Thank you chair and greetings to all.

The Employers thank the Office for preparing document INS 5 which provides detailed information on the progress in implementing the revised workplan for the strengthening of the standards supervisory system.

We would like to kick off by complimenting the office for coordinating the informal consultations in the bilateral format for the initial two meetings, followed by the tripartite consultation. It certainly provided an opportunity for deep engagement and as result can confidently say that clarity was easy to achieve.

We note that the document takes into account some of the inputs made by constituents in the tripartite informal consultations. However, we can also say that the content (and language) of a number of sections (including annexes) in the document is to a significant extent different from the document submitted to the informal consultations.

While we consider many of the proposals in the document worthy of consideration, we find the approach taken sometimes unduly focused on procedural details with the risk that things are getting unduly complicated and bureaucratic.

We would like now to make comments and proposals on all the components of INS/5. These comments and proposals are aimed at strengthening the ILO supervisory system and motivated by the following guiding principles:

• to streamline and simplify the existing procedures, so as to ensure that they have distinct profiles and mandates;
• to enhance their transparency, legal clarity, user-friendliness and effectiveness in bringing about positive changes in the application of standards in ILO member States.
• to strengthen tripartite governance and ownership.

As we already did during the informal consultations and in prior discussions on this issue, we are ready to examine and more concretely to take decisions to **improve the operation of the Article 24 procedure, the streamlining of reporting and the potential of article 19 at this session of the GB**. We are also ready to continue to provide solid and constructive guidance with regards to actions in the work-plan that will be examined at a later stage.

We will take time to make comments to each proposal in the Office document. In this regard we shall ask for indulgence as we shall be rather long due to the pedantic nature of this discussion. Some of them are acceptable to our Group as presented. Others will require to be nuanced and some others are not acceptable and will imply substantial amendments to the points for decision in para. 72.

**Let me turn to the representation procedure under article 24 of the Constitution**
It is important to preface our comments with noting that we consider article 24 representations to be a serious process that deserves to be given the same level of focus and attention to ensure that it achieves what is intended at all times. We have an opportunity to build a better future and the supervisory system needs to be one of the vehicles we use for a better framework for the future. We cannot about the future of work in an abstract and theoretical manner without seizing opportunities like this to have systems that will be aligned to all mechanisms for the future we want. The same applies to the governance principles to be adhered to, as well as the role to be played by the GB. The GB must do what it was meant to do all the time - the erosion of its role needs to be restored. I will return to these points from time to time as I go through my comments.

In the section Receipt and processing of representations (paras 8 to 10), a proposal is made for introducing the possibility to suspend the Art 24 procedure for a limited period to allow for conciliation at national level. We consider this possibility as pertinent and reasonable. In our view, it is always preferable that a solution to a dispute is developed at national level, using the existing institutions, procedures, practices and rules. As already highlighted during the consultations, national remedies do not consist exclusively of national conciliation procedures but can take a variety of forms, such as, informal national exchanges between the complaint and national authorities, internal administrative or judicial procedures, or social dialogue.

We believe this is the most important message that needs to come out from the Governing Body. There needs to be an attempt to try and solve issues locally first whenever possible. During the informal consultations, we provided sufficient information that we believe should have been used in the office paper to ensure that this view comes through. And in this regard, we would like to see the use of the word “encourage” being used as much as possible to convey this wish.

At the same time, we agree that any suspension must not impose undue pressure on the complainant to use and accept the outcomes of national level procedures and thus hinder proper access to the Art 24 procedure. Therefore, exhaustion of national procedures should not be a receivability criterion and any suspension should be only for a limited period, for example six months as suggested in para 9.

As a further safeguard, it is proposed in para 9 that the GB Officers can suspend the representation procedure only “if the complainant is willing to do so and the Government agrees”.

We find this restriction inappropriate and inexpedient.

