

The Standards Initiative:

Consolidating tripartite consensus on an authoritative supervisory system

Consultation document, December 2016

- *Purpose of the document:* This document follows up the Governing Body's decisions in relation to the joint report of the two Chairpersons in the context of the Standards Initiative. It is intended to facilitate the tripartite consultations scheduled to take place between January-February 2017 with a view to submitting specific recommendations to the March 2017 session of the Governing Body. It is, accordingly, preparatory to the more substantive draft that will be produced, on the basis of tripartite consultations in January, for the February round of consultations.
- *Approach taken by this document:* The document brings together the views of the tripartite constituents in relation to the strengthening of the supervisory system. It identifies areas of convergence that have guided **10 concrete proposals**, organized under **four focus areas**. Questions for the consultations, including prioritisation of two of the concrete proposals, are presented to determine the content of the Governing Body document in March 2017 (see annex 1).
- *Expected outcome of consultations:* Guidance on the concrete proposals to be presented to the Governing Body in March 2017. This involves answering the questions put forward in this document and prioritising which concrete proposals would be discussed with a view to a decision in March 2017 or at a later stage.

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Context

1. Pursuant to the decisions taken by the Governing Body,¹ this document is part of a consultation process initiated within the framework of the Standards Initiative. Its overall objective is to create a process to “consolidate tripartite consensus on an authoritative supervisory system” responding to the tripartite constituents’ call for innovative, ambitious and concrete proposals.²
2. This document brings together the comments and proposals made by the tripartite constituents, particularly within the context of the joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association (the joint report) as well as during the 326th and 328th Sessions of the Governing Body,³ and the 2016 Resolution on Advancing Social Justice through Decent Work.⁴ To do so, the Office has analysed comments of the tripartite constituents with the intention of building upon meaningful and constructive commonalities.
3. The present tripartite discussions are taking place at a time of opportunity. There is agreement among constituents that a broad and integrated approach should be taken to the examination of the functioning of the supervisory system, with all options being considered. The Standards Initiative clearly sets a strategic direction for tripartite discussions on the supervisory system.
4. Notably, in their comments during the consultation process relating to the preparation of the joint report and before the Governing Body in March and November 2016, the tripartite constituents highlighted the necessity of implementing the Standards Initiative as a single endeavour and developing concrete and forward-looking outcomes. In addition, the 2016 Conference Resolution on Advancing Social Justice through Decent Work and the Social Justice Declaration and its Follow-up emphasized the fundamental role of the standards system and the coordination between the recurrent discussions and the outcomes of the

¹ Governing Body, 326th session (March 2016) [GB.326/PV](#), para. 502 and Governing Body, 328th session (November 2016) [GB.328/LILS/PV/Draft](#), para 42

² Report of the Director-General ([Report 1A](#)), International Labour Conference, 102nd Session, Geneva (2013) para. 155 (2).

³ The Office is currently following up the possibility of publishing the comments of the tripartite constituents on the website during January 2017.

⁴ See sub-paragraph 15.1 of the [Resolution](#).

Standards Initiative; the standards system as a whole is highlighted as a priority area of action for the Organization.⁵

Strengthening the supervisory system: areas of convergence

5. Constituents have expressed diverse views on the functioning of the supervisory system. At the same time, there is convergence on the expected outcome of the present discussion. In practical terms, this section sets out the areas on which there is convergence in relation to a well-functioning and effective supervisory system within the Constitutional framework. In this way, it guides the development and implementation of concrete proposals to further strengthen the system.

The value of the supervisory system is incontrovertible...

6. The role of the supervisory system in giving practical effect to the ILO founding values and constitutional objectives has a critical global value. The tripartite constituents have highlighted the importance of the system as a whole, as well as of the individual supervisory procedures, for the discharge of the ILO's mandate. Any evolution of the supervisory system must be based on its well-established strengths. Equally, there is consensus that the system could be strengthened further.

... and the responsibility to further strengthen the supervisory system lies with the tripartite constituents.

