

**Committee of Experts on the Application
of Conventions and Recommendations (CEACR)**

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**IOE COMMENTS
CEACR GENERAL SURVEY 2017**

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1. Introduction

Improving safety and health at work has a positive impact on working conditions, productivity and economic and social development. The promotion of occupational safety and health and the prevention of accidents and diseases at work is a core element of the ILO's founding mission and of the Decent Work Agenda. Additionally, promoting "*safe and secure working environments for all workers*" features prominently in the Sustainable Developments Goals (Target 8.8).

Occupational Safety and Health has been an integral part of the ILO's mandate since its creation in 1919. The Preamble of the ILO Constitution refers to "*the protection of the worker against sickness, disease and injury arising out of his employment*". Nearly half of the ILO

instruments deal mainly or among other things with OSH issues.¹ Hence, the undeniable importance of OSH in labour and social issues. While most OSH Conventions have enjoyed broad tripartite support at the time of adoption and most jurisdictions have in place legislation on OSH, the Conventions on OSH have nevertheless proven difficult to ratify for many countries.

IOE members have long been concerned with reducing occupational accidents, injuries and diseases. Employers face costly early retirements, loss of skilled staff, absenteeism, and high insurance premiums due to work-related accidents and diseases. While overall responsibility for safety and health in the workplace is the responsibility of the employer, its management can be enhanced if those entering the workforce already have a preventative safety mentality. An approach that invites not just employers but also workers and government to engage in a responsible manner at the national level in creating a safety and health culture and reinforcing national efforts to reduce occupational accidents, injuries and disease is key. Society as a whole needs to be part of the wider solution of creating a mentality and culture of safety and health that will support employers' efforts to reduce accidents at work in all sectors of society including construction, mines and agriculture. While OSH regulation and institutions are also very important, in order to be effective they should avoid undue bureaucracy. Compliance with the law has to be accompanied by education, training and support towards compliance.

It therefore makes sense for member States to promote a safety and health culture to ensure it includes the elements employers need to reinforce their own efforts at creating safe and healthy workplaces in all sectors of the economy.

2. 2016 General Survey

The IOE looks forward to the 2016 General Survey on the following eight ILO instruments in the field of occupational safety and health (OSH):

- Occupational Safety and Health Convention, 2006 (No. 187), and Recommendation, 2006 (No. 197)
- Safety and Health in Construction Convention, 1988 (No. 167), and Recommendation, 1988 (No. 175)
- Safety and Health in Mines Convention, 1995 (No. 176), and Recommendation, 1995 (No. 183)
- Safety and Health in Agriculture Convention, 2001 (No. 184), and Recommendation, 2001 (No. 192)

This is the first time that a General Survey by the CEACR will be conducted on these eight instruments. ***It is expected that the CEACR will provide in the Survey in depth non-binding technical guidance on the scope and the meaning of the provisions of the instruments concerned, present the difficulties raised by governments and social partners as standing in the way of their ratification and implementation in law and practice, and indicate possible means of overcoming these obstacles. Also it is expected that the General Survey will present new trends and challenges in OSH, including in construction, mines and agriculture.*** Most importantly, the General Survey should be a useful tool for tripartite examination and discussion in the Conference Committee

¹ <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>

on the Application of Standards to determine any necessary action to be taken by the Organization with regards to the instruments concerned, including their promotion, revision or consolidation.

As requested by the Employers Group in the 2016 Committee on Application of Standards, ***IOE would appreciate that these comments be made available online to other ILO constituents and the outside world.***

3. Occupational Safety and Health Convention, 2006 (No. 187), and Recommendation, 2006 (No. 197)

A new non-prescriptive approach to standard setting was pursued with the adoption by the International Labour Conference in 2006 of Convention 187 and Recommendation 197 on the Promotional Framework for Occupational Safety and Health. Enjoying tripartite support at the time of adoption, the instruments clearly positioned the ILO as the UN agency mandated to address OSH engaging the real actors from the world of work. The adoption of the instruments coincided with an increased interest by other bodies – notably the World Health Organization (WHO) and, perhaps more importantly, the International Organization for Standardization (ISO) – in the issue of workplace safety and health. The Convention therefore can build on synergies that can help reinforce the effectiveness in elaborating appropriate national-level responses.