The restriction will not help in cases where national procedures providing for all constitutional guarantees exist but the complainant for unknown reasons is not even interested in trying to use them. If the purpose of the suspension is to keep the Art 24 procedure focused and effective and with the purpose to truly facilitate voluntary conciliation or any other appropriate mechanism at national level, the decision on whether the representation procedure should be suspended or not in a situation cannot be solely left to the complainant. The fact that any suspension decision requires consensus in the tripartite committee should be a sufficient guarantee that suspension is not imposed lightly. The tripartite committee, in taking a decision on suspension, would have to consider all relevant circumstances, including the views of the complainant and the government on the usefulness of a suspension in the case under consideration.
With these nuances, we could accept the proposal for a possible suspension of the Art 24 procedure and would propose an amendment to the point for decision in para. 72 (1) (a) to read “interim arrangements on the possible suspension of the procedure to facilitate voluntary national conciliation or the use of other alternative remedies at the national level”.

We would also ask the Office to adapt the model electronic form in Appendix III to the effect that any language suggesting that suspension requires the agreement of the complainant and the government concerned is removed.

We agree that the suspension option may be applied on a trial basis of two years and that, if it proves useful, the Standing Orders of the Art 24 procedures would be adapted accordingly.

Turning to para 11 and the “Automatic referral” of Art 24 representations that concern Conventions on freedom of association and collective bargaining to the CFA, we note the explanation that this has been a standing practice since 1955 and has been subsequently reflected in the Art 24 Standing Orders. Let’s recall the exact wording of the standing Orders: Art 3 (2) “… if a representation which the Governing Body decides is receivable relates to a Convention dealing with trade union rights, it MAY be referred to the CFA for examination…”.

It is significant to note this suggestive language in the form of the word “may” as opposed to the peremptory use of the word “must”. This therefore affords the GB very wide parameters and discretion. This contextualises part of what we said in our introduction, namely, restoring the governance role of the GB and not by-passing it as has happened in the past.

Paragraph 9 also refers to it as a “consistent practice”.

Nevertheless, it is proposed in para 72, point 5, that the GB could invite the CFA “to assess further its practice in this regard and to propose any necessary measures or adjustments to ensure a clearer distinction between its consideration of representations and of regular complaints”.

We disagree with the content of this paragraph and the corresponding para 5 in the point for decision. This is a governance issue and therefore it is for the GB to decide how Art 24 needs to be handled, we cannot leave this to the CFA. This is the reasoning for our disagreement:

- First, the so-called automatic referral of Art 24 representations to the CFA has blurred the differences between these two distinct procedures and has contributed to the lack of clarity regarding the nature, role, mandate and competences of the CFA. The CFA is a conciliation body, not a standards supervisory body. Different from tripartite committees set up under Art 24, the CFA has no basis in the ILO Constitution to consider complaints regarding non-compliance with ratified Conventions. What is more, representations sometimes refer to several Conventions. They are intentionally presented together and therefore also need to be examined together.

- Second, the so-called automatic referral of Art 24 representations or its artificial splitting up disregards the will of the complainant who wishes to make a representation under this procedure and not a complaint to the CFA. This would be even more so in view of the electronic form that now requests the complainant to provide information on why he has chosen to make an Article 24 representation rather than using other available ILO procedures.

- Third, the procedure for examination of representations differs from the CFA procedure with regards to
the **details of the examination**: When examining the representations, the members of the ad-hoc committee receive a complete folder containing the complaint, the relevant legislation and additional information on the case, while CFA members receive only a summary of the case previously drafted by the ILO Office and cases are treated the same way CFA cases are treated,

**the time dedicated to the examination**: the CFA discusses approximately 30 cases in two days, while the ad-hoc tripartite committee established under Art 24 meets approximately 3-5 times before conclusions are agreed and therefore can make a much more rigorous examination of the case.

- Finally, automatic referral to the CFA is not necessary. If the purpose of the referral is to use the competence of CFA members in the field of freedom of association and collective bargaining, it would suffice to give preference to past or present members of the CFA when composing Art 24 tripartite committees.

- For reasons of transparency and legal clarity, the Art 24 procedure should be applied in a uniform manner, from the beginning to its end, whether Conventions in the field of freedom of association and collective bargaining or any other Conventions are involved.

For all these reasons, we consider that the expedient practice borne out of convenience that has led to the perceived **automatic referral of Art 24 representations to the CFA should be discontinued and that, for reasons of governance, the GB should have this discretion restored to take this decision and should not leave it to the CFA**.

