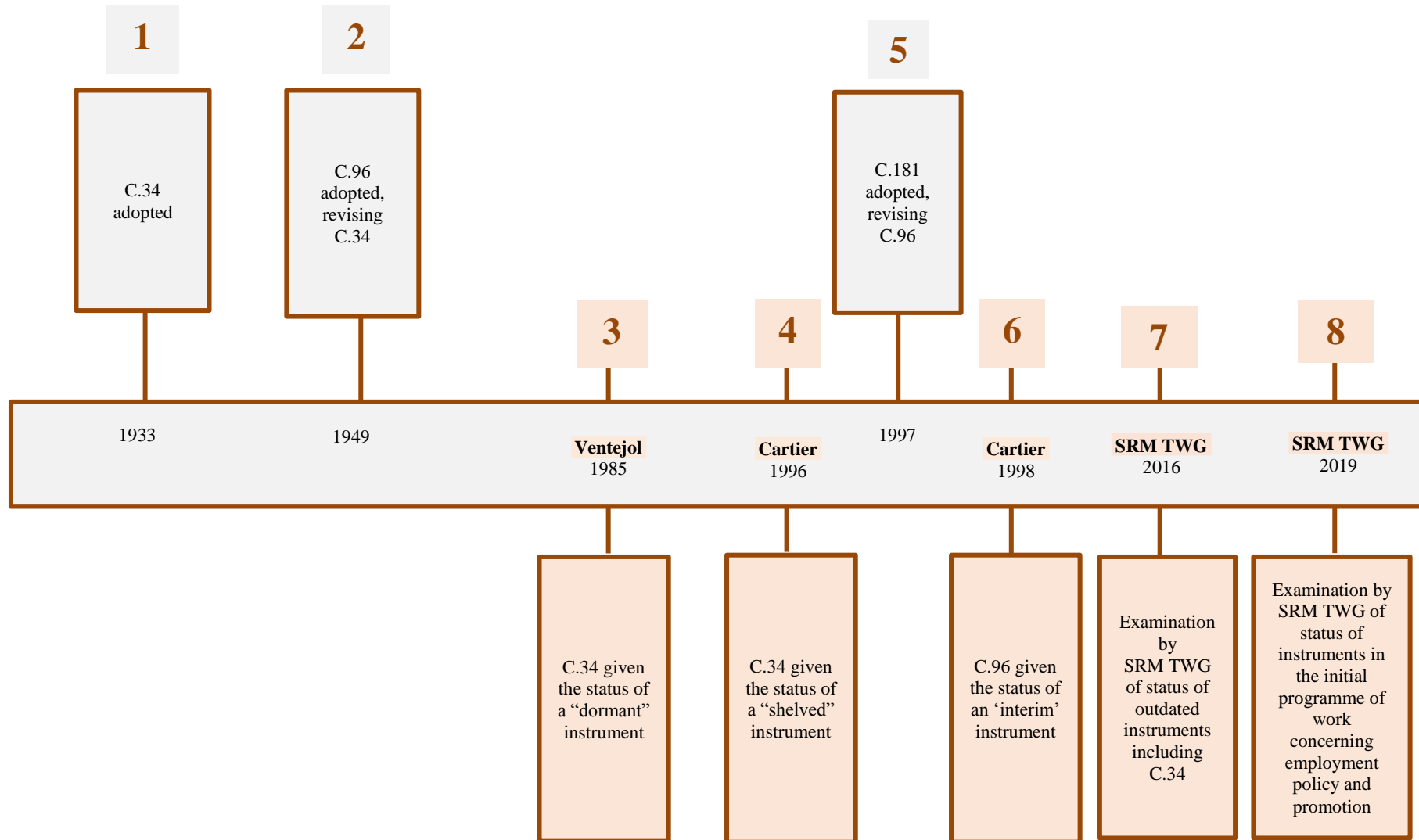
EXAMINATION OF INSTRUMENTS CONCERNING EMPLOYMENT POLICY AND PROMOTION

Technical Note 3: Instruments concerning private employment agencies

- There are four instruments in the initial programme of work concerning the regulation of private employment agencies:
 - the **Fee-Charging Employment Agencies Convention, 1933 (No. 34)**
 - the **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)**
 - the **Private Employment Agencies Convention, 1997 (No. 181)**
 - the **Private Employment Agencies Recommendation, 1997 (No. 188)**
- *Current status of instruments:* Convention No. 34 is considered outdated (classification of Cartier Working Party confirmed by SRM TWG); Convention No. 96 is considered 'interim' (as determined by the Cartier Working Party); Convention No. 181 and Recommendation No. 188 are considered to be up-to-date (never reviewed)
- *Possible action to be considered:* classification of Convention No. 96 as outdated and Convention No. 181 and Recommendation No. 188 as up-to-date, while acknowledging the status of Convention No. 34 as outdated

16 August 2019

ILO regulation of private employment agencies: Chronology of developments



ILO regulatory approach to private employment agencies

The **Fee-Charging Employment Agencies Convention, 1933 (No. 34)** aims to regulate intermediaries procuring employment for workers or supplying workers for employers. The regulatory approach in this area has evolved over time in response to evolving labour market conditions.

