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TWENTIETH ITEM ON THE AGENDA

Report of the Director-General

Second Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Ukraine of the Protection of Wages Convention, 1949 (No. 95), made under article 24 of the ILO Constitution by the Federation of Trade Unions of Ukraine, the Federation of Transport Workers' Trade Unions, the Association of All-Ukrainian Autonomous Trade Unions, the Association of All Ukrainian Trade Unions and Trade Union Associations "Iednist", the Confederation of Free Trade Unions of Ukraine and the Federation of Trade Unions of Small and Medium Business' Workers of Ukraine

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I. Introduction

1. By a communication dated 16 April 2015, the Federation of Trade Unions of Ukraine (FTUU), the Federation of Transport Workers' Trade Unions, the Association of All-Ukrainian Autonomous Trade Unions, the Association of All-Ukrainian Trade Unions and Trade Union Associations "Iednist", the Confederation of Free Trade Unions of Ukraine and the Federation of Trade Unions of Small and Medium Business' Workers of Ukraine made a representation to the International Labour Office under article 24 of the International Labour Organisation (ILO) Constitution alleging non-observance by Ukraine of the Protection of Wages Convention, 1949 (No. 95). Convention No. 95 was ratified by Ukraine in 1961 and is in force in the country. By a communication dated 16 March 2016, the Federation of Trade Unions of Ukraine submitted additional information.
2. The provisions of the ILO Constitution concerning the submission of representations are as follows:

Article 24

Representations of non-observance of Conventions

1. 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 that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

1. 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.
3. In accordance with articles 1 and 2(1) of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the ILO, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation, informed the Government of Ukraine and brought the matter before the Officers of the Governing Body.
4. At its 324th Session (June 2015), the Governing Body found the representation to be receivable and set up a committee to examine it. The Committee is composed of Mr Luis Carlos Melero García (Government member, Spain), Ms Garance Pineau (Employer member, France) and Mr Kelly Ross (Worker member, United States).
5. On 7 September 2015, the Government communicated its observations concerning the representation. On 19 May 2016, it transmitted its observations on the supplementary information communicated by the Federation of Trade Unions of Ukraine.
6. The Committee met on 20 March 2017 to examine the representation and adopt its report.

II. Examination of the representation

A. The complainant organizations' allegations

7. The Federation of Trade Unions of Ukraine, the Federation of Transport Workers' Trade Unions, the Association of All-Ukrainian Autonomous Trade Unions, the Association of All-Ukrainian Trade Unions and Trade Union Associations "Iednist", the Confederation of Free Trade Unions of Ukraine and the Federation of Trade Unions of Small and Medium Business' Workers of Ukraine allege that Ukraine violated the provisions set out in Convention No. 95, in particular Article 12, paragraph 1, due to late and partial payments of wages to workers.
8. The complainants indicate that despite the fact that this issue was repeatedly considered by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on the Application of Standards (CAS), as well as the measures taken by successive governments, the timely payment of wages in Ukraine remains a serious social and economic problem. The complainants consider that the Government failed to take effective measures for the implementation of previous conclusions of the CAS in order to ensure State protection of the legitimate rights of workers to the timely payment of wages.
9. According to the allegations submitted by the complainants: (i) as of March 2015, the total wage arrears amounted to more than 1.575 billion Ukrainian Hryvnia (UAH) (US\$58,333,333)¹ without regard to the "temporarily occupied territories"; (ii) the wage arrears predominantly affect industrial workers, particularly from the coal mining and mechanical engineering sectors (wage arrears amounted to more UAH1.051 billion (\$38,925,926)), as well as transport (UAH224 million = \$8,296,296), scientific and technical sectors (UAH115 million = \$4,259,259). The complainants specifically refer to the situation in the three following enterprises: Kharkiv State Aircraft Manufacturing Company; State Company Malyshev Factory; and State Company 61st Communards Shipyard; (iii) wages were not paid to 201,300 workers (2.5 per cent of staff of regular employees) at economically active enterprises. In January–February 2015, wage arrears increased by almost 20 per cent on average in the country, and by 50 to 135 per cent in some regions. The largest wage arrears are in Donetsk (UAH396 million = \$14,666,667), Kharkiv (UAH142 million = \$5,259,259) and Kiev provinces (UAH137 million = \$5,074,074).
10. The complainants highlight that due to high inflation (24.9 per cent in 2014) and increased tariffs for gas in the country, even in case of payment of wage arrears workers will lose half of their earnings. They state that the Government ignored all trade union demands, supported by workers mass protests, to ensure the payment of existing wage arrears and the timely payment of wages in the future, and to change the legislation in order to make the wage arrears unprofitable for employers. In particular, they indicate that they have proposed to strengthen the liability of employers for delays in wage payment by increasing the compensation required to be paid to workers by law for each day that pay is delayed. They add in this regard that requesting a loan from a commercial bank is significantly more expensive for an employer than the payment established by law to compensate a worker for delayed wages.
11. The complainants also allege that in spite of the Ukraine's ratification of Convention No. 95 and the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), the current mechanism of compensation for wage arrears remains flawed.