Therefore, the point for decision in para. 72 (1) and (5) should be amended

With regards to the section on **Improvements in the functioning of ad hoc tripartite committees (paras 12 to 16)**, we can agree to the following proposals:

- not to introduce general pre-established time-limits for the processing and examination of representations
- to keep the GB informed at every session of the status of pending representations. This is necessary. To date, GB members are called into private sittings without sufficient prior information as to what they are supposed to adopt.
- Documents are put in pigeonholes some days or even the same day that the documents are to be discussed. This practice needs to improve and become transparent. The Office needs to provide this information and make it available electronically.
- We can also agree to introduce procedural safeguards that ensure that members of Art 24 tripartite committees discharge their duties in an objective and impartial manner.

As regards the proposal that tripartite committee members from the Government group should be from member States that have ratified the Convention or Conventions concerned, this is for the Government group to decide. We have examined the amendment circulated by IMEC in this regard and can agree to it.

With regards to the **Follow up to representations (para 17, 18 and Annex IV)**, we believe that **tripartite committees, rather than the Committee of Experts, should retain responsibility for following up action taken on the recommendations**.

We noted the information contained in Appendix IV regarding follow up to Art 24 procedures and some of the effects that the shift of follow-up from the Committee of Experts to the tripartite committee may have. We are surprised at the negative manner in which same is couched and conveyed, leaving out our representations again in which we clearly outlined the positive way we could proceed, given the opportunity to build a more effective, transparent and governance
oriented management system. We would, first of all, like to enquire why it is said in para (iii); that the Government needs to report back to the tripartite committee on effects given to a recommendation within the following year. Where is this period for reporting back defined?

In any case, having considered this information and additional points, we are convinced that it would indeed be more appropriate if the monitoring of the implementation of Art 24 recommendations would be subsumed by the Art 24 ad hoc committee, for the following reasons:

- First, the ad hoc tripartite committee will not need to discuss the case again and open new items for discussion.
- Second the committee is fully familiar with the details of the case and would be best placed to assess if action taken by the government meets its recommendations.
- Third, follow up by the tripartite committee should be feasible in practice as the members of the tripartite committee are also members of the GB and could meet during GB sessions for follow up meetings.
- Fourth, maintaining the competence of the tripartite committee from the start until the closure of the process would protect the integrity and autonomy of the Art 24 procedure.
- Fifth and perhaps most importantly, follow up by the Art 24 tripartite committee would also be a measure that promotes tripartite governance in ILO standards supervision.

In conclusion, we suggest a change of the present practice to the effect that the responsibility for follow-up to Art 24 representations be shifted from the Committee of Experts to the respective Art 24 tripartite committees.

We request that this point be added accordingly to the point for decision in para. 72 (1) In addition, we noted and can agree to the other proposals made regarding follow-up, that is to say:

- The publishing and regular updating of an information document on the ILO website to keep the GB informed on follow-up given to Art 24 recommendations.
- The reinforced integration of follow-up to recommendations, including the offer of technical assistance and tripartite follow-up at national level.

We turn now to the Streamlining of reporting

We agree to the introduction of an electronic document and information management system for the supervisory bodies. However, as these measures are also meant to be an investment that would improve efficiency of the supervisory system, we would appreciate having a rough estimate of possible savings or, where this is difficult, at least an indication for what items savings would be possible. This info could help the GB have a better idea of the proportionality and cost-effectiveness of the proposed measures.

We also agree to the introduction of E- reporting with a view to facilitating reporting by constituents, as well as the processing of reports by the supervisory bodies. Although these measures would mainly be meant to benefit constituents, there may be also cost savings for the Office. The Employers invite the Office to provide some indication in this regard, as far as possible.

We agree that the proposed measures may later on also be extended to other supervisory procedures (under Art 24 and 26), as well as the CFA procedure, taking into account lessons learnt from their introduction to the regular supervisory system.
With regards to the thematic grouping of Conventions, we would like to express a preference for Option 2 (3-year reporting cycle for fundamental and governance Conventions and a 6 year cycle for technical Conventions). The extension of the reporting cycle from 5 to 6 years for technical Conventions under Option 2 would also lead to a significant reduction of the number of reports requested and thus ease the reporting burden both for the constituents, as well as the review burden for the Committee of Experts and the Office.

