



## Governing Body

324th Session, Geneva, 13 June 2015

GB.324/INS/7/5

Institutional Section

INS

### SEVENTH ITEM ON THE AGENDA

## Report of the Director-General

### **Fifth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Portugal of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Occupational Safety and Health Convention, 1981 (No. 155), made under article 24 of the ILO Constitution by the Union of Labour Inspectors (SIT)**

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## List of abbreviations

ACT	Working Conditions Authority
CEACR	Committee of Experts on the Application of Conventions and Recommendations
OSH	occupational safety and health
QUAR	National Evaluation and Accountability Framework
SIADAP	Integrated System for Management and Performance Evaluation in the Public Administration
SINAI	National Information System on the Inspection Activity of the Working Conditions Authority
SIT	Union of Labour Inspectors
SWOT analysis	strengths, weaknesses, opportunities and threats analysis
APIT	Portuguese Association of Labour Inspectors
FAQs	frequently asked questions
SSL VPN	Secure Sockets Layer virtual private network



## I. Introduction

1. In a communication dated 9 August 2013, the Union of Labour Inspectors (SIT) addressed a representation to the International Labour Office, in accordance with article 24 of the ILO Constitution, alleging non-observance by Portugal of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Occupational Safety and Health Convention, 1981 (No. 155).
2. Convention No. 81, was ratified by Portugal on 12 February 1962, Convention No. 129, was ratified by Portugal on 24 February 1983 and Convention No. 155 was ratified by Portugal on 28 May 1985. All these Conventions are in force in the country.
3. The following provisions of the Constitution of the International Labour Organisation relate to representations:

### *Article 24*

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite the government to make such statement on the subjects as it may think fit.

### *Article 25*

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

4. The representation procedure is governed by the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004).
5. In accordance with articles 1 and 2(1) of the above Standing Orders, the Director-General acknowledged receipt of the representation, informed the Government of Portugal and brought it before the Officers of the Governing Body.
6. At its 319th Session (October 2013), the Governing Body decided that the representation was receivable and set up a committee to examine the matter. The Committee members appointed were Ms Rosanna Margiotta (Government member, Italy), Mr Kris de Meester (Employer member, Belgium) and Ms Helen Kelly (Worker member, New Zealand). Ms Helen Kelly was subsequently replaced by Mr Kelly Ross (Worker member, United States).
7. The Government of Portugal submitted its observations concerning the representation in a communication dated 10 April 2014.
8. The SIT submitted additional allegations in a communication received by the Office on 2 July 2014, and the Government of Portugal submitted its observations concerning these additional allegations in a communication dated 14 October 2014.

9. The Committee met on 24 March and 10 June 2015 to examine the case and adopt its report.

## II. Examination of the representation

### A. The complainant's allegations

10. In its communication dated 9 August 2013, the complainant organization alleges non-observance by the Government of Portugal of Articles 3, 6, 7, 10, 11, 16 and 17 of Convention No. 81; Articles 6, 8, 9, 14, 15, 21 and 22 of Convention No. 129; and Articles 4–15 of Convention No. 155.
11. With regard to the alleged non-observance of Article 6 of Convention No. 81 and Article 8 of Convention No. 129, the SIT asserts that labour inspectors are the target of various unlawful measures, resulting in a significant cut in their remuneration, which undermine the safeguards provided in these Articles. These measures: (a) attempt to limit the effectiveness of labour inspectors and appear to be a concession to the International Monetary Fund, the European Commission and the European Central Bank to the detriment of the conditions of workers that the labour inspectorate seeks to protect; (b) constitute a discriminatory policy in relation to professionals in other inspection bodies; (c) result in years of experience and levels of responsibility not being sufficiently reflected in remuneration; and (d) result in some labour inspectors finding it difficult to meet their prior economic commitments.
12. *Restrictive wage and fiscal arrangements.* Due to the restrictive wage and fiscal arrangements applied, for most labour inspectors (those that are in the superior inspector category), their annual gross income has fallen from €32,790.94 in 2010 to €26,567.40 in 2012. This means that, when deducting personal income tax and statutory contributions for health insurance and pensions, the monthly net income of labour inspectors in this category is approximately €1,500. The trade union details the restrictive wage and fiscal arrangements applied, including: tax increases; wage cuts; Christmas and holiday bonus cuts; the freezing of increments and the cutting of performance bonuses; the ban on career progression through competition; the increase in the retirement age to 65; the reduction in the value of pensions for certain employees; the introduction of stricter rules concerning entitlement to allowances; reduced overtime pay (below private sector levels); and certain reductions in sickness benefits. The SIT draws attention to the fact that further substantial cuts are expected.
13. *Pay supplements.* The SIT describes in detail developments concerning the pay supplements granted to labour inspectors. It indicates that Legislative Decree No. 102/2000, of 2 June 2000, determines the career structure of labour inspectors, while Legislative Decree No. 112/2001, of 6 April 2001, establishes the remuneration scheme for labour inspectors, including a pay supplement to compensate for the specific challenges inherent in the exercise of their duties. It adds that although Legislative Decree No. 170/2009 streamlined all inspection functions by creating a special career scheme for inspection services (including supplementary pay under the terms of section 15), labour inspectors were not included in this Decree for political reasons, and the regulation of this category was deferred to a later date.<sup>1</sup> The SIT asserts that, as labour inspectors are not covered by this Decree, they are exposed to any changes or decisions relating to

<sup>1</sup> In this context, the trade union refers to Section 2(3) of Legislative Decree No. 170/2009 which states that: “Careers in inspection services other than those referred to in paragraphs 1 and 2 are governed by separate legislation, with the current arrangements continuing to apply until they are revised, in which case they shall conform, *mutatis mutandis*, to the principles contained in this Legislative Decree.”

supplementary pay. It further deplores that the pay supplement for labour inspection duties provided for under section 12 of Legislative Decree No. 112/2001, and fixed at 22.5 per cent of the respective basic salary, has no longer been paid in full since 2009. Although the pay supplement should have been calculated at 22.5 per cent of the basis of the basic salary, both the basic salary and the pay supplement were only adjusted by 2.1 per cent.

14. *Performance evaluation system.* The trade union alleges that an attempt has been made to undermine labour inspectors in various ways, in particular by subjecting them to an evaluation system (the Integrated System for Management and Performance Evaluation in the Public Administration (SIADAP)), which is applicable to all public officials. However, the SIADAP does not take into account the specific nature of their mandate and results in a lack of career development options and systematic injustices, leading to demotivation and a fall in the quality of inspection work.
15. *Harassment.* The SIT reports moral harassment by hierarchical superiors in the Working Conditions Authority (ACT), which the SIT had tried to discuss on numerous occasions with the Secretary of State for Employment. The SIT was not given the opportunity of a meeting for this purpose, on grounds of inconvenience.
16. Concerning the alleged non-observance of Articles 3(2) and 10 of Convention No. 81 and Articles 6(3) and 14 of Convention No. 129, the trade union reports that the number of labour inspectors and administrative support staff has decreased, and that labour inspectors are increasingly being assigned to other duties, which presents a serious obstacle to the exercise of their primary functions.
17. *Number of labour inspectors and administrative support staff.* Referring to the statistical information annexed to its representation, containing data on the number of public officials working in the ACT as at December 2012, the SIT indicates that analysis of these statistics reveals a reduction between 2011 and 2012 in the number of inspectors of 15.8 per cent, down to 359 inspectors. According to the trade union, the same data reveal that there was a total of 273 administrative support staff in December 2012, with 70 of them having retired or applied for retirement in that year, which resulted in a reduction in the number of administrative support staff by 19.5 per cent between 2011 and 2012.<sup>2</sup>
18. *Other duties entrusted to labour inspectors.* With reference to the alleged assignment of additional duties to labour inspectors, which has a negative impact on the performance of their primary functions, the SIT asserts that: (i) there is a trend for labour inspection functions to be almost exclusively administrative; (ii) labour inspectors are now required to spend an average of 30 additional days a year at the information service; (iii) labour inspectors spend more time on secondary tasks that are totally unrelated to inspection (such as visiting auto repair shops, repairing equipment and facilities, transporting equipment (such as computers) between central and decentralized offices, photocopying and performing other tasks); and (iv) that they spend a considerable amount of time entering data into a computer system that is obsolete.
19. *Annual plans of action for labour inspection.* In this context, the SIT also asserts that unrealistic plans of action for labour inspection limit labour inspectors to taking reactive

<sup>2</sup> According to the information provided by the SIT, the total number of public officials working in the ACT was 894 in December 2012, including managerial staff, labour inspectors, technicians and assistants. According to this information, in 2012, the number of public officials who retired was 28, while the number of those who had requested or were awaiting retirement was 105, with seven starting to work for the ACT, ten who requested a transfer to another public service under the mobility scheme, and three who were transferred to the ACT under the mobility scheme to the ACT.

measures, the majority of which are not relevant to, or have no bearing on, the mandate of labour inspection.

20. With regard to the alleged non-observance of Article 16 of Convention No. 81 and Article 21 of Convention No. 129, the trade union maintains that, despite the reduction in the number of inspectors and the increase in their workload, the objectives of the labour inspectorate as determined by the performance evaluation system SIADAP remain unchanged and the pace of the work that they are required to perform increases every year, leading to a deterioration in the quality in the service provided. It has therefore become impossible to inspect enterprises thoroughly and on a regular basis. The SIT indicates that, on some occasions, labour inspectors have even had to forgo visiting a workplace in person (including in matters relating to occupational safety and health (OSH)), and have instead simply sent a written notification to comply with the established annual objectives, or simply carried out an administrative analysis of the procedures in question.
21. With regard to the alleged non-observance of Article 11 of Convention No. 81 and Article 15 of Convention No. 129, the trade union indicates that: (a) the fleet of cars at the disposal of labour inspectors has fallen into disrepair, with old cars that have been in service for more than 12 years, which are unsafe and repaired in workshops of dubious quality; (b) in certain remote units, expenses for professional travel, such as parking costs, are not reimbursed; (c) certain local facilities are not adapted to the needs of the service; and (d) the fact that disciplinary action is taken in cases of loss or theft of equipment has meant that inspectors prefer to acquire their own equipment to avoid the risk of facing such action.
22. With regard to the alleged non-observance of Article 7 of Convention No. 81 and Article 9 of Convention No. 129, the trade union observes that the training provided to inspectors at the beginning of their career is inadequate, as it is not adapted to current realities, and that continuous training is practically non-existent. Consequently, inspectors feel hindered in the exercise of their functions and the fulfilment of their mandate.
23. With reference to the alleged non-observance of Article 17 of Convention No. 81 and Article 22 of Convention No. 129, the trade union states that while, legally, labour inspectors may sanction enterprises that fail to meet their obligations, this rarely happens in practice. The ACT units examining the infractions recorded by labour inspectors<sup>3</sup> are ineffective and lack the financial and human resources to fulfil their mandate. Moreover, the judiciary is so slow and the judicial authorities are so unfamiliar with the mandate and functions of the labour inspectorate that the majority of offences brought to its attention have the same result: the files are closed. The limits in practice on the authority of labour inspectors are increasingly known or suspected by employers, and negatively affect their role in the application of the law.
24. *Responsibility of labour inspectors for actions undertaken in the course of their duties.* The union alleges that labour inspectors are not covered by civil liability insurance or by any real form of state protection, which leads them to fear that they will be held responsible for initiating the inspection procedures necessary to carry out their work, which in turn affects their independence, autonomy and freedom to take decisions.
25. In relation to the non-observance of Article 3 of Convention No. 81, and Article 6 of Convention No. 129 and Articles 4–15 of Convention No. 155, the trade union concludes that the Government has shown no interest in maintaining an inspection system that is adequate, rapid and efficient. On the contrary, material and legal resources are being

<sup>3</sup> The trade union explains that in Portugal, labour law offences are classified as administrative offences.

withdrawn from labour inspectors. The autonomy of the labour inspectorate is therefore reduced, which undermines the efficiency of their actions. Furthermore, the inspection system lacks an adequate strategy to guarantee workers' safety and health.

