



Governing Body

326th Session, Geneva, 10–24 March 2016

GB.326/POL/8

Policy Development Section
MNE Segment

POL

Date: 24 February 2016
Original: English

EIGHTH ITEM ON THE AGENDA

Proposed modalities to review the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

Purpose of the document

At its 325th Session, the Governing Body discussed the implementation of the promotional framework and follow-up mechanism to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. In view of the increased relevance of the MNE Declaration in the context of the 2030 Agenda for Sustainable Development and other global developments as well as its upcoming 40th anniversary, the Governing Body requested the Office to “propose modalities to review the MNE Declaration for decision by the 326th Session of the Governing Body”. Based on the proposed modalities outlined in this paper, the Governing Body is invited to consider the draft decision in paragraph 19.

Relevant strategic objective: All.

Policy implications: Yes.

Legal implications: Yes.

Financial implications: Yes, if the Governing Body decides on certain modalities for the review process.

Follow-up action required: This will depend on the decision taken.

Author unit: Multinational Enterprises and Enterprise Engagement Unit (MULTI).

Related documents: GB.325/POL/PV/Draft, GB.325/POL/9, GB.326/INS/3.

Introduction

1. At its 325th Session (November 2015), the Governing Body reviewed progress made on the implementation of the promotional framework of and follow-up to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). The Governing Body noted the action taken by the Office on the various components of the strategy and affirmed that it was starting to bear fruits in terms of increased visibility and understanding of the MNE Declaration among the tripartite constituents in ILO member States as well as multinational enterprises. The Governing Body also stated the increased importance of the MNE Declaration in the context of the 2030 Agenda for Sustainable Development and the recognition of the role of the private sector and social dialogue in achieving decent work and inclusive growth.
2. Furthermore, the Governing Body discussed a possible review process of the MNE Declaration, recognizing that the instrument had not been updated since 2006 and that the instrument needed to be relevant in today's globalized world. An up-to-date and forward-looking MNE Declaration would allow the ILO and its Members to play a leading role in promoting respect by businesses of decent work at the global, regional and national level. The Governing Body agreed that the instrument could benefit from a review, taking into account the 2030 Agenda for Sustainable Development, the 40th anniversary of the MNE Declaration in 2017, as well as developments outside of the ILO. The future of work and the enterprises centenary initiatives were also recognized as opportune in view of such a review; hence the Governing Body requested the Office to propose different modalities to review the MNE Declaration for decision at its 326th Session (March 2016).

Past experiences

Previous updates of the MNE Declaration

3. The Governing Body adopted the MNE Declaration at its 204th Session (November 1977) and amended the text at its 279th Session (November 2000) and its 295th Session (March 2006). The annex with the list of international labour Conventions and Recommendations referred to in the Declaration was updated on two occasions (November 2000 and March 2006) and Addendum I containing the list of international labour Conventions and Recommendations adopted since 1977 which contain provisions relevant to the MNE Declaration was adopted by the Governing Body at its 238th Session (November 1987) and amended three times (November 1995, November 2000 and March 2006) to take into account newly adopted international labour standards.
4. The update in 2000 had the aim of “cementing the relationship between the [MNE Declaration] and the Declaration on Fundamental Principles and Rights at Work” adopted at the 86th Session of the International Labour Conference and ensuring that “the interpretation and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy should fully take into account the objectives of the ILO Declaration on Fundamental Principles and Rights at Work”.¹ The Governing Body added Addendum II to the MNE Declaration at its 277th Session (March 2000), recognizing that “the contribution of multinational enterprises to its implementation can

¹ GB.277/12, para. 61.

prove an important element in the attainment of its objectives”.² Furthermore, amendments related to the elimination of child labour and minimum age were introduced in the text, which were discussed in the Governing Body Subcommittee on Multinational Enterprises in March and November 2000 and adopted by the Governing Body at its 279th Session (November 2000).

5. The 2006 update was initiated by the Office on the basis that the text of the Declaration “is regularly updated to include references to new instruments of relevance to the MNE Declaration adopted by the International Labour Conference and the Governing Body” and that “[s]ince the last update in 2000 a number of relevant new instruments have been adopted by the International Labour Conference”.³ The proposed amendments were discussed in the Governing Body’s Subcommittee on Multinational Enterprises at its two sessions in 2006 and included not only references to newly adopted international labour standards but also a change in paragraph 2 of the Declaration referring to “subsequent developments [since the New International Economic Order] within the United Nations, for example, the Global Compact and the Millennium Development Goals”, thus taking into account broader relevant developments outside the ILO. The Governing Body adopted the amendments to the text at its 295th Session, one year before the 30th anniversary of the MNE Declaration in 2007.