In 1933, at the time that Convention No. 34 was adopted, the regulatory approach favoured the abolition of fee-charging employment agencies conducted with a view to profit and the regulation of those not conducted with a view to profit. This approach evolved, by 1949, into the dual regulatory policy set out in **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)**, which revised Convention No. 34.

Member States that ratify Convention No. 96 may 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. Alternatively, ratifying States may accept the new optional Part III which provides for the regulation of fee-charging employment agencies, including those conducted with a view to profit.

A further evolution in the regulatory approach, responding to emerging private employment agencies, led to the single regulatory policy set out in the **Private Employment Agencies Convention, 1997 (No. 181)** and the **Private Employment Agencies Recommendation, 1997 (No. 188)**. The approach in Convention No. 181 builds on Part III of Convention No. 96, recognising the role of private employment agencies in a well-functioning labour market, providing protection for workers using their services, and promoting cooperation between public employment services and private employment agencies.

ILO developments since adoption of the instruments

1. 1933: ILC adopted Convention No. 34

Convention 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.

Convention No. 34 has not been in force since 2008, when the number of its effective ratifications fell to one (Chile).¹

See: [Convention No. 34](#)

¹ [Convention No. 34](#) was automatically denounced following *Slovakia's* ratification of [Convention No. 181](#) in 2007.

2. 1949: ILC adopted Convention No. 96, explicitly revising Convention No. 34

Convention No. 96 revises Convention No. 34. Its major difference from Convention No. 34 is in the choice given to member States to either accept a new optional Part II that provides for the progressive abolition of fee-charging employment agencies conducted with a view to profit and the regulation of other agencies (similar to Convention No. 34) on condition that a public employment service is established; or to accept the new optional Part III that provides for the regulation of fee-charging employment agencies, whether conducted with a view to profit or not.

The entering into force of Convention No. 96 in 1951 closed Convention No. 34 to new ratifications.

See: [Convention No. 96](#)

3. 1985: Governing Body classed Convention No. 34 as 'dormant'

Detailed reporting on Convention No. 34 was discontinued in 1985 by the Governing Body on the recommendation of the Ventejol Working Party, as Convention No. 34 was one of a group of instruments that were considered to have 'lost their relevance'.

See: [GB.231/13/18](#), para. 73

4. 1996: Governing Body shelved Convention No. 34 with immediate effect

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. As a shelved instrument, Convention No. 34 was no longer promoted or discussed in Office documents, was effectively closed to new ratifications, and was not the subject of requests for regular reports; it could, however, be the subject of article 24 and 26 procedures and observations under Article 23.

See: [GB.265/LILS/WP/PRS/1](#), pp. 22-23 (*Office background paper prepared for Working Party, March 1996*); [GB.265/LILS/5](#), p. 12 (*Report of the Working Party, March 1996*); [GB.265/8/2](#), para. 24 (*discussion of the LILS Committee, March 1996*)

5. 1997: ILC adopted Convention No. 181, revising Convention No. 96

Convention No. 181 and Recommendation No. 188 revise Convention No. 96 (which revises Convention No. 34) and signal the development of a new paradigm in regulatory approach. These instruments allow for the operation of private employment agencies; provide for the protection of workers using their services, with a focus on fundamental principles and rights at work; and promote cooperation with public employment services. Private employment agencies should not charge any fees or cost to workers for their services, unless ratifying States authorize exceptions.

Since Convention No. 181 came into force in 2000, Convention No. 96 has been closed to ratification; ratification of Convention No. 181 results in automatic denunciation of Convention No. 96.

See: [Convention No. 181](#) and [Recommendation No. 188](#)

6. 1998: Governing Body gave interim status to Convention No. 96

On the recommendation of the Cartier Working Party, the Governing Body placed Convention No. 96 in the category of “other instruments”, 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.

See: [GB.273/LILS/WP/PRS/2](#) (Office background paper, November 1998); [GB.273/LILS/4](#)(Rev. 1), paras 17-19 (Report of the Working Party, November 1998); [GB.273/8/2](#), paras 1-7 (discussion of the LILS Committee, November 1998); [GB.283/LILS/WP/PRS/1/2](#) (Office information note, March 2002)

7. 2016: SRM TWG examined Convention No. 34 within the context of its examination of the follow-up to the outdated instruments

The SRM TWG examined Convention No. 34 within the context of its examination of the follow-up to be taken to the outdated instruments, recommending that:

- (1) the Office commences follow-up with the government and the social partners of the member State party to Convention No. 34, within the next 12 months encouraging it to ratify Convention No. 181, as the most up-to-date instrument in this subject area which would result in the automatic denunciation of Convention No. 34;
- (2) based on the Office’s report concerning the information obtained through that follow-up, the SRM TWG will consider Convention No. 34 during its later examination of other instruments concerning employment policy instruments and decide at that time whether or not to recommend its withdrawal.

