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Legal Issues and International Labour Standards Section

LILS

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DRAFT MINUTES

Legal Issues and International Labour Standards Section

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Legal Issues Segment

First item on the agenda

Incomplete delegations to the International Labour Conference and Regional Meetings ([GB.331/LILS/1](#))

1. *The Employer spokesperson* said that the recurrent problem of incomplete or non-accredited delegations to the International Labour Conference and Regional Meetings, which concerned particularly Members from the Caribbean and Pacific Island subregions, undermined tripartite representation. Previous efforts to address the issue had had minimal results. While some Members had put forward the lack of financial means, the Employers noted that they did not conduct any process of designation of their tripartite delegations. The Office should therefore provide them with guidance and technical assistance and with options for affordable lodging and other budget-friendly alternatives prior to the next session of the Conference and in preparation for Regional Meetings. The Credentials Committee should be empowered to take action in the case of delegations that, year after year, were incomplete or composed solely of Government delegates with no objection lodged by the country's employers or workers; tripartite representation was not only a right but also an obligation. A new compliance mechanism, or even an amendment to the *Rules for Regional Meetings*, might be needed. His group supported the draft decision.
2. *The Worker spokesperson* regretted that the number of Members that were represented by incomplete delegations or not represented at all at the Conference during the period under review was approximately the same as during the previous period. The Office should make targeted efforts to address the problems encountered by States, particularly in the Caribbean and Pacific Island subregions, in order to ensure tripartite participation. He invited all member States to meet their constitutional obligations by remedying serious and manifest imbalances in delegations in favour of governments so that the social partners could take part in all of the Conference's technical committees. It was unfortunate that in the case of Asia and the Pacific the number of incomplete and non-accredited delegations to Regional Meetings had increased; he urged member States to send tripartite delegations and the Office to conduct targeted remedial actions. Furthermore, while the number of objections regarding the failure of member States to nominate either Employer or Worker delegates was growing, the fact that the Credentials Committee had not always received explanations from the States concerned made it difficult for the Committee to discharge its mandate.
3. Pre-conference seminars offered by the International Training Centre in Turin facilitated participation of tripartite delegations, and measures taken jointly with the host country in order to provide low-budget accommodation could reduce the economic burden of participation in the Conference. However, finances were not the only problem and other efforts were needed in order to secure fully tripartite delegations. It was further observed that the document made no mention of the proportion of women accredited in Conference delegations, an issue that had not been discussed since 2012. The Office should submit a report on that matter to the Governing Body at its March or November 2018 session. With those comments, his group supported the draft decision.
4. *Speaking on behalf of the Africa group*, a Government representative of Lesotho said that the Office should continue to raise awareness of the need for member States to accredit full tripartite delegations to the Conference; engage bilaterally with member States to monitor compliance with article 3 of the Constitution of the ILO and report on the outcome of those

efforts; and enable remote participation, including through video conferencing, where full delegations could not be sent. Her group supported the draft decision.

5. *Speaking on behalf of the group of Latin American and Caribbean countries (GRULAC)*, a Government representative of Paraguay said that governments were aware of their constitutional obligation regarding the accreditation of tripartite delegations and did not wish to prevent their countries' workers and employers from being duly represented. He noted that most governments that had not sent full delegations had said that they were unable to do so owing to financial constraints, natural disasters or internal strife. His group supported the draft decision.
6. *The Employer spokesperson* said that, like the Worker spokesperson, he was concerned about member States' failure to provide the Credentials Committee with an explanation regarding their incomplete delegations; immediate action was needed.
7. *A representative of the Director-General (Legal Adviser)* said that the Office took due note and would consider how best to follow up on the different proposals for promoting tripartite participation, including through strengthening the role of the Credentials Committee. Online participation in the Conference and Regional Meetings would pose both logistical and substantive problems, particularly with regard to participation in the work of technical committees by means of moving amendments, voting or attending drafting groups and group meetings. Regarding the participation of women, he recalled that after each session of the Conference, the Director-General sent a letter to each member State that had failed to meet the 30 per cent target for the participation of women in its delegation. However, no consolidated report had been submitted to the Governing Body in the past five years. The Office could certainly prepare a report for submission to the Governing Body at its March 2018 session, as requested by the Workers' group.

