



## Governing Body

334th Session, Geneva, 25 October–8 November 2018

GB.334/INS/5

Institutional Section

INS

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### FIFTH ITEM ON THE AGENDA

## The Standards Initiative: Implementing the workplan for strengthening the supervisory system

### Progress report

#### Purpose of the document

Report on progress, following consultations with the tripartite constituents, to implement the revised workplan for the strengthening of the supervisory system. The document restates the progress report presented to the Governing Body in March 2018 which presented concrete options concerning the actions prioritized for examination by the Governing Body – operation of the article 24 procedure (action 2.2); the streamlining of reporting (action 3.1); and the potential of article 19, paragraphs 5(e) and 6(d) (action 4.3) – and sought guidance on actions concerning a regular conversation between the supervisory bodies (action 1.2); codification of the article 26 procedure (action 2.1); and further steps to ensure legal certainty (action 2.3) (see draft decision in paragraph 72 of GB.332/INS/5(Rev.)). The present document presents a revised draft decision based on the partial examination of the progress report in March 2018 and the consultations with the tripartite constituents since (see paragraph 21).

**Relevant strategic objective:** All four strategic objectives.

**Main relevant outcome/cross-cutting policy driver:** Outcome 2: Ratification and application of international labour standards and cross-cutting policy driver concerning international labour standards.

**Policy implications:** Will depend on the outcome of the discussion by the Governing Body.

**Legal implications:** Will depend on the outcome of the discussion by the Governing Body.

**Financial implications:** Will depend on the outcome of the discussion by the Governing Body (paragraph 23 of GB.332/INS/5(Rev.) provides estimates on possible budget implications).

**Follow-up action required:** Will depend on the outcome of the discussion by the Governing Body.

**Author unit:** International Labour Standards Department (NORMES).

**Related documents:** GB.332/INS/5(Rev.); GB.332/PV; GB.331/INS/5; GB.331/INS/3; GB.331/POL/2; GB.331/PFA/5; GB.331/PV; GB.329/INS/5; GB.329/INS/5(Add.)(Rev.); GB.329/PV; GB.328/LILS/2/2; GB.328/INS/6; GB.328/PV; GB.326/LILS/3/1; GB.326/PV; GB.323/INS/5; GB.323.PV.

## Introduction

1. At its 329th Session (March 2017), the Governing Body: (a) approved the revised workplan for the strengthening of the supervisory system; (b) requested the Office to take the necessary steps to implement the revised workplan based on the guidance provided and to report on progress made at its 331st Session (October–November 2017), following consultations with the tripartite constituents; and (c) decided to review the revised workplan, as it might be adjusted by the Governing Body during its 331st Session, in the context of its broader review of the Standards Initiative at its 332nd Session (March 2018).<sup>1</sup>
2. At its 331st Session (October–November 2017), the Governing Body: (a) approved the measures and costs relating to the setting up of an electronic document and information management system for the supervisory bodies and the preparation of a guide on established practices across the supervisory system; and (b) deferred consideration of all remaining matters concerning the implementation of the workplan for strengthening the supervisory system to its 332nd Session (March 2018).
3. At its 332nd Session (March 2018), the Governing Body considered these remaining matters concerning the implementation of the workplan for strengthening the supervisory system. Building on joint proposals by the Employers and the Workers, deliberations achieved considerable convergence of views among all groups; however the discussions were interrupted due to the early adjournment of the Governing Body session.
4. The Governing Body is to consider at its 334th Session (October–November 2018) the matters set out in the document presented to the Governing Body at its 332nd Session (March 2018)<sup>2</sup> with a view to adopting a draft decision revised according to amendments submitted to the Governing Body by Employers and Workers and subsequent tripartite consultations on subamendments formulated by the Government group of the Governing Body.
5. The revised draft decision concerns the following actions:
  - (a) Three actions prioritized for examination by the Governing Body in October–November 2017: the operation of the article 24 procedure (action 2.2); the streamlining of reporting (action 3.1); and the potential of article 19, paragraphs 5(e) and 6(d) (action 4.3).
  - (b) Three actions submitted to the Governing Body in October–November 2017 for guidance on the next steps: a regular conversation between the supervisory bodies (action 1.2); codification of the article 26 procedure (action 2.1); and further steps to ensure legal certainty (action 2.3).
6. Tripartite consultations held in September 2018 have provided further guidance on five actions:
  - (a) the operation of the article 24 procedure (action 2.2);
  - (b) the streamlining of reporting (action 3.1);

<sup>1</sup> [GB.329/PV](#), para. 148.