## **B. The Government's observations**

26. In its communication dated 10 April 2014, the Government indicates that the alleged violation of the requirements under Conventions Nos 81, 129 and 155 is unfounded.
27. The Government refers to a strategy of fiscal consolidation and reform of the public administration in Portugal. It indicates that reductions in expenditure have mostly resulted in reductions in staffing costs (reflected in the public administration salary scale, stringent restrictions on promotions and career moves, and even staff cuts). One of the initiatives in this context is the Plan for Economic and Financial Adjustment, which establishes a cross-cutting target of reducing the central administration staff by 1 per cent, and the regional and local staff by 2 per cent (through a restricted recruitment policy, mobility mechanisms aimed at the efficient reallocation of workers and the regulation of the termination of employment contracts by mutual agreement).
28. With regard to the alleged non-observance of Article 6 of Convention No. 81 and Article 8 of Convention No. 129, the Government indicates that the employment stability and independence of labour inspectors are primarily ensured by the nature of their legal status, which entails their permanent appointment for an indefinite period, pursuant to sections 10 and 11 of Act No. 12-A/2008, of 27 February 2008.
29. *Restrictive wage and fiscal arrangements.* The Government emphasizes that the restrictive wage and fiscal arrangements applied cannot be seen as an attempt to subordinate, belittle or silence labour inspectors, since these measures, determined by the imperative of fiscal consolidation, were applied without distinction to all professions in the public administration.
30. *Pay supplements.* The Government confirms the trade union's indications that labour inspectors (including the professional categories of superior inspectors and technical inspectors) are governed by a special regime, determining their career structures and salary scale (Legislative Decree No. 102/2000, of 2 June 2000), and that labour inspectors are entitled to an inspectorate bonus, set at 22.5 per cent of their respective basic pay, as compensation for the specific burden inherent in the exercise of their duties, in accordance with Legislative Decree No. 112/2001, of 6 April 2001. The Government further adds that Act No. 12-A/2008, of 27 February 2008, establishes the new contractual regimes, professional categories and salaries of public servants, under the public administration reform programme (permanent appointment of inspectors was maintained). The aim of this Act is to revise the general and special inspection professions, and combine them in a single statute, namely Legislative Decree No. 170/2009. The profession of labour inspector was reserved for specific legislation, although its revision should comply, *mutatis mutandis*, with the principles contained in the Act. Under Legislative Decree No. 170/2009 the inspection supplement must be part of the basic salary of the professions listed therein. Through various budgetary restraint measures, the amounts of pay bonuses that were not tantamount to basic pay were frozen at 2.1 per cent.
31. *Responsibility of labour inspectors for actions undertaken in the course of their duties.* The Government indicates that Legislative Decree No. 276/2007, of 31 July 2007, provides for the payment of attorney's fees and costs of litigation where labour inspectors are subject to

legal proceedings relating to actions undertaken in the course of their duties.<sup>4</sup> It adds that it does not have knowledge of any lawsuit claiming the civil liability of labour inspectors for damages incurred as a result of their interventions.

32. *Performance evaluation system.* The Government indicates that the SIADAP system (Act No. 66-B/2007, of 28 December 2007), is applicable to all public servants in the public service. This system is aimed at improving performance and quality, coherence and consistency in the public service, and promoting professional motivation and skills development. It is based on an objectives-based approach, and uses parameters of effectiveness, efficiency and quality. The results achieved are measured against pre-established goals, which ensure, inter alia, transparency, and impartiality and the prevention of arbitrary decision-making. The objectives set for each worker are naturally subject to negotiation with their respective hierarchical superior and relate directly to the objectives set for the organizational units of the ACT. These objectives are ambitious and have evolved in light of changes in the number of establishments visited by labour inspectors as stated in the respective annual activity reports.
33. *Harassment.* With regard to the alleged psychological harassment, the Government indicates that the ACT is unaware of any complaint made by the trade union on this or any other issue against any serving ACT manager.
34. The Government contests the alleged non-observance of Articles 3(2) and 10 of Convention No. 81 and Articles 6(3) and 14 of Convention No. 129, with regard to the allegations concerning an insufficient number of labour inspectors and support staff, and the negative impact of other duties on the primary functions of labour inspectors.
35. *Number of labour inspectors and administrative support staff.* Concerning the allegation of an insufficient number of labour inspectors, the Government asserts that, over time, in particular over the past five years, measures have been taken to recruit new labour inspectors. According to the information provided by the Government, the number of labour inspectors was 264 in 2008, 253 in 2009, 384 in 2010, 404 in 2011 and 391 in 2012 (the Government specifies that the numbers provided for 2011 and 2012 also include management positions). The Government states that in 2010 there was a marked increase in the number of labour inspectors, owing to the recruitment of 150 labour inspectors, representing an increase in inspection staff of 51.79 per cent. Although the number of labour inspectors fell from 404 in 2011 to 391 in 2012, this was a mere decrease of 3.21 per cent. It further indicates that there have not yet been any specific measures to reduce the number of labour inspectors in the framework of the Economic and Financial Adjustment Plan. It also indicates that effectiveness and efficiency are primarily based on the human resources of the ACT.<sup>5</sup>

<sup>4</sup> Section 19 of Legislative Decree No. 276/2007, of 31 July 2007, provides that "... where inspection services and inspection staff are accused or parties in administrative, disciplinary or judicial proceedings for acts committed or occurring in the exercise of or as a result of their duties, they are entitled to be assisted by an attorney, appointed according to the law by the head of the inspectorate, after the person concerned is heard, awarded at the expense of the corresponding body ..." and "... they are also entitled to the payment of legal costs, as well as transport and subsistence costs where this is justified by the location of the court or judicial entities."

<sup>5</sup> In this context, the Government also states that the data provided by the SIT do not correspond to the actual situation concerning public officials working in the ACT as at December 2012. While the Government confirms that there were indeed 105 public officials awaiting retirement, as indicated by the SIT, it adds that, contrary to the statistics provided by the trade union: the total number of public officials working at the ACT at that date was 893; the number of public officials who retired in 2012 was 29; the number of public officials who started working for the ACT was 22; the number

36. *Other duties entrusted to labour inspectors.* Concerning the alleged assignment of other duties that have an impact on the primary duties of labour inspectors, the Government indicates that: (i) the time spent by inspectors on administrative tasks has been decreasing as a result of investment in technology, information and communication systems and a variety of measures to reduce bureaucracy, rationalize resources and simplify administrative procedures, including through the dissemination of information on the ACT website, as well as the provision of specialized assistance to labour inspectors, including through the ACT intranet, to allow them to focus on their core functions; and (ii) labour inspectors have been required to be more involved in the provision of information services owing to greater demand in this regard and the growing complexity of labour relations issues (as a result of the economic crisis).<sup>6</sup>
37. *Annual plans of action for labour inspection.* The Government emphasizes that, despite the significant economic, financial and social crisis faced by the country, which heavily influences the performance of the ACT, the latter has endeavoured to respond to challenges to its mission of promoting the improvement of working conditions. It indicates that the annual plans of action of the ACT strengthen the practices of planning, monitoring and evaluation activities, and take into account international and national strategic benchmarks,<sup>7</sup> policies and plans, with particular emphasis on ILO Conventions, bearing in mind the reality facing the country and the major issues in the world of work. Annual plans of action and annual activity reports are published on the ACT website.<sup>8</sup> Moreover, the annual plans of action for labour inspection are the result of a participatory process (including dissemination on the ACT Internet portal) involving the entire organizational structure, including the Advisory Council for the Promotion of Occupational Safety and Health of the ACT,<sup>9</sup> which has not made any observations similar to those of the SIT.

of public officials who requested a transfer to another public service under the mobility scheme was 16; and the number of public officials who were transferred to the ACT under the mobility scheme was nine.

<sup>6</sup> In this context, the Government also provides statistical information from 2008 to 2012 on the number of enquiries received (an increase from 335,170 in 2008 to 415,994 in 2012), the number of complaints received (an increase from 2,626 in 2008 to 8,568 in 2012) and the number of emails processed (a decrease from 8,355 in 2010 to 6,741 in 2012).

<sup>7</sup> In this regard, the Government refers, for example, to the National Evaluation and Accountability Framework (QUAR), the Strategic Policy Framework 2010–15, adopted by the ILO Governing Body at its 304th Session (March 2009), and the Decent Work Agenda, defined by the International Labour Conference at its 87th Session (June 1999).

<sup>8</sup> The Government specifies that the annual plans of action can be found at: [http://www.act.gov.pt/\(pt-PT\)/SobreACT/DocumentosOrientadores/PlanoActividades/Paginas/default.aspx](http://www.act.gov.pt/(pt-PT)/SobreACT/DocumentosOrientadores/PlanoActividades/Paginas/default.aspx), while the annual activity reports prepared in accordance with Articles 20 and 21 of Convention No. 81 and Articles 26 and 27 of Convention No. 129 containing the results of the ACT's activities can be found at: [http://www.act.gov.pt/\(pt-PT\)/crc/PublicacoesElectronicas/EstatasticaseRelatorios/Paginas/default.aspx](http://www.act.gov.pt/(pt-PT)/crc/PublicacoesElectronicas/EstatasticaseRelatorios/Paginas/default.aspx).

<sup>9</sup> According to information on the ACT website, the ACT Advisory Council for the Promotion of Occupational Safety and Health is a tripartite collegiate body that assists the ACT in the exercise of its powers in the field of OSH and in which representatives from each union and employer confederation take part.

- 38.** Concerning the allegations made in relation to Article 16 of Convention No. 81 and Article 21 of Convention No. 129, the Government indicates that the objectives of the performance evaluation system SIADAP are, by their nature, the result of a process of consultation and negotiations with the various levels in the hierarchical chain of the ACT, including labour inspectors, and they have to be both ambitious and realistic; they have therefore, over time, been adapted as a result of changes in the number of establishments visited annually by labour inspectors. Mere administrative analysis of processes is not an inspection practice in use and is contrary to the doctrine defined by the ACT management.
- 39.** Concerning the alleged non-observance of Article 7 of Convention No. 81 and Article 9 of Convention No. 129, the Government indicates that admission to the labour inspectorate is dependent, among other requirements, on the successful initial on-the-job training (probation). The objectives and course contents of this one-year initial training (involving a theoretical phase and a practical phase), are determined by Joint Decision No. 371/2004. They are developed and implemented by the training panel in collaboration with the trainers who have experience and knowledge of the inspection profession and its modalities. The Government indicates that relentless efforts are made to provide labour inspectors with appropriate continuous training. In this regard, it provides statistical information on the training provided to labour inspectors from 2008 to 2012.<sup>10</sup> These training courses covered, among other subjects, OSH, labour legislation, labour law offences, provision of services, computer applications and systems, management and planning, and training for trainers.
- 40.** The Government provides explanations in relation to a number of issues concerning the alleged non-observance of Article 11 of Convention No. 81 and Article 15 of Convention No. 129.
- 41.** *Transport facilities and reimbursement of travelling costs.* Concerning the transport facilities of the labour inspectorate, the Government indicates that in 2013 the ACT had 140 vehicles of an average age of 13 years. The Government further states that internal instructions provide that vehicles may only be driven if the periodic car inspection is valid. In the Lisbon and Porto offices, labour inspectors receive an allowance for the purchase of public transport passes to use within their respective areas of jurisdiction. Furthermore, the ACT usually meets any costs relating to public transport, in particular the railways, and directly pays the transport company, which is why employees are not entitled to any payment or advance.
- 42.** *Reimbursement of other expenses.* Concerning the reimbursement of other expenses, the Government indicates that the payment of the per diem subsistence allowance for meals and accommodation is usually made two months after the relevant inspection visits. It states that all other expenses are also reimbursed where they are justified, even though the relevant procedures might sometimes take longer than labour inspectors would like.
- 43.** *Facilities and equipment.* The Government further indicates that over the past 20 years, there have been significant improvements in the facilities of all ACT services. Most inspection services have been provided with new premises, and those that have not are targeted for renovation. Concerning equipment, the Government indicates that in 2013 a total of 879 computers were available including 276 laptops, of which 260 were attributed

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<sup>10</sup> These statistics reveal that in 2008, 53 training courses were provided, totalling 741 hours; in 2009, 66 training courses were provided (48 initial training courses and 18 continuous training courses), totalling 2,586 hours; in 2010, 49 training courses were provided, totalling 1,331.5 hours; in 2011, 39 training courses were provided, totalling 902.5 hours; and in 2012, 55 training courses were provided, totalling 914 hours.

to labour inspectors. All labour inspectors are provided with a mobile telephone and calls are paid for up to a certain limit.

