



FIRST ITEM ON THE AGENDA

Possible improvements in the standards-related activities of the ILO: Proposals regarding submission to competent authorities

1. At its 291st Session (November 2004), the Governing Body examined proposals for the revision of the *Memorandum concerning the obligation of submission to the competent authorities* (hereinafter “the Memorandum”).¹
2. It is recalled that the Memorandum, which was adopted by the Governing Body in 1954 and revised in 1959 and 1980, is a document that the Director-General sends to the governments of member States when communicating, with a view to submission to competent authorities, the texts of new instruments adopted by the Conference. It aims to help governments to discharge their obligations under article 19 of the Constitution and to facilitate the transmission by governments of the information requested along uniform lines.
3. The new draft text of the revised Memorandum reproduced in the annex was drafted in the light of the views expressed and the amendments proposed during the discussion and on which there appeared to be consensus. As was recalled during the discussions, the central part of the Memorandum draws upon extracts from reports by the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Conventions and Recommendations. Thus, while it was possible to remove some extracts and add others, it was hardly possible to change them beyond harmonizing style and terminology, which have changed over the years.
4. *The Committee may wish to examine the draft revised Memorandum and recommend its adoption to the Governing Body.*

Geneva, 21 January 2005.

Point for decision: Paragraph 4.

¹ GB.291/9(Rev.), paras. 2-18.

Annex

INTERNATIONAL LABOUR OFFICE
Geneva, [year]

**MEMORANDUM CONCERNING THE OBLIGATION
TO SUBMIT CONVENTIONS ¹ AND RECOMMENDATIONS
TO THE COMPETENT AUTHORITIES**

Article 19 of the Constitution of the International Labour Organisation

Paragraphs 5, 6 and 7 of article 19 of the Constitution of the International Labour Organisation, concerning the obligation to submit to the competent authorities the Conventions and Recommendations adopted by the Conference, are as follows:

“5. In the case of a Convention –

- (a) the Convention will be communicated to all Members for ratification;
- (b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action;
- (c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;

.....
6. In the case of a Recommendation –

- (a) the Recommendation will be communicated to all Members for their consideration with a view to effect being given to it by national legislation or otherwise;
- (b) each of the Members undertakes that it will, within a period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the closing of the Conference, bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action;
- (c) the Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Recommendation before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;

.....
7. In the case of a federal State, the following provisions shall apply:

- (a) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;

¹ The term “Convention” also refers to any Protocol adopted by the International Labour Conference in accordance with article 19 of the Constitution of the ILO.

- (b) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces, or cantons rather than for federal action, the federal Government shall –
 - (i) make, in accordance with its Constitution and the constitutions of the states, provinces or cantons concerned, effective arrangements for the reference of such Conventions and Recommendations not later than 18 months from the closing of the session of the Conference to the appropriate federal, state, provincial or cantonal authorities for the enactment of legislation or other action;
 - (ii) arrange, subject to the concurrence of the state, provincial or cantonal governments concerned, for periodical consultations between the federal and the state, provincial or cantonal authorities with a view to promoting within the federal State coordinated action to give effect to the provisions of such Conventions and Recommendations;
 - (iii) inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring such Conventions and Recommendations before the appropriate federal, state, provincial or cantonal authorities with particulars of the authorities regarded as appropriate and of the action taken by them;”

.....

In response to a request made by the Conference at its 36th Session (1953) and without prejudice to the authority of the International Court of Justice under article 37 of the ILO Constitution, the Governing Body of the International Labour Office established this Memorandum in 1954, more particularly in order to assist Governments in carrying out their constitutional obligations in this field and to facilitate the communication along uniform lines of the information requested.

Following suggestions made by the Conference Committee on the Application of Conventions and Recommendations, the Governing Body amplified the text of the Memorandum in 1958, and revised it in 1980 and, again, in 2005 in order to take into account subsequent developments.