<sup>2</sup> [GB.332/INS/5\(Rev.\)](#).

- (c) codification of the article 26 procedure (action 2.1);
- (d) further steps to ensure legal certainty (action 2.3); and
- (e) a review of the Standards Initiative.

## **Operation of the article 24 representations procedure (action 2.2)**

7. The tripartite consultations suggested a broad consensus in the Governing Body around the measures put forward in paragraphs (1) and paragraph (4) of the draft decision.
8. Some Government members expressed a need for more flexibility in the length of the maximum period during which the examination of the merits of the representation would be suspended so as to allow for conciliation or other measures to be taken at the national level. Other members clarified that a maximum period had to be stipulated to prevent undue delays in the examination of the merits of the representation; that the period of maximum six months would start from the date of the decision of the tripartite ad hoc committee to suspend its examination and that the committee could decide on a limited further extension of the suspension should the parties so request to successfully resolve the issues raised in the representation; and that the Governing Body would review the functioning of the conciliation mechanism after a trial period of two years.
9. The model electronic form for the submission of a representation under article 24 of the ILO Constitution has been modified to reflect these clarifications. As requested, these modifications are found in track-change format attached to this report as Appendix I.

## **Streamlining of reporting (action 3.1)**

10. The tripartite consultations suggested a broad consensus in the Governing Body around the measures put forward in paragraph 2 of the draft decision.
11. Some Government members expressed concern with respect to paragraph 2(a) that establishing a conditionality between extension of the regular article 22 reporting cycle for technical Conventions and expansion of the criteria used by the Committee of Experts to break the regular reporting cycle could call into question the independence of the Committee of Experts. Other members clarified that the draft decision did not suggest any such conditionality in the sense that extension of the cycle could take effect while the outcome of the Committee of Experts' deliberations was awaited. It also had to be clear, however, that this matter had been discussed on the occasion of previous extensions of the reporting cycle by the Governing Body, and that serious observations in relation to the application of certain technical Conventions could not remain unaddressed for as long as six years.

## **Codification of article 26 procedure (action 2.1)**

12. The tripartite consultations considered an Office Note for Informal Consultation and Guidance focusing on a single question: does the Governing Body wish to develop Standing Orders to codify the procedure for the examination of article 26 complaints?
13. The consultations suggested a significant divergence of views around the urgency and usefulness of developing such Standing Orders. Some members felt that in some cases the absence of Standing Orders had afforded the Governing Body the flexibility needed to

successfully pursue alternatives to the establishment of a commission of inquiry. Other members felt that in other cases the exploration of such alternatives had been unduly protracted, leading to time-consuming deliberations in the Governing Body; uncertainty and lack of transparency for governments in preparing for their participation in the procedure; and some meritorious cases ultimately not being examined by a commission of inquiry.

14. The consultations suggested as a possible way forward to await the presentation by the Office of the guide on established practices of the supervisory bodies and assess if the guide could provide an opportunity to clarify certain practices and obtain transparency before continuing its exchange of views on codification.

### **Further steps to ensure legal certainty (action 2.3)**

15. The tripartite consultations considered an Office Note for Informal Consultation and Guidance on the modalities for a possible tripartite exchange of views focusing on the question what use, if any, the Organization should make of the opportunity provided by article 37, paragraph 2, to establish a tribunal for the interpretation of Conventions with a view to increasing legal certainty.
16. The consultations revealed a certain amount of initial reservation among members with regard to the expedience of setting up such tribunal, but more convergent views emerged around the need to improve legal certainty and the perceived value of a continued exchange of views around more precise questions.
17. As a possible way forward, the consultations suggested the Office to:
  - (a) propose a timeline extending beyond March 2019 for the consideration of this item by the Governing Body; and
  - (b) provide on the next occasion an update of the Note for Informal Consultation based on the guidance received at the informal consultations.