44. *Disciplinary action for loss or theft of equipment.* The Government explains that the rules governing the use of government property (including equipment) apply to all users, and provide that they may be held liable for mismanagement or misuse. Whenever damage is caused to government property, a non-disciplinary investigation is instigated into a possible breach of public officials' duties. When a relevant breach is determined, the initiation of disciplinary proceedings will be proposed. In recent years, there have been several instances of theft and damage to equipment, although no breach was found and no disciplinary sanction has therefore been imposed upon users.
45. The Government indicates that there is no violation of Article 17 of Convention No. 81 and Article 22 of Convention No. 129. The powers conferred by law on labour inspectors match those set out in Articles 12, 13 and 17 of Convention No. 81 and Articles 16, 18 and 22 of Convention No. 129. Employers in violation of the legal provisions are subject to a system of offences dealt with at the administrative headquarters with the possibility of recourse to the courts, a system also found in other countries, which demonstrates a real potential for effectiveness, as reflected by the imposition of fines and the collection of a significant amount of penalties.<sup>11</sup> The Government also indicates that the majority of labour offence procedures are the consequence of coercive procedures undertaken by labour inspectors in relation to the violations detected, and provides statistical information for 2008–12 on the number of infractions detected by labour inspectors, as well as by other authorities<sup>12</sup> and the relevant number of administrative procedures initiated,<sup>13</sup> including the number of fines imposed and fines collected. The Government further indicates that the number of closed offence procedures is not significant and these cases are not a consequence of slow processing at the administrative headquarters. In this regard, it provides statistical information for 2008–12. According to these statistics, of the 37,793 procedures that were completed in 2008, 5,913 were closed; and of the 27,307 procedures that were completed in 2012, 5,338 were closed.<sup>14</sup>

<sup>11</sup> In this context, the Government provides statistical information on the total amount of fines collected following labour offence procedures (as a result of infractions detected by labour inspectors and other authorities) from 2008 to 2012 (in 2008, a total of €15,576,990 was collected; in 2009, a total of €10,707,656 was collected; in 2010, a total of €11,363,249 was collected; in 2011, a total of €13,460,252 was collected; and in 2012, a total of €11,475,622 was collected).

<sup>12</sup> The statistics provided by the Government show that: in 2008, the number of infractions detected by labour inspectors was 18,667 (30,991 infractions were detected by other bodies); in 2009, the number of infractions detected by labour inspectors was 15,977 (against 23,764 detected by other bodies); in 2010, the relevant number was 22,634 (17,268 were detected by other bodies); in 2011, labour inspectors detected 21,862 violations (against 19,825 by other bodies); and in 2012, labour inspectors detected 18,248 infractions (against 17,557 detected by other bodies).

<sup>13</sup> The relevant statistics provided by the Government in relation to the infractions detected show that: in 2008, there were 14,470 procedures initiated following the reports of labour inspectors (28,639 following the reports made by other bodies); 12,687 in 2009 (against 22,267 following the reports made by other bodies); 18,082 in 2010 (against 16,423 following the reports made by other bodies); 16,673 in 2011 (against 17,449 following the reports made by other bodies); and 13,191 in 2012 (15,111 following the reports made by other bodies).

<sup>14</sup> The Government also provides statistics for 2009, 2010 and 2011, according to which: of the 29,917 procedures that were completed in 2009, 5,486 were closed; of the 31,147 procedures completed in 2010, 7,396 were closed; and of the 30,822 procedures completed in 2011, 7,477 were closed.

46. The Government further indicates that guidelines for the harmonization of administrative offence procedures were established, and a database with more than 600 judgments following the labour offence procedures carried out at the ACT has been made available on the ACT intranet.
47. With reference to Article 3 of Convention No. 81, Article 6 of Convention No. 129 and Articles 4–15 of Convention No. 155, the Government indicates that there is no violation of these Articles as the decrease in the remuneration paid is not specific to labour inspectors, but affects the whole public administration as a result of the budgetary adjustment imperatives, which cannot be equated with disinterest in the system of labour inspection. Consequently, the claim that the autonomy and freedom of labour inspectors have been curtailed is unjustified. Such an assessment has also never been made by the tripartite bodies on social dialogue, namely the Standing Committee on Social Dialogue of the Economic and Social Council, and the Advisory Council for the Promotion of Occupational Safety and Health of the ACT. The Government emphasizes that the strategy of the Portuguese labour inspection system is in conformity with the definitions as consolidated within these tripartite bodies and as reflected in the respective annual activity plans published on the ACT Internet portal.

### **C. The additional allegations made by the complainant**

48. The complainant organization, in its additional allegations received by the Office on 2 July 2014, asserts that the Government cannot excuse its non-compliance with the requirements of Conventions Nos 81, 129 and 155 by claiming a “state of necessity”, as it has been doing when adopting extremely serious measures under the pretext of conditions imposed by international bodies. It refers to certain new developments which, in its view, are in violation of Articles 3(2), 10 and 17(2) of Convention No. 81 and Articles 6(2), 14 and 22(2) of Convention No. 129.
49. *On-the-spot information service and the “call centre” service.* The trade union indicates that further duties continue to be assigned to labour inspectors, such as the new “call centre” service introduced in February 2014, without increasing staff numbers as required. The information services that labour inspectors have to provide to the general public on all labour-related questions, both on-the-spot and through the new “call centre” telephone service, now account on average for an extra 60 working days for labour inspectors per year. The SIT alleges that, in view of the assignment of additional tasks and the small number of labour inspectors in service, it is impossible to perform credible inspection work of the necessary quality that responds effectively and efficiently to the challenges that arise. With reference to its previous observations, the SIT expresses the view that labour inspectors are assigned other duties that constitute a serious obstacle to the exercise of their primary duties, and that labour inspectors are being diverted from their mission by having to perform ancillary tasks.
50. *Administrative offences.* The trade union indicates that, in addition to administrative and call centre operation tasks, labour inspectors are required to conduct labour law infringement procedures resulting from the establishment of infringement reports. These are administrative procedures which are to be undertaken by senior technicians and which, once again, distract labour inspectors from their primary duties, for which they have less and less time available, such that the exercise of inspection activities has now become a merely incidental task for labour inspectors.

- 51. *Reference Framework for Inspections.*** The trade union further asserts that the application of the document entitled “Reference Framework for Inspections” adopted by the ACT in May 2014, completely curtails the autonomy of labour inspectors. The SIT states that the ACT adopted the Reference Framework for Inspections despite the opposition of all labour inspectors,<sup>15</sup> and without giving them an active part in the drafting process (they were only given an opportunity to comment on the draft).
- 52.** According to the complainant organization, the Reference Framework is neither a code of ethics, nor a code for the harmonization of professional conduct. It imposes, by means of flowcharts, the conduct to be followed by labour inspectors in their dealings with the persons concerned in the context of an inspection visit (copies of the Reference Framework and the flowcharts are attached to the SIT’s communication). Far from being guidance, the Reference Framework is a mandatory, binding instrument imposed on labour inspectors. It denies labour inspectors any freedom to examine the distinctive features of each particular case, requiring them to treat different situations in the same way (for example, without taking into account the number of workers employed by a company). This imposes a mechanical and automated application of procedures, threatens the credibility of the mission of labour inspection and makes a punitive approach more likely. Labour inspectors are ultimately required to collect state funds in order to balance the public accounts. The objective of the Reference Framework is not to provide safeguards against arbitrary assessments by inspectors but, on the contrary, prevents inspectors from assessing different situations according to criteria appropriate in relation to each case.
- 53. *Unpaid overtime.*** The trade union asserts that, possibly in view of the ancillary tasks described above and mindful that the current work schedule of 40 hours per week is patently inadequate for carrying them out, the ACT made available a new network computer system in May 2014, through which labour inspectors are granted external access to a set of additional applications (including the National Information System on the Inspection Activity of the Working Conditions Authority (SINAI), the National Social Security Database, and intranet) that were previously available only within the institution. The installation of this computer system, at a time of enormous financial constraints, can only be interpreted as a way of making labour inspectors perform their work outside their working hours without being paid overtime. Such a need is perceived because it will be impossible for labour inspectors to meet the objectives imposed on them by the ACT within their normal working days or weeks. The complainant organization asserts that certain labour inspectors already carry out inspections, are involved in training (e-learning) and conduct labour law infringement procedures outside their normal working hours without receiving the corresponding remuneration. The trade union indicates that labour inspectors are living in a climate of insecurity, stress and burnout, which is irreconcilable with their mission and responsibilities.
- 54. *Impossibility of reconciling work life and family life.*** The complainant organization also states that the ACT has made it impossible to reconcile work life and family life of labour inspectors by: (a) assigning them with excessive work that has to be performed by labour inspectors outside their working hours; (b) rejecting any transfer request submitted by labour inspectors; and (c) rejecting all requests for continuous working hours or flexitime submitted by labour inspectors. With reference to the ACT Office Circular

<sup>15</sup> The SIT attaches five letters of protest (the first letter is not dated or signed; the second letter is dated 12 March 2014, signed by one senior higher labour inspector; the third letter is not dated and signed by 12 labour inspectors; the fourth letter (by the Portuguese Association of Labour Inspectors (APIT)) is dated 21 March 2014; and the fifth letter is not dated and signed by four members of the Workers’ Committee of the ACT.

No. 24/DirACT/13,<sup>16</sup> the trade union alleges that labour inspectors are obliged to carry out their work while being denied all other rights, such as the right to family life, decent conditions of service and salary.

**D. The observations of the Government in reply to the additional allegations made by the complainant**

55. In its communication dated 14 October 2014, the Government provided its observations in relation to the additional allegations submitted by the complainant in its communication received by the Office on 2 July 2014.
56. *On-the-spot information service and the “call centre” service.* The Government emphasizes, in relation to the on-the-spot information service and the “call centre” service, that the provision of technical information and advice is one of the priorities of the ACT for preventive action, in accordance with Article 3 of Convention No. 81 and Article 6 of Convention No. 129, in order to enhance knowledge of the legislation and promote compliance with the legal provisions concerning conditions of work.
57. The on-the-spot information service is provided by labour inspectors and ACT technical experts in all ACT departments upon request. The number of ACT staff has fallen as a result of normal staff movements arising out of the reform of the public administration. The on-the-spot information service (which also includes information provided by phone) responded to some 415,000 people in 2012 and 350,000 in 2013. As a way of simplifying access to information for workers, enterprises and organizations and reducing the demand for on-the-spot information, the ACT has developed various kinds of content and tools which are now available on the ACT website (800 frequently asked questions (FAQs), legislation in the fields of OSH, a checklist of employers’ obligations, as well as a database on collective agreements and useful forms available for download). These tools also include a calculator of compensation due for termination of employment, established in response to the need expressed by some 90 per cent of ACT service users, and which has been used by 892,000 persons since its establishment in February 2014.
58. In February 2014, the ACT also introduced the “call centre” service to ensure the provision of information by phone throughout the country, which is provided on a daily basis by 20 labour inspectors and ACT technical experts, corresponding to 2.2 per cent of ACT human resources. Since its introduction, the “call centre” service has experienced considerable demand, with information being provided to 79,635 workers, enterprises and organizations between February and August 2014. A collaborative area has been developed on the ACT intranet as a support tool for the providers of the telephone information service, with a permanent support team providing information in relation to FAQs, annotated labour legislation, jurisprudence and collective agreements.
59. *Administrative offences.* The Government stresses that the effectiveness of ACT inspection work is closely linked to the outcome of labour law infringement proceedings and the capacity to conclude them rapidly, so that the offending parties in violation of the legal provisions are promptly penalized. Currently, there are numerous infringement proceedings pending within the framework of the ACT, a situation which risks undermining the effectiveness of the law and of inspection work. Priority has therefore been given to concluding these proceedings, making use of all available resources in each

<sup>16</sup> This circular is attached to the trade union’s additional allegations and concerns “the exemption from overtime and its compatibility with the duty of constant availability of labour inspectors”.