See: [GB.328/LILS/2/1\(Rev.\)](#), Annex I (recommendations), para. 9

8. 2016: Tripartite Meeting of Experts developed Guidelines on Fair Recruitment

The *General principles and operational guidelines for fair recruitment* reiterated that recruitment fees and related costs should not be charged to workers or jobseekers, consonant with Convention No. 181 and the Protocol of 2014 to the Forced Labour Convention, 1930. The cost of recruitment is an indicator for SDG target 10.7, of which the ILO is co-custodian with the World Bank; a new methodology for measuring recruitment fees and related costs in both cross-border and national recruitment is being developed, validated and tested. In 2018, a Tripartite Meeting of Experts developed a definition of recruitment fees and related costs.

Analysis of Conventions Nos 96 and 181

Analysis of Convention No. 96

The substantive provisions of Convention No. 96 are organised into three Parts.

ANALYSIS OF SUBSTANTIVE PROVISIONS OF CONVENTION NO. 96	
<i>I – General provisions</i>	
Article 1	<ul style="list-style-type: none"> • <i>Objective</i>: defines fee-charging employment agencies to include both those with a view to profit and those which are not • <i>Comparison with C.181</i>: C.181 defines private employment agencies to include a broader range of services (Art. 1) • <i>Current relevance</i>: the regulatory approach applied in the latest instrument does not rely on this distinction
Article 2	<ul style="list-style-type: none"> • <i>Objective</i>: sets out process for accepting the provisions of Part II, providing for the progressive abolition of fee-charging employment agencies conducted with a view to profit and the regulation of other agencies, or Part III of the Convention, providing for the regulation of fee-charging employment agencies including agencies conducted with a view to profit. Any Member accepting the provisions of Part III of the Convention may subsequently notify that it accepts the provisions of Part II. • <i>Comparison with C.181</i>: Non applicable • <i>Current relevance</i>: the regulatory approach applied in the latest instrument no longer includes an option of progressively abolishing fee-charging agencies with a view to a profit
<i>II – Progressive abolition of fee-charging employment agencies conducted with a view to profit and regulation of other agencies</i>	
Articles 3-9	<ul style="list-style-type: none"> • <i>Objective</i>: process by which fee-charging employment agencies conducted with a view to profit should be abolished within a limited period of time, including supervision prior to abolition; and setting out the requirement for agencies not conducted with a view to profit to be authorised to operate • <i>Comparison with C.181</i>: C.181 does not include an option of progressively abolishing fee-charging agencies with a view to a profit; and reduces the administrative burden of authorisation procedures • <i>Current relevance</i>: the regulatory approach applied in the latest instrument no longer includes an option to prohibit fee-charging agencies with a view to a profit
<i>III – Regulation of fee-charging employment agencies</i>	

Articles 10 & 11	<ul style="list-style-type: none"> • <i>Objective:</i> Fee-charging employment agencies shall be supervised by the competent authority, charge fees according to an authorised scale, and place or recruit workers abroad in accordance with the law; while those conducted with a view to profit shall require a licence, those not conducted with a view to profit shall require an authorisation • <i>Comparison with C.181:</i> C.181 provides that States shall determine whether a system of licensing or certification applies (Art. 3(2)) • <i>Current relevance:</i> the framework of C.96 is more complex than the regulatory approach applied in the latest instrument
Article 12	<ul style="list-style-type: none"> • <i>Objective:</i> competent authority should satisfy itself that operations of non-fee-charging employment agencies are carried out for free • <i>Comparison with C.181:</i> C.181 provides that private employment agencies shall not charge fees, with exceptions possible in limited circumstances (Art. 7); supervision of the implementation of the provisions in C.181 is by the labour inspectorate or other competent public authorities (Art. 14(2)) • <i>Current relevance:</i> encapsulated in C.181
Article 13	<ul style="list-style-type: none"> • <i>Objective:</i> appropriate penalties shall be applied in the event of violations • <i>Comparison with C.181:</i> adequate remedies, including penalties, shall be provided for and effectively applied (Art. 14(3)) • <i>Current relevance:</i> extended in C.181

Analysis of Convention No. 181

Convention No. 181 is the most recently adopted of the international labour conventions on employment agencies. It was analyzed by the Committee of Experts in its 2010 *General Survey*.²

ANALYSIS OF SUBSTANTIVE PROVISIONS OF CONVENTION NO. 181	
Article 1	<ul style="list-style-type: none"> • <i>Objective:</i> defines “private employment agency” as any natural or legal person, independent of the public authorities, which provides the labour market services listed in the Convention; and defines “workers” and “processing of personal data of workers” • <i>Current relevance:</i> Consistent with current practices
Article 2	<ul style="list-style-type: none"> • <i>Objective:</i> provides that the Convention applies to all private employment agencies, to all categories of workers and all branches of economic activity except seafarers; allows for the exclusion of workers in certain sectors subject

² ILO, [General Survey concerning employment instruments](#), (International Labour Conference, 99th Session, 2010, Geneva, Report III (Part 1B)), paras. 296-383.

