

First meeting of the tripartite working group on full, equal and democratic participation in the ILO's tripartite governance

► Background note

Introduction

1. At its 337th Session (October-November 2019), the Governing Body decided to establish a tripartite Working Group to serve as a platform for focused dialogue and for developing proposals on the full, equal and democratic participation in the ILO's tripartite governance, in the spirit of the Centenary Declaration.¹ At its 340th Session (November 2020), the Governing Body decided that:
 - (a) the tripartite working group on full, equal and democratic participation in the ILO's tripartite governance shall be mandated to discuss, develop and present proposals to the Governing Body on the full, equal and democratic participation of the ILO's constituents in the Organization's tripartite governance by ensuring a fair representation of all regions and establishing the principle of equality among Member States;
 - (b) the tripartite working group shall be composed of 14 Government members from each of the four regions and the Employers' and Workers' group secretariats while all interested governments may attend and participate in the discussions;
 - (c) the Government members of the tripartite working group shall nominate one of them as Chairperson of the working group and, in case of no agreement on a single Chairperson, two Government members shall be nominated to co-chair the working group; and
 - (d) the tripartite working group shall hold two meetings prior to its 341st Session (March 2021) and submit its first report to that session.²

Functioning of the Working Group

Chairperson

2. As decided by the Governing Body at its 340th Session, the Government members of the Working Group shall nominate at the opening of the first meeting one of them as Chairperson of the Working Group and, in case of no agreement on a single Chairperson, two Government members to co-chair the Working Group.³

¹ GB.337/INS/PV, para. 448; GB.337/INS/12/1(Rev.1), para. 13, as amended by the Governing Body.

² 340th Session of the Governing Body, [Record of decisions](#) (30 October 2020) and GB.340/INS/18/1, para. 19

³ Ibid., para. c).

Terms of reference and working methods

3. As per usual practice, at its first meeting, the Working Group will consider its terms of reference and working methods.⁴
4. As noted above, the Governing Body mandated the Working Group to “discuss, develop and present proposals to the Governing Body on the full, equal and democratic participation of the ILO’s constituents in the Organization’s tripartite governance by ensuring a fair representation of all regions and establishing the principle of equality among Member States”.⁵ The Working Group may wish to consider whether more detailed terms of reference should be developed on the basis of this mandate. In particular, since there are two governance organs at the ILO, namely, the International Labour Conference and the Governing Body, the Working Group may wish to consider whether its work should concern both or be limited to one of them. Furthermore, the terms “fair representation of all regions” and “the principle of equality among Member States” could be elaborated in more detail to facilitate the identification and focus of further discussions. Such discussions could include the identification of possible actions relating to the functioning and composition of the governing bodies.
5. As regards working methods, all interested governments may attend and participate in the discussions at the meetings of the Working Group, in addition to its members.⁶ The Director-General or his representative and other ILO officials shall attend the meetings of the Working Group to provide administrative and substantive support. The International Labour Office will make arrangements for interpretation during the meetings and for translation of documents in the three official languages of the ILO.
6. As per usual practice, the Chairperson(s) will direct the debates, maintain order and ensure the efficient conduct of deliberations. It is proposed that the Chairperson(s) will represent the Working Group before other ILO organs, as appropriate. The Working Group, through its Chairperson(s), will report to the Governing Body.
7. With regard to decision making, it would seem appropriate to provide that decisions of the Working Group shall be taken by consensus and its consensual proposals shall be submitted to the Governing Body for decision and follow-up action, as required. Where it is not possible to reach consensus on a specific issue, the divergent views shall be set out in its report to the Governing Body.

The 1986 Constitutional Amendment - Status of ratification and related information

8. As at 27 November 2020, 114 ratifications of the 1986 Instrument for the Amendment of the Constitution of the ILO (“1986 Amendment”) had been registered, including two from Members of chief industrial importance (India and Italy). One new ratification (Spain) has been registered since the last report submitted to the Governing Body in October-November 2020.⁷ A further 11 ratifications, including at least three from Members of chief industrial importance (from among Brazil, China, France, Germany, Japan, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the

⁴ GB.340/INS/18/1, para. 18.