ACT department, in view of the critical importance of the situation. This activity forms part of the duties of labour inspectors and is the only way to ensure the effectiveness of inspection work as a whole. It should be noted that there has been no decline in inspection work, as shown by the 16 per cent increase in the number of infringement reports and the 19 per cent increase in relevant improvement notices in the first half of 2014 compared with the same period in 2013.

60. *Reference Framework for Inspections.* The Government asserts that the Reference Framework is a code for the harmonization of inspection work, which neither restricts nor limits at any time the autonomy and independence of labour inspectors in the performance of their duties, nor does it focus on coercive action rather than instruction or advice, or vice versa. Following a period of consultation on the draft proposed by a working group of labour inspectors, in the course of which contributions and suggestions were made by labour inspectors and ACT managers in 22 regional departments, as well as the representative organizations of ACT workers (the Workers' Committee of the ACT, the SIT and the APIT), the vast majority of contributions submitted were adopted as part of the Reference Framework for Inspections.
61. The Government indicates that the Reference Framework for Inspections seeks to improve the performance, coherence and consistency of inspection work, promote professional motivation and skills development for labour inspectors and reinforce the credibility of inspection work. It forms part of a policy to constantly improve the standards of quality, effectiveness and efficiency of public administration, ensuring the use of objective, public criteria in performance management, with full respect for national and international frames of reference, especially the ILO Conventions. An in-depth systematization of existing resources was undertaken to simplify day-to-day work.
62. The Reference Framework for Inspections includes a set of options arising from the range of competencies and functions of labour inspectors, which are guided by respect for the limits deriving from the principle of legality and other principles of public administration (namely justice, impartiality and proportionality), which are also reflected in general laws and Legislative Decree No. 102/2000, of 2 June 2000, governing labour inspectors. The criteria underlying the action of labour inspectors are determined by these legal principles, and not by criteria determined by each inspector. In other words, labour inspectors' autonomy of action, in relation to a given offence, takes the form of having the authority (obligation) to take the steps defined in law for putting an end to the unlawful conduct concerned. Such steps are mandatory when only one course of action is prescribed by the law and are discretionary when a choice has been made among several possible courses of action under the law.
63. The Government also asserts that the Reference Framework for Inspections is in accordance with Paragraph 8 of the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), which states as follows: "The central labour inspection authority should give labour inspectors in agriculture guidelines so as to ensure that they perform their duties throughout the country in a uniform manner." The Government further emphasizes that the Reference Framework also reflects many of the principles and guidelines of *A tool kit for labour inspectors: A model enforcement policy, a training and operations manual, a code of ethical behaviour*, published by the ILO.
64. *Unpaid overtime.* In relation to the trade union's allegations concerning unpaid overtime, the Government indicates that in the context of modernizing the technological infrastructure of the ACT, a new Secure Sockets Layer virtual private network (SSL VPN) IT solution has been made available to all ACT workers. This IT solution does not aim to make employees work outside their normal working hours, but is merely intended to give

labour inspectors access during workplace inspections to a series of applications and information that are essential for conducting the inspection.

- 65.** *Impossibility of reconciling work life and family life.* The Government indicates that the workload of labour inspectors has always been considerable and that the crisis affecting Europe as a whole, and Portugal in particular, has resulted in an increase in labour disputes, which in turn has led to the need for workplace interventions. It further indicates that the outstanding confirmation of the decentralized departments of the ACT following a re-organization in 2012 and the lack of human resources are preventing the authorization of transfers of labour inspectors between regional departments (there is a risk that some regional departments might have to close if all requests were approved, also when considering that the majority of transfer requests are for Lisbon and Porto). The Government further states that, at present, 24 labour inspectors are working on a flexitime basis, which is why the allegations of the SIT concerning working hours are inaccurate. As regards the rejected requests for continuous working days, the Government expresses the view that such working-time arrangements are incompatible with the regulations governing labour inspectors, which require constant availability for the inspection service.

### **III. The Committee's conclusions**

- 66.** The Committee has based its conclusions on its review of the complainant organizations' allegations and further allegations, and the observations transmitted by the Government, in reply to them, as well as the numerous documents attached thereto, and the information that is available on the website of the Working Conditions Authority (ACT) (including the annual plans of action for inspection, the annual activity reports, and the strategy paper of the ACT for 2013–15). Account has also been taken of the information communicated by the Government in the framework of its reports on the application of ratified Conventions under article 22 of the ILO Constitution (article 22 reports), and the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

#### **A. Preliminary remarks**

- 67.** The Committee notes that the complainant organization alleges non-observance by the Government of Portugal of Articles 3, 6, 7, 10, 11, 16 and 17 of Convention No. 81; Articles 6, 8, 9, 14, 15, 21 and 22 of Convention No. 129; and Articles 4–15 of Convention No. 155.

#### **1. Conventions Nos 81 and 129**

- 68.** For the purpose of simplification concerning the issues raised with regard to labour inspection, the Committee will focus its comments on the Articles of Convention No. 81, on the understanding that the corresponding Articles of Convention No. 129 are also covered by the same considerations.
- 69.** With regard to the content of the allegations made by the complainant organizations, the Committee will assess the compliance with the following requirements of Convention No. 81: any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties (Article 3(2));<sup>17</sup> the inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of

<sup>17</sup> Article 6(3) of Convention No. 129.

changes of government and of improper external influences (Article 6);<sup>18</sup> labour inspectors shall be adequately trained for the performance of their duties (Article 7);<sup>19</sup> the number of labour inspectors and the number and thoroughness of labour inspections must be sufficient to secure the effective discharge of their duties (Articles 10 and 16);<sup>20</sup> the financial and material means of the inspection services must be adequate (Article 11);<sup>21</sup> any violations of the legal provisions enforceable by labour inspectors are subject to prompt proceedings and effectively penalized (Articles 17(1) and 18);<sup>22</sup> and it shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings (Article 17(2)).<sup>23</sup>

## **2. Article 3(1) of Convention No. 81 and Articles 4–15 of Convention No. 155**

**70.** Concerning the alleged violation of Article 3(1) of Convention No. 81 and Articles 4–15 of Convention No. 155, the Committee is called upon to determine whether the Portuguese labour inspection system is effective and adequate, and whether there is an adequate labour inspection policy, as a part of the national OSH policy.

## **B. Requirements under Conventions Nos 81 and 129**

### **1. Articles 3(2), 10 and 16 of Convention No. 81**

**71.** The Committee notes that Article 3(2) of the Convention No. 81<sup>24</sup> provides that:

Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

**72.** The Committee recalls that Article 10 of Convention No. 81<sup>25</sup> provides that:

The number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate and shall be determined with due regard for:

- (a) the importance of the duties which inspectors have to perform, in particular–
  - (i) the number, nature, size and situation of the workplaces liable to inspection;
  - (ii) the number and classes of workers employed in such workplaces; and
  - (iii) the number and complexity of the legal provisions to be enforced;

<sup>18</sup> Article 8 of Convention No. 129.

<sup>19</sup> Article 9 of Convention No. 129.

<sup>20</sup> Articles 14 and 21 of Convention No. 129.

<sup>21</sup> Article 15 of Convention No. 129.

<sup>22</sup> Articles 22(1) and 24 of Convention No. 129.

<sup>23</sup> Article 22(2) of Convention No. 129.

<sup>24</sup> Article 6(3) of Convention No. 129.

<sup>25</sup> Article 14 of Convention No. 129.

- (b) the material means placed at the disposal of the inspectors; and
- (c) the practical conditions under which visits of inspection must be carried out in order to be effective.

**73.** It further recalls that Article 16 of Convention No. 81<sup>26</sup> provides that:

Workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

**74.** The Committee wishes to recall that the objective of Articles 10 and 16, based on a sufficient number of labour inspectors and an adequate frequency and thoroughness of inspections, is to secure the effective discharge of the duties of the inspectorate and the effective application of the relevant legal provisions.

**75.** In light of the information provided, the Committee will therefore assess whether the objective of ensuring compliance with the legal provisions relating to conditions of work and the protection of workers in accordance with Articles 10 and 16 is achieved in the Portuguese labour inspection system. In this regard, the Committee will proceed to assess a number of different aspects, including: (1) the number of labour inspectors, the coverage of workplaces and workers by labour inspections, and the frequency and thoroughness of inspections; and (2) the workload of labour inspectors, including their involvement in any further tasks which may detract from their primary duties.

- (1) Number of labour inspectors, coverage of workplaces and workers liable to inspection, and frequency and thoroughness of inspection.

*Number of labour inspectors*

**76.** The Committee notes that the SIT deplors that the number of labour inspectors decreased by 15.8 per cent, that is, to 359, between 2011 and 2012. On the other hand, it notes the indications by the Government that the number of labour inspectors increased from 264 in 2008 (excluding management positions) to 391 in 2012 (including management positions). The Committee understands this difference in the number indicated by the parties for 2012 may be due to the inclusion or exclusion of management positions in these figures. It notes from the annual activity report of the ACT that the number of labour inspectors (including management positions) was 374 at the end of 2013.

**77.** The Committee notes from the strengths, weaknesses, opportunities and threats (SWOT) analysis in the strategy paper of the ACT for 2013–15 (available on the ACT website),<sup>27</sup> that the shortage of human resources has been recognized as one of the weaknesses of the ACT, and that the change in the human resources policy of the public administration as well as a further decrease in the available resources has been recognized as one of the challenges that the ACT is facing. However, according to the indications of the Government, there have not yet been any specific measures taken to reduce the number of labour inspectors in the framework of the plans to reduce the public administration staff.

<sup>26</sup> Article 21 of Convention No. 129.

<sup>27</sup> See page 9 of the strategy paper of the ACT available at: [http://www.act.gov.pt/\(pt-PT\)/SobreACT/DocumentosOrientadores/PlanoActividades/Documents/Estrategia%202013-2015.pdf](http://www.act.gov.pt/(pt-PT)/SobreACT/DocumentosOrientadores/PlanoActividades/Documents/Estrategia%202013-2015.pdf).