### **Review of the Standards Initiative**

18. The revised workplan agreed in March 2017 sets out a timetable for a package of ten agreed actions grouped under four focus areas that aim to strengthen the supervisory system within the constitutional framework:<sup>3</sup>
  - (a) Three actions prioritized for examination by the Governing Body in October–November 2017: the operation of the article 24 procedure (action 2.2); the streamlining of reporting (action 3.1); and the potential of article 19, paragraphs 5(e) and 6(d) (action 4.3).
  - (b) Three actions submitted to the Governing Body in October–November 2017 for guidance on the next steps: a regular conversation between the supervisory bodies (action 1.2); codification of the article 26 procedure (action 2.1); and further steps to ensure legal certainty (action 2.3).

<sup>3</sup> GB.329/INS/5(Add.)(Rev.), para. 4; GB.329/PV, para. 137.

- (c) Four actions integrated into the Office's regular work: a guide on established practices across the supervisory system (action 1.1); information-sharing with other organizations (action 3.2); clear recommendations of the supervisory bodies (action 4.1); and systematized follow-up of the recommendations of the ILO supervisory bodies at the national level (action 4.2).
19. These ten actions complement the ongoing work of the Committee on the Application of Standards (CAS), the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) to review their methods of work.<sup>4</sup> These supervisory bodies will continue reporting to the Conference and the Governing Body respectively and the discussions on their working methods will feed into the implementation of the workplan.
20. It was foreseen that the implementation of the workplan was to be monitored by the Governing Body in accordance with its governance role. In particular, the common principles guiding the strengthening of the supervisory system submitted to the Governing Body at its 329th Session will operate as a benchmark for the March 2018 review of the implementation of the workplan in the context of the broad review of the Standards Initiative.<sup>5</sup>

## Draft decision

21. *The Governing Body, based on the proposals set out in documents GB.334/INS/5 and GB.332/INS/5(Rev.) and the further guidance provided during the discussion and the tripartite consultations:*
- (1) *Approved the following measures concerning the operation of the representations procedure under article 24 of the Constitution:*
- (a) *arrangements to allow for optional voluntary conciliation or other measures at the national level, leading to a temporary suspension, for a maximum period of six months, of the examination of the merits of a representation by the ad hoc committee. The suspension would be subject to the agreement of the complainant as expressed in the complaint form, and the agreement of the government. These arrangements would be reviewed by the Governing Body after a two-year trial period;*
- (b) *publication of an information document on the status of pending representations at the March and November sessions of the Governing Body;*
- (c) *members of article 24 ad hoc tripartite committees need to receive all information and relevant documents from the Office 15 days in advance of their meetings and members of the Governing Body should receive the final report of article 24 ad hoc tripartite committees three days before they are called to adopt their conclusions;*

<sup>4</sup> GB.329/INS/5, para. 22 and GB.329/INS/5(Add.)(Rev.), Appendix I.

<sup>5</sup> GB.329/INS/5, paras 5–11.

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- (d) *ratification of the Conventions concerned as a condition for membership of Governments in ad hoc committees unless no Government titular or deputy member of the Governing Body has ratified the Conventions concerned;*
- (e) *maintaining existing measures and exploring other possible measures to be agreed upon by the Governing Body for the integrity of procedure and to protect ad hoc committee members from undue interference; and*
- (f) *reinforced integration of follow-up measures in the recommendations of committees and a regularly updated document on the effect given to these recommendations for the information of the Governing Body, as well as continuing to explore modalities for follow-up action on the recommendations adopted by the Governing Body concerning representations.*
- (2) *Approved the measures proposed on the streamlining of reporting on ratified Conventions concerning:*
- (a) *thematic grouping for reporting purposes under a six-year cycle for the technical Conventions provided that the Committee of Experts further reviews, clarifies and extends possibilities for breaking the reporting cycle with respect to technical Conventions; and*
- (b) *a new report form for simplified reports (Appendix II of GB.334/INS/5).*
- (3) *Decided to continue to explore concrete and practical measures to improve the use of article 19, paragraphs 5(e) and 6(d), of the Constitution, including with the purpose of enhancing the functions of General Surveys and improving the quality of their discussion and follow-up.*
- (4) *Instructed the Committee on Freedom of Association to examine its working methods on article 24 representations and to propose any necessary measures or adjustments to the Governing Body so as to ensure that article 24 representations referred to it be examined according to the modalities set out in the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization.*
- (5) *Encouraged the Committee of Experts to pursue the examination of thematically related issues in consolidated comments; and invites it to make proposals on its possible contribution to optimizing the use made of article 19, paragraphs 5(e) and 6(d), of the Constitution, in particular by considering measures to improve the presentation of General Surveys, so as to ensure a user-friendly approach and format that maximizes their value for constituents.*
- (6) *Invited the Conference Committee on the Application of Standards to consider, through the informal tripartite consultations on its working methods, measures to enhance its discussion of General Surveys.*