7. There is a collective view that it is the joint and inalienable responsibility of the tripartite constituents to consider further strengthening of the supervisory mechanisms. Undoubtedly, all solutions lie with the tripartite constituents and decisions will be taken on a consensual and participatory basis by the ILO governance bodies. The tripartite structure adds value to the supervisory system, and is an important reason for its authoritativeness. In addition to recognising their role in the functioning of the system, the tripartite constituents have committed to engaging fully in the process of strengthening it.

Improvements must result in a robust, relevant and sustainable system...

8. The supervisory system must remain fully relevant to the existing world of work. This will enable it to continue to guide the ILO in achieving progress and social justice in a constantly changing environment, remaining pertinent and retaining global significance.

⁵ [Resolution on Advancing Social Justice Through Decent Work](#), Evaluation of the impact of the ILO Declaration on Social Justice for a Fair Globalization, and conclusions for future actions, sub-paragraphs 15.1, 15.2(b) and 16(b).

Fundamentally, the system must enjoy committed tripartite support that is manifested in constructive involvement and genuine engagement. A strong supervisory system will continue to inspire confidence, while enabling the ILO and its Members to be resilient to change.

... and its procedures should be efficient and effective.

9. The supervisory system has proved over the years to be effective and efficient. In supervising the application of international labour standards, it must continue to fulfil its purpose and make the best use of available resources. As an organised and coherent system, it contributes to the achievement of the ILO's strategic objectives through the effective application of standards in member States. Complementary to national and regional systems, the supervisory system should continue to be global in reach and universal in outlook.

The supervisory system must be fair and rigorous, leading to consistent and impartial outcomes.

10. Transparency and integrity in the system are essential. The procedures must not only continue to be fair, but must be seen to be fair by all involved. Equally, the outcomes of the supervisory system must be consistent and impartial. Comments, decisions and recommendations that are understood to be the outcome of an objective and rigorous process are essential to the credibility and authority of the system.

Strengthening the supervisory system: concrete proposals

11. Based on its examination of the constituents' previous comments, the Office has identified four focus areas for mutually supportive and complementary action leading to the further strengthening of the supervisory system. These focus areas organise 10 concrete proposals, presented for the consideration of the tripartite constituents in the current consultation process. While there is a diversity of views among the tripartite constituents on how to approach these focus areas, the objective of this section is to structure the discussion in a useful way with a view to consolidating consensus on the supervisory system.

Focus area 1: Effective relationships between the procedures

12. Many views expressed by the constituents concern the idea of approaching the supervisory system systemically, highlighting the fact that it is a functioning system of interrelated and complementary individual procedures. Constituents have underlined the need to consider

the functioning of the system as a whole, and to improve understanding of its procedures and the linkages between them. Proposals grouped within this focus area aim to fulfil these intentions.

Concrete proposal 1.1: Record of established practices across the supervisory system

- 13.** Clarifying the way in which the supervisory system operates would enable the constituents to better anticipate the various stages and requirements of the procedures. A record could set out, in a step-by-step format, the established procedures and practices for each supervisory procedure. In this way, it would clarify timelines, linkages with other supervisory procedures and with national bodies for the resolution of labour disputes, and follow-up to the recommendations of the supervisory bodies.
- 14.** If the tripartite constituents consider this concrete proposal to be useful, the Office could prepare an outline of such a record of established practices across the supervisory system for the Governing Body to consider at its March 2017 session. The record would be completed on the basis of the Governing Body decision, including in relation to timeframe.

Concrete proposal 1.2: Formalized conversation between the supervisory bodies

- 15.** As set out in the joint report,⁶ a formalized conversation between the various supervisory bodies through their Chairs and Vice-Chairs could be initiated to complement the existing dialogues between the supervisory bodies. This could include an annual meeting, as well as regular information-sharing, and could include the Governing Body Officers, taking into account their role in relation to the articles 24 and 26 procedures. Such a formalized conversation could address critical issues in relation to enhancing complementarity, synergies and dynamic interplays between the procedures and considering any unnecessary duplication. In particular, steps could be taken to ensure that the supervisory system more systematically manages cases that are particularly significant and pressing.
- 16.** If the tripartite constituents consider this concrete proposal to be useful, the Governing Body could decide, at its March 2017 session, on the means through which such a formalized conversation could take place.