### *Coverage of workplaces liable to inspection*

- 78.** The Committee recalls the indications of the CEACR in its 2006 General Survey on labour inspection that the manner in which Article 16 of Convention No. 81 and Article 21 of Convention No. 129 are applied in practice is the basic test of any labour inspection system.<sup>28</sup>
- 79.** It notes, from the information contained in the 2013 annual activity report,<sup>29</sup> that the number of labour inspections has decreased from 71,442 inspection visits in 2008 (concerning 62,477 workplaces and 620,246 workers) to 41,546 inspection visits in 2013 (concerning 29,539 workplaces and 340,092 workers). In this regard, it also recalls that the total number of employed workers in the country fell from 5,197,800 in 2008 to 4,513,400 in 2013. The Committee therefore observes that the percentage of workers covered by labour inspections decreased from about 11.9 per cent in 2008 to about 7.5 per cent in 2013.<sup>30</sup>

### *Thoroughness of labour inspections*

- 80.** The Committee considers that, in addition to the number of labour inspectors and the coverage of workplaces liable to inspection, another factor to take into consideration when assessing the effective application of the legal provisions is the thoroughness of inspections.
- 81.** The Committee notes that the SIT alleges that the objectives in the annual plans of action are unrealistic and limit labour inspectors to taking reactive measures, and that the objectives as determined by the SIADAP are set so ambitiously that they result in workplaces not being inspected thoroughly and regularly. In this respect, the Committee also notes that the SIT asserts that there is a practice, in some cases, of foregoing the inspection of a workplace in person, and instead simply sending notifications in writing to comply with the set objectives, or simply carrying out an administrative analysis of the procedures in question. The Committee notes that the Government contests these allegations.
- 82.** In this context, the Committee would like to emphasize that members States are required to ensure, in conformity with Article 16 of Convention No. 81, that raising the level of productivity by means of determining a certain number of inspections to be undertaken every year should not prevent workplace inspections from being as thorough as necessary to ensure the effective application of the relevant legal provisions. While assessing labour inspectors' productivity by reference to their performance and relating inputs and outputs (such as a predetermined number of inspections) to a definite time frame, are not per se problematic, measures to increase productivity should not negatively impact on the quality of inspection work.
- 83.** The Committee notes, in relation to the above, that the 2013 annual plan of action for labour inspection provides for specific objectives in relation to the number of labour

<sup>28</sup> See the 2006 General Survey on labour inspection, para. 256.

<sup>29</sup> [http://www.act.gov.pt/\(pt-PT\)/crc/PublicacoesElectronicas/EstatisticaseRelatorios/Paginas/default.aspx](http://www.act.gov.pt/(pt-PT)/crc/PublicacoesElectronicas/EstatisticaseRelatorios/Paginas/default.aspx).

<sup>30</sup> This calculation is based on the number of 620,246 workers covered by labour inspections, and the total number of 5,197,800 employed workers in the country in 2008; and the number of 340,092 workers covered by labour inspections, and the total number of 4,513,400 employed workers in the country in 2013.

inspections concerning specific areas of control,<sup>31</sup> and the 2013 annual activity report of the ACT<sup>32</sup> shows that the objectives concerning the total number of inspections of approximately 40,000 in 2013 appear to have been met.<sup>33</sup> It further notes that no information is provided on the specific objectives set for each labour inspector, and whether they are realistic or would induce labour inspectors to conduct inspections less thoroughly to meet the fixed outcome.

**84. The Committee considers that the available information does not allow for any conclusions to be drawn on the thoroughness of labour inspections. It therefore requests the Government to provide information to the CEACR on how it ensures that workplaces are inspected as thoroughly as necessary to ensure the effective application of the relevant legal provisions, in accordance with Article 16 of Convention No. 81.**

(2) Workload of labour inspectors resulting from their primary functions and additional duties entrusted to them

**85.** The Committee considers that, in order to assess the effective discharge of the duties of the labour inspectorate, the workload of labour inspectors has to be taken into consideration, especially those tasks that are unrelated to, and divert time and resources, from their primary functions, as described in Article 3(1) of Convention No. 81.

**86.** In this regard, it notes the trade union's comments that: (a) labour inspectors are being assigned many administrative and other additional tasks (for example, visiting auto repair shops, repairing facilities, transporting equipment, photocopying, etc.); (b) they spend considerable time on the provision of information services, which now account for an extra 60 working days of labour inspectors per year; and (c) they are involved in labour law infringement procedures. It notes that the trade union asserts that, when combined with the small number of labour inspectors in service, these additional tasks make it impossible to perform credible inspection work of the necessary quality.

**87.** The Committee also notes from the indications of the Government that: (a) the Government does not contradict that labour inspectors engage in administrative, logistical and maintenance tasks, but does not provide information that allows for an assessment of their time spent on these duties; (b) labour inspectors have been required to be more involved in information services due, among other things, to greater demand as a result of the economic crisis (the Committee notes from the statistics provided that the number of requests received rose by about 25 per cent between 2008 and 2013);<sup>34</sup> and (c) numerous

<sup>31</sup> For example, 17,500 inspections relating to controls of minimum guarantees under the law; 17,500 inspections relating to controls in the area of OSH; 2,000 inspections on temporary work sites; 2,500 controls relating to working hours in the road transport sector, etc.

<sup>32</sup> The annual activity reports of the ACT for 2011–13 are available on the website of the ACT under the following link: [http://www.act.gov.pt/\(pt-PT\)/crc/PublicacoesElectronicas/EstatisticaseRelatorios/Paginas/default.aspx](http://www.act.gov.pt/(pt-PT)/crc/PublicacoesElectronicas/EstatisticaseRelatorios/Paginas/default.aspx).

<sup>33</sup> The 2013 annual plan of action for labour inspection sets an objective of about 40,000 inspections, which corresponds approximately to the number of 41,546 inspections as indicated in the 2013 annual activity report.

<sup>34</sup> The Committee notes from the information of the Government and the information in the annual activity reports that the number of requests received rose from 335,170 to 415,994 between 2008 and 2013, and that the number of complaints received by the information services increased from 2,626 in 2008 to 21,042 in 2013. In this respect, the Committee also notes from the Government's indications that, while the "call centre" services (with information being provided to 79,635 requests

infringement proceedings are currently pending, which is why priority has been given to concluding these proceedings, making use of all available resources in each ACT department, including labour inspectors.

*Primary and additional functions within the meaning of Convention No. 81*

- 88.** The Committee considers that: (a) both administrative, and maintenance and logistical duties (visiting auto repair shops, repairing facilities, transporting equipment, photocopying, etc.) are additional tasks within the meaning of Article 3(2) of the Convention. Conversely, it considers that: (b) the provision of information services forms part of the primary functions of labour inspectors, as described in Article 3(1)(b) of the Convention;<sup>35</sup> and (c) the processing of infringement reports by labour inspectors in administrative proceedings, in so far as they concern legal provisions that are enforceable by labour inspectors, is a function within the meaning of Article 3(1)(a) of the Convention,<sup>36</sup> namely to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers.<sup>37</sup>

*Workload resulting from these duties*

- 89.** The Committee notes from the indications by the parties that the workload of labour inspectors has increased.
- 90.** The Committee recalls from the abovementioned strategy paper of the ACT for 2013–15 that one of the challenges identified for the ACT was the change in the human resources policy in the public administration and a further decrease in the available resources of the

between February and August 2014) correspond to 2.2 per cent of ACT human resources (including labour inspectors and ACT technical experts), it does not provide an estimate on the human resources allocated to the provision of on-the-spot information in all ACT departments (which, according to the indications provided by the Government, responded to requests by some 415,000 people in 2012 and 315,000 in 2013).

<sup>35</sup> In accordance with Article 3(1)(b) of the Convention, the primary functions of labour inspectors include the supply of technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions. The Committee finds that the means or channels through which information and advice is provided is irrelevant for its consideration as primary function.

<sup>36</sup> In accordance with Article 3(1)(a) of the Convention, the primary functions of labour inspectors include the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors.

<sup>37</sup> In this context the Committee also notes that it would appear that labour inspectors are also entrusted with tasks relating to the processing of administrative offences as a result of violations detected by other public authorities (in 2012, 13,191 procedures were conducted as a consequence of irregularities detected by labour inspectors, whereas 15,111 procedures were conducted in the same year as a consequence of irregularities detected by other authorities). The Committee finds that, in so far as these proceedings concern provisions that are enforceable by labour inspectors and enumerated or related to those in Article 3(1)(a), the involvement of labour inspectors in these proceedings would also have to be considered as primary functions.

ACT,<sup>38</sup> and that the Government confirms that the number of administrative support staff has decreased (as a result of the reform in the public administration).

91. The Committee therefore considers that it appears that the decrease in the number of administrative support staff has resulted in labour inspectors increasingly assuming tasks that were previously assumed by other employees within the ACT.
92. However, the Committee also notes that measures have been taken to reduce the workload of labour inspectors relating from these duties, including through: (a) the investment in a number of measures to rationalize resources and simplify administrative procedures, so as to allow labour inspectors to focus on their core functions; (b) simplifying access to information for workers and employers and deploying resources to assist labour inspectors in the provision of information and advice;<sup>39</sup> and (c) establishing guidelines for the harmonization of administrative offence procedures.
93. Concerning the additional tasks entrusted to labour inspectors (administrative, logistical and maintenance tasks), the Committee is not in a position to specifically quantify the human resources diverted from the primary functions of labour inspectors, as the parties have not provided an estimate of the time spent by labour inspectors on these tasks. In this regard, the Committee also recalls the indications of the CEACR in its 2006 General Survey on labour inspection, that the primary duties of labour inspectors are complex and require time, resources, training and considerable freedom of action and movement, which is why any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties.<sup>40</sup>
- 94. The Committee encourages the Government to ensure that any administrative duties, as well as maintenance and logistical tasks entrusted to labour inspectors do not affect the effective discharge of their primary functions, in accordance with Article 3(2) of the Convention. In this regard, the Committee requests the Government to provide information to the CEACR on the proportion of time spent by labour inspectors on administrative duties, as well as logistical and maintenance tasks in relation to the primary functions of labour inspection.**

(3) Final considerations

95. The Committee recalls from its above observations that the number of labour inspections fell by almost half between 2008 and 2013; and the percentage of workers covered by labour inspections decreased from 11.9 per cent in 2008 to 7.5 per cent in 2013. It also notes that the workload of labour inspectors has increased, which appears to be a result of the reduction in the support staff in the ACT, and the economic crisis which requires the increased intervention of labour inspectors in workplaces.<sup>41</sup> The Committee recalls from

<sup>38</sup> See page 9 of the strategy paper of the ACT available at: [http://www.act.gov.pt/\(pt-PT\)/SobreACT/DocumentosOrientadores/PlanoActividades/Documents/Estrategia%202013-2015.pdf](http://www.act.gov.pt/(pt-PT)/SobreACT/DocumentosOrientadores/PlanoActividades/Documents/Estrategia%202013-2015.pdf).

<sup>39</sup> In this regard, the Committee notes the indications by the Government that the ACT has developed various kinds of content and tools which are now available on the ACT website (including FAQs, OSH legislation, checklists for employers, etc.), and that labour inspectors providing advice by phone are assisted by a permanent support team in the collaboration area of the ACT intranet.

<sup>40</sup> See the 2006 General Survey on labour inspection, para. 69.

<sup>41</sup> In this regard, it also notes the Government's indication that the crisis affecting Europe as a whole, and Portugal in particular, has resulted in an increase in labour disputes, which in turn has

the abovementioned ACT strategy paper for 2013–15 that a further decrease in the available human resources has been recognized as one of the challenges for the ACT.

**96.** In this context, the Committee also notes the statement of the Government that, despite the significant economic, financial and social crisis facing the country, which has heavily influenced the performance of the ACT, the latter has endeavoured to respond to challenges to its mission of promoting the improvement of working conditions. Recognizing the efforts deployed to maintain the effectiveness of the labour inspection services within the available resources, the Committee is of the view that an evaluation of the needs of labour inspectors in light of the increasing workload should be conducted. The Committee, while being aware of the obligations of the Government in the context of the fiscal consolidation and reform of the public administration, is of the view that such an evaluation would enable measures to be taken to appropriately respond to the current realities and the increased demand for interventions resulting from the ongoing economic crisis.