Convention 187 aims at promoting a preventive safety and health culture and progressively achieving a safe and healthy working environment. It recognizes the primary role of governments, through its regulatory approach and targeted educational programmes, in creating the wider safety and health culture. Convention 187 requires ratifying States to develop a national policy, a national system, and national programme on OSH, in consultation with the most representative organizations of employers and workers. Consultation in this regard should involve a continuous involvement of the social partners in the design and implementation of national measures. The national policy shall be developed in accordance with the principles of Article 4 of ILO Occupational Safety and Health Convention, 1981 (No. 155), and the national systems and programmes shall be developed taking into account the principles set out in relevant ILO instruments. A list of relevant instruments is contained in the Annex to Recommendation 197. National systems shall provide the infrastructure for implementing national policy and programmes on OSH, such as laws and regulations, authorities or bodies, compliance mechanisms including systems of inspection, and arrangements at the level of the undertaking. National programmes shall include time-bound measures to promote OSH, enabling a measuring of progress.

Convention 187 contains a number of flexibility devices, in particular Article 2 para 3, Article 3 para 3, Article 4 para 2 and 3, art 5 para 2 (b) and (e) which give ratifying States a great deal of discretion in implementation and make it possible that national measures may be tailored according to needs. It is important that this flexibility for implementation built into the Convention is not subsequently limited via a restrictive interpretation by ILO supervisory bodies.

Since its adoption in 2006, Convention 187 has been ratified by 39 ILO Member States. Given the important topic covered by Convention 187, its unique nature and the broad tripartite support received since the time its adoption, ***it is expected that the CEACR's General Survey will shed light as to the specific reasons that are impeding ILO Member States***

to ratify this important and innovative instrument more widely. With this information, ILO's tripartite constituents will be in a position to decide on the most appropriate standard-related action to be taken, including a review by the Standards Review Mechanism Tripartite Working Group (SRM TWG). A review by the SRM TWG should not concern in isolation Convention 187 and Recommendation 197 (and the instruments referred in its Annex) but ideally apply a holistic approach covering all ILO instruments in the field of OSH to ensure relevance, coherence and clarity of the ILO body of standards in this important field.

4. Safety and Health in Construction Convention, 1988 (No. 167), and Recommendation, 1988 (No. 175)

The construction industry generates jobs for large numbers of people around the world and the results of the work in the construction industry remain for the use and enjoyment of successive generations. Construction is a complex set of related operations which, in the end, produce a finished product. This product may take many forms; it may be a building, a bridge, a power station or a dwelling, but it is always the result of skilled people working in a combination that eventually results in a durable structure. It is due, in part, to this complicated multi-trade system which takes place on a construction site, that safety and health becomes a primary concern. The prevention of accidents, diseases and harmful effects on the health of workers in the appropriate design and implementation of construction projects is not only a main priority but also and most important, a core value for IOE Member Federations.

Convention 167, adopted 28 years ago, provides for detailed technical preventive and protective measures in the construction sector. At the time of adoption of the Convention in 1988, the Employers were of the view that the scope of the instrument was too broad and not only set down principles but attempted to apply those principles in several areas of operations, a task that was proper to a Recommendation. The Employers at the time also made the point that it was inappropriate to set too detailed technical standards, which were likely to change in the course of time, into a Convention. These were some of the reasons why the Employers' Group almost unanimously voted against the adoption of Convention 167 (out of 97 Employers voting, 96 voted against and 1 Employer abstained) in 1988. While all 124 Governments voted in favour of the adoption of the Convention, to date only 30 out of 187 ILO Member States ratified it, which also points to problems of acceptance of this instrument. Therefore, rather than promoting ratification, the ILO should first undertake a review of the approach and the detailed provisions of this Convention with a view to evaluating their relevance and appropriateness in today's realities in the construction sector. It is worth noting that the Convention, which has been classified by the ILO Governing Body as up-to-date, has since its adoption in 1988 not yet been the subject of a thorough review either by the International Labour Conference or the ILO Governing Body.

Bearing in mind that since 1988 there have been considerable technological advances which also impacted the way OSH is being managed in the construction industry, **Member States and social partners may want to review the appropriateness and up-to-dateness of the provisions in Convention 167.**

5. Safety and Health in Mines Convention (No. 176), and Recommendation (No. 183)

Health and safety in mines is about keeping people healthy and safe and trying to move towards a zero harm industry. In recent years the global mining industry has made great progress in improving health and safety performance. One of the sustainable development principles of the global mining industry nowadays is to seek continual improvement in health and safety performance. There is a commitment in the global mining industry to live by a culture of safety. By introducing procedures such as risk assessment, the management of critical controls or training, companies in the mining industry are able to rehearse the type of behaviours needed to reduce risk and ultimately get closer to zero harm.