⁶ See Governing Body, 326th Session, Geneva (March 2016) [GB. 326/LILS/3/1](#), para. 127.

Focus area 2: Accessible rules and practices

17. The tripartite constituents agree on the need for accessibility, visibility and clarity. While some degree of complexity is inevitable in such an intricate and multi-faceted system, accessibility could be enhanced and rules and practices could be more widely available and transparent. Proposals grouped within this focus area aim to fulfil these intentions.

Concrete proposal 2.1: Codification of established practice related to the article 26 procedure

18. Given its importance at the apex of the ILO supervisory system, the established practices related to the complaint procedure set out in articles 26-34 of the ILO Constitution could be codified so as to make them more widely accessible.

19. This proposal is one of two proposals that would require substantial preparation. Accordingly, if the tripartite constituents indicate during these consultations that this proposal should be considered a priority, the Office could prepare a draft outline of codification of the established practice on the article 26 procedure for the Governing Body's consideration at its March 2017 session.

Concrete proposal 2.2: Tripartite consideration of the operation of the article 24 procedure

20. All three tripartite groups have indicated that the way in which the article 24 procedure operates in practice should be strengthened. In the context of the *Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the ILO*, this could involve tripartite discussion addressing elements such as the desirability of an ad-hoc standing committee for the procedure, time limits, linkages with other supervisory procedures and how to ensure optimal follow up.

21. This proposal is one of two proposals that would require substantial preparation. Accordingly, if the tripartite constituents indicate during these consultations that this proposal should be considered a priority, the Office could present elements for a first consideration by the Governing Body at its March 2017 session.

Concrete proposal 2.3: Consider whether to take steps to ensure further legal certainty

22. Legal certainty is important for the continued credibility and effectiveness of the supervisory system. The joint report proposed steps to be taken in relation to the question

of how to interpret Conventions.⁷ Whether or not further steps should be taken in this regard is a matter for the determination of the tripartite constituents.

Focus area 3: Enhanced reporting and information

23. A third focus area concerns the communication of reports and other information for the purposes of the supervisory procedures. Notably, the constituents have expressed views on workload; the quality of information provided by governments and the social partners; and the need to take advantage of new technologies. The tripartite constituents' profound knowledge of the practical implementation of the instruments at national level and the realities of the world of work should inform the supervisory system's operation which in turn should make the best use of available resources. Proposals grouped within this focus area aim to fulfil these intentions.

Concrete proposal 3.1: Further streamline reporting

24. Building on a proposal set out in the joint report⁸ and responding to the perceived need to further streamline reporting, an assessment could be made to identify possible measures that could result in streamlined reporting process. These measures could then be trialled before full scale implementation.

25. If the tripartite constituents consider this concrete proposal to be useful, the Governing Body could, at its March 2017 session, mandate the Office to follow-up possibilities to further streamline reporting and to report back to the Governing Body in this regard.

Concrete proposal 3.2: Closer cooperation with other international organizations

26. As suggested in the joint report,⁹ closer cooperation and coordination between the ILO and other UN institutions could be beneficial. A concrete proposal in this regard could involve regular exchange of information between the Office and other international organisations, in particular UN institutions.

27. If the tripartite constituents consider this concrete proposal to be useful, the Governing Body could, at its March 2017 session, mandate the Office to review its exchange of

⁷ Governing Body, 326th Session, Geneva (March 2016) [GB. 326/LILS/3/1](#), paras 133-136.

⁸ Governing Body, 326th Session, Geneva (March 2016) [GB. 326/LILS/3/1](#), para. 130.