**97. In view of the increase of the workload of labour inspectors and the decrease in the number of inspections, workplaces and workers covered, the Committee requests the Government, in accordance with Article 10 of the Convention, to maintain a sufficient number of labour inspectors to ensure the effective discharge of inspection duties and compliance with the respective legal provisions. In this respect, the Committee encourages the Government to carry out an evaluation of the needs of the labour inspectorate in terms of the number of labour inspectors required for the effective discharge of their duties. It also requests the Government, in accordance with Article 16 of the Convention, to ensure that a sufficient number of inspections of adequate thoroughness are undertaken.**

## **2. Article 6 of Convention No. 81**

**98.** The Committee recalls that Article 6 of Convention No. 81<sup>42</sup> provides that:

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

### **(1) Status of labour inspectors**

**99.** The Committee notes that it is not at issue among the parties that labour inspectors enjoy the status of public servants, which entails their permanent appointment for an indefinite period, and that permanent appointment to the inspectorate has been maintained under the public administration reform programme.

**100.** The Committee recalls, as can be seen from the preparatory work on Convention No. 81,<sup>43</sup> that their status as public servants is considered necessary for inspection staff as it is best suited to guaranteeing them the independence and impartiality necessary for the performance of their duties.

led to the need for workplace interventions. In this respect, the Committee also notes from the 2013 annual activity report of the ACT that the number of requests for interventions in the workplace increased from 21,899 in 2010 to 28,001 in 2013.

<sup>42</sup> Article 8 of Convention No. 129.

<sup>43</sup> Report IV, *Organisation of labour inspection in industrial and commercial undertakings*, International Labour Conference, 30th Session, Geneva, 1947, p. 161.

(2) Conditions of service of labour inspectors

**101.** The Committee further recalls from the preparatory work on Convention No. 81 that a sufficiently high salary of labour inspectors was considered to be among the main safeguards to assure them stability of employment and render them independent of changes of improper external influences.<sup>44</sup>

**102.** The CEACR indicated, in its 2006 General Survey on labour inspection,<sup>45</sup> that it is vital that levels of remuneration and career prospects of inspectors are such that high quality staff are attracted, retained and protected from any improper influence.

(a) *Level of remuneration of labour inspectors*

**103.** The Committee notes the indication by the SIT that, following the application of various restrictive wage and fiscal measures (tax increases, wage cuts, bonus cuts, etc.), including the cuts in pay supplements, the annual gross income for most labour inspectors (that is, those in the primary inspector category) has decreased from €32,790.94 in 2010 to €26,567.40 in 2012, amounting to a monthly net income of approximately €1,500.

**104.** It notes the assertion of the SIT that these cuts in the remuneration of labour inspectors undermine the safeguards provided for in Article 6 of the Convention, and that some labour inspectors are finding it difficult to meet their prior economic commitments.

(i) *Level of remuneration of labour inspectors in relation to other inspectors exercising similar functions*

***Restrictive wage and fiscal measures***

**105.** In this context, the Committee notes that it is not at issue between the parties that the various restrictive wage and fiscal measures (such as tax increases, wage cuts, bonus cuts, etc.) have been applied without distinction to all professions in the public administration.

***Pay supplements***

**106.** However, the Committee notes that the SIT claims that there is a discriminatory policy regarding pay supplements for labour inspectors in relation to those paid to professionals in other inspection bodies. In this regard, the Committee understands from the explanations of the parties that, as of 2009, the pay supplements of labour inspectors were frozen at 2.1 per cent, and the pay supplements set at 22.5 per cent of the basic salary, as provided for in section 12 of Legislative Decree No. 112/2001 governing the remuneration scheme of labour inspectors, were no longer paid.

**107.** It further understands from the submissions that the pay supplements of inspection professions covered by Legislative Decree No. 170/2009 (which streamlined inspection functions by creating a special career scheme for inspection services) were not frozen.<sup>46</sup> In this regard, it notes the Government's explanations that pay supplements were not frozen

<sup>44</sup> Preliminary report, *Organisation of labour inspection in industrial and commercial undertakings*, International Labour Conference, 26th Session, Geneva, 1940, p. 89.

<sup>45</sup> See the 2006 General Survey on labour inspection, para. 204.

<sup>46</sup> The Committee notes that in accordance with Article 2(1) of Legislative Decree No. 170/2009, this Decree applies, among others to: the General-Inspectorate for Finance; the General-Inspectorate for Agriculture and Fisheries; the General-Inspectorate of the Ministry for Labour and Social Affairs; the General-Inspectorate for Health; and the General-Inspectorate for Education.

when they form part of the basic salary of public servants, which is the case for the inspection professions governed by Legislative Decree No. 170/2009.

**108.** The Committee concludes that, due to the cuts in the pay supplements, which were not applied to the inspection professions covered by Legislative Decree No. 170/2009, the final wage of labour inspectors appears to be significantly lower than that of inspectors covered by Legislative Decree No. 170/2009.

(ii) *Adequate salary*

**109.** The Committee recalls, in light of the above considerations, that the net monthly income of labour inspectors in the primary category is approximately €1,500, while inspectors covered by Legislative Decree No. 170/2009 receive higher wages, largely because their pay supplements have not been frozen. The Committee also notes, from information available on the Internet, that the monthly minimum wage in Portugal was €505 on 1 January 2015.<sup>47</sup>

**110.** The Committee wishes to recall the observations made by the CEACR in its 2006 General Survey on labour inspection,<sup>48</sup> where it indicated that although it is aware of the severe budgetary restrictions governments often face, it is bound to emphasize the importance it places on the treatment of labour inspectors in a way that reflects the importance and specificities of their duties and that takes account of personal merit.

**111.** **The Committee considers that, in accordance with Article 6 of the Convention, the levels of remuneration of labour inspectors should be such as to attract and retain high-quality staff, protect them from any improper influence, and ensure that they remain motivated. In this regard, it finds that the levels of remuneration of labour inspectors should be at least commensurate with that of inspectors exercising similar functions.**

(b) *Career prospects*

(i) *Career opportunities in general*

**112.** The Committee notes from the trade union's indications that the restrictive wage and fiscal arrangements applied include the freezing of increments and the cutting of performance bonuses, as well as a ban on career progression through competitions, and that remuneration cuts result in years of experience and levels of responsibility no longer being sufficiently reflected in remuneration. It further notes that the Government does not contest these indications.

**113.** In this context, the Committee recalls the indications of the CEACR in its 2006 General Survey on labour inspection<sup>49</sup> that career prospects which take into account seniority and personal merit are essential to attract, and especially to retain, qualified and motivated staff in labour inspectorates. The CEACR also emphasizes, in the same General Survey, that while it is true that the relevant instruments do not contain specific guidelines on inspectors' career development, the fact is that the complexity of labour inspection duties

<sup>47</sup> See the PORDATA Contemporary Portugal Database (<http://www.pordata.pt/en/Portugal/National+minimum+wage-74>). According to the information on this website, the source of the statistical information provided is the Directorate-General for Employment and Labour Relations (DGERT).

<sup>48</sup> See the 2006 General Survey on labour inspection, para. 209.

<sup>49</sup> See the 2006 General Survey on labour inspection, para. 216.

and the degree of responsibility that they involve require incentives, including attractive career prospects that are at least as favourable as those of other public servants doing work of similar complexity and with similar responsibilities.<sup>50</sup> The CEACR adds that labour inspectors should be able to expect career prospects that value their seniority, enthusiasm and commitment.<sup>51</sup>

**114.** In this context, the Committee also notes that the SWOT analysis in the strategy paper of the ACT for 2013–15 identifies one of the weaknesses of the ACT as being the demotivation of workers in view of the lack of adequate incentives.<sup>52</sup>

**115. The Committee encourages the Government to take measures, in conformity with Article 6 of the Convention, to ensure that labour inspectors enjoy career prospects that take into account their merit, experience and levels of responsibility. It considers that this matter should be discussed with the social partners.**

(ii) *Evaluation of performance of labour inspectors*

**116.** The Committee further notes the indication by the trade union that the performance evaluation system SIADAP, which is applicable to all public officials, does not take into account the nature of the mandate of labour inspectors and results in a lack of career development options and systematic injustices leading to their demotivation. It notes the Government's indications, on the other hand, that this system, which measures results against pre-established goals, is aimed at promoting professional motivation and skills development. The Committee understands from the statements of the parties that they disagree on whether these objectives are set too ambitiously.

**117.** The Committee considers that performance-based management, or the measurement of results against pre-established goals, is a commonly used system in the public administration of many member States, and is per se not incompatible with the nature of the mandate of labour inspection. It also notes that the trade union has not provided more specific information on the reasons why the Portuguese performance evaluation system is allegedly incompatible with the nature of the mandate of labour inspection, or results in a lack of career development options and demotivation.

**118. The Committee considers that the available information does not allow for any conclusions to be drawn on whether the performance evaluation system SIADAP is unsuited to the mandate of labour inspectors.**

(3) *Other conditions of service*

**119.** The Committee recalls that the objective of guaranteeing labour inspectors adequate conditions of work is to assure them stability of employment and make them independent of any undue external influences, with a view to enabling the effective discharge of their duties, and the effective functioning of the labour inspection system.

**120.** It therefore considers that all the remaining allegations made by the complainant in relation to Article 6 of the Convention (harassment, extraordinary workload, unpaid overtime,

<sup>50</sup> See the 2006 General Survey on labour inspection, para. 217.

<sup>51</sup> See the 2006 General Survey on labour inspection, para. 219.

<sup>52</sup> See page 9 of the strategy paper of the ACT available at: [http://www.act.gov.pt/\(pt-PT\)/SobreACT/Documents/Orientadores/PlanoActividades/Documents/Estrategia%202013-2015.pdf](http://www.act.gov.pt/(pt-PT)/SobreACT/Documents/Orientadores/PlanoActividades/Documents/Estrategia%202013-2015.pdf).

work-related stress, the free choice of the duty station of labour inspectors, and working time arrangements) need to be examined in light of this objective.

- 121.** *Mechanisms to address cases of harassment.* The Committee notes that no specific information on the alleged cases of moral harassment by hierarchical superiors in the ACT has been provided by the trade union. However, the Committee also understands from the indications of the Government that the SIT has not made a formal complaint in this respect, but has sought to discuss these issues, and that it has not yet been granted a meeting for this purpose.
- 122.** The Committee considers that cases of harassment and conflicts at work are likely to make labour inspectors feel disrespected, which negatively affects their authority and the inspectorate's work. It therefore finds that there should be mechanisms in place so as to address alleged cases of harassment, including appropriate channels for the submission and investigation of complaints, or to discuss such cases informally guaranteeing the confidentiality of the persons concerned.
- 123.** **The Committee requests the Government to take measures to arrange a meeting to give the SIT the opportunity to discuss the abovementioned cases.**
- 124.** *Workload, overtime and work-related stress.* The Committee notes that the trade union indicates that labour inspectors are being assigned excessive work that has to be performed outside their normal working hours without receiving corresponding remuneration,<sup>53</sup> and that labour inspectors are living in a climate of insecurity, stress and burnout. The Committee notes that the Government has not specifically replied to these allegations, but that it confirms that the workload of labour inspectors has increased as a result of the economic crisis.
- 125.** The Committee considers that the requirement to work constant overtime is liable to lead to stress and burnout, and may negatively affect the quality of the inspectorate's work.
- 126.** **The Committee requests the Government to provide further information to the CEACR in relation to the abovementioned allegations. In this regard, it emphasizes that it is necessary for labour inspectors to have regular and sufficient time off work for recreation and recovery to enable them to carry out their work effectively.**
- 127.** *Transfer of labour inspectors to other inspection services and working time arrangements.* The Committee notes the indications by the trade union that the ACT has made it impossible to reconcile work life and family life, not only by obliging labour inspectors to work overtime, but also by rejecting requests from labour inspectors for transfer to other inspection services and to be granted continuous working hours or flexitime arrangements. The Committee notes that the Government, on the other hand, indicates that some requests were granted (24 labour inspectors are currently working on a flexitime basis), and that rejections were justified in light of the effective functioning of the labour inspection services (availability of human resources in all regional departments, and impossibility of certain working time arrangements due to the requirement of constant availability for the inspection service).
- 128.** Recalling the objective of granting labour inspectors adequate working conditions, the Committee considers that the rejection of the abovementioned requests neither affects the stability of employment of labour inspectors, nor their independence, and that these

<sup>53</sup> According to the trade union, this work relates to the conduct of labour inspections, labour law infringement procedures, and training (e-learning).

rejections are based on the argument of the effective functioning of the labour inspection system throughout its regional departments.