- (7) *Requested the Office to present at its 335th Session (March 2019) following consultations with the tripartite constituents:*
- (a) *concrete proposals to prepare the discussion on actions 1.2 (regular conversation between the supervisory bodies) and 2.3 (consideration of further steps to ensure legal certainty);*
  - (b) *a report on progress towards the development of a guide on established practices of the supervisory system, bearing in mind the guidance received on action 2.1 (consideration of the codification of the article 26 procedure);*
  - (c) *further detailed proposals on the use of article 19, paragraphs 5(e) and 6(d), of the Constitution, including in relation to the Annual Review under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work;*
  - (d) *a report on progress towards the development of detailed proposals for electronic accessibility to the supervisory system for constituents (e-reporting, section 2.1 of GB.332/INS/5(Rev.)) bearing in mind the concerns raised by constituents during the discussion;*
  - (e) *more information on a pilot project for the establishment of baselines for the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (section 2.2.2.2 of GB.332/INS/5(Rev.)); and*
  - (f) *a report on progress towards completing the Standards Initiative workplan as revised by the Governing Body in March 2017.*

## Appendix I

### Model electronic form for the submission of a representation under article 24 of the ILO Constitution

Information and further instructions on the article 24 procedure and its implications, as well as on other available ILO supervisory mechanisms, may be found here [\[hyperlink\]](#). For further support you may contact: for employers' organizations [\[ACT/EMP contact\]](#) and for workers' organizations [\[ACTRAV contact\]](#).

(Please provide information on why you are submitting your allegations through an article 24 representation procedure, as opposed to other procedures)

### **Receivability**

1. Please indicate the name of the industrial association of employers or workers making the representation:

(Please provide information on the organization concerned, its statutes, contact details, etc.)

2. Please indicate the Member of the Organization against which the representation is made:

3. Please indicate the ratified Convention(s) of which non-observance is alleged:

(Please also specify the ratification date(s))

4. Please use the [expandable] space below to inform the ILO Director-General in what respect it is alleged that the Member against which the representation is made has failed to secure the effective observance within its jurisdiction of the Convention(s) indicated above, making

specific reference to article 24 of the ILO Constitution. Please provide any relevant information in support of your allegations:

**Other information**

5. Please indicate whether the issue has already been examined by, or submitted to, the national competent authorities (including national courts, social dialogue mechanisms or mechanisms to resolve disputes before the ILO that may exist in the country) and provide any information on the state and outcome of the procedures engaged. Exhaustion of national procedures is not a prerequisite for the submission of a representation. However, in certain cases, the procedure to examine the representation may allow for conciliation or other measures at the national level – see the following question:

6. Please indicate if: (i) your organization would wish to explore the possibility of seeking conciliation or other measures at the national level for a ~~limited period of time~~ maximum period of 6 months from the date of the ad hoc tripartite committee’s decision to suspend the examination of the merits of the representation in order to address the allegations (subject to the agreement of the Government; ~~and~~ with the possibility for your organization to request the procedure to resume at an earlier moment should the conciliation/other measures fail; and with the possibility for the tripartite committee to decide on a limited further extension of the suspension should the initial conciliation or other measures need a further period of time to successfully resolve the issues raised in the representation); (ii) if so, please indicate if you would wish to have recourse to the intervention or technical assistance of the Office or the secretariats of the Employers’ or Workers’ groups in this regard.

7. Please indicate whether, to your knowledge, the allegations have already been examined by or submitted to ILO supervisory bodies and, if so, in what respect any currently submitted allegations are different from those already examined or submitted.

## Appendix II

### Proposed new integrated report form

#### ***Simplified reports to be sent under article 22 of the ILO Constitution for [name of country]***

The present report form has been approved by the Governing Body of the International Labour Office, in accordance with article 22 of the ILO Constitution, which reads as follows: “Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.”