Decision

8. *The Governing Body:*

- (a) *urged member States to comply with their constitutional obligations to accredit full tripartite delegations to sessions of the International Labour Conference and Regional Meetings; and*
- (b) *requested the Director-General to continue to monitor the situation of member States which fail to accredit a tripartite delegation to sessions of the International Labour Conference and Regional Meetings, taking into account the guidance provided by the Governing Body.*

(GB.331/LILS/1, paragraph 15.)

International Labour Standards and Human Rights Segment

Second item on the agenda

The Standards Initiative: Report of the third meeting of the Standards Review Mechanism Tripartite Working Group

Report of the Officers, in accordance with paragraph 17 of the terms of reference of the Standards Review Mechanism Tripartite Working Group ([GB.331/LILS/2](#))

Financial arrangements for two meetings of the Standards Review Mechanism Tripartite Working Group (2018–19) ([GB.331/LILS/2\(Add.\)](#))

9. *The Worker spokesperson* noted the importance of the fact that the third meeting of the Standards Review Mechanism Tripartite Working Group (SRM TWG) had agreed on a three-classification system of standards: “up-to-date instruments”, “instruments requiring further action to ensure continued and future relevance” and “outdated instruments”, and had classified 19 standards on occupational safety and health (OSH) accordingly. Additionally, two gaps in standards were identified and the SRM TWG had agreed on practical and time-bound follow-up action, covering the promotion of the ratification and implementation of standards classified as up to date, technical assistance, standard-setting action and non-normative action. Follow-up by the Office and ILO constituents of the recommendations was a key element in keeping the body of ILO standards up to date, particularly as in the past recommendations of the Cartier Working Party concerning ratification of up-to-date standards had not always been followed up. Her group attached great importance to the SRM TWG’s request to the Office to treat the recommendations of the meeting, as adopted by the Governing Body, as a matter of institutional priority, and to make proposals on how to address standard-setting activities and non-normative follow-up, both of which would have an impact on the human and financial resources of the Office and on the agenda of the Conference. It requested the Office to allocate sufficient resources to the promotion of the ratification of those standards identified as up to date, and invited member States that had not yet done so to prioritize the ratification of those instruments.
10. She noted with concern the presence at the third meeting of the SRM TWG of a representative of the International Chrysotile Association, who was not a registered participant. After leaving the meeting room at the request of the Office, the individual remained in the building for several days and spoke with participants. Another representative of the International Chrysotile Association apparently attended the meeting within the Employers’ delegation. The Association had subsequently placed a so-called report of the SRM TWG meeting on its website claiming that, by deeming the Asbestos Convention, 1986 (No. 162), to be up to date, the SRM TWG had endorsed the responsible and controlled use of the chrysotile fibre, which was absolutely not the case. That document had subsequently been removed from the Association’s website after the Employers’ group had intervened.

The Workers' group recalled the number of deaths caused annually by asbestos and that the 2006 ILC resolution concerning asbestos classified all forms of asbestos as human carcinogens. The SRM TWG had confirmed that the elimination of asbestos diseases was a priority, which could best be achieved by ending the use of all forms of asbestos. The Workers' group endorsed the draft decision.