**129. In the absence of more specific information, the Committee does not find that the alleged rejection of transfers to other inspection services, nor the alleged rejection of working time arrangements, is incompatible with Article 6 of the Convention.**

### **3. Article 7(1) and (3) of Convention No. 81**

**130.** The Committee recalls that Article 7(3) of Convention No. 81<sup>54</sup> provides that:

Labour inspectors shall be adequately trained for the performance of their duties.

**131.** The Committee notes the indication of the trade union that the initial training of labour inspectors is largely insufficient and inadequate, and not adapted to current realities, and that continuous training is practically non-existent. It notes that the Government, on the other hand, provides explanations on the initial training (that is, its duration and the determination of its subjects by the training panel and experienced labour inspectors), as well as statistical information on the total number of training courses provided from 2008 to 2012, and the subjects covered (that is, OSH, labour legislation, labour law offences, provision of services, computer applications and systems, management and planning, and training for trainers).

**132.** In this context, the Committee wishes to refer to the indications made by the CEACR in its 1985 General Survey on labour inspection,<sup>55</sup> that whatever the value of the training given to inspectors on their entry into service, it is advisable that it should be periodically supplemented, not only in order to refresh their knowledge, but also to keep them abreast of new technologies.

**133.** The Government notes from the data provided by the Government that labour inspectors receive regular training on a number of relevant subjects. It also notes from the SWOT analysis in the strategy paper of the ACT for 2013–15<sup>56</sup> that difficulties resulting from the continuous adaptation of competencies in the context of change have been recognized as one of the weaknesses of the ACT.

**134. The Committee notes that the trade union does not provide details on how the initial training is not adapted to current realities and needs. It requests the Government to provide information to the CEACR on the difficulties identified in the abovementioned strategy paper concerning the continuous adaptation of competencies, as well as on any measures taken to address these difficulties. It considers that specific training needs in light of current realities and labour market developments should be further discussed with the social partners.**

<sup>54</sup> Article 9 of Convention No. 129.

<sup>55</sup> ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4B), International Labour Conference, 71st Session, Geneva, 1985 (the 1985 General Survey on labour inspection), para. 155.

<sup>56</sup> See page 9 of the strategy paper of the ACT available at: [http://www.act.gov.pt/\(pt-PT\)/SobreACT/DocumentosOrientadores/PlanoActividades/Documents/Estrategia%202013-2015.pdf](http://www.act.gov.pt/(pt-PT)/SobreACT/DocumentosOrientadores/PlanoActividades/Documents/Estrategia%202013-2015.pdf).

#### 4. **Article 11 of Convention No. 81**

135. The Committee recalls that Article 11 of the Convention No. 81<sup>57</sup> provides that:

1. The competent authority shall make the necessary arrangements to furnish labour inspectors with –

- (a) local offices, suitably equipped in accordance with the requirements of the service, and accessible to all persons concerned; and
- (b) the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist.

2. The competent authority shall make the necessary arrangements to reimburse labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties.

(1) **Transport facilities and reimbursement of travel expenses  
(Article 11(1)(b) and (2))**

136. Concerning the transport facilities available to labour inspectors, the Committee notes the Government's statement that in 2013 the ACT had 140 vehicles of an average age of 13 years. It further notes the indications of the trade union that these vehicles are unsafe and are being repaired in workshops of dubious quality, and the indications of the Government that instructions provide that vehicles should not be used without periodic tune-up.

137. The Committee further notes the Government's indications that labour inspectors in Lisbon and Porto are paid advances to pay for public transport passes to be used for their inspections, and that in other regional offices, public transport costs are directly paid to the relevant transport company.

**138. The Committee considers that the arrangements that are in place for labour inspections in the central area (the provision of public transport passes), and labour inspections in the regions (the availability of 140 vehicles, and the direct payment of transport fees to the relevant transport company) in principle ensure labour inspectors sufficient mobility to carry out their duties, in conformity with Article 11(1)(b) and (2) of the Convention. However, the Committee also considers that internal instructions only to use cars that have been inspected are not sufficient, and that additional measures are necessary for the physical safety of labour inspectors (such as the purchase of new vehicles, the regular maintenance of vehicles, etc.).**

(2) **Reimbursement of incidental expenses (Article 11(2))**

139. The Committee further notes the indications by the trade union that, in certain remote units, expenses for inspection-related travel, such as parking costs, are not reimbursed. The Government indicates that the per diem subsistence allowance for meals and accommodation is usually paid two months after they have been incurred, and that all other expenses are also reimbursed when the responsible unit in the ACT considers that they are justified.

**140. The Committee notes that labour inspectors are paid a subsistence allowance for their main incidental costs, such as meals and accommodation, in accordance with Article 11(2) of the Convention. As for other incidental costs that might be necessary**

<sup>57</sup> Article 15(1)(a) of Convention No. 129.

for the performance of inspection visits (parking costs, etc.), the Committee considers that it does not have sufficient information on the criteria for their reimbursement. It therefore requests the Government to provide information to the CEACR on the procedures in place for the reimbursement of all incidental costs incurred during inspection visits, including cases in which requests were rejected.

(3) Office facilities and equipment (Article 11(1)(a))

- 141.** *Adequacy of labour inspection offices.* The Committee notes that the Government does not contradict the indications by the trade union that certain local offices are not adapted to the needs of the service. However, the Committee also notes the Government's indications that, over the past 20 years, there have been significant improvements in the offices of all ACT services, and most services have been provided with new premises, whereas all other offices are targeted for renovation.
- 142.** *Equipment, including computers and mobile phones.* The Committee notes from the indications of the Government that in 2013 a total of 879 computers including 276 laptops were available (of which 260 were attributed to labour inspectors), and that a new network computer system was set up in May 2014, through which labour inspectors were granted external access to a set of applications. It further notes the indications by the trade union that the computer system of the ACT is obsolete. The Committee also notes that the Government indicates that all labour inspectors are provided with a mobile telephone and that calls are paid for up to a certain limit.
- 143.** The Committee finally notes from the SWOT analysis in the strategy paper of the ACT for 2013–15 that the inadequacy of the material resources has been recognized as one of the weaknesses of the ACT.
- 144.** **The Committee encourages the Government to take the necessary measures to ensure that all labour inspection services at the central and regional levels are adapted to the needs of the service. In this regard, and noting the inadequacy of the material resources of the ACT acknowledged in the strategy paper of the ACT for 2013–15, it asks the Government to provide information to the CEACR on any measures taken to improve the material resources of the ACT.**
- 145.** *Disciplinary action for loss or theft of equipment.* The Committee notes the indications by the trade union that labour inspectors prefer to acquire their own equipment to avoid the risk of disciplinary action in the case of loss or theft of equipment. The Government indicates, on the other hand, that the rules governing the use of Government equipment provide that users may be held liable for the mismanagement or misuse of equipment. According to the Government, whenever damage is caused to Government property, a non-disciplinary investigation is instigated into a possible breach of public officials' duties, followed by disciplinary proceedings when a relevant breach is determined. The Committee notes the Government's indications that in recent years there have been several instances of theft and damage to equipment, although no breach was found and therefore no disciplinary sanction was imposed.
- 146.** **In the absence of more specific information, the Committee does not find that there is a violation of Article 11 of the Convention, because labour inspectors are being held responsible for the careful use of ACT equipment with a view to avoiding theft or damage, especially considering that there have not been any disciplinary sanctions imposed in recent years.**

## 5. *Articles 17 and 18 of Convention No. 81*

**147.** The Committee recalls that Article 17(1) of Convention No. 81<sup>58</sup> provides that:

1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning: Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

**148.** It further recalls that Article 18 of Convention No. 81<sup>59</sup> provides that:

Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

**149.** In this context, the Committee also recalls that Article 5(a) of Convention No. 81<sup>60</sup> provides that:

The competent authority shall make appropriate arrangements to promote:

- (a) effective co-operation between the inspection services and other government services and public or private institutions engaged in similar activities; ...

### (1) Number of violations detected by labour inspectors

**150.** The Committee notes that, according to the statistics provided by the Government (and despite the fall in the number of workplaces covered by labour inspections by about half between 2008 and 2012),<sup>61</sup> the number of violations detected by labour inspectors remained approximately the same between 2008 and 2012, despite certain fluctuations in those years (18,667 violations were detected in 2008, and 18,248 in 2012).<sup>62</sup> The Committee notes that the ratio of infringement reports established per workplace has increased from about 30 per cent in 2008 to about 49 per cent in 2012 (as the number of violations detected has remained more or less constant, while the number of workplaces covered by labour inspections has decreased). However, it also notes the Government's indications that there has been no decline in inspection work, as there was a 16 per cent increase in the number of infringement reports established by labour inspectors in the first half of 2014, in comparison with the equivalent period in 2013.

<sup>58</sup> Article 22(1) of Convention No. 129.

<sup>59</sup> Article 24 of Convention No. 129.

<sup>60</sup> Article 12 of Convention No. 129.

<sup>61</sup> The Committee recalls from the statistics in the annual activity reports of the ACT that the number of inspection visits decreased from 71,442 inspection visits in 2008 (concerning 62,477 workplaces and 620,246 workers) to 54,922 inspection visits in 2012 (concerning 37,398 workplaces and 499,200 workers). The number of inspection visits in 2012 can be found in the annual activity report.

<sup>62</sup> 15,977 infractions were detected in 2009, 22,634 infractions were detected in 2010 and 21,862 infractions were detected in 2011.

## (2) Effective enforcement of penalties

- 151.** The Committee notes from the submissions that the infringement reports established by labour inspectors are processed at the administrative headquarters of the ACT (labour offence proceedings), with the possibility of recourse to the courts.
- 152.** *Labour offence proceedings at the administrative headquarters of the ACT.* It notes the assertion by the trade union that these labour offence proceedings are inadequate, and that labour law infringements therefore too rarely result in the imposition of fines, a situation which affects the authority and credibility of labour inspectors. The SIT claims that this is also due to the inadequate allocation of financial and human resources for such proceedings. The Committee notes the indication by the Government, on the other hand, that: a significant amount of penalties was collected between 2008 and 2012; and the number of closed offence procedures is not significant (and their closure is not a result of slow processing by the ACT). The Committee also notes the Government's indications that, in view of the numerous infringement proceedings that are currently pending, priority has been given to concluding these proceedings, using all the available resources in each ACT department.
- 153.** In this regard, the Committee notes from the statistics provided that: (i) the number of completed labour offence procedures fell by 25 per cent between 2008 and 2012 (that is, from 37,793 in 2008 to 27,307 in 2012), and that the corresponding amount of fines collected also fell by about 25 per cent (that is, from €15,576,990 to €11,475,622) over that period; and (ii) on average, about 17–20 per cent of procedures were closed annually from 2008 to 2012.<sup>63</sup> The Committee also observes, based on the SWOT analysis in the strategy paper of the ACT for 2013–15, that the challenges identified include changes in the human resources policy of the public administration and a further reduction in the human resources available to the ACT.<sup>64</sup>
- 154.** *Cooperation with the judicial authorities.* The Committee also notes that, according to the trade union, the judiciary is too slow and the judicial authorities are unfamiliar with the mandate and functions of the labour inspectorate resulting in the closing of files. It notes that the Government indicates that a database containing over 600 judgments following the completion of the procedures carried out by the ACT has been made available on its intranet.
- 155.** **The Committee considers that there is no violation of Articles 17 and 18 of the Convention, as the system for the enforcement of labour offence procedures appears to be adequate, and that efforts are being made to complete all pending procedures, which include the deployment of additional resources to compensate for the perceived shortage in human resources. The Committee requests the Government to take all possible steps to allocate, on a permanent basis, sufficient human and material resources for the effective enforcement of penalties for labour law violations, so as to ensure a deterrent effect of the infringement reports established by labour inspectors, and to ensure that the increased workload for labour inspectors due to their involvement in such procedures does not prevent them from carrying out their other duties in an adequate manner.**

<sup>63</sup> For example, of the 37,793 procedures that were completed in 2008, 5,913 were closed; and of the 27,307 procedures that were completed in 2012, 5,338 were closed.