	<p>to safeguards, and following examination by the competent authority and after consultation with the social partners</p> <ul style="list-style-type: none"> • <i>Current relevance:</i> Consistent with current practices. In its 2010 General Survey, the Committee of Experts noted that several countries had reserved the right to limit private employment agencies to certain activities to be determined by the authority responsible for labour matters (para. 323).
Article 3	<ul style="list-style-type: none"> • <i>Objective:</i> Legal status of private employment agencies determined after consultation with social partners; establishes system of licensing or certification • <i>Current relevance:</i> Consistent with current practices In its 2010 General Survey, the Committee of Experts commented that conditions concerning the operation of private employment agencies may be established by licences or certification, or otherwise regulated or determined by national law and practice (para. 240).
Article 4	<ul style="list-style-type: none"> • <i>Objective:</i> Obligation on States to ensure workers recruited by private employment agencies are not denied rights to freedom of association and collective bargaining • <i>Current relevance:</i> Consistent with current practices concerning fundamental principles and rights at work
Article 5	<ul style="list-style-type: none"> • <i>Objective:</i> Obligation on States to ensure private employment agencies treat workers without discrimination • <i>Current relevance:</i> Consistent with current practices concerning fundamental principles and rights at work
Article 6	<ul style="list-style-type: none"> • <i>Objective:</i> processing of personal data of workers by private employment agencies • <i>Current relevance:</i> Consistent with current practices, particularly in light of an increasing digitalization of service provision
Article 7	<ul style="list-style-type: none"> • <i>Objective:</i> general prohibition on charging fees or other costs, in whole or in part, to workers; exceptions permitted for certain categories of workers and specified types of services • <i>Current relevance:</i> Consistent with current practices. In its 2010 General Survey, the Committee of Experts noted that only some countries have made use of the possibility for exceptions (para. 336); that in most non-ratifying industrialized countries where temporary work agencies dominate the private employment market it is standard to prohibit fee-charging (para. 347); and that other non-ratifying countries with a significant number of overseas placement agencies have restricted fees and costs to certain categories of workers or fixed ceilings (para. 348). The industry of private employment agencies has also adopted, in many instances, codes of conduct that incorporate the principle of no charging fees or costs to workers for services delivered. C.189 also encourages the adoption of measures to ensure that fees

	charged by private employment agencies are not deducted from the remuneration of domestic workers (Art. 15 (e)).
Article 8	<ul style="list-style-type: none"> • <i>Objective:</i> obligation on States to ensure the protection of migrants recruited or placed in the territory of a member State • <i>Current relevance:</i> Consistent with current practices. In its 2010 General Survey, the Committee of Experts noted that this was a pivotal point of the Convention (para. 364). Provisions are also in line with C.189 to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies (Art. 15 (c)).
Article 9	<ul style="list-style-type: none"> • <i>Objective:</i> obligation on States to ensure that private agencies do not use children or place them in employment. • <i>Current relevance:</i> Consistent with current practices concerning fundamental principles and rights at work
Article 10	<ul style="list-style-type: none"> • <i>Objective:</i> machinery and procedure for investigation of complaints, alleged abuses and fraudulent practices • <i>Current relevance:</i> Consistent with current practices, including those promoted by C.189 (Art. 15(b)).
Articles 11 & 12	<ul style="list-style-type: none"> • <i>Objective:</i> obligation on States to ensure adequate protection for workers employed by private employment agencies, and to determine responsibilities between agencies and user enterprises, in relation to freedom of association, collective bargaining, minimum wages, working time and working conditions, statutory social security benefits, access to training, occupational safety and health, compensation in case of occupational accidents or diseases, insolvency and protection of workers claims, maternity protection and benefits, and parental protection and benefits • <i>Current relevance:</i> Consistent with current practices and C.189 to ensure decent work conditions for domestic workers placed by private employment agencies (Art. 15 (c)).
Article 13	<ul style="list-style-type: none"> • <i>Objective:</i> active cooperation between public employment service and private employment agencies while retaining final authority for formulating labour market policy and utilizing or controlling public funds for its implementation in public authorities • <i>Current relevance:</i> Consistent with current practice. Complementary provision in C.88 (art. 11)

The instruments in 2019

A Policy context

In the 21st century, the increasing need to provide services to expanding and more diversified labour markets needing to satisfy expectations of flexibility as well as job security have led to

a rethinking of the role of private employment agencies. The private placement and recruitment industry has steadily increased its market share and activities as many employers find them to be partner specialists in specific sectors or local markets, while for workers they present an additional portal to the labour market. With the adoption of Convention No. 181 and Recommendation No. 188, private employment agencies have a legitimate role in the labour market when effectively regulated. Experience from countries applying the provisions of the Convention show that effective laws and enforcement provide the basis for enhancing the protection of workers using the industry's services, improving access to decent work conditions and establishing a level playing field among different providers of employment services.