⁹ Governing Body, 326th Session, Geneva (March 2016) [GB. 326/LILS/3/1](#), para. 144.

information and collaboration with other international organizations and report back to the Governing Body in this regard.

Focus area 4: Improved reach and implementation

- 28.** There is tripartite awareness of the need to improve the reach of the supervisory system. The comments of the supervisory procedures should assist governments and be impactful. Technical assistance should be available to member States to facilitate prevention and resolution of disputes as well as to ensure implementation of supervisory bodies' recommendations at the national level. Proposals grouped within this focus area aim to fulfil these intentions.

Concrete proposal 4.1: Action-oriented and clear recommendations by the supervisory bodies

- 29.** For the supervisory system to be fully effective, the recommendations made by the supervisory bodies should be formulated in clear terms and guide follow-up action at the national level. There is convergence on the usefulness of formulating action-oriented and clear recommendations so as to facilitate their implementation.
- 30.** If the tripartite constituents consider this concrete proposal to be useful, the Governing Body could, at its March 2017 session, mandate the Office to undertake the appropriate follow-up with the various supervisory bodies and to report back to the Governing Body in this regard.

Concrete proposal 4.2: Systematized follow-up at national level

- 31.** As set out in the joint report, active steps could be taken to enhance the reach of the comments generated by the supervisory system through the further use of other ILO means of action.¹⁰ At the national level, this could involve priority access to technical assistance supporting follow-up on the comments of the supervisory system,¹¹ including through Decent Work Country Programmes.¹²
- 32.** If the tripartite constituents consider this concrete proposal to be useful, the Governing Body could, at its March 2017 session, mandate the Office to take steps in this regard and to report back to the Governing Body.

¹⁰ Governing Body, 326th Session, Geneva (March 2016) [GB.326/LILS/3/1](#), para. 144.

¹¹ See Governing Body, 328th Session, Geneva (November 2016) [GB.328/PFA/2](#), para. 30.

¹² See Governing Body, 326th Session, Geneva (March 2016) [GB.326/LILS/3/1](#), para. 143.

Concrete proposal 4.3: Tripartite dialogue on the potential of article 19 to extend reach and implementation of standards

- 33.** An enhanced understanding of the implementation of international labour standards by both ratifying and non-ratifying member States ¹³ would improve the impact and relevance of standards across the ILO membership. The 2016 Resolution on Advancing Social Justice Declaration through Decent Work calls for an exploration of options for making better use of article 19, 5 (e) and 6 (d), of the Constitution, without increasing reporting obligations. This would feed both the implementation of the Standards Initiative and the follow-up to the 2016 Resolution.
- 34.** If the tripartite constituents consider this concrete proposal to be useful, the Office could present elements for an initial discussion by the Governing Body at its March 2017 session, ¹⁴ which would then be followed up during 2017.

Next steps

- 35.** Based on the areas of convergence, a series of mutually supportive and concrete proposals on the supervisory system have been set out for the consideration of the tripartite constituents during these consultations. On this basis, the constituents are invited to prioritise certain of the concrete proposals requiring more substantial preparations. At this point, it is for the tripartite constituents to determine whether these proposals sufficiently represent the tripartite vision for the future of the supervisory system, to raise any other proposals and to confirm whether, through this combination of complementary concrete proposals, the necessary steps would be taken to further strengthen the supervisory system.
- 36.** In terms of timetabling, the majority of the concrete proposals can be progressed to some extent by the Governing Body at its March 2017 session. Two of the concrete proposals, however, will require significant preparation ahead of the Governing Body, notably including a full consultation process on their substance based on additional documents prepared by the Office. That is, at these consultations the tripartite constituents would need to indicate which of the concrete proposals 2.1 (codification of the article 26 procedure) or 2.2 (consideration of the operation of the article 24 procedure) should be the focus of preparations for the Governing Body session in March 2017.

¹³ See Governing Body, 326th Session, Geneva (March 2016) [GB. 326/LILS/3/1](#), para. 143.