<sup>64</sup> See page 9 of the strategy paper of the ACT available at: [http://www.act.gov.pt/\(pt-PT\)/SobreACT/DocumentosOrientadores/PlanoActividades/Documents/Estrategia%202013-2015.pdf](http://www.act.gov.pt/(pt-PT)/SobreACT/DocumentosOrientadores/PlanoActividades/Documents/Estrategia%202013-2015.pdf).

**156. While the Committee welcomes the publication of court rulings as a measure to improve the work of ACT officials engaged in labour offence procedures, it is also of the view that cooperation with the judicial authorities could be further strengthened (for example, through joint training) with a view to raising understanding among judges and labour inspectors of their respective work.**

- (3) Legal protection of labour inspectors for initiating the necessary inspection procedures

**157.** The Committee notes the indication by the trade union that the fact that labour inspectors are not covered by civil liability insurance or any real form of state protection, which leads them to fear that they will be held responsible for initiating the inspection procedures necessary to carry out their work, which affects their independence, autonomy and freedom to take decisions. In this regard, it notes that the Government refers to the rights granted to labour inspectors by law, under which they are subject to legal proceedings with regard to their actions taken in the course of their duties (attorneys' fees, costs of litigation, etc.).<sup>65</sup> The Government adds that it does not have knowledge of any lawsuit initiated claiming the civil liability of labour inspectors for damages incurred as a result of their interventions.

**158.** The Committee understands from Act No. 67/2007 of 31 December 2007 on the civil liability of the State and public entities<sup>66</sup> that civil claims for damages incurred (for example, following an order to stop machines) have to be brought against the ACT (and not individual labour inspectors), and that labour inspectors can be required to reimburse internally the costs incurred by the labour inspectorate, only where gross negligence on their part is determined by the courts.

**159. The Committee therefore considers that there is no violation of Articles 17(1) and 18 of the Convention.**

## **6. Article 17(2) of Convention No. 81**

**160.** The Committee recalls that Article 17(2) of Convention No. 81<sup>67</sup> provides that:

It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

**161. Reference Framework for Inspections.** The Committee notes the indications of the trade union that the document entitled "Reference Framework for Inspections" is a binding instrument and imposes, by means of flowcharts, the conduct to be followed by labour inspectors in their dealings with the persons concerned in the context of an inspection visit. According to the SIT, the Reference Framework for Inspections curtails the autonomy of labour inspectors and denies them any freedom to examine the specific characteristics of each case, imposes a mechanical application of procedures and makes a punitive approach more likely.

<sup>65</sup> In this regard, the Government refers to section 19 of Legislative Decree No. 276/2007, of 31 July 2007.

<sup>66</sup> This Act was not referred to by the parties.

<sup>67</sup> Article 22(2) of Convention No. 129.

- 162.** On the other hand, the Committee notes the indications of the Government according to which the Reference Framework for Inspections does not restrict the autonomy of labour inspectors, nor does it focus on coercive action rather than instruction or advice, or vice versa, but that it seeks to improve the performance of inspection work. According to the Government, it includes a set of options arising from the range of competencies and functions of labour inspectors, or the action they are required to take, in conformity with legal principles and requirements (which may be mandatory or discretionary where several courses of action are possible under the law). With reference to Paragraph 8 of Recommendation No. 133, the Government observes that the Reference Framework for Inspections also reflects many of the principles and guidelines set out in *A tool kit for labour inspectors: A model enforcement policy, a training and operations manual, a code of ethical behaviour*, published by the ILO.
- 163.** The Committee notes that the complainant organization has not provided specific examples of how the flowcharts restrict the autonomy of labour inspectors. The Committee notes that the Reference Framework for Inspections provides guidance for the preparation (consultation of relevant documents, liaison with other authorities concerned, etc.), conduct (consideration of the applicable legal provisions and criteria to be taken into account when examining a case) and completion of inspection visits (measures to be taken depending on the situation encountered and the relevant legal provisions concerned). However, the flowcharts also leave labour inspectors discretion to assess different situations. For example, Annex 25 of the Reference Framework for Inspections (on the immediate suspension of work) gives labour inspectors the discretion to determine whether there is a serious risk or the serious possibility that a situation might harm the life, physical integrity or health of workers.
- 164.** The Committee considers that the objective of Article 17(2) of the Convention is to allow labour inspectors discretion to assess whether coercive measures or advice and persuasion are better suited to achieving compliance with the law. In this regard, the Committee considers that the flowcharts provide labour inspectors with useful criteria based on experience to exercise this discretion.
- 165. In the absence of more specific allegations on the alleged restrictions of the discretion of labour inspectors by the Reference Framework for Inspections, the Committee considers that there is no violation of Article 17(2) of the Convention.**

**7. Article 3 of Convention No. 81, Article 6 of Convention No. 129 and Articles 4–15 of Convention No. 155**

- (1) Effective and adequate labour inspection system

**166.** The Committee recalls that Article 3 of Convention No. 81 provides that:

1. The functions of the system of labour inspection shall be:
  - (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
  - (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
  - (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

2. Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

**167.** The Committee also recalls that Article 9(1) of Convention No. 155 provides that:

1. The enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection.

**168.** The Committee notes that the SIT alleges that the Government has not made sufficient efforts to maintain an adequate and efficient inspection system. On the other hand, it notes that the Government indicates that despite the significant economic, financial and social crisis faced by the country, which heavily influences the performance of the ACT, the latter has endeavoured to respond to challenges to its mission of promoting the improvement of working conditions.

**169.** In this context, the Committee recalls the indications in Paragraph 5 of the Occupational Safety and Health Recommendation, 1981 (No. 164), which provides that the system of inspection provided for in Convention No. 155 should be guided by the provisions of Conventions Nos 81 and 129.

**170. The Committee therefore wishes to refer to its considerations above concerning the application of Convention No. 81, and in particular to its conclusions in paras 84, 94, 97, 111, 115, 118, 123, 126, 129, 134, 138, 140, 144, 146, 155, 156, 159, and 165.**

(2) Adequate inspection strategy as a part of the national OSH strategy

**171.** The Committee recalls also that Article 4 of Convention No. 155 provides that:

1. Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.

2. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

**172.** The Committee notes that Articles 5–7 of Convention No. 155 determine the modalities of the national OSH policy, and that Articles 8–15 of the Convention establish the requirements for giving effect to this policy.

**173.** In this respect, it notes that, in particular, Article 8 of Convention No. 155 provides that:

Each Member shall, by laws or regulations or any other method consistent with national conditions and practice and in consultation with the representative organisations of employers and workers concerned, take such steps as may be necessary to give effect to Article 4 of this Convention.

**174.** The Committee notes that the SIT alleges that there is no adequate labour inspection strategy to secure the conditions of workers, including those relating to OSH. In this regard, the Committee notes the indications of the Government that the labour inspection strategy is in conformity with the definitions consolidated in Portuguese tripartite social dialogue bodies (that is, the Standing Committee on Social Dialogue of the Economic and

Social Council and the Advisory Council for the Promotion of Health and Safety at Work of the ACT) set out in the respective annual activity plans published on the ACT website.

- 175.** The Committee considers that the determination of the national labour inspection strategy is an important factor in giving effect to the national OSH strategy.
- 176.** In this regard, the Committee notes that the ACT strategy for 2013–15 is published on the ACT website, and that this strategy determines the major objectives of labour inspection and analyzes weaknesses or challenges for the ACT.
- 177.** With regard to the allegations in relation to the effectiveness of the strategy to ensure the safety and health of workers, the Committee notes that: the ACT strategy for 2013–15 determines the reduction of the number of occupational accidents as one of the two major strategic objectives for this period; and that there have not been significant changes in the number of occupational accidents and diseases, as the number of occupational accidents has decreased between 2008 to 2013<sup>68</sup> while the cases of occupational diseases<sup>69</sup> fluctuated between 2010 and 2013.<sup>70</sup>
- 178.** The Committee further notes that the Government has made efforts with a view to the effective functioning of the labour inspectorate in general, including measures to alleviate the workload of labour inspectors (for example, the assessment of the strengths and weaknesses of the ACT in the strategy paper for 2013–15, the publication of numerous tools on the ACT website to provide information to employers and workers, the provision of information resources and guidelines to assist labour inspectors in their duties, the installation of a new computer programme to make information available to labour inspectors during their inspection visits, the definition of inputs and outputs in the annual plans for labour inspection in consultation with the social partners, etc.).
- 179.** However, the major issues of the ACT appear to consist of a shortage of human and material resources and the challenge of a further reduction of the resources available to the ACT as a result of the staff reduction policy in the public administration. Other weaknesses have been recognized as including the lack of adequate incentives and the adaption of competencies to the current realities.
- 180.** **The Committee encourages the Government to follow-up on the specific issues raised by the SIT, and identified in the ACT strategy for 2013–15, with the social partners in the relevant tripartite bodies (such as the needs of the labour inspectorate in terms of human and material resources, career opportunities and the adaptation of training to current realities). In this regard, it invites the Government, in consultation with the social partners, to identify needs to ensure the effective enforcement of the legal provisions concerning OSH, and to determine priorities for action.**

<sup>68</sup> The latest annual activity report of the ACT that is published on the ACT website relates to 2013, and does not contain statistics on occupational accidents for 2012 and 2013.

<sup>69</sup> The annual activity reports that are published on the ACT website only concern the years 2011, 2012 and 2013. The 2011 annual activity report does not contain information on the cases of occupational diseases certified in 2008 and 2009.

<sup>70</sup> The annual activity reports of the ACT for 2011–13 show that the number of industrial accidents decreased between 2008 and 2011 (from 240,018 industrial accidents to 209,183), and that cases of occupational diseases fluctuated between 2010 and 2013 (there were 2,598 cases in 2010, 4,088 in 2011, 2,727 in 2012, and 3,545 in 2013).

#### IV. The Committee's recommendations

181. *In the light of the above conclusions, the Committee recommends to the Governing Body that it:*

- (a) approve the present report;*
- (b) encourage the Government, in light of the conclusions set out in paragraphs 84, 94, 97, 111, 115, 118, 123, 126, 129, 134, 138, 140, 144, 146, 155, 156, 159, 165, 170 and 180, and to take such measures as may be necessary to ensure the effective implementation of the provisions of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Occupational Safety and Health Convention, 1981 (No. 155);*
- (c) entrust the Committee of Experts on the Application of Conventions and Recommendations with following up on the issues raised in the present report in respect of the application of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Occupational Safety and Health Convention, 1981 (No. 155); and*
- (d) make this report publicly available and close the procedure initiated by the representation made by the Union of Labour Inspectors (SIT) alleging non-observance by Portugal of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Occupational Safety and Health Convention, 1981 (No. 155).*

Geneva, 10 June 2015

*(Signed)* R. Margiotta  
Chairperson

K. de Meester

K. Ross

*Points for decision:* Paragraph 181