11. *The Employer spokesperson* considered the outcomes of the third meeting of the SRM TWG to be promising and forward-looking. While differences of opinion had existed, it had been possible to reach decisions on which everybody agreed. She said that it was important to draw on lessons learned to constantly improve the review of standards. For future meetings of the SRM TWG, more comprehensive information on the relevance of the reviewed standards to the real world of work would be helpful; the Office should engage with constituents to identify data on the extent to which standards were applied in law and practice in member States. Article-by-article analyses of the instruments under review should be conducted within the resources available and alternative proposals for the classification and follow-up of reviewed standards should be presented in the preparatory technical notes. Furthermore, a clearer common understanding of the current classification system was needed, as it seemed that there were different understandings of their implications. The Office should propose definitions and indicators for the classification categories to minimize the possibility of subjective interpretations.
12. It was important to adopt an integrated regulatory approach to standards on OSH. In determining follow-up, the SRM TWG would have the unique opportunity to develop an overall concept for OSH standards to replace the past piecemeal approach. That should involve synchronizing standards with technical guidelines, codes of practice and other non-normative ILO action. Ways to facilitate the updating of instruments should be considered, including the use of electronic platforms. The Office should submit suggestions on those matters to the next meeting of the SRM TWG, when it would complete its review of the OSH standards. She reiterated the Employers' preference that the reports of the meetings should comprehensively and faithfully summarize the SRM TWG's discussions. That would facilitate a better understanding of the considerations underlying decisions, as well as facilitate compromise where differing opinions existed, by ensuring that points of view were reflected.
13. Her group supported the draft decision and reiterated the group's understanding that: the Office would make proposals to the next SRM TWG meeting concerning a broader, integrated concept of OSH standards; the introduction of the new classification system in NORMLEX concerned only standards classified accordingly by the SRM TWG, with existing classifications maintained until replaced by the SRM TWG; and any standard setting would need prior agreement on an integrated concept on OSH and should be harmonized with non-normative follow-up.
14. *The Worker spokesperson* clarified that the report of the SRM TWG's third meeting had been the subject of extensive discussion and agreement by all groups. She was concerned that remarks from the Employers seemed to challenge parts of that agreement and wished to take away the impression that there was disagreement on those matters.
15. *The Employer spokesperson* clarified that her group supported the report of the SRM TWG's third meeting.
16. *Speaking on behalf of the Government group*, a Government representative of the Republic of Korea said that the report of the SRM TWG's third meeting faithfully reflected the outcome of the meeting. His group supported the establishment of a new classification system and welcomed the decision to reflect the classifications in NORMLEX to ensure transparency. The review of OSH instruments had contributed to the overall objective of

ensuring an up-to-date body of international labour standards. The decision to review, at the fourth meeting of the SRM TWG, the remaining subgroup of OSH instruments on specific branches of activity, as well as instruments concerning labour inspection and labour administration, was welcome. His group supported the participation of technical advisers and representatives of other international organizations. With constructive dialogue, collaboration, transparency and outcome-focused tripartite decision making, the SRM TWG would continue to achieve its objectives. The Government group supported the draft decision.

17. *Speaking on behalf of the group of industrialized market economy countries (IMEC)*, a Government representative of the United States said that her group welcomed the consensus-based recommendations on the OSH instruments, including the simplified classification system and the understanding that the legal status of all standards remained active until abrogated, withdrawn or replaced by the International Labour Conference. IMEC supported the proposed subject matter of the fourth meeting of the SRM TWG and emphasized the importance it attached to the participation of technical advisers, who facilitated the informed participation of Government members. The participation of representatives of international organizations was supported where it added value; their roles should be clearly defined and their input reflected in the report of the SRM TWG. She expressed surprise at the lack of provision for the SRM TWG in the Programme and Budget for 2018–19 and queried the basis for the high projected cost for their travel and subsistence. Concrete and time-bound follow-up was crucial. The Office should integrate the outcomes of the SRM TWG into its work, including when proposing agenda items for the Conference. In that regard, she noted the recommendations regarding revision of instruments, including the possible consolidation of instruments and efforts to address regulatory gaps, which could facilitate timely action and help to ensure a body of up-to-date standards. Her group supported the draft decision.
18. *Speaking on behalf of the Asia and Pacific group (ASPAG)*, a Government representative of the Islamic Republic of Iran said that the SRM TWG's review at its third meeting had contributed significantly to the overall objective to ensure that the ILO had an up-to-date body of international labour standards. His group noted the three-classification system and recommended that the NORMLEX database should provide adequate explanations in relation to instruments to avoid any confusion. The Office should submit proposals on the gaps in coverage identified in the context of the instruments concerning maximum weight, and anthrax, consolidation of the instruments on chemical hazards, and the revision of the instruments on guarding of machinery. The participation of the technical advisers to support the members at the third meeting was welcome and should be continued to ensure success of the future meetings. The need for time-bound action was emphasized. His group supported the draft decision.
19. *Speaking on behalf of the European Union (EU) and its Member States*, a Government representative of Bulgaria said that the former Yugoslav Republic of Macedonia, Montenegro, Serbia, Albania, and Bosnia and Herzegovina aligned themselves with the statement. She considered that the work of the SRM TWG was vital. She welcomed the fact that the SRM TWG's work had extended far beyond classification, including recommendations for follow-up action. In particular, the integrated approach taken to chemicals, biological hazards and ergonomics was conducive to coherent and result-oriented standard setting capable of adapting to the changing world of work and to the evolution of scientific knowledge. That approach should facilitate ratification and concise reporting, and enable a framework to be implemented in specific country contexts with the contribution of the social partners. The integrated approach corresponded with EU law relating to OSH, and her group was willing to share information in that regard, as well as on setting and updating limit values, during the revision and standard-setting process. Her group looked forward to the Office's proposals on ways to ensure coherence and consistency in the standards policy framework in relation to OSH instruments, including considering consolidation as a possible

