



26 August 2013

## PROPOSED NEW ILO STANDARD(S) – INFORMAL ECONOMY 2014 INTERNATIONAL LABOUR CONFERENCE (ILC 2014)

### Background

1. At its 317th Session (March 2013), the ILO Governing Body agreed to place a standard-setting item on the agenda of the 103rd Session (June 2014) of the International Labour Conference on facilitating transitions from the informal to the formal economy with a view to the elaboration of a Recommendation.
2. This will be subjected to the Double Discussion process, with standard setting being substantively progressed in 2014, and finalised in 2015.
3. An 83-page report has been issued by the ILO Office in preparation for the 2014 standard setting discussion. It provides useful background information, and may be accessed at:

[http://www.ilo.org/ilc/ILCSessions/103/reports/ReportssubmittedtotheConference/WCMS\\_218128/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/103/reports/ReportssubmittedtotheConference/WCMS_218128/lang--en/index.htm) (The Report)

4. A Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy will be held in Geneva from 16 to 20 September 2013. Twelve employer experts will participate in the meeting. The aim of the Meeting of Experts is to provide guidance on the proposed instrument concerning innovative solutions and up-to-date experience (legal, policy, institutional, governance and other interventions) that have proved successful in supporting the transition from informality to formality. The output of this meeting will also serve as an input for the discussion on this specific topic during the ILC 2014.

### ILO Office Questionnaire

5. The 2013 report also contains a detailed ILO Office questionnaire on the parameters and scope of a possible recommendation on informal economy (pp.53-66 of the Report).
6. This will be significant in shaping the draft Office Text, which will form the starting point for discussions in 2014.
7. In accordance with article 39(5) of the Standing Orders of the Conference and the decision made by the Governing Body for a programme of reduced intervals, the Office is required to communicate the final preparatory report for the first discussion of the proposed Recommendation to governments no later than March 2014. Hence, governments are requested to send their replies to the questionnaire so that they reach the office by **31 Dec 2013. National governments may have set earlier dates** for employers and workers organisations to contribute to combined national responses.

8. Note that Article 39(1) of the Standing Orders of the Conference asks that governments consult the most representative organisations of employers and workers before finalising their replies. The replies should reflect the results of that consultation and governments are to indicate which organisations have been so consulted. As such, employer organisations are urged to make sure that they are appropriately and sufficiently involved by their respective governments in the consultations.

**Siew Sze LEE**  
*IOE Adviser*

ILO Office: Questionnaire – Informal Economy Recommendation  
(pp. 53-66, Report V(1) 2014 ILC)

**General Comments**

- The Employers' Group is in favour of having a Recommendation on facilitating the transition from informal to formal economy and the Governing Body has agreed to a standard setting discussion. It is hence all the more important that employers scrutinise the questionnaire to ensure that it does not end up being counterproductive or distort the objectives of setting such a Recommendation.
- Discussions should lead to a Recommendation that, if adopted, promotes conditions that facilitate the formalisation of informal economy rather than merely destroying the informal economy, which is nonetheless an important source of livelihood for many where conditions are difficult for participation in the formal economy.
- Some effort is made in the questionnaire to address the needs and concerns of employers. Nevertheless, it helps to be more critical at this initial stage as the discussions are still being framed.
- This questionnaire contains several loaded questions, i.e. too many issues in one question; given responses are either Yes or No, it could potentially lead respondents to a situation where their (dis)agreement with one of the issues implies (dis)agreement with the other even if that is not the case. Hence, it is important to make use of the Comments section fully and appropriately to clarify these responses, where applicable.
- This questionnaire also contains questions based on assumptions that have yet to be proven. Any standard setting must be evidence-based and capable of both being used, and addressing genuine and fundamental concerns across a wide range of ILO member countries. The Comments section should be fully utilised and members are encouraged to ensure that where necessary, discussions are held with their governments to ensure they are aware that the statements include assumptions that still require further proof of validity.
- Only the questions that need highlighting are mentioned below.