¹ US\$1 = UAH27 rate of exchange on 8 February 2017.

Furthermore, they indicate that they are seeking the establishment by the Government of appropriate guarantee institutions in order to protect wages in cases of employer insolvency, as provided for in Convention No. 173.

12. The Federation of Trade Unions of Ukraine also alleges that since the submission of the present representation, wage arrears increased to UAH2,092.5 million (\$77,500,000) as of 1 February 2016. It highlights that according to the Ukrainian Law on Collective Labour Disputes Settlement Procedure, the Joint Representative Body of all Ukrainian associations of trade unions at the national level entered in April 2015 into two collective labour disputes with the Government and the Joint Representative Body of employers at national level in order to settle the problem of payment of wages debts to workers. However, according to the complainant, the decisions taken by the Labour Arbitration and Conciliation Commission in the framework of the said disputes regarding employers' payment of wage arrears are not being implemented. It further indicates that in light of the chronic nature of the problem, and since the Government fails to take effective measures in order to ensure timely payment of wages and debt recovery to workers, the Office should send a mission in order to study the situation on the ground and provide technical assistance to the Government on the issues raised in the representation.

B. The Government's reply

13. In its reply, the Government states that the problem of wage arrears is not new. It indicates that although the situation improves from time to time due to various factors, the military activity currently taking place in Donetsk and Luhansk provinces and the occupation of Crimea have had a negative impact on socially important matters such as the payment of wages. It further indicates that in 2014, wage arrears increased once more as a result of such situation. There are currently approximately 1.3 million internally displaced persons in Ukraine.
14. The Government points out, however, arrears are 25 per cent lower than at the height of the financial crisis in 2008 and currently affect far fewer workers. In this respect, it indicates that as of 1 July 2015, statistics indicate that wage arrears stand at UAH1.915 billion (\$70,925,926) 46 per cent of which was owed to workers of enterprises in the territory of military activity in Donetsk and Luhansk provinces. The Government highlights that the majority of wage arrears is accumulated in the industrial sector representing 70.5 per cent of the overall wage arrears of Ukrainian enterprises; 11.8 per cent in transport and communications; and 5.3 per cent in the construction sector.
15. The Government states that the wage arrears owed to workers at economically active enterprises, as of 1 July 2015, amounted to UAH1,435,700,000 (\$53,174,074) and the number of workers concerned who have not received their wages on time was 265,800, equivalent to 3.3 per cent of the total number of regular workers. It adds that from the total amount of wage arrears, 23.3 per cent corresponds to enterprises that are undergoing procedures to recover the ability to pay their debts or to recognize their bankruptcy, and 1.7 per cent relates to economically inactive enterprises, such as those that suspended production and economic activities in 2014 or the preceding years. The Government states that a trend of reduced wage arrears is currently emerging due to special monitoring of the state of payment of wages.
16. According to the Government, the clearance of wage arrears is analysed each week by the Ministry of Social Policy and proposals are being made on issuing instructions to central and local authorities to improve the effectiveness of their work to liquidate arrears. In this regard, reports on the state of timely payment of wages and clearing debts are submitted and heard by the Commission on Clearing Arrears in Wages (cash allowances), Pensions, Stipends and Other Social Payments. In 2015, three sessions of this Commission were held with the