On the issue of the improvements in the form and content of reports (paras 45 to 49), we would agree, in principle, to the consolidated report form for simplified Art 22 reports. In view of the development of electronic reporting facilities, we wonder, however, if the difference between detailed and simplified reports would continue to play a major role in future. Once a ratifying country has provided a detailed report on Art 22, it would be required, in regular intervals in line with the respective reporting cycle, to update the information, as required, and could do so directly in the electronic form containing its earlier report. Thus, governments could use the detailed report as a basis, deleting in it outdated information and add new info, as required.

The issue of the timing of the submission of reports, more specifically the delay in the receipt of government reports, is mentioned in para 49 and Figure 2 of page 22. We turn to the governments to make proposals on how to incentivize on-time regular reporting. In any case, it remains to be seen if the planned electronic reporting facilities will help improve respecting reporting deadlines.

With regards the proposed pilot project on making Art 22 report and Art 23 information publicly available (para 50 to 53), we welcome this proposal and we would appreciate more detailed explanation and illustration from the Office, on how this information could be presented in a user-friendly manner. We are not against the proposal in para 52 to start with the Maritime Labour convention but given the specificities of the instrument, we would also suggest adding to the pilot project for example Convention 187 on OSH Framework which is a relatively recent Convention with an increasing number of ratifications in recent years.

**Turning now to the Action 4.3 that is to say the potential of Article 19, paragraphs 5 (e) and 6(d) (para 54 to 63)**

Just one preliminary remark, we find the proposals made in this section unnecessarily abstract and, as a consequent, difficult to understand. What does for instance “Better action-oriented use of reporting” mean? The proposals also seem to be unduly concerned with coordination, coherence and synergies between processes. However, it is not clear what the intended improvements in terms of quality of results are.

Now on the substance of Article 19, paragraphs 5(e) and 6(d) clearly specify the purpose, contents and the scope of the reporting obligation for governments. While the GB may select the instruments on which reports are requested and decide on the concrete contents of the report forms, the latter is not fully at the GB’s discretion as it has to respect the constitutional limitations set out in the wording of article 19, paragraphs 5(e) and 6(d).

We agree that the potential of article 19 remains to be fully tapped but, as a first step, we would like to propose to address the following issues to improve the quality of General Surveys and the quality of the discussion of the Surveys:

- First, how can the response rate by governments to Art 19 questionnaires and respective contributions by the social partners be increased to enable General Surveys provide a more representative picture?
- Second, how can the completeness and relevance of government responses to Art 19 questionnaires, where it is not sufficient, be improved?
- Third, how can the contents of General Surveys be presented in a more user-friendly way?

In this regard, one could think, for example, of a clearly defined outline or structure that would be applied to all General Surveys in which information/explanation/assessment would be provided in a uniform manner on a number of pre-defined points. This would make it easier to search for particular information and to compare General Surveys amongst each other over the years.

With regards to the proposals related to the design, preparation and discussion/follow-up of General Surveys to improve their contribution to recurrent discussions, we have the following comments:

- The overall approach of suggesting possible improvements is not very convincing. As a first step, and to manage expectations, it should be explained in clear terms in what regard the contribution of General Surveys to recurrent discussions is not optimal and should be improved. Only once there is some clarity on this, targeted measures, such as improvement of the questionnaires, could be considered.

It is proposed that the first discussion in the GB would focus on “determining the general topic and group of instruments, as framed by the subject of the corresponding recurrent discussion”. We understand, this is already being done in that instruments are selected that relate to the respective recurrent discussion. In any case, what needs to be done is to determine one or more (related) instruments, not the determination of a “general topic”. As we have said in the past, the fewer the instruments selected, the more in-depth analysis from the Experts could be expected.

- It is also proposed that in the subsequent discussion in the GB on the questionnaire regarding the selected instruments, “with a view to enhancing the usefulness of General Surveys for recurrent discussions … attention be paid to ensuring that the questions also address broader policy matters and include a limited number of questions linked to the achievement of the broader strategic objective.” It is rightly said, and we would like to stress the importance of this point, that “all of these questions would need to fall within the bounds of the selected Conventions and Recommendations, and therefore within the scope of article 19, paragraphs 5(e) and 6(d)”. We wonder how this could be concretely achieved given that ILO Conventions and Recommendations do not refer to the achievement of ILO’s “broader strategic objectives”.