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***I. Preliminary questions (Q. 1 – 2)***

- Both are valid questions to better understand each member state's work on informal economy.
- Comment that there should first be a clear understanding and agreement at the national level initially on what defines the informal economy and how it is measured. Otherwise, it will be difficult to answer what legislation, measures or practice, programmes and policies in your countries are relevant to facilitating formalisation. Furthermore, such definition

should be included in the response to ensure that the answers to the questionnaire are consistent with the definition agreed.

- The informal economy is a complex subject precisely because defining and measuring it are difficult. It has many aspects, involves a multitude of activities, and is influenced by very specific national problems. Normally the definition and measurement of the informal economy ultimately depend on the policy concerns that motivate the analysis and on data availability.

## **II. Preamble (Q. 3 – 6)**

- Employers should note that it is possible to further the content of the Preamble as discussion progresses.

### *Question 3*

- Responses should question what are the international labour standards and UN instruments that may be recalled. Emphasise that appropriate cross referencing and recitations at the front of any instrument can only be determined as discussions progress.
- Also, it is important to answer this question bearing in mind whether it is useful for your country to recall those existing standards and instruments.
- In terms of ILO Standards it would be important to propose that **ONLY** the Fundamental and priority Conventions be recalled in the preamble. The eight fundamental Conventions contain the basic enabling rights which are instrumental in progressively breaking away from the informal economy and poverty. The four priority Conventions – or governance instruments – serve to promote active labour market policies, ensure appropriate law enforcement and oversight from the public authorities and encourage the common search for solutions through tripartite dialogue.
- Emphasise that while the standards and instruments are recalled, individual national contexts should be taken into consideration and be respected.
- Emphasise that it should not simply be a check off or recitation at the start of a new instrument. The existing regulation must be substantively taken into account in designing any new standard to avoid overlap and repetition.
- This may not be limited to ILO and UN instruments and there may be a scope for recitation or recollection of additional treaties and standards from other agencies.

### *Question 4 (a)*

- No, as this narrows the scope of informal economy.
- This question assumes participation in the informal economy are always and definitely involuntary and are invariably due to a lack of opportunities in the formal economy. The informal economy stems from governance issues and unfavourable or inefficient business environments. However, participation in the informal economy is not always involuntary.

- Some relevant research: most informal work is not undertaken by marginalised workers and that some workers or firms choose informality (OECD, 2008). Survey data on undeclared work shows that about 60% of undeclared work in EU27 was conducted on a voluntary basis, whereas only 18% was related to exclusion from the formal economy (Williams and Renooy, 2008).
- Informal economy also often implies opportunities are found and people have adapted to cater to the demands of the populace<sup>1</sup>.

#### Question 4 (b)

- Yes, valid.
- Response can emphasise the importance of strengthening institutions (such as property rights) and the different branches of government; adapting and simplifying regulations and boosting their efficacy in line with the reality in which economic units operate.
- Where appropriate, employers may also recall that the informal economy also provides opportunities for those with low skills and productivity who are squeezed out of the formal economy, due to factors such as unreasonably high level of minimum wage, rigid labour market etc.

#### Question 4 (c)

- No.
- Employers should ask what it means by 'decent work deficits'.
- This question also assumes decent work deficits are most pronounced in the informal economy. While this could potentially be true, is there any evidence to prove this?
- In cases where informal economy helps to provide jobs to those unable to find jobs in the formal economy, characterising informal economy as an economy with decent work deficits will ignore the point that some jobs in the informal economy are decent and are a source of income for those who are otherwise unable to find employment.
- Another element which should be considered is that informal economy does serve to increase opportunities for workforce participation, particularly for women in developing countries.
- The concept and definition of decent work is still unclear so bringing it into the proposed instrument will divert discussions from finding ways to improve formalisation of the informal economy to one that debates on what decent work means. Notions of fair and decent are relative ones, and this may not advance a clear standard.
- It is also unclear how recalling decent work into the discussions on facilitating formalisation will contribute to defining the scope and content of the proposed instrument. Decent work goes beyond informality. Informality itself is an issue that is already

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<sup>1</sup> Becker, 'The Informal economy', Swedish International Development Cooperation Agency, Department for Infrastructure and Economic Co-operation, 2004

complex, making it deserving of being treated on its own to maximise the potential of discussion.