option. The mapping exercise on the application of standards to non-metropolitan territories was important to ensure the relevance and effective application of labour standards in the concerned territories, and she welcomed the intention to offer technical assistance. International labour standards and their supervision contributed to the promotion of universal human rights and directly affected the EU and its policies. The way in which the SRM TWG had functioned during its third meeting had allowed it to best fulfil its mandate; future meetings should continue to operate in the same way. The outcomes of the SRM TWG should be fully integrated into the activities of the Office and should be in line with other ILO activities. The Office should therefore propose options on how to ensure concrete, timely follow-up to the SRM TWG recommendations on standard setting. She supported the draft decision.

20. *A Government representative of the Russian Federation* supported the conclusions of the SRM TWG. It was important that member States should be informed regularly of progress in view of the fact that its meetings were closed. His Government's experience in implementing ratified fundamental Conventions could prove useful to a detailed analysis of standards relating to OSH, and it stood ready to share its knowledge in that regard. He supported the draft decision.
21. *A Government representative of India* said that the standards should be reviewed with reference to the changing world of work and the challenges it posed. The SRM TWG required flexibility, regular evaluation, good faith negotiations and, where possible, consensual decision making; in the absence of consensus, divergent views must be given due importance. He agreed that all standards should be considered active until the Conference decided to abrogate, withdraw or replace them. The International Labour Standards Department (NORMES) should offer technical assistance to member States including sharing good practices to promote ratification of up-to-date Conventions. In relation to the consolidation of the chemicals instruments, the implications for member States in transferring from one or more ratified Conventions to a consolidated Convention should be examined. It was crucial to promptly address standards classified as requiring further action so that their ratification rates would not be adversely affected. He supported the draft decision.
22. *The Chairperson of the Tripartite Working Group* thanked the Governing Body for the broad support shown for the report and the results of the work undertaken. The success of the third meeting was a testament to the constructive approach adopted by participants. He highlighted that, in addition to the present report of the third meeting, a revised version of the report of the second meeting of the SRM TWG, held in October 2016, had now been published online. The forward-looking and constructive spirit of the third meeting suggested that the SRM TWG was well placed to fulfil its mandate. It was particularly pleasing that consensus had been reached on the new classification system, which set up a framework for the SRM TWG's future work.
23. *A representative of the Director-General* (Director, NORMES) said, in response to the question on the budget, that travel costs relating to the possible participation of representatives of international organizations had been estimated on the basis of eight representatives participating. The Office had used the standard methodology for preparing budget estimates. The estimate of travel costs was conservative, as it was not yet known which representatives of international organizations would attend. The actual travel costs were expected to be lower.
24. *The Worker spokesperson* said that she was looking forward to continued constructive cooperation with the tripartite members of the SRM TWG and international experts. The group should consider in the near future the challenging question of how to ensure its recommendations were followed up in practice.