Every year, based on this report form, the Office sends to each member State a single request for all the simplified reports which are due that year. In addition, the Office communicates to each member State the list of detailed reports which may also be due the year in question.

- (a) Please provide information on any new legislative or other measures affecting the application of ratified Conventions; where this has not already been done, please forward copies of any relevant texts to the International Labour Office with this report.
- (b) Please reply to the comments which have been addressed to your Government by the Committee of Experts on the Application of Conventions and Recommendations or by the Conference Committee on the Application of Standards, as contained in the annex to this form.<sup>1</sup>
- (c) In so far as it has not already been supplied in reply to question (b), please provide information on the practical application of the Conventions concerned (for example, copies or extracts from official documents including inspection reports, studies and inquiries, statistics); please also state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Conventions concerned. If so, please supply the text of these decisions.
- (d) Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization.<sup>2</sup> If copies of the report have not been communicated to representative organizations of employers and/or workers, or if they have been communicated to bodies other than such organizations, please supply information on any particular circumstances existing in your country which explain the procedure followed.

<sup>1</sup> The annex is established on the basis of the regular reporting cycle and any additional requests for reports addressed to your country by the supervisory bodies for the year in question. It also includes cases in which your country has failed to submit the simplified reports requested the previous year. It does not cover any simplified report due under the Maritime Labour Convention, 2006 (MLC, 2006), as amended, for which a specific form will be sent to your country, as appropriate.

<sup>2</sup> Article 23, para. 2, of the Constitution reads as follows: “Each Member shall communicate to the representative organisations recognised for the purpose of article 3 copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22.”

- (e) Please indicate whether you have received from the organizations of employers or workers concerned any observations, either of a general kind or in connection with the present or the previous report, regarding the practical application of the provisions of the Conventions concerned. If so, please communicate a copy of the observations received, together with any comments that you consider useful.

## Appendix III

### Workplan and timetable for Governing Body discussions on the strengthening of the supervisory system

	Governing Body, March 2017	Governing Body October-November 2017	Governing Body, March 2018	Governing Body October-November 2018	Governing Body, March 2019
<b>Focus area 1: Relationships between the procedures</b>					
1.1. <i>Guide on established practices across the system</i>	First consideration	Decision that Office develops a guide			Review of implementation of Standards Initiative
1.2. Regular conversation between supervisory bodies	First consideration				Review of implementation of Standards Initiative
<b>Focus area 2: Rules and practices</b>					
2.1. Consider codification of the article 26 procedure		Guidance on possibility of Standing Orders	Guidance on possibility of Standing Orders	Guidance on possibility of Standing Orders	Review of implementation of Standards Initiative
2.2. Consider the operation of the article 24 procedure	Guidance on initial elements	Discussion as per guidance	Discussion as per guidance	Discussion as per guidance	Review of implementation of Standards Initiative
2.3. Consider further steps to ensure legal certainty	Guidance on whether discussion should proceed	Guidance on whether discussion should proceed	Guidance on whether discussion should proceed	Guidance on possible tripartite exchange of views	Review of implementation of Standards Initiative
<b>Focus area 3: Reporting and information</b>					
3.1. Streamline reporting	Examination of different options	Examination of options & decision to computerize case management	Continuation of examination of options	Continuation of examination of options	Review of implementation of Standards Initiative
3.2. <i>Information sharing with organizations</i>	<i>Regular action by Office to be continued</i>				Review of implementation of Standards Initiative
<b>Focus area 4: Reach and implementation</b>					
4.1. <i>Clear supervisory body recommendations</i>	<i>Integrated in support provided by Office</i>				Review of implementation of Standards Initiative
4.2. <i>Systematized follow-up at national level</i>	<i>Integrated in support provided by Office</i>				Review of implementation of Standards Initiative
4.3. Consider potential of article 19	Guidance on initial elements	First consideration	Further guidance	Further guidance	Review of implementation of Standards Initiative
<b>Review by the supervisory procedures of their working methods</b>					
Committee on the Application of Standards	Informal tripartite consultation on working methods				
Committee of Experts	Ongoing discussion of working methods				
Committee on Freedom of Association	Ongoing discussion of working methods				