The Memorandum does not impose new obligations on member States in addition to those provided for in the ILO Constitution, but is designed to draw their attention to comments of the Committee of Experts on the Application of Conventions and Recommendations and of the Conference Committee on the Application of Conventions and Recommendations concerning measures that appear necessary or desirable in the matter. The comments contained in the Memorandum have been chosen by the Governing Body which, in some cases, edited them in order to standardize the terminology used. The Memorandum also includes a questionnaire for the purpose of obtaining information on the measures taken.

Members are requested to take into account, as far as possible and in the interest of the implementation of Conventions and Recommendations, the points given below and to supply information in reply to the questions listed at the end of this Memorandum.

If the Committee of Experts or the Conference Committee on the Application of Conventions and Recommendations has requested additional information or has made an observation on the measures taken to submit Conventions and Recommendations to the competent authorities, please supply the information asked for or indicate the action taken by your government to settle the points in question in accordance with the requirements of the ILO Constitution.

I. AIMS AND OBJECTIVES OF SUBMISSION

- (a) The main aim of submission is to promote measures at the domestic level for the implementation of Conventions and Recommendations. Furthermore, in the case of Conventions, the procedure also aims to promote ratification.²

² See International Labour Conference (ILC), 64th Session (1978), Report III (Part 4A), General Report, para. 115.

- (b) Governments remain entirely free to propose any action which they may judge appropriate in respect of Conventions or Recommendations. The aim of submission is to encourage a rapid and responsible decision by each member State on instruments adopted by the Conference.³
- (c) The obligation of submission is a fundamental element of the standards system of the ILO. One purpose of this obligation was, and still is, that the instruments adopted by the Conference are brought to the knowledge of the public through their submission to a parliamentary body.⁴
- (d) The obligation of submission reinforces the relations between the Organization and the competent authorities and stimulates tripartite dialogue at the national level.⁵

II. NATURE OF THE COMPETENT AUTHORITY

- (a) The competent authority is the authority which, under the Constitution of each State, has power to legislate or to take other action in order to implement Conventions and Recommendations.⁶
- (b) The competent national authority should normally be the legislature.⁷
- (c) Even in cases where, under the terms of the Constitution of the Member, legislative power is held by the executive, it is in conformity with the spirit of the provisions of article 19 of the Constitution of the ILO and of practice to arrange for the examination of the instruments adopted by the Conference by a deliberative body, where one exists. Discussion in a deliberative assembly, or at least information of the assembly, can constitute an important factor in the complete examination of a question and in a possible improvement of the measures taken at the national level to give effect to the instruments adopted by the Conference.⁸ With respect to Conventions, it could lead to a decision as to their ratification.⁹
- (d) In the absence of a parliamentary body, informing a consultative body makes it possible to carry out a full examination of the issues addressed by the Conference. This process ensures that the instruments are widely disseminated among the public, which is one of the purposes of the obligation of submission.¹⁰

³ See ILC, 87th Session (1999), Report III (Part 1A), General Report, para. 221.

⁴ See ILC, 89th Session (2001), Report III (Part 1A), General Report, para. 221.

⁵ See ILC, 92nd Session (2004), Report III (Part 1A), General Report, para. 85.

⁶ See ILC, 46th Session (1962), *Record of Proceedings*, Third Part, Appendix VI (*Report of the Committee on the Application of Conventions and Recommendations*, para. 39).

⁷ See ILC, 64th Session (1978), Report III (Part IVA), para. 122; ILC, 29th Session (1946), Report II(1): *Constitutional questions*, Part 1 (Reports of the Conference delegation on constitutional questions, para. 43; ILC, 87th Session (1999), Report III (Part 1A), General Report, para. 219.

⁸ See ILC, 88th Session (2000), Report III (Part 1A), General Report, para. 114.

⁹ See ILC, 64th Session (1978), Report III (Part IV), General Report, para. 124.

¹⁰ See ILC, 92nd Session (2004), Report III (Part 1A), General Report, para. 87.