The Global Commission on the Future of Work encourages reinforcement of the linkages between public employment services and other partner organizations to support people through increasing labour market transitions. There are a number of areas where joint action is already the norm, particularly around the needs of vulnerable groups, such as people with disabilities, young jobseekers, older workers or ethnic minorities facing complex barriers to employment. Other interventions involve addressing sectoral or industry skill shortages through bringing private employment agencies in recruiting workers with the required profile from different geographical areas, including abroad. Nevertheless, for cooperation to be effective, the national employment service will need to strengthen its capacity to assume governance functions stipulated in Convention No. 181, in regard, to formulating labour market policy and establishing policy priorities for the utilization of public funds. This also requires creating incentives for private providers to develop capacity and improve compliance with laws and quality standards set by public authorities.³

Changes in technology introduce new opportunities and challenges.⁴ For instance, digital labour platforms are serving as placement intermediaries with the expansion of recruitment practices through crowd work and location-based applications (apps), which allocate work to individuals in dispersed geographical areas.⁵ The Global Commission on the Future of Work recommended the development of an international governance system for digital labour platforms that sets and requires platforms (and their clients) to respect certain minimum rights and protections.⁶ Particularly in economies where private employment agencies are regulated and embedded in the labour market, the industry promotes the adoption of codes of conduct to differentiate legitimate employment agencies from illegitimate job brokers. Codes encapsulate fundamental principles promoted by the Convention No. 181,⁷ including fair treatment and non-discrimination⁸, respect for freedom of association and the right to collective bargaining,⁹

³ Avila, Z. and Tian, G., [Good practices in using partnerships for the delivery of employment services in China, Working Paper No. 229](#), 2018, ILO Geneva.

⁴ ILO, [Global Commission on the Future of Work: Work for a brighter future](#), 2019, Geneva, p.44.

⁵ Berg, J. et al., [Digital labour platforms and the future of work: Towards decent work in the online world](#), 2018, ILO Geneva, p. xv.

⁶ [Global Commission on the Future of Work 2010](#), p.44.

⁷ [General Survey 2010](#), para. 350.

⁸ [General Survey 2010](#), para. 354; Art. 5 of [Convention No.181](#).

⁹ [Convention No. 181](#), Art. 4.

prohibition of the replacement of striking workers¹⁰ by temporary agency workers without prejudice to national legislation or practices, attention to working conditions and clarity of benefits and prohibition on child labour.¹¹ While mechanisms for self-regulation improve compliance, more downstream action is needed to effectively address and prevent fraudulent practices and violations by private employment agencies. Another crucial aspect, is that the Convention expressly prohibits the charging of fees to workers for temporary assignments and permanent placement services provided by private employment agencies. However, fee collection remains an ongoing debate in many member States and additional policy research is necessary to facilitate the implementation of mechanisms to define and allocate in a transparent manner related fees and costs, particularly in those cases where certain exceptions are applied in accordance with Art. 7(2) of the Convention No. 181.

B International labour standards context

(1) Information relating to the ratification of the Conventions

Convention No. 34 has been closed to new ratifications since 1951, when Convention No. 96 came into force. Ratification of the revising Convention automatically leads to the denunciation of Convention No. 34.

Convention No. 96 was last ratified 23 years ago and has been closed to new ratifications since 2000, when Convention No. 181 came into force. Ratification of the revising Convention automatically leads to the denunciation of Convention No. 96. Six of the 23 member States for which Convention No. 96 is in force have accepted the obligations of its Part III which, like the up-to-date Convention No. 181, involve the regulation of private employment agencies.

Convention No. 181 is the most ratified of the three instruments concerning private employment agencies. It was last ratified in 2018 and has not been denounced by any member State.

Convention	Effective ratifications:	Further information
Convention No. 34	1 effective ratification (10 denunciations)	<ul style="list-style-type: none"> No longer in force as only one effective ratification by <i>Chile</i> (ratified in 1935)
Convention No. 96	23 effective ratifications (19 denunciations)	<ul style="list-style-type: none"> <u>Last ratification</u>: 1996 (<i>Argentina</i>); closed to new ratifications since 2000 <u>Ratification by dates</u>: 1950-1969: 26 ratifications; 1970-1989: 11 ratifications; 1990-2000: 5 ratifications

¹⁰ Paragraph 6 of [Recommendation No.188](#): “Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.”

¹¹ [General Survey 2010](#), para. 359; Art. 9 of [Convention No. 181](#).

		<ul style="list-style-type: none"> • <u>Ratification by region</u>: Europe and Central Asia: 4 ratifications;¹² Africa: 7 ratifications;¹³ Americas: 6 ratifications;¹⁴ Asia and the Pacific: 3 ratifications;¹⁵ Arab States: 3 ratifications.¹⁶ • <u>Ratification by parts</u>: Part II: 15 ratifications;¹⁷ Part III: 8 ratifications.¹⁸
Convention No. 181	34 effective ratifications (0 denunciations)	<ul style="list-style-type: none"> • <u>Last ratification</u>: 2018 (<i>Rwanda</i>) • <u>Ratification by dates</u>: 1997-2007: 20 ratifications; 2008-2019: 13 ratifications • <u>Ratification by region</u>: Europe and Central Asia: 20 ratifications;¹⁹ Africa: 8 ratifications;²⁰ Americas: 3 ratifications;²¹ Asia and the Pacific: 3 ratifications;²² Arab States: 0 ratifications.