In this context, we would also like to recall and stress that General Surveys have a particular value and purpose of their own which is to give a comprehensive and reliable picture of the state of implementation and acceptance of the instruments covered by it. When General Surveys contain solid and relevant information in this regard, this will help having meaningful outcomes in the CAS which in turn will provide a substantial contribution to the recurrent discussion.

Also the time allocated for the discussion of the General survey in the CAS could be reconsidered to allow a more meaningful discussions that will lead to meaningful outcomes. When I say discussion, I mean a real discussion and not delegates reading out speeches.

These may be matters to be discussed between the Office, and members of the CEACR and the CAS. The CAS Working Methods meeting taking place tomorrow (Saturday 4 November) could start reflecting on these important points.

One important aspect that is not addressed in detail in this section is the relationship between General Surveys and its discussion in the CAS on the one hand, and the work of the SRM TWG on the other. General Surveys and their respective discussion in the CAS, could help
the SRM TWG in making reviews and assessments of the respective instruments. However, this will only work, as I said it earlier, when General Surveys concentrate on few selected instruments to be able to make complete and in-depth examinations of them. This particular use of General Surveys should be kept in mind when considering measures to improve them.

Concerning the proposal to have recourse to external experts as a way of improving the discussion of General Surveys in the CAS, this may be considered on an ad-hoc basis in special cases only, for example to provide to the discussion important background that is of relevance for the implementation of the standards in question but difficult to obtain from government reports and thus not contained in the General Survey.

With regard to the proposal for a follow-up discussion of General Surveys at the November sessions of GB, we do not think this is really necessary. In any case, any follow-up discussion in the GB would have to make decisions on the implementation of the outcomes of the General Survey discussion in the CAS, whatever these outcomes are. Outcomes of the CAS discussion may not necessarily and exclusively be “promoting the ratification of standards and their implementation by non-ratifying countries”, as para. 61 seems to suggest.

As regards better use of Art. 19 paras. 5(e) and 6(d) in the context of the Annual Review and its coordination with other processes in support of fundamental principles and rights at work, we note that proposals in this regard would be presented in March 2018. We call upon the Office, in doing so, to keep things clear and transparent and present only proposals that can bring about clear improvement.

III. I turn now to the Three actions submitted for guidance.

With regards to the proposed presentation of a report of activities by the Chairperson of the CFA to the CAS as of the 2018 ILC, and as stated in the Joint Position of Workers and Employers from Merch 2017, we stress the necessity of a prior clarification of the distinct role and mandate of the CFA, which is different from ILO supervisory bodies such as the Committee of Experts and the CAS. This prior clarification is important to avoid confusion. In particular, while the CFA looks into complaints regarding the principles of freedom of association and collective bargaining, it has no mandate to supervise ratified ILO Conventions. Unless a proper “clarification of the role and mandate of the CFA” is considered by the GB, we do not support the presentation of a report of activities by the CFA chairperson to the CAS.

On the proposed publication of summary reports of missions requested in the conclusions of the CAS, we consider the publication of these reports as fundamental to increase transparency in the follow up of CAS discussions, more precisely for the CAS members to be able to assess to what extent it has been possible to achieve progress regarding issues addressed in CAS conclusions. It goes without saying that follow-up missions should involve ACT/EMP and ACTRAV.

We find the proposal for publication of the follow up to CAS conclusions in a separate part of the report of the Experts as from the November/December 2017 session important to give visibility to tripartite owned CAS conclusions.

With regards to the proposed consideration of the codification of article 26 procedure, we can support the staged approach on the understanding that the second step, the codification, depends on the outcomes of the first step and thus is not an automatism.

With regards to the consideration of further steps to ensure legal certainty, we would like to remind that, in earlier discussions including in the consultations, there was not much support
for developing this proposal further, given the difficult political and legal questions involved. We would not oppose tripartite consultations on the issue but again wish to highlight that there is no automatism between the first step and the second step, let alone between the second step and the setting up of a body under article 37, para. 2. We kindly ask the Office to take good note of this position.