ILO Convention 176 was adopted by the International Labour Conference in 1995. At the time of adoption of the Convention the Employers stressed that the *“Employers’ efforts were devoted to the formulation of a Convention which would satisfy the following three criteria. Firstly, it would need to be acceptable to Employers, and of course to Workers and Governments. Secondly, in the medium term (emphasis added) it would have to enjoy widespread ratification by member States. Thirdly, and most importantly, in the longer term the Convention, in conjunction with the Recommendation, should have the effect of bringing about significant improvements in the safety and health of miners around the world.”* Employer delegates to the Conference in 1995 considered that both Convention 176 and Recommendation 183 had the flexibility to be adapted to widely differing circumstances since they set out the rights and duties and responsibilities of three parties in reasonable terms. At that time the Employers believed that the Conference had produced an instrument which had the potential to be ratified by many members and voted mostly in favour of the adoption of the instruments (78 in favour, 7 against and 12 abstentions). Government delegates to the 1995 Conference voted in a similar manner (197 in favour, 2 against and 21 abstentions).

However, twenty-one years after its adoption ILO Convention 176 has been ratified only by 31 out of 187 ILO Member States. It is also worth noting that ILO Convention 176, which is considered to be an up to date instrument, has not yet been reviewed by the Conference or the Governing Body with regard to its ongoing relevance for today’s mining industry.

Bearing in mind the new realities of the mining industry, ***Member States and social partners may want to review to what extent Convention 176 and Recommendation 183 are still appropriate and relevant.***

6. Safety and Health in Agriculture Convention 2001 (No. 184), and Recommendation 2001 (No. 192)

According to FAO, until 2000, agriculture was the main pillar of employment around the world. Although employment growth in agriculture has slowed down, the number of workers in this sector reached over one billion in 2009. Agriculture is the most important sector for female employment in many countries, especially in regions such as Latin America, Africa and Asia, and a major proportion of agricultural workers are women.

Agriculture involves a wide range of different types of machinery, animals, plants and products, working in different environments under widely varying geographic and meteorological conditions. While agricultural enterprises in many developed countries are highly mechanized and operate on a large scale, in many developing countries agricultural economic units are

labour intensive family farms. The different characteristics in the way the agricultural sector is understood and developed have an important impact on safety and health with varying levels of risk awareness and attitudes towards preventing accidents and diseases.

Convention 184 aims at preventing accidents and injury to health arising out of, linked with, or occurring in the course of agricultural and forestry work. For that purpose, the Convention includes detailed provisions relating to machinery safety and ergonomics, handling and transport of materials, sound management of chemicals, animal handling, protection against biological risks, and welfare and accommodation facilities.

Convention 184 was adopted by the International Labour Conference in 2001 with 223 Governments voting in favour and 0 abstaining and 13 voting against. While at that time also many Employer delegates voted in favour of the adoption (72), the Employers nevertheless also expressed serious concerns regarding the new Convention. These concerns were reflected in a significant number of Employers voting against (28) and abstaining (2). Since then Convention 184 has been ratified by 16 out of 187 ILO Member States only.

With the time that has elapsed since the adoption of the Convention and the very low number of ratifications, Employers came to realize that the Convention has not been designed for all kind of agricultural economic units. In particular, the cost structures and economics of medium, small and family farms are such that full implementation of the Convention could seriously affect the competitiveness and viability of these farms because of the additional costs incurred. The Convention and Recommendation treat farms as if they are large businesses with a substantial human resources infrastructure. However, many farms are family operations with hardly any infrastructure to implement the provisions of the Convention. In addition, the Convention goes far beyond the safety and health of agricultural workers in that it unnecessarily duplicates and often exceeds the provisions of other ILO Conventions such as the Occupational Safety and Health Convention, 1981 (No. 155), the Minimum Age Convention, 1973 (No. 138), the Chemicals Convention, 1990 (No. 170) (as well as its accompanying Recommendation (No. 177)), and the Worst Forms of Child Labour Convention, 1999 (No. 182). For example, the Worst Forms of Child Labour Convention, 1999 (No. 182), does not limit all agricultural labour for youth under 18, but this Convention does. There is little flexibility in the Convention other than the method by which the country goes about complying with it. The Convention is also impractical at several levels. It assumes that farms have stable workforces where representatives can be identified and elected. For most farms not only in developing but also in developed countries, the workforces are seasonal and the composition of those workforces vary each year. The Convention assumes that farmers have sufficient infrastructure to conduct risk assessments and training programmes. Perhaps most significantly, the Convention does not recognize that agriculture is driven by the weather. The concept of working time arrangements is injurious to production agriculture because the hours of work are also dictated by weather conditions and seasons and a systematic control of hours of work is not always viable. These compelling problems as well as the inclusion of such issues as ergonomics, special treatment of women workers and compulsory insurance undermine the fragile economics of agriculture.