¹⁴ In March 2017, the Governing Body will also be considering the programme of work to give effect to the [2016 Resolution](#).

- 37.** A key factor that has not been addressed in the proposals is their resource implications. The Office would be ready to provide further information in this regard in relation to any proposals that the tripartite constituents indicate should be followed up, with regard to timetabling considerations.
- 38.** Two annexes are attached to this document. *Annex 1* lists questions for the consultations. *Annex 2* highlights the implications of each proposal for the Governing Body Session in March 2017.

Annex 1: Questions for consultations

1	Should the principles set out in paragraphs 6-10 guide the further strengthening of the supervisory system?	(paragraphs 6-10)
2	Should a record of established practices across the supervisory system be developed?	(concrete proposal 1.1 paragraphs 13-14)
3	Should a formalized conversation be initiated between the supervisory bodies?	(concrete proposal 1.2 paragraphs 15-16)
4	Should the established practice for the article 26 procedure be codified?	(concrete proposal 2.1 paragraphs 18-19)
5	Should consideration be given to the operation of the article 24 procedure?	(concrete proposal 2.2 paragraphs 20-21)
6	Should further steps be taken in relation to legal certainty?	(concrete proposal 2.3 paragraphs 22)
7	Should steps be taken to consider further streamlined reporting?	(concrete proposal 3.1 paragraphs 24-25)
8	Should closer cooperation with other international organisations be pursued?	(concrete proposal 3.2 paragraphs 26-27)
9	Should steps be taken to ensure the formulation by the supervisory bodies of action-oriented and clear recommendations?	(concrete proposal 4.1 paragraphs 29-30)
10	Should steps be taken to ensure systematized follow-up at the national level of the comments generated by the supervisory system?	(concrete proposal 4.2 paragraphs 31-32)
11	Should steps be taken to explore the potential of article 19 to extend reach and implementation of standards?	(concrete proposal 4.3 paragraphs 33-34)
	Which of the following two proposals requiring substantial preparations should be prioritised in terms of the preparation for the Governing Body session in March 2017?	
12	<ul style="list-style-type: none">• concrete proposal 2.1 (codification of the article 26 procedure) or• concrete proposal 2.2 (consideration of the operation of the article 24 procedure)	(paragraph 36)

Annex 2: Preparing for the Governing Body's March 2017 session

NOTES:

- (1) In adjusting and adding to these concrete proposals, the constituents will indicate the steps to be taken to prepare the Governing Body's session in March 2017.
- (2) The tripartite constituents are invited to prioritise one of concrete proposals 2.1 and 2.2 for substantive discussion in March 2017.

FOCUS AREA 1: EFFECTIVE RELATIONSHIPS BETWEEN THE PROCEDURES	
1.1	Record of established practices across the supervisory procedures <i>Consider an outline of a record of established practice</i>
1.2	Formalized conversation between supervisory bodies <i>Decide on means to formalize conversation between supervisory bodies</i>
FOCUS AREA 2: ACCESSIBLE RULES AND PRACTICES	
2.1	Codification of article 26 procedure <i>Consider outline of draft codification</i>
2.2	Consideration of operation of article 24 procedure <i>Consider initial elements concerning article 24 procedure</i>
2.3	Consideration of legal certainty <i>Consider whether or not further steps should be taken in relation to legal certainty</i>
FOCUS AREA 3: ENHANCED REPORTING AND INFORMATION	
3.1	Further streamline reporting <i>Mandate the Office to follow-up possibilities for further streamlined reporting</i>
3.2	Closer cooperation with other international organisations <i>Mandate the Office to undertake a review of its on-going cooperation</i>
FOCUS AREA 4: IMPROVED REACH AND IMPLEMENTATION	
4.1	Action-oriented and clear recommendations <i>Mandate the Office to follow-up with the supervisory bodies</i>
4.2	Systematized follow-up at national level <i>Mandate the Office to follow-up at national level</i>
4.3	Dialogue on the potential of article 19 <i>Consider initial elements concerning article 19</i>