25. *The Employer spokesperson endorsed the summary of the chairperson of the SRM TWG.*

Decision

26. *The Governing Body took note of the report of the Officers of the Standards Review Mechanism Tripartite Working Group (SRM TWG) contained in document GB.331/LILS/2 and, in approving its recommendations:*

- (a) welcomed the steps taken by the SRM TWG to ensure the sustainability of its process, in the context of its impact on the broader institutional arrangements in the Organization, and would look forward to receiving recommendations from the SRM TWG at its next meeting on Office proposals on how to ensure follow-up to the SRM TWG was implemented as a matter of institutional priority, and how to ensure coherence and consistency in the standards policy framework in relation to OSH instruments;*
- (b) noted the work undertaken by the Office in follow-up to the recommendations of the SRM TWG at its second meeting in October 2016 and requested the Office to continue this follow-up as planned;*
- (c) noted that the SRM TWG had decided to adopt a three-classification system in relation to its work reviewing the standards and requested the Office to take the necessary follow-up in that regard, in particular as concerns the NORMLEX database;*
- (d) decided that the 19 instruments concerning OSH (general provisions and specific risks) reviewed by the SRM TWG should be considered to have the classifications it had recommended, and requested the Office to take the necessary follow-up action in that regard and in accordance with the time-bound elements of the recommendations;*
- (e) noted the SRM TWG's recommendation concerning the withdrawal of Recommendation No. 31, in relation to which it would consider placing an item on the agenda of the International Labour Conference at the earliest date possible (see GB.331/INS/2(Add.));*
- (f) requested the Office to prepare, for consideration for inclusion at the earliest dates possible in future agendas of the International Labour Conference, proposals for possible standard-setting items:*
 - (i) on biological hazards and ergonomics, recognizing the regulatory gaps identified in that regard;*
 - (ii) on the consolidation of the instruments concerning chemical hazards;*
 - (iii) on the revision of the instruments concerning guarding of machinery;**and requested to be kept up to date in that regard;*

- (g) *requested the Office to commence work on technical guidelines on biological hazards and chemical hazards, and to consider the regular review of the 2011 code of practice on safety and health in the use of machinery at a later date;*
- (h) *decided that the SRM TWG would examine the 11 instruments concerning OSH (specific branches of activity), labour inspection and labour administration, within sets of instruments 6, 11, 12 and 13 of the revised initial programme of work, in its fourth meeting; and*
- (i) *convened the fourth meeting of the SRM TWG from 17 to 21 September 2018.*

(GB.331/LILS/2, paragraph 5.)

27. *The Governing Body decided that the cost of the two meetings of the SRM TWG to be held during the biennium 2018–19, estimated at US\$795,200, should be financed in the first instance from savings in Part I of the budget for 2018–19 or, failing that, through Part II, on the understanding that should that subsequently prove impossible, the Director-General would propose alternative methods of financing.*

(GB.331/LILS/2(Add.), paragraph 7.)

Third item on the agenda

Choice of Conventions and Recommendations on which reports should be requested under article 19, paragraphs 5(e) and 6(d), of the Constitution in 2019 (GB.331/LILS/3)

28. *The Employer spokesperson* said that the proposed General Survey for 2019 would entail only a partial consideration, as the options proposed to examine only some provisions of the instruments selected. For instance, why would only the impact of the Employment Policy Convention, 1964 (No. 122), be studied? Furthermore, the suggestions in paragraph 10 of the document related to instruments with a broader scope than employment alone. General Surveys were supposed to conduct exhaustive analyses of all provisions of a small number of selected instruments on a given topic. His group could not support either of the options proposed in the document, which were also quite similar. Each option included too many instruments, which could result in an overly superficial analysis, and could place an excessive burden on governments sending information which, moreover, could prove to be of little use.
29. He therefore proposed a third option: the General Survey for 2019 should focus solely on the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168), which were referenced in the first option and were linked to the strategic objective of employment. Persons with disabilities continued to be disadvantaged in accessing the labour market and were significantly more likely to be unemployed than their non-disabled counterparts. Moreover, those instruments, together with the promotion of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the UN Convention on the Rights of Persons with Disabilities, were a cornerstone of the ILO's Disability Inclusion Strategy and Action Plan 2014–17 and were

also relevant to Sustainable Development Goal target 4.5. Although a General Survey on Convention No. 159 and its Recommendation had already been conducted in 1998, it would be useful for the Committee of Experts to assess progress since then.