#### *Question 4 (d)*

- Yes. Important point to highlight, referring to how the lack of sound, predictable and efficient institutions (such as property rights, laws, rules and regulations), or their limited coverage and enforcement encourage informality.

#### *Question 5*

- Yes. Employers should also highlight that tripartite consultation in devising the measures should not be compromised at any time notwithstanding the urgency.
- Employers can suggest that the large diversity of the nature of informality is also recognised.

#### *Question 6*

- No, even though it is true that informal employment also exists in the formal economy, it should probably be left for later to allow clear understanding of the definition of informal employment to be established first.
- It must not be an opportunity for other constituents to bring in the concept of 'precarious work', definition of which is still unclear and debatable. More importantly, it must not be an opportunity for other constituents to bring in various forms of flexible contracts as being types of 'informal employment'.

### **III. Scope (Q. 7)**

#### *Question 7*

- No. Even though this description was seemingly agreed in 2002, there had been many developments since.
- The reference to 'formal arrangements' needs clarification. Does this imply the inclusion of informal jobs in the formal economy as part of the informal economy? How are formal jobs in the informal economy being considered?
- This description is also confusing as it goes beyond definition to include one of the reasons for informality. The inclusion of '... or they are not covered in practice, which means that – although they are operating within the formal reach of the law, the law is not applied or not enforced' suggests that informal economy includes the ones which are covered by the law but are where the law is not enforced/enforceable. Respondents need to question whether this is accepted as a definition of informal economy - that activities covered by the law are considered as part of the informal economy if the laws are not enforced/enforceable.
- While it is true that the informal economy flourishes on weak law enforcement, weak enforcement is not the only reason for informality. In principle, it is not wrong to go beyond definition while describing the informal economy. However, if the plan is to include in the description of informal economy the reasons that give rise to the informal economy, it needs to be more comprehensive and include more than just law enforcement, which is only one of the many reasons that encourage the creation and

expansion of the informal economy. This point needs to be stressed because the description, once it is agreed to be included in the proposed instrument, will frame the scope and content of following discussions.

- Under comments, it could be worthwhile requesting that another definition be elaborated, that takes into account experiences and practical work implemented by the ILO and other international bodies as well as the member countries since the Resolution in 2002 and integrates changes in thoughts and in global economy regarding informal economy in the last decade. The point is that if the understanding of informal economy is not updated, it will risk making further discussions irrelevant to current realities.

#### ***IV. Objectives and principles (Q. 8 – 11)***

- The questions are generally valid. The only question to highlight is question 8.

##### *Question 8*

- Yes, but highlight that the proposed instrument should also provide that Members promote the creation of enterprises in the formal economy.

#### ***V. Legal and policy frameworks (Q. 12 – 14)***

##### ***Legislative framework (Q. 12)***

##### *Question 12*

- No, several issues.
- Firstly, informal economy often stems from cumbersome and ineffective national laws and regulations. Hence, merely providing that these laws cover all categories of workers and economic units could only serve to destroy livelihoods without promoting formalisation.
- Secondly, the national laws and regulations or other measures might not be relevant to 'all' categories of workers and economic units.
- Thirdly, does the word 'appropriate' refer to the extent of the coverage or the relevance of the respective laws and regulations to the particular category of workers and economic units? If it refers to the latter, it should be conveyed that the extent of the coverage should be subjected to appropriateness too as for instance, some small enterprises do not have the capacity to address certain laws and regulations.
- Lastly, many times the laws cover these categories of workers and economic units but are not applied.