III. EXTENT OF THE OBLIGATION TO SUBMIT

- (a) Article 19 lays down the obligation to place before the competent authorities *all* instruments adopted by the Conference without exception and without distinction between Conventions and Recommendations.¹¹
- (b) Governments have complete freedom as to the nature of the proposals to be made when submitting the instruments and on the effect that they consider it appropriate to give to the instruments adopted by the Conference. The obligation to submit the instruments does not imply any obligation to propose the ratification of Conventions or to accept the Recommendations.¹²

IV. FORM OF SUBMISSION

- (a) Since article 19 of the Constitution is clearly aimed at obtaining a decision from the competent authorities, the submission of Conventions and Recommendations to these authorities should always be accompanied or followed by a statement or proposals setting out the Government's views as to the action to be taken on the instruments.¹³
- (b) The essential points to bear in mind are: (a) that, at the time of or subsequent to the submission of Conventions and Recommendations to the legislative authorities, Governments should either indicate what measures might be taken to give effect to these instruments or propose that no action should be taken or that a decision should be postponed; and (b) that there should be an opportunity to take up the matter for debate within the legislature.¹⁴

V. TIME LIMITS

- (a) In order that the competent national authorities may be kept up to date on the standards adopted at the international level which may require action by each State to give effect to them at the national level, submission should be made as early as possible and in any case within the time limits set by article 19 of the ILO Constitution.¹⁵
- (b) In virtue of the formal provisions of article 19, the submission of texts adopted by the Conference to the competent authorities must be effected within one year or, in exceptional circumstances, not longer than 18 months from the close of the session of the Conference.¹⁶ This provision applies not only to non-federal but also to federal States; in the case of the latter, the period of 18 months is applicable only in respect of Conventions and Recommendations which the federal Government considers to be appropriate for action by the constituent states, provinces or cantons. In order that it may be possible to ascertain that States Members have respected the prescribed time limits, the Committee considers that it would be advisable for the date on which the decisions of the Conference have been

¹¹ See ILC, 64th Session (1978), Report III (Part 1A), para. 129.

¹² See ILC, 88th Session (2000), Report III (Part 1A), General Report, para. 120.

¹³ See ILC, 40th Session (1957), *Record of Proceedings*, Appendix VI, para. 45.

¹⁴ See ILC, 42nd Session (1958), Report III (Part IV), para. 43.

¹⁵ See ILC, 87th Session (1999), Report III (Part 1A), General Report, para. 221.

¹⁶ The time limits provided for in article 19, paragraphs 5(b) and 6(b), of the Constitution do not apply to the provision of information under paragraphs 5(c) and 6(c), or to decisions of the competent authorities.

submitted to the competent authorities to be indicated in the communication to the Director-General.¹⁷

VI. OBLIGATIONS OF FEDERAL STATES

As regards federal States, the Committee wishes to point out that under article 19 of the Constitution, paragraph 7(b)(i), whenever action by the constituent states, provinces or cantons is considered “appropriate”, the Government must make effective arrangements for the reference of Conventions and Recommendations adopted by the Conference to the “appropriate authorities” of the constituent states, provinces or cantons for the enactment of legislation or other action.¹⁸

VII. TRIPARTITE CONSULTATIONS

- (a) For those States which have already ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), effective consultations have to be held on the proposals made to the competent authorities when submitting the instruments adopted by the Conference (Article 5, paragraph 1(b), of Convention No. 144).¹⁹
- (b) Members which have not ratified Convention No. 144 may refer to the relevant provisions of that Convention and to those of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152).²⁰
- (c) The representative organizations must be consulted beforehand.²¹ The effectiveness of consultations presupposes that the representatives of employers and of workers have at their disposal sufficiently in advance all the elements necessary for them to reach their opinions before the Government finalizes its definitive decision.²²
- (d) The representative organizations may be requested to make known their point of view on the action to be taken with regard to new instruments independently, with the texts simply being transmitted to them for an opinion or they may be requested to examine a draft proposal, either by means of an exchange of written communications or in the competent advisory body.²³ Fulfilment of the submission procedure is an important moment of dialogue between government authorities, the social partners and parliamentarians.²⁴

¹⁷ See ILC, 36th Session (1953), Report III (Part IV), para. 46(d).