For these practical reasons, the low ratification rates and given the fact that 15 years had passed since the adoption of the instruments without a thorough review by the ILO of its relevance and up to date ness, ***Member States and social partners may want to review whether such detailed provisions as contained in Convention 184 and Recommendation 192 are appropriate and relevant to todays' realities of the***

agricultural sector. The SRM appears to be an appropriate forum for undertaking such review.

7. Concluding remarks

Promoting high levels of safety and health at work is the responsibility of the society as a whole. All members of society must contribute to achieving this goal by ensuring that occupational safety and health is not a priority but a fundamental value in national agendas and by building and maintaining a national preventative safety and health culture in all sectors of the economy including construction, mines and agriculture.

A national preventative safety and health culture is one in which the right to a safe and healthy working environment is respected at all levels, where governments, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, education and training and where the principle of prevention is accorded not only the highest priority but is recognized as a core value.

The continuous improvement of occupational safety and health in all sectors should be promoted by a systems approach to the management of occupational safety and health, including the development of a national policy, system and programmes taking into consideration the provisions of Convention 187 and Recommendation 197.

Also access to information with regards to the application in law and practice of all ILO Conventions in the field of OSH including Conventions 167, 176, 184 and 187 is of fundamental importance. So reliable information about the application in law and also in practice is key. **A possible measure to generate more and relevant information about the application of Conventions 167, 176, 184 and 187 in law and practice may be to follow a global/thematic approach in the supervision of OSH standards and to put more emphasis in simplifying and consolidating ILO report forms for regular supervision** for example by subjects covered by international labour standards. We would **encourage the Governing Body without further delay to look into and discuss this possibility.**

Overall, the Employers expect that the General Survey will be a useful tool for tripartite examination and discussion at the International Labour Conference and at the Governing Body to determine any necessary action - including to promote, to review, to revise, to consolidate- to be taken by the Office and/or the Organization with regards to the instruments concerned.

Subject to the findings in the General Survey, **the Employers consider the following:**

- **There exists a modern and relevant Framework Convention, C 187, which seems to be able to provide a lasting fundament for all national action on OSH.**
- **On the other hand, there are the sectoral Conventions and Recommendations on OSH in mining, construction and agriculture which appear to be partly unduly detailed, partly outdated and partly overlapping. Given the low level of ratification of these instruments, it is expected that the CEACR will present in the Survey the difficulties raised by governments and social partners as standing in the way of their ratification and implementation in law and practice, and indicate possible means of overcoming these obstacles.**

- **Moreover, although not the subject of the present General Survey, there are many other Conventions and Recommendations which deal with specific OSH risks or which address OSH, among other things, as part of general working conditions.**

Against the background of these facts and with a view to achieving more impact, the Employers feel that it would be desirable to **consider possibilities to simplify, update and consolidate existing OSH instruments**. In doing so, it seems necessary that **a global perspective be applied**, taking into account all existing OSH Conventions and Recommendations rather than a piece-meal approach considering individual instruments.

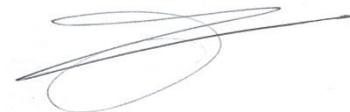
In the Employers' view, **a possible future architecture of OSH instruments could for instance consist of one high-impact ILO Framework Convention on OSH to which Annexes on OSH in particular high-risk sectors or on specific OSH issues could be added.**

These Annexes should be strictly confined to universally relevant specificities of the respective sectors/issues while the Framework Convention would deal with the basics of OSH (so these basics would not have to be repeated in the Annexes). The Annexes would be individually ratifiable for member States that have ratified the Convention, and would be subject to an accelerated revision procedure to enable swift updating. If need be, new Annexes could be added and obsolete ones could be removed, without affecting the Convention.

Alternatively – or in addition – the Framework Convention could be complemented by Recommendations on OSH in high-risk sectors or on specific OSH issues which, while not ratifiable, would provide guidance and could also be swiftly revised and updated.

The Employers would invite the CEACR to provide also its views in this regard. A more in-depth examination could then take place later on in the SRM TWG of the Governing Body.

Yours sincerely,



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The International Organisation of Employers (IOE) is the largest network of the private sector in the world, with more than 150 business and employer organisation members. In social and labour policy debate taking place in the International Labour Organization, across the UN and multilateral system, and in the G20 and other emerging processes, the IOE is the recognized voice of business. The IOE seeks to influence the environment for doing business, including by advocating for regulatory frameworks at the international level that favour entrepreneurship, private sector development, and sustainable job creation. The IOE supports national business organisations in guiding corporate members in matters of international labour standards, business and human rights, CSR, occupational health and safety, and international industrial relations. For more information visit www.ioe-emp.org