##### ***Policy framework (Q. 13 – 14)***

- For this segment, all the questions are valid and positive responses can be given. Only question 14, part (c) needs more attention.

##### *Question 14 (c)*

- No, refer to points addressing question 6.

- Informal employment is another issue on its own with different factors and consequences which deserve proper treatments.
- Should not confuse employment type with type of economies; they are not the same.

#### ***VI. Rights at work (Q. 15)***

- The questions focus on fundamental principles and rights at work which employers are also committed to.
- Nevertheless, employers should question how rights at work are to be extended to those beyond the reach of law enforcement and reiterate that formalisation is thus an important means through which rights at work can apply to more people in the economy.
- Employers may also highlight the necessity of assuring that the means to ensuring these rights of workers are realistic and efficient and social protection extended to workers in the informal economy should be proportionate and take into consideration local contexts and the nature of work.

#### ***Question 15 (c)***

- Facilitating transition from informal to formal economy is about targeting all workers in the informal economy. There is a large diversity of participants in the informal economy and not all the workers in the informal economy are women and/or belong to vulnerable categories of workers. It is unclear how formalisation can be promoted by giving special attention to women and vulnerable categories of workers.
- Also, by segmenting the informal economy, it is not giving equal attention to other groups of workers in the informal economy and could potentially be counterproductive in promoting formalisation.
- There is a place for tackling the gender dimension and for addressing vulnerable groups of workers but this is not the place. Providing specifically for these could dilute the focus on promoting formalisation.

#### ***VII. Employment (Q. 16)***

- Yes.

#### ***VIII. Working conditions and social protection (Q. 17 – 21)***

#### ***Question 17 & 18***

- This is like the issue of including informal employment (Q.6 & Q.14(c)); it is diluting the focus on transition from the informal to the formal economy.
- Responses can also highlight that while ensuring workers' health and safety and expanding women's employment opportunities are highly important priorities, there must be shared responsibilities (for question 17) and the means to assuring these must not be detrimental to the costs of doing business, especially for the SMEs, and conditions must

be conducive for creating enterprises in the formal economy, which are important for facilitating formalisation and for employment creation.

#### *Question 19*

- Highlight that social security system must be fiscally responsible and financially sustainable, and subject to local contexts.

#### *Question 20*

- Also need to consider the capacity of the self-employed, the employers and the enterprises.
- Employers' contributions to the coverage of social insurance to these additional categories of workers should be proportionate to ensure that the costs remain affordable for the employers so that these jobs and livelihoods will not be destroyed.

### ***IX. Compliance and enforcement (Q. 22 – 23)***

- Compliance with laws and their enforcement need take into account the possibility that the laws in place might not be appropriate, practical, effective and efficient. Many countries have large informal economy precisely because of cumbersome or uncertain laws. In such cases, ensuring their compliance and enforcement will not address informality.

#### *Question 22 (a)*

- No, as this assumes efficient and sound laws and regulations.
- There should be an impact assessment mechanism of the existing laws and regulations before enforcing compliance.

#### *Question 22 (b)*

- Emphasise that the system of inspection should be transparent and efficient with opportunity for feedback (other important attributes are mentioned in question 22(c)) and that it does not impose unnecessary costs on employers.

#### *Question 23*

- No. Again, the laws must be sound and practical in the first place.
- Also, violations can be a result of lack of knowledge/awareness and/or capacity to comply. In such cases, more education and guidance are needed. The sticks approach should be limited to not deter enterprise and employment creation.

### ***X. Role of employers' and workers' organisations (Q. 24 – 27)***

#### *Question 24*

- No.
- Note that freedom of association is one of the fundamental principles and rights at work which employers are committed to.