¹⁸ See ILC, 36th Session (1953), Report III (Part IV), para. 46(e).

¹⁹ See ILC, 92nd Session (2004), Report III (Part 1A), General Report, para. 89.

²⁰ See ILC, 88th Session (2000), Report III (Part 1A), General Report, para. 115.

²¹ See ILC, 88th Session (2000), Report III (Part 1B: *Tripartite consultation*), para. 85.

²² See ILC, 88th Session (2000), Report III (Part 1A), General Report, para. 115.

²³ See ILC, 88th Session (2000), Report III (Part 1B: *Tripartite consultation*), para. 86.

²⁴ See ILC, 92nd Session (2004), Report III (Part 1A), General Report, para. 89.

VIII. COMMUNICATION TO THE REPRESENTATIVE ORGANIZATIONS

- (a) Under article 23, paragraph 2, of the Constitution, the information communicated to the Director-General on submission to the competent authorities must be sent also to the representative organizations of employers and workers.²⁵
- (b) This provision is designed to enable the representative organizations of employers and workers to formulate their own observations on the action that has been taken or is to be taken with regard to the instruments in question.²⁶

²⁵ See ILC, 36th Session (1953), Report III (Part IV), General Report, para. 46(f).

²⁶ See ILC, 89th Session (2001), Report III (Part 1A), General Report, para. 223.

*QUESTIONNAIRE***Unitary States**

- I.** (a) Please indicate what authority or authorities are competent in the matter as regards each Convention or Recommendation on which information is requested.
- (b) Please indicate what is the legislative body according to the Constitution or basic law of your country.
- II.** (a) Please indicate the date on which the Conventions and Recommendations concerned were submitted to the competent authorities for the enactment of legislation or other action.
- (b) Please indicate whether, at the time of submitting the Conventions and Recommendations to the legislative body, the Government tabled any proposals in the said body, on the measures which might be taken for the enactment of legislation or other action.
- (c) Please attach duplicate copies, if possible, or supply information on the substance of the document or documents by means of which the Conventions and Recommendations were submitted, and of any proposals which may have been made.
- III.** If it has not been possible to submit the Conventions and Recommendations, please indicate the exceptional circumstances which prevented the Government from submitting the said Conventions and Recommendations to the competent authorities within the prescribed date limits.
- IV.** Please indicate the contents of the decision taken by the competent authority or authorities on the instruments which were submitted to them.
- V.** Please indicate whether prior tripartite consultations took place and, if applicable, the nature of those consultations.
- VI.** Please indicate the representative organizations of employers and workers to which the information submitted to the Director-General has been communicated.
- Please state whether you have received from the organizations of employers or workers concerned any observations concerning the effect given or to be given, to the instrument (or instruments) to which this information relates.

Federal States

- VII.** Please indicate – with regard to each one of the Conventions and Recommendations on which information is requested – whether the federal Government regards them as appropriate under its constitutional system for federal action or whether, on the other hand, it regards them as appropriate in whole or in part for action by the constituent states, provinces or cantons.
- VIII.** In the former case (federal action) please supply the information requested under “Unitary States” in paragraphs I to IV.
- IX.** In the latter case (action in whole or in part by the constituent states, provinces or cantons) please indicate what measures have been adopted with a view to submitting each one of the Conventions and Recommendations on which information is requested to the appropriate federal, state, provincial or cantonal authorities for the

enactment of legislation or other action, and supply the relevant information on the authorities considered as appropriate and the measures taken by them.

- X. Please indicate in all cases whether prior tripartite consultations took place and, if applicable, the nature of those consultations.
- XI. Please indicate in all cases the representative organizations of employers and workers to which the information submitted to the Director-General has been communicated.

Please state whether you have received from the organizations of employers or workers concerned any observations concerning the effect given, or to be given, to the instrument (or instruments) to which this information relates.