Finally, I turn now to the actions integrated into the Office’s regular work.

a) We trust that the preparation of the guide on established practices across the supervisory system will be carried out in cooperation with ACTEMP and ACTRAV. Some indication by the Office on when roughly the guide is expected to be available would be appreciated. We noted that the estimated costs for “Web and visual development” (47,800 USD) are more than five times higher than the costs for the “Development of the content” (8,900 USD). This seems to be a bit out of proportion and the we would appreciate having some explanation on this point.

b) We note the information provided in para. 69, as well as the link to the ILO website in footnote 42 which contains web-links to the agreements on which cooperation between ILO and the other international or regional organizations is based. Apart from the one example regarding OECD provided, we would like to have some more concrete information in particular on: What are the main organizations the ILO presently shares standards-related information with? What kind of standards-related info is shared? What is done or proposed to be done differently in terms of info-sharing from what was done before?

c) We would also appreciate having more concrete information on “clear recommendations of the supervisory bodies”, in particular what improvements have been made or are intended regarding recommendations made by the CEACR?

d) On “systematized follow-up of the recommendations of the supervisory bodies”, first of all, we stress their earlier point that the competence for monitoring follow-up should lie with the supervisory body that made the recommendations. Moreover, in following up recommendations, the Office should give priority to the recommendations made by tripartite supervisory bodies, in particular the CAS.

In conclusion, the Employers would like to have regularly updated information on the actions integrated into the Office’s regular work.

Just to recap our proposals in terms of amending the draft point for decision are as follows:

The Governing Body, subject to the guidance provided during the discussion:

(1) Approves the measures concerning the operation of the representations procedure under article 24 of the Constitution set out in:

(a) paragraphs 9–10 interim arrangements on the possible suspension of the procedure to facilitate voluntary national conciliation or other alternative measures at the national level (, to be reviewed by the Governing Body after a two-year trial period);
(b) paragraphs 14–16 (publication of information document on status of pending representations, ratification of Conventions concerned as condition for membership of
Governments in ad hoc committees, integrity of procedure and measures to protect ad hoc committee members from undue interference; and

(c) paragraph 17 (reinforced integration of follow-up measures in the recommendations of committees and regularly updated information document on effect given to these recommendations).

(d) and approves to continue to explore the modalities by which ad hoc tripartite committees could undertake the possibility to follow up action taken on the recommendations concerning a representation adopted by the Governing Body

(2) Approves the measures and costs set out in section 2.1 (computerization of the supervisory system) and in paragraph 69 (preparation of a guide on established practices across the supervisory system), and decides that they will be financed in the first instance from savings that might arise under Part I of the budget or, failing that, through the use of the provision for unforeseen expenditure, Part II. Should this subsequently prove impossible, the Director General would propose alternative methods of financing at a later stage in the 2018–19 biennium.

(3) Approves the measures proposed on the streamlining of reporting on ratified Conventions concerning:

(a) thematic grouping for reporting purposes (Appendix V) under [option 2] (section 2.2.1.1);

(b) a new report form for simplified reports (section 2.2.2.1); and

(c) a pilot project for the establishment of baselines for the Maritime Labour Convention (section 2.2.2.2).

(4) Approves to explore concrete and practical measures to improve the use of article 19, paragraphs 5(e) and 6(d), of the Constitution with the purpose of improving the quality of General Surveys and the quality of the discussion of the Surveys in the Committee on Application of Standards

(5) Invites the Governing Body, to ensure a clearer distinction between its consideration of representations and of complaints.

(6) Invites the Committee of Experts to review the current operation of the safeguard allowing observations from the social partners to be addressed outside the regular reporting cycle (paragraph 42); encourages it to pursue the examination of thematically related issues in consolidated comments (section 2.2.1.2); and further invites it to make proposals on its possible contribution to optimizing the use made of article 19, paragraphs 5(e) and 6(d), of the Constitution (paragraph 59).

(7) Invites the Conference Committee on the Application of Standards, through the informal tripartite consultations on its working methods, to consider measures to enhance its discussion of General Surveys (paragraph 60). (8) Requests the Office to present at its 332nd (March 2018) Session: (a) concrete proposals to give effect to actions 1.2 (regular conversation between the supervisory bodies), 2.1 (consideration of the codification of the article 26 procedure) and 2.3 (consideration of further steps to ensure legal certainty); and (b) further detailed proposals on the use of article 19, paragraphs 5(e) and 6(d), of the Constitution, including in relation to the Annual Review under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.

Thank you Chair