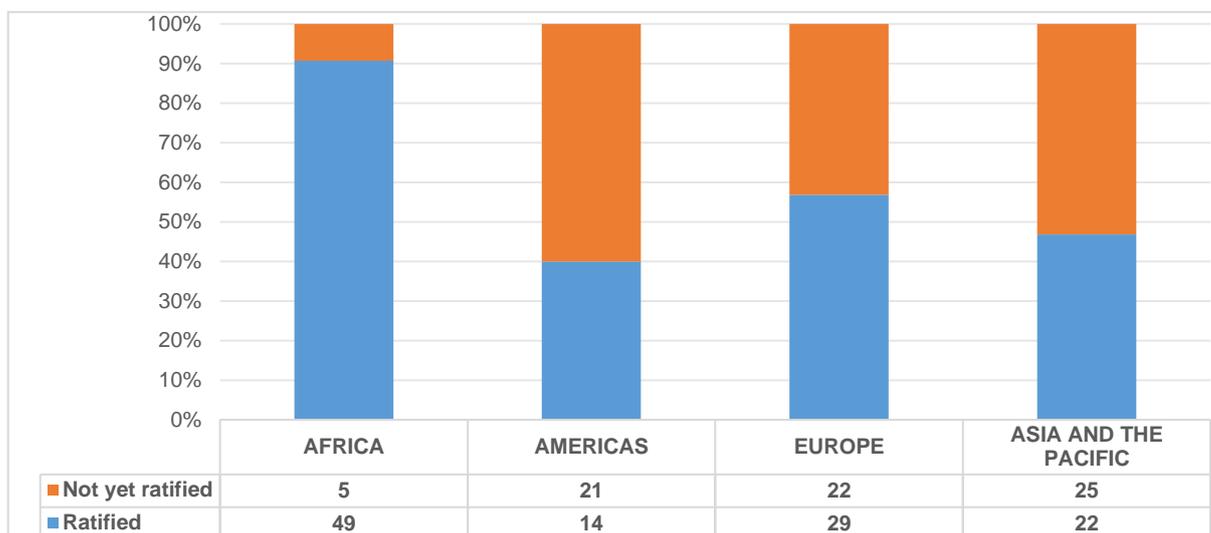
⁵ 340th Session of the Governing Body, [Record of decisions](#) (30 October 2020), para. a) and GB.340/INS/18/1, para. 19.

⁶ Ibid., para. b).

⁷ GB.340/INS/18/1.

United States of America), are required for the 1986 Amendment to enter into force. Five Member States for the African region, 21 from the Americas, 22 from the European region and 25 from the Asia and the Pacific have not yet ratified the Amendment.

► Ratifications by region



9. As of 27 November 2020, 22 (30 per cent) of the governments that have not yet ratified the 1986 Amendment have replied to the Director-General's promotional letters since April 2017 inviting them to consider ratification, and, unless they had already done so, to provide comments and explanations on the reasons which have prevented or delayed ratification. The Office has received no further replies since the last report submitted to the Governing Body in October-November 2020.⁸
10. While the majority of the respondents have been positive about the ratification prospects, the position of the two Members of chief industrial importance who have replied (Japan and the Russian Federation) was reserved.⁹ Reported reasons for delay in ratification include prioritizing other legislative projects (e.g. Canada¹⁰ and Slovakia¹¹). Another government (Australia) was waiting for further Governing Body discussion to inform its consideration.¹² Three governments have initiated ratification procedures (Lebanon, Peru and Yemen).
11. Only two governments (Bulgaria¹³ and Estonia¹⁴) have considered that there was an obstacle preventing ratification, both pointing to the reference to "the socialist States of

⁸ GB.340/INS/18/1.

⁹ Japan recognized the importance of making the Governing Body more representative but indicated that no consensus on ratification had been reached. The Russian Federation stated that ratification required further consideration. In its view, the modifications of the 1986 Amendment would complicate the work of the Organization as the Governing Body should remain compact for effective decision-making; the submission of the Director-General's appointment to the Conference for approval was unnecessary; and the stricter majority and quorum requirements at the Conference would make the work of the Organization more difficult. See GB.331/WP/GBC/1, paras 5 and 6.

¹⁰ GB.331/WP/GBC/1, para. 4.

¹¹ GB.332/WP/GBC/1, para. 4.

¹² GB.331/WP/GBC/1, para. 4.

¹³ GB.340/INS/18/1, para. 5.

¹⁴ GB.332/WP/GBC/1, para. 4.

Eastern Europe” in article 7(3)(b)(i) of the 1986 Amendment. This question was already raised at the time the 1995 interim amendment to the Standing Orders of the Conference was being considered.¹⁵ More recently, it has been raised by the Workers’ group, making reference to the replies from Estonia and Bulgaria,¹⁶ the Government of Lithuania who sought an explanation of this matter and the EU which, at the October-November 2019 Governing Body session, noted that the provisions related to the socialist States of Eastern Europe no longer responded to the geographical situation within the region.¹⁷

12. Article 7.3(b)(i) of the 1986 Amendment provides that:

... The Government delegates representing the States of Western Europe and those representing the socialist States of Eastern Europe shall constitute separate electoral colleges. They shall agree to divide between them the seats assigned to the region and shall select separately their representatives on the Governing Body.