- Employer organisations can accept informal enterprises as members on grounds that a level playing field is ensured by subjecting informal competitors to the same requirements as their members, and by spreading the tax and social protection burden more evenly and equitably.
- Employer organisations have always been at the forefront of promoting formalisation. To have within an instrument a provision for entrepreneurs in the informal economy to be able to join employer organisations in the formal economy will oblige employer organisations without giving them the opportunity to assess their capacities and will disregard the fact that people join the informal economy with various motivations. It might also risk reducing the incentives for enterprises in the informal economy to formalise and tilting the playing field in favour of informal economy operators.
- Business can play a significant role in drawing attention to the pressing need for action and in bringing into the mainstream the considerable potential for employment and wealth creation that is currently in the informal economy.
- Business and employer organisations, as representatives of mainstream formal economy enterprises, have been advising government on macro-economic and social policies and in influencing government legislation and policies to create a supportive and enabling environment for all levels of enterprises, thus bringing more enterprises and work into the formal system. Any simplification of administrative rules and regulations is likely to benefit both formal and informal businesses in equal measure.
- For those informal enterprises with genuine interests to formalise, employer organisations can consider assisting them through access to information, access to finance, insurance, technology and other resources, and extending business support and services for registering new business, productivity improvements and entrepreneurial development (perhaps in cooperation with government, international organisations or donors). Business organisations can act as a conduit for the establishment of links between informal and formal enterprises, and initiate activities adapted to the needs of the informal economy that can yield important results such as improved safety and health and improved labour management cooperation.
- As for the provision for informal entrepreneurs to create their own organisations, more discussions are needed to determine how such an organisation/network/association should look like and its purpose. It should be recalled that sound governance and enterprise- and employment-friendly business environments are fundamental to promoting informal to formal transitions. Having separate organisations for the informal economy could risk creating a dual system, which can be more complicated for governments to manage and might even reverse transition from formal to informal economy.

#### Question 25

- No, as it includes consulting organisations of workers and entrepreneurs in the informal economy.
- By providing in the proposed instrument to consult ‘organisations of entrepreneurs in the informal economy’, it again brings us back to points raised in question 24.

- Organised, formal businesses of all sizes are at the forefront of operating in the economy and business environment of any country and no other actors are better placed to know many of the real world challenges holding individuals and enterprises back from formality. By consulting employer organisations, it will already be useful in developing, implementing and evaluating policies and programmes of relevance to the informal economy, including its formalisation. Indeed, given that the members represented by these employer organisations are formal enterprises in the formal economy which imply that they are able to successfully overcome the potential obstacles to formalise, it is even more worthwhile to consult them to understand the key drivers motivating and facilitating formalisation.

#### *Question 26*

- This is a loaded question, where several points are included in one question. Responses should be careful to make sure agreement with one of the points does not give the impression that there is agreement with the other points. This question is also almost identical to question 24.
- Agree that the role of employer organisations as facilitating transition from informal to formal economy is important and should be emphasised. Refer to points in question 24.
- Employer organisations may encourage and support the creation and development of representative organisations where capacities are available and where the informal economy operators are genuinely keen to formalise. Including in the proposed instrument a provision for this might exert undue pressure on employer organisations.

#### *Question 27*

- Yes, more valid than questions 24 – 26 as it is with a view to facilitating transition to formality.
- Responses can request for clarification of what it means by “representative organisations of the informal economy” - who are they? As mentioned in previous questions, will doing this reduce incentives for formalisation and create a dual system such that transitioning from informal to formal loses its relevance?

### ***XI. Data collection and monitoring (Q. 28)***

- Both (a) and (b) are valid and positive responses can be given.
- Reiterate the importance of having a clear and quantifiable measurement of the size and composition of the informal economy.

### ***XII. Implementation and follow-up (Q. 29 – 30)***

- Both questions are fair and positive responses can be given.

### ***XIII. Other question (Q. 31)***

#### *Question 31*

- Employers can respond that while this could be useful by giving more clarity to what is relevant and making it easy for referencing, the ILS to be placed in the list as relevant

should first be discussed in a tripartite consultation with the constituents to allow the constituents to review, add and/or delete the ILS that are placed on the list.

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