2011–13 Tripartite Ad Hoc Working Group of the Governing Body

6. The conclusions concerning the recurrent discussion on employment adopted by the International Labour Conference at its 99th Session (2010) requested the MNE Subcommittee of the Governing Body to initiate a review of the follow-up mechanism to the MNE Declaration (the periodic survey) with a view to developing promotional options.⁴ The Governing Body subsequently established a tripartite ad hoc working group comprised of five Government members (Argentina, Belgium, China, Italy and South Africa), three Employer and three Worker representatives, which met three times. The report of the tripartite ad hoc working group to the Governing Body forms the basis of the implementation strategy for the promotional framework and follow-up to the MNE Declaration as adopted by the Governing Body at its 317th and 320th Sessions. A review of the text of the Declaration was not part of the mandate of this tripartite ad hoc working group, nor did the working group discuss the procedure for the examination of disputes.

Procedure for examination of disputes

7. The Governing Body first adopted a procedure for disputes concerning the application of the MNE Declaration in 1980. It subsequently replaced that procedure with the current **procedure for the examination of disputes concerning the application of the MNE Declaration by means of interpretation of its provisions**⁵ (interpretation procedure) at its 232nd Session (March 1986). The purpose of the procedure is “to interpret the provisions of the Declaration when needed to resolve a disagreement on their meaning,

² Record of Decisions of the 277th Session of the Governing Body (March 2000), para. 44.

³ GB.295/MNE/1/3, para. 1.

⁴ International Labour Conference, 99th Session (2010), Resolution concerning the recurrent discussion on employment, Conclusions, para. 52.

⁵ For the full text of the interpretation procedure, see www.ilo.org/mnedeclaration, pp. 17–18.

arising from an actual situation, between parties to whom the Declaration is commended". To date, five cases have been the subject of decisions by the Governing Body.⁶ The procedure is still in existence in the absence of any Governing Body decision to the contrary, but it has not been called upon since 1997. The interpretation procedure could benefit from a review to reflect the amendments made to the rules of the Governing Body in 2011 and the replacement of the Subcommittee on Multinational Enterprises (which had its own Officers) by the Multinational Enterprises Segment of the Policy Development Section, which is formally responsible for the interpretation procedure under the MNE Declaration.⁷

Proposed modalities to review the MNE Declaration and its related procedures

8. The modalities proposed cover the objectives, scope, process, timeline and financial implications of the review and provide various options for consideration and decision.

1. Objectives of the review

9. Based on the discussion in the Governing Body at its 325th Session and subsequent informal consultations, the objectives of the review could be to:
 - (a) enhance the relevance, credibility and robustness of the MNE Declaration by eliminating outdated parts and complementing the useful elements with new ones that respond to new economic realities, especially of increased international investment and trade, accelerated technology, and production transfers;
 - (b) increase the ownership of the instrument by the tripartite constituents and the uptake of its principles by enterprises, especially multinational enterprises;
 - (c) streamline the instrument's text with its procedure on the examination of disputes and its implementation strategy for the promotional framework and follow-up mechanism to the MNE Declaration; and
 - (d) re-emphasize the ILO's leadership role in discussions on the impact of multinational enterprises on decent work and socio-economic development and increase the Organization's effectiveness in its second century.

⁶ Two were submitted by a government, and three by international organizations of workers on behalf of representative national affiliates. Four of the cases were found receivable, two unanimously and the other two by majority decisions. The fifth case was declared non-receivable and did not reach the interpretation stage. In four cases, substantive interpretations have been issued.

⁷ See <http://www.ilo.org/public/english/bureau/leg/download/compendium-nov2011-en.pdf>, p. 9: "The multinational enterprises segment examines the effect given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, considers requests for interpretation of the Declaration, and monitors activities of the ILO and other organizations regarding multinational enterprises, it being understood that other aspects of the activities of multinational enterprises may if necessary be examined by other segments."

2. Scope of the review

10. Three options could be considered for the scope of the review:

- (a) **Option 1:** The **text of the Declaration**, including the **annex** and **addenda**. This option could include:
- (i) an analysis of the relevance of the international labour standards adopted since 2005,⁸ as was the case with previous text updates;
 - (ii) an analysis of other international labour standards that were adopted before 2006 but are not explicitly included and have gained importance in recent discussions on business and decent work, such as the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and Conventions related to women’s economic empowerment (the Workers with Family Responsibilities Convention, 1981 (No. 156), and the Maternity Protection Convention, 2000 (No. 183)), social protection and fragile situations;
 - (iii) a review of ILO codes of practice adopted since 2005;⁹
 - (iv) a review of developments outside of the ILO concerning expected business behaviour, such as the “Protect, Respect and Remedy” Framework of the UN Guiding Principles on Business and Human Rights and the “due diligence” principle regarding corporate responsibility, as well as the role of the private sector and investment in the implementation of the 2030 Agenda for Sustainable Development and its 17 goals;
 - (v) a review of outdated references in the MNE Declaration;
 - (vi) a review of the annex and addenda to the Declaration.
- (b) **Option 2:** The **text** (as outlined above in Option 1) and the **interpretation procedure**. This option could include:
- (i) a review of the underlying reasons why the interpretation procedure has not been used since 1997;
 - (ii) a review of the interpretation procedure together with the company–union dialogue facilitation that was established by the Governing Body in 2013 but never used; and
 - (iii) a review of options for an improved mechanism or mechanisms.