The Committee of Experts recorded, in its 2010 General Survey, prospects for ratification of Convention No. 181 by certain member States, as well as reasons for its non-ratification by other member States.²³

The Committee of Experts noted that 36 member States indicated prospects for ratification of Convention No. 181, three of which had begun the process of ratification.²⁴ Of those 36 member States, five have completed the ratification process by March 2019: *France* (2015), *Israel* (2012), *Mongolia* (2015), *Rwanda* (2018) and *Serbia* (2013); three further member States that the Committee of Experts had noted had begun the process of ratification in 2010 have not yet completed the process.²⁵ Within the programmatic cycle 2018-19, the Office is supporting the ratification process in *Ukraine*.

Obstacles to ratification of Convention No. 181 noted in the 2010 General Survey included divergence from national legislation, the existence of other national priorities or opposition to intermediary employment operations, the non-existence of private employment agencies, and incompatibility of national law and practice with the prohibition in article 7 of the Convention

¹² *Ireland, Luxembourg, Malta and Turkey.*

¹³ *Côte d'Ivoire, Djibouti, Eswatini, Gabon, Ghana, Mauritania and Senegal.*

¹⁴ *Argentina, Bolivia, Costa Rica, Cuba, Guatemala and Mexico.*

¹⁵ *Bangladesh, Pakistan and Sri Lanka.*

¹⁶ *Egypt, Libya and Syrian Arab Republic.*

¹⁷ *Bangladesh, Bolivia, Costa Rica, Cuba, Djibouti, Egypt, Eswatini, Gabon, Ghana, Guatemala, Libya, Luxembourg, Mauritania, Pakistan, Syrian Arab Republic.*

¹⁸ *Argentina, Côte d'Ivoire, Ireland, Malta, Mexico, Senegal, Sri Lanka, Turkey.*

¹⁹ *Albania, Belgium, Bosnia and Herzegovina, Bulgaria, Czech Republic, Finland, France, Georgia, Hungary, Israel, Italy, Lithuania, Republic of Moldova, Netherlands, Poland, Portugal, Serbia, Slovakia, Spain and The former Yugoslav Republic of Macedonia.*

²⁰ *Algeria, Ethiopia, Madagascar, Mali, Morocco, Niger, Rwanda and Zambia.*

²¹ *Panama, Suriname and Uruguay.*

²² *Fiji, Japan and Mongolia.*

²³ See [General Survey 2010](#), paras. 723-740.

²⁴ [General Survey 2010](#), para. 734.

²⁵ [General Survey 2010](#), para. 735: *Central African Republic, Côte d'Ivoire and Seychelles.*

against the charging of fees to workers.²⁶ Some member States indicated that they were not considering ratification either because their labour markets were in transition or because their private employment agencies were underdeveloped.²⁷ In the context of the Committee's regular examination of the application of Convention No. 96, other obstacles to the ratification of Convention No. 181 concerned the lack of legal and administrative infrastructure, divergence from national legislation, lack of agreement by the social partners to ratification, or a belief that the Convention is not necessary.²⁸

(2) Information concerning the implementation of Conventions Nos 96 and 181

The Committee of Experts actively supervises the application of Conventions Nos 96 and 181.

In relation to the 22 pending comments concerning the application of **Convention No. 96**:

- In a number of the comments, the Committee refers to ratification of Convention No. 181²⁹ or notes steps taken towards its ratification by member States in which Convention No. 96 is currently in force.³⁰
- It appears that most ratifying States that have accepted the obligations of Part II of the Convention have not taken steps to abolish fee-charging employment agencies as that Part provides.³¹
- Substantive elements raised by the Committee in relation to ratifying States that have accepted the obligations of Part III of the Convention include requests for information on the application of the Convention in practice, and particularly supervision of agencies in relation to inspection and remedying of violations.³² The recruitment and placement of workers abroad is raised in relation to Parts II and III of the Convention.³³

²⁶ [General Survey 2010](#), para. 724. Note that *Mali*, that had indicated that divergence from national legislation was an obstacle to ratification of [Convention No. 181](#), has since ratified it in 2016.

²⁷ [General Survey 2010](#), para. 726.

²⁸ [General Survey 2010](#), paras. 729-733.

²⁹ Eg, *Libya*, *Luxembourg*, and *Malta*, direct requests, published in 2018; *Mauritania*, direct request, published in 2017; *Eswatini* and *Pakistan*, observations, published in 2016; *Guatemala* and *Turkey*, direct requests, published in 2016; *Mexico* and *Senegal*, direct requests, published in 2015.

³⁰ Eg, *Djibouti*, direct request, published in 2017 (Government envisages ratification of C.181 and intended to submit to tripartite council); *Gabon* (C.181 submitted to Parliament recommending ratification) and *Syrian Arab Republic* (Government intended to submit C.181 to competent authorities via the tripartite council), direct requests, published in 2017; *Costa Rica* (C.181 pending before the Legislative Assembly) and *Ghana* (Government indicated that ratification of C.181 instituted), direct requests, published in 2016.

³¹ Eg, *Libya* and *Luxembourg*, direct requests, published in 2018; *Mauritania*, direct request, published in 2017; *Guatemala*, direct request, published in 2016; *Pakistan*, observation, published in 2016.