13. As indicated during Governing Body discussions in March 1994¹⁸ and March 2018,¹⁹ the provision refers to the factual situation as it stood at the time of adoption of the Amendment, and simply represents one manner of applying to that regional situation the general principles underlying the system of distribution of seats within each region under the Amendment. In this respect, clause (ii) of the subparagraph offers in more general terms the same possibility to all the regions: “When the special characteristics of a region so require, the governments of that region may agree to form subdivisions on a subregional basis to appoint separately Members to fill the seats assigned to the subregion concerned.”

14. It would therefore be legitimate to regard this provision as having lapsed, without any need to delete it to make it ineffective. A statement to that effect could be made by the Conference, for example by a resolution noting that, as the factual situation obtaining at the time the Amendment was adopted has ceased to exist, Europe is henceforth free to constitute a single electoral college, or several electoral colleges, in accordance with the general provisions applicable to all the regions.

15. In this context, it may be noted that lapsed, or obsolete, provisions exist in other international instruments. For instance, the Hours of Work (Industry) Convention, 1919 (No. 1) refers in its article 10 to “British India”. While India has made declarations objecting to the term, no steps have been taken for the formal revision of the Convention. Another example are the so-called “enemy State” clauses in the UN Charter. In Resolution 50/52 the UN General Assembly recognized “that, having regard to the substantial changes that have taken place in the world, the “enemy State” clauses in Articles 53, Articles 77 and Articles 107 of the Charter of the United Nations have become obsolete”.²⁰

16. In any event, a State has the possibility to submit with its instrument of ratification a declaration about its understanding of a matter contained in or the interpretation of a particular provision in the 1986 Amendment. The purpose of such an interpretative

¹⁵ GB.259/14/4, paras 17-22.

¹⁶ GB.332/INS/12, para. 5 and *Commentaires du Groupe des travailleurs*.

¹⁷ GB.337/INS/PV, para. 418.

¹⁸ GB.259/14/4, paras 17-22.

¹⁹ GB.332/INS/12, para. 5.

²⁰ UNGA Resolution 50/52 of 11 December 1995 (A/RES/50/52), preamble.

declaration would be to clarify the meaning of a certain provision without purporting to exclude or modify legal effects.

Composition of the Governing Body - Options considered

17. The composition of the Governing Body has been the object of several discussions at the Governing Body, with a view to addressing the concern that the category “Members of chief industrial importance”, referred to in article 7, paragraph 2, of the ILO Constitution, does not include Members from all geographical regions.²¹
18. At its 301st Session (March 2008), the Governing Body considered three options to change the current situation, namely, the possibility of the Governing Body to review the composition of the ten “Members of chief industrial importance”,²² the adoption of a new constitutional amendment, which could address either the number of non-elective seats or their geographical distribution, or both, and the possibility for governments to distribute seats within their regions to reflect contemporary priorities and needs through the use of regional protocols.²³
19. At its 303rd Session (November 2008), the Governing Body considered a proposal that foresaw an amendment to article 7, paragraph 2, of the ILO Constitution by increasing the number of non-elective Members of the Governing Body from ten to 12 while introducing a geographical requirement to the effect that all four regions (Africa, Americas, Asia and Pacific, and Europe) should be represented among the non-elective Members of chief industrial importance.²⁴ Following divergent views, the Governing Body decided to keep the item on its agenda for future sessions and return to it once the necessary consultations within the Government group had taken place.²⁵

²¹ See e.g. [GB.300/LILS/4](#), [GB.300/6](#), para. 134, [GB.300/PV](#), paras 156-168, [GB.300/13\(Rev.\)](#), paras 30-41, [GB.301/5](#), [GB.301/PV](#), paras 98-110, [GB.303/5](#), [GB.303/PV](#), paras 103-133, [GB.329/INS/18](#), para. 2, [GB.329/WP/GBC/1](#), paras 1-3.

²² Under article 7, paragraph 3, of the ILO Constitution, the Governing Body may as occasion requires determine which are the Members of the Organization of chief industrial importance and make rules to ensure that all questions relating to the selection of the Members of chief industrial importance are considered by an impartial committee before being decided by the Governing Body. For more, see [GB.300/LILS/4](#), paras 11-23.

²³ [GB.301/5](#).

²⁴ [GB.303/5](#), paras 6-10.

²⁵ [GB.303/PV](#), paras 103-133.