⁸ **MLC** – Maritime Labour Convention, 2006 (MLC, 2006); **C187** – Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); **C188** – Work in Fishing Convention, 2007 (No. 188); **C189** – Domestic Workers Convention, 2011 (No. 189); **P029** – Protocol of 2014 to the Forced Labour Convention, 1930; **R197** – Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197); **R198** – Employment Relationship Recommendation, 2006 (No. 198); **R199** – Work in Fishing Recommendation, 2007 (No. 199); **R200** – HIV and AIDS Recommendation, 2010 (No. 200); **R201** – Domestic Workers Recommendation, 2011 (No. 201); **R202** – Social Protection Floors Recommendation, 2012 (No. 202); **R203** – Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203); **R204** – Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

⁹ See <http://www.ilo.org/safework/info/standards-and-instruments/codes/lang--en/index.htm> and <http://www.ilo.org/sector/Resources/codes-of-practice-and-guidelines/lang--en/index.htm>.

- (c) **Option 3:** The **text** and the **interpretation procedure** (as outlined in Options 1 and 2 above) and the **implementation strategy** for the promotional framework and follow-up mechanism adopted by the Governing Body in March 2014. This option could include:
- (i) a review of the promotional framework as adopted by the Governing Body at its 317th Session and discussed at its 325th Session;
 - (ii) a review of the follow-up mechanism as adopted by the Governing Body at its 320th Session and discussed at its 325th Session; and
 - (iii) a review of options for further improvements of the promotional framework and follow-up mechanism.

11. Should the Governing Body decide on the third option, it would need to alter its March 2014 decision to review in 2018 the adopted MNE Declaration follow-up mechanism, once the four regional reports have been prepared and tripartite discussions during four Regional Meetings have taken place; however, that would not apply if the Governing Body decides on the second proposed timeline (to end the review process by 2018).

3. *Process*

12. Three options could be considered for the review process:

- (a) **Option 1:** The **Governing Body** discusses papers prepared by the Office in its sittings of the POL/MNE segment.
- (b) **Option 2:** The Governing Body convenes in Geneva one **meeting of experts** to examine the Declaration and any proposed updates/revisions and make recommendations to the Governing Body. For the composition of this expert meeting group, examples of previously convened expert meetings could be followed, with a Meeting of Experts attended by eight experts nominated after consultations with Governments, eight experts nominated after consultations with the Employers' group and eight experts nominated after consultations with the Workers' group.
- (c) **Option 3:** The Governing Body establishes a **tripartite ad hoc working group** to spearhead the review process and present its recommendations and any agreed updates/revisions to the Governing Body for decision. To allow for a balanced geographical representation and constituent ownership, while also bearing in mind the cost factor of such meetings, the ad hoc working group could be comprised of eight Government, four Employer and four Worker members and could meet twice in Geneva before presenting its report to the Governing Body.

13. Under all three options, the Governing Body, the tripartite meeting of experts or the tripartite ad hoc working group could consider inviting, as part of the review process, representatives of other international organizations that have instruments and frameworks guiding business behaviour – such as the Office of the United Nations High Commissioner for Human Rights, the UN Global Compact and the Organisation for Economic Co-operation and Development – as well as representatives of multinational enterprises, one of the target groups of the instrument.

14. In all cases, the Office could function as the secretariat for the process, preparing technical papers for consideration and discussion.

15. The second and third options have budgetary implications as they involve constituents' travel to Geneva and costs related to conference facilities (interpretation and translation costs).

4. *Timeline*

16. Depending on the decisions on the scope and process of the review, two options could be considered as the end date for the review process:
- (a) **Option 1: 2017**, the year of the 40th anniversary of the Declaration; or
 - (b) **Option 2: 2018**, the year that the Governing Body had previously decided for the review of the follow-up mechanism adopted in 2014.

5. *Financial implications*

17. Of the three options for the review process, the second and third would incur additional costs for the experts to meet once in Geneva or for an ad hoc working group to meet twice in Geneva. The table below outlines the cost breakdown of the two options:

Costs (in US\$) of the options for the review process

	One meeting of experts in	Two meetings of an ad hoc working group in Geneva
Travel and subsistence costs	138 000	158 500
Interpretation	64 750	129 500
Documentation	50 000	50 000
Printing and translation	20 000	20 000
Total	272 750	358 000

18. The Programme and Budget for 2016–17 contains no provision for either of these options. It is proposed that the costs would, in the first instance, be financed from savings that may arise under Part I of the budget for 2016–17 or, failing that, through the use of the provision for unforeseen expenditure, in Part II. Should this not prove possible, the Director-General would propose alternative methods of financing at a later stage in the biennium.

Draft decision

19. *The Governing Body:*

- (a) *requests the Director-General to take all necessary steps to follow up on the modalities for the review of the MNE Declaration, taking into account its guidance regarding the objectives, scope, process and timeline of that review; and*
- (b) *approves that the costs related to the review of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the level of which would be based on the estimated cost for the option selected by the Governing Body as set out in paragraph 17, be financed in the first instance from savings in Part I of the budget or, failing that, through Part II, on the*

understanding that, should this subsequently prove impossible, the Director-General would propose alternative methods of financing at a later stage in the 2016–17 biennium.