³² Eg, *Côte d'Ivoire* and *Malta*, direct requests, published in 2018; *Argentina*, observation, published in 2017; *Ireland*, direct request, published in 2017; *Turkey*, direct request, published in 2016; *Mexico*, direct request, published in 2015.

³³ Eg *Djibouti*, direct request, published in 2017; *Bangladesh* and *Guatemala*, direct requests, published in 2016; *Sri Lanka*, direct request, published in 2015.

- Workers' and employers' organizations in *Argentina, Costa Rica, Turkey* and *Mexico* have submitted observations to the Committee concerning the application of the Convention in recent years.

In relation to the 25 pending comments concerning the application of **Convention No. 181**:

- Substantive elements raised by the Committee include requests for more information concerning the application of the Convention in practice in relation to all its provisions, such as application to temporary work agencies,³⁴ application of the principle that fees should not be charged,³⁵ personal data,³⁶ allocation of responsibilities between agencies and enterprises,³⁷ protection of freedom of association,³⁸ investigation of complaints and remedies,³⁹ protections of workers and particularly migrant workers,⁴⁰ and cooperation between private employment agencies and public employment services.⁴¹
- In a direct request published in 2017, the Committee noted with interest conditions for cooperation between public employment services and private employment agencies in *Belgium*.
- The Committee is following up the recommendations of a tripartite committee established under article 24 of the Constitution in relation to the application by *Japan* of the Convention, noting the need for adequate protection for all workers employed by private employment agencies.⁴²
- In 2016, the Committee provided in-depth comments on the first reports of the Governments of *Fiji, Macedonia* and *Zambia*.

³⁴ Eg, *Belgium*, direct request, published in 2017; *Bulgaria* and *Italy*, observations, published in 2017; *North Macedonia*, direct request, published in 2016; *Netherlands*, direct request, published in 2015.

³⁵ Eg, *Albania*, direct request, published in 2018; *Belgium* and *Poland*, direct requests, published in 2017; *Georgia*, observation, published in 2017; *Fiji, Israel, North Macedonia, Portugal* and *Zambia*, direct requests, published in 2016; *Morocco*, direct request, published in 2015.

³⁶ Eg, *Czech Republic* and *Ethiopia*, direct requests, published in 2017; *Georgia*, observation, published in 2017; *North Macedonia* and *Zambia*, direct requests, published in 2016; *Panama*, observation, published in 2016; *Netherlands*, direct request, published in 2015.

³⁷ Eg, *Czech Republic, Hungary* and *Poland*, direct requests, published in 2017; *Fiji, Finland, Israel* and *Slovakia*, direct requests, published in 2016; *Lithuania* and *Republic of Moldova*, direct requests, published in 2015.

³⁸ Eg, *Bulgaria* and *Georgia*, observations, published in 2017; *North Macedonia*, direct request, published in 2016.

³⁹ Eg, *Albania*, direct request, published in 2018; *Poland*, direct request, published in 2017; *Bosnia and Herzegovina, Israel, North Macedonia, Portugal* and *Zambia*, direct requests, published in 2016; *Panama*, observation, published in 2016; *Republic of Moldova* and *Morocco*, direct requests, published in 2015.

⁴⁰ Eg, *Albania*, direct request, published in 2018; *Bulgaria* and *Georgia*, observations, published in 2017; *Ethiopia* and *Poland*, direct requests, published in 2017; *Uruguay*, observation, published in 2017; *Bosnia and Herzegovina, Fiji, Israel, North Macedonia, Portugal, Slovakia* and *Zambia*, direct requests, published in 2016; *Lithuania, Republic of Moldova* and *Morocco*, direct requests, published in 2015;

⁴¹ Eg, *Bulgaria, Georgia, Italy* and *Uruguay*, observations, published in 2017; *Czech Republic, Ethiopia* and *Hungary*, direct requests, published in 2017; *Fiji, Israel, North Macedonia, Portugal, Slovakia* and *Zambia*, direct requests, published in 2016; *Lithuania, Morocco* and *Netherlands*, direct requests, published in 2015.

⁴² *Japan*, direct request, published in 2018.

- Observations submitted by employers' and workers' organizations in *Japan, Bulgaria, Czech Republic, Georgia, Poland, Finland* and *Portugal* have been examined by the Committee of Experts in recent years.

(2) Information concerning Office follow-up of the SRM TWG's earlier recommendation concerning Convention No. 34

Within the 12 months following the SRM TWG's October 2016 meeting, the Office started implementing the SRM TWG's recommendations in relation to the 30 Conventions previously identified as outdated.⁴³ In relation to the member State bound by Convention No. 34, the Office has established a baseline, developed an implementation plan, and transmitted an individualised letter, inviting Chile to consider ratifying Convention No. 181, the related more up-to-date instrument, which would result in the automatic denunciation of Convention No. 34.

