



Governing Body

320th Session, Geneva, 13–27 March 2014

GB.320/LILS/2

Legal Issues and International Labour Standards Section
Legal Issues Segment

LILS

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SECOND ITEM ON THE AGENDA

Privileges and immunities of the International Labour Organization: Identification document for Employer and Worker members of the Governing Body

Purpose of the document

The present document responds to the decision of the Governing Body at its 319th Session (October 2013) to defer to its following session consideration of a possible identification document for Worker and Employer members of the Governing Body.

Relevant strategic objective: Cross-cutting.

Policy implications: None.

Legal implications: None.

Financial implications: None.

Follow-up action required: Preparation of a new detailed document if requested by the Governing Body.

Author unit: Office of the Legal Adviser (JUR).

Related documents: GB.317/LILS/1(Rev.), paragraphs 12, 13 and 14; GB.317/PV, paragraph 495(f); GB.319/LILS/2/2; GB.319/PV, paragraph 547.

Background

1. In March 2013, as part of a campaign to strengthen the legal protection of the ILO and its representatives, the Governing Body considered the possibility of issuing an identification document for Employer and Worker members of the Governing Body.¹ The Governing Body found merit in examining this possibility and requested the Office to prepare a detailed proposal,² which was made available in August 2013.³ The Governing Body discussed the proposal at its October 2013 session. While it was supported by Employer and Worker members, a large number of Government representatives raised questions and concerns and requested more time to study the matter. Consideration was thus deferred. This paper clarifies additional points with a view to addressing the concerns raised and facilitating further discussion. It should be read in conjunction with GB.319/LILS/2/2.

Purpose of the identification document

2. The identification document would be a simple card issued by the ILO that attests to its holder's status as Governing Body member. The text on the card would recall that, as a Governing Body member, the holder enjoys certain privileges and immunities pursuant to Annex I of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (1947 Convention).
3. The document would thus merely seek to facilitate recognition by member States of the status of Governing Body members, including the privileges and immunities they enjoy while exercising their functions and during their journeys to and from meeting locations. This would in particular apply to travel and transit related to Governing Body meetings, attendance at ILO Regional Meetings, and also participation in commissions or committees set up by the Governing Body, including high-level missions for the Organization, which have become more frequent in recent years.
4. The need for such a document is unique to the ILO since the ILO is the only organization in the United Nations (UN) system which has governing organs comprising members that do not represent governments. The UN Secretariat, when consulted by the Office at the suggestion of one Governing Body member, was not aware of any comparable cards or similar practices developed by other organizations.
5. Other existing arrangements regarding the issuance of certificates already cover most of the situations in which the proposed document would be of use, thus diminishing the added value of the proposed identification document:
 - The Swiss authorities issue to Governing Body members a document (*laissez-passer*) co-signed by the Director-General of the ILO, which facilitates the obtaining of Swiss visas for Governing Body sessions and attests to the holder's Governing Body member status in Switzerland under the host country agreement between the ILO and Switzerland. Switzerland has indicated that this document would continue to be issued, even if a new identification document was adopted by the ILO.

¹ See GB.317/LILS/1(Rev.).

² See GB.317/LILS/1(Rev.), paragraphs 12, 13, 14; and GB.317/PV, paragraph 495(f).

³ GB.319/LILS/2/2.

- When Governing Body members perform missions for the Organization, they also qualify as “experts on mission” and are as such entitled to privileges and immunities equivalent to those accorded to them as Governing Body members. In accordance with past practice, the Director-General provides experts on mission with formal certificates as necessary for the duration of their mission.
- In connection with the performance of other official functions by Governing Body members, the Director-General can always attest to their Governing Body membership upon request and issue corresponding ad hoc certificates in paper form.

Nature of the identification document

6. As the document would be no more than an attestation, produced in card format to make it more user-friendly, and would therefore have a purely declaratory value, it would not affect or modify the existing rights and obligations of member States, nor would it constitute a travel or identity document.
 - The identification document would not create any new privileges or immunities or other entitlements for Governing Body members. Only States that are bound by the 1947 Convention and its Annex I (either through accession to the Convention in respect of the ILO or through acceptance of its provisions through a bilateral agreement with the ILO) are under the obligation to accord the privileges and immunities provided in it. This is the only point that the UN Secretariat stressed when asked by the Office to provide legal comments on the proposed identification document.
 - The identification document would not in any way extend existing privileges or immunities. In particular, the issuance of the document would not alter the fact that, under section 17 of the 1947 Convention, the privileges and immunities of Employer and Worker members of the Governing Body under the Convention are not applicable in relation to the authorities of a State of which the person is a national or of which he or she is or has been a representative. While this provision raises issues in connection with freedom of speech of non-governmental members of the Governing Body, these are entirely unrelated to the question of the identification document. Following the request of the Workers’ group, these issues will therefore be examined separately in a document to be presented at the October 2014 session of the Governing Body.
 - The identification document would not be an identity document. Therefore, to prove their identity, Governing Body members would still have to carry their national passports with them.
 - The identification document would not be a travel document like a passport or a laissez-passer. National passports and, where applicable, entry or transit visas would still be required.

Safeguards

7. Proposals regarding the validity and safekeeping of the identification document are contained in paragraphs 9–12 and 21–24 of GB.319/LILS/2/2. Moreover, as the number of holders of the document worldwide would be very limited (some 120–130), governments could easily verify with the Office that a document is authentic. Since the document is not an identity or travel document, it is not envisaged to include biometric features in it (other than a simple photograph).

8. In addition, the Office could also be requested to attest to when the Governing Body members exercise their functions, and to when they are travelling to and from the place where an official meeting is held.

Draft decision

9. *The Governing Body decides to:*

either

- (a) request the Office to prepare a new detailed proposal for the issuance of an identification document taking into account the discussions at its 319th and 320th Sessions;***

or

- (b) take no further action at this stage.***