30. *The Worker spokesperson* said that her group agreed with the proposed focus on the promotion of full, productive and freely chosen employment, and the examination of that strategic objective from different perspectives. She noted that gender and other non-discrimination aspects were particularly important for the Workers' group. She said that the rapidly changing world of work meant that the priority for the next General Survey must be to consider the growth of non-standard forms of employment, which particularly affected women, young people and migrant workers, and which posed challenges to ensuring all workers' access to the protection of labour standards. The intersection between transnational digital work and non-standard forms of employment was a further aspect to consider.
31. The Workers therefore supported the second option, which would tie in with other Office work on non-standard forms of employment as well as with the follow-up to the Global Commission on the Future of Work. Her group was in favour of the inclusion of Convention No. 122, as well as the Employment Relationship Recommendation, 2006 (No. 198), and the Home Work Convention, 1996 (No. 177), and Home Work Recommendation, 1996 (No. 184). The latter two instruments had never been the subject of a General Survey and the analysis would provide useful insight into their impact, particularly in light of the digitalization of the economy. Given the prevalence of female homeworkers and the decent work deficits they faced, inclusion of those instruments could contribute to the design of strategies to promote decent work for homeworkers. Her group also supported the inclusion of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). However, as the Private Employment Agencies Convention, 1997 (No. 181), had been included in the 2010 General Survey, it would not be necessary to include it again.
32. *Speaking on behalf of IMEC*, a Government representative of the United States expressed appreciation for the Office's efforts to align the subject matter of the article 19 reporting with the recurrent item discussion cycle. Her group preferred the second option, on employment promotion through the regulation of the employment relationship. A General Survey that responded to such a mandate would give a clear picture of the present diversity in employment relationships and the variety of possible regulatory and other approaches to promoting decent work in that context. It could also inform the work of the Standards Review Mechanism. IMEC looked forward to reviewing the article 19 questionnaire at the March 2018 session and requested the Office to ensure that it would be concise, with questions firmly rooted in the Conventions. IMEC supported the draft decision.
33. *A Government representative of Cuba* said that her group did not object to either option, but would favour the second option. She supported the draft decision.
34. *A Government representative of India* noted that long-term structural changes such as globalization and changes in technology were impacting the world of work, giving rise to diverse working arrangements, which it was necessary to understand and address. He said that, while there was considerable overlap between the two options, he supported the second option proposed, which was more focused. The General Survey should concentrate on workers vulnerable to decent work deficits and exclusion, such as young women and men and homeworkers. He hoped that the General Survey would help to identify potential gaps in international labour standards.
35. *A representative of the Director-General* (Director, NORMES) said that it seemed that there was a clear preference for the second option among the views expressed.

36. *The Employer spokesperson* said that insufficient views had been expressed for the Governing Body to adopt the second option. He reiterated his group's proposal that the General Survey should focus solely on Convention No. 159 and Recommendation No. 168, which had been the outcome of agreements among groups and would be in accordance with the responsibility to protect workers vulnerable to decent work deficits and exclusion. The Employers did not support the second option.
37. *The Worker spokesperson* said that the majority was in favour of the second option. The challenges encountered by persons in situations of vulnerability could best be addressed by examining changes in the world of work and new and emerging decent work deficits.
38. *The Employer spokesperson* said that his group remained concerned that the quantity of instruments proposed would mean that the General Survey would not be conducted in sufficient depth. As a compromise, some of the instruments proposed in the second option – at a minimum, the Private Employment Agencies Convention, 1997 (No. 181), and Private Employment Agencies Recommendation, 1997 (No. 188), which had already been examined in a previous General Survey – could be removed and Convention No. 159 and its Recommendation added.
39. *The Worker spokesperson* agreed that Convention No. 181 could be removed and Convention No. 159 and its Recommendation could be added, as long as the other instruments were still included.

Decision

40. *The Governing Body requested the Office to prepare, for consideration at its 332nd Session (March 2018), the article 19 report form on the following instruments:*
- *the Employment Policy Convention, 1964 (No. 122), and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169);*
 - *the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168);*
 - *the Home Work Convention, 1996 (No. 177), and the Home Work Recommendation, 1996 (No. 184);*
 - *the Employment Relationship Recommendation, 2006 (No. 198); and*
 - *the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).*

(GB.331/LILS/3, paragraph 20, as amended.)