Key considerations

In examining **Conventions Nos 96 and 181** and **Recommendation No. 188** for the purpose of determining their status, the following considerations are particularly relevant:

- Convention No. 181 is in force in 33 member States; Convention No. 96 is in force in 23 member States. Convention No. 96 was last ratified in 1996 and was closed to new ratifications by the coming into force of the revising Convention No. 181 which, on ratification, results in the automatic denunciation of Convention No. 96. A number of the ratifications of Convention No. 181 are recent, and there are certain prospects for its future ratification.
- Most ratifying States that have accepted the obligations of Part II of Convention No. 96 have not taken steps to abolish fee-charging employment agencies as that Part provides.
- The application of both Conventions is actively supervised by the Committee of Experts, which has taken into consideration observations from workers' and employers' organizations about the application of both instruments.
- Convention No. 96 gives member States the choice of either progressively abolishing fee-charging employment agencies (Part II) or allowing a system of coexistence between public and private actors (Part III).⁴⁴ Eight of the 23 ratifying States have accepted the obligations of its Part III.
- Convention No. 181 is the result of the revision of Convention No. 96 that recognised the role played by private employment agencies in the operation of the labour market. As was set out in the General Survey in 2010, Convention No. 181 provides a broader scope for the regulation of private employment agencies than the provisions in Convention No. 96 and takes into account newer developments in the sector and national circumstances.⁴⁵

⁴³ [SRM TWG/2017/Information document 2](#): Follow-up to 2016 recommendations, pp. 2-4.

⁴⁴ [General Survey 2010](#), para. 195.

⁴⁵ [General Survey 2010](#), para. 728.

In considering **Convention No. 34** for the purpose of determining the appropriate follow-up to be taken to the outdated instrument, and in particular any appropriate action to recommend, the following considerations are particularly relevant:

- The regulatory approach to employment agencies has changed considerably since the adoption of Convention No. 34 in 1933, having been revised both in 1949 and in 1997.
- Ratification by a member State of either of Conventions Nos 96 and 181 will result in the automatic denunciation of Convention No. 34.⁴⁶
- For 31 years, Convention No. 34 has been closed to new ratifications and not subject to full supervision.
- Convention No. 34 is no longer in force as it has fewer than two effective ratifications (only *Chile*).

Possible action to be considered in relation to the instruments

Private employment agencies play an important role in implementing an active labour market policy to promote full, productive and freely chosen employment. There is nothing to suggest that the instruments concerning private employment agencies have lost their purpose.

Both Conventions Nos 34 and 96 have been revised and the Governing Body determined that Convention No. 34 was outdated in 1997. This is in comparison to the regulatory approach taken in Convention No. 181, which is the most recent instrument adopted concerning the potential role of private employment agencies.

Following its review of Conventions Nos 34, 96 and 181, and Recommendation No. 188, and tailoring lessons learnt through the SRM TWG process to the specificities of this review, the SRM TWG will take decisions concerning the three elements within its mandate and make corresponding recommendations to the Governing Body:

1. STATUS OF INSTRUMENTS UNDER REVIEW:

The SRM TWG could consider whether, within their current legal status as active instruments, Convention No. 181 and Recommendation No. 188 should be classified as *up-to-date* instruments and Convention No. 96 should be classified as an *outdated* instrument, while acknowledging the status of Convention No. 34 as an *outdated* instrument.

2. IDENTIFICATION OF GAPS IN COVERAGE:

In determining whether or not a regulatory gap in coverage exists in relation to private employment agencies, the SRM TWG should consider all relevant elements, including that:

⁴⁶ Note that as [Convention No. 96](#) has been closed for ratification since May 2000, its ratification is no longer possible.

- i. the subject matter of Conventions Nos 34 and 96 is regulated by the revising Convention No. 181;
- ii. Convention No. 34 is still in force in one member State which has not ratified the later Convention No. 181 regulating the same subject matter;
- iii. Convention No. 96 is still in force in 23 member States which have not ratified the later Convention No. 181 regulating the same subject matter.

3. FOLLOW-UP ACTION AS APPROPRIATE:

Considering past practices of the SRM TWG and the specificities of the instruments under review, the SRM TWG could decide what follow-up action should be taken:

- i. The SRM TWG could recognize that the aim of avoiding gaps in legal protection in member States, as well as ensuring the application of the most up to date international regulation on private employment agencies, requires the *promotion of ratification of relevant up-to-date Conventions*. The SRM TWG could stress that this involves concerted and committed attention by governments and the social partners, supported by the Office. Accordingly, the SRM TWG could recommend that:
 - a) the tripartite constituents should collaborate to take active steps towards ratification of Convention No. 181 by member States in which Conventions Nos 34 and 96 are currently in force; and
 - b) the Office should support the tripartite constituents in taking steps to ensure ratification of Convention No. 181 by implementing a proactive and intensive plan of action tailored to each member State concerned.
- ii. The SRM TWG could determine that *a decision to abrogate or withdraw Conventions Nos 34 and 96 by the Conference* should take into account the need for a smooth transition by ratifying States from ratifications of Conventions Nos 34 and 96 to ratifications of Convention No. 181. In that context, the SRM TWG could decide to recommend that withdrawal or abrogation be considered either:
 - a) At a particular session or sessions of the Conference as it determines;
or
 - b) At a time when the 15 member States currently bound by Part II of Convention No. 96 have ratified Convention No. 181; or
 - c) At an undetermined date that ensures there is no gap in legal protection in the 24 member States in which Conventions Nos 34 and 96 are currently in force.