participation of local and central authorities and the parties to social dialogue. Other similar temporary commissions exist in every administrative and territorial division. These commissions hear reports from the managers of enterprises in their region affected by wage arrears and from public officials responsible for clearing debt. For the period January to August 2015, these Commissions held 4,147 sessions. As a result, 8,265 managers of enterprises were warned of disciplinary action, 33 contracts were dissolved and 2,705 other effective actions were taken.

17. The Government further states that at its request, the Parliament decided to strengthen liability for violations of the labour law. To this end, an Act amending several laws was enacted and entered into force on 1 January 2015 to reform compulsory state social insurance and introduce the legal regulation of payroll wage bills, which in particular strengthened the liability of employers for the late payment of wages. This Act strengthens the sanctions applicable under the Code of Administrative Offences, the Criminal Code and the Labour Code in case of late or non-payment of wages.²
18. Moreover, the Government indicates that in order to establish additional guarantees to protect the rights of workers in the occupied territories, it has prepared a decision on the procedure for clearing their wage arrears and paying pensions.
19. The Government further indicates that work continues on the ratification of the remaining parts of Convention No. 173. It adds that the provisions of Part II of the Convention entered into force in 2005. These provisions guarantee the protection of workers' claims by means of a privilege, so that they are paid out of the assets of the insolvent employer before non-privileged creditors. In this connection, the Government states that consideration is being given to setting up a mechanism to pay wages in cases of employer insolvency through the establishment by the employers of a guarantee institution. The Government concludes that adopting the above legislation will help improving the social protection of workers by ensuring the timely payment of wages.

² Under *section 41 of the Code of Administrative Offences*, violating the period for payment of pensions, stipends, wages or the failure to make such payments in full shall incur a fine ranging from 30 to 100 times the non-taxable minimum income (UAH510–UAH1,700 = \$19–\$63), which is imposed on the director of the enterprise, establishment or organization, regardless of type of ownership, and on citizens acting as sole proprietors. In case of repetition of the violation of established time frames for the payment of pensions, stipends and wages or the failure to make such payments in full, for which the individual has already been served an administrative penalty, or the same violations committed against a minor, a pregnant woman, a single father, mother or other person acting as a parent who is raising a child under 14 years or a child with disabilities, shall incur a fine ranging from 100 to 300 times the non-taxable minimum income (UAH1,700–UAH5,100 = \$63–\$189), which is imposed on the director of the enterprise, establishment or organization, regardless of type of ownership, and on citizens acting as sole proprietors. Under *section 175 of the Criminal Code* 1. The groundless and wilful failure of a manager of an enterprise, institution or organization, regardless of type of ownership, or a citizen acting as a sole proprietor, to pay wages, stipends, pensions or any other statutory payment within a period of more than one month, shall incur a fine of 500 to 1,000 times the non-taxable minimum income (UAH8,500–UAH17,000 = \$315–\$630), or manual labour for a term of up to two years, or detention for a term of up to two years with restriction on the right to occupy certain posts or engage in certain activities for a term of up to three years. ... 3. A person shall be discharged from criminal liability if he or she paid citizens wages, stipends, pensions, or any other statutory payments before criminal prosecution. Under *section 265 of the Labour Code*, legal entities and sole proprietors who use hired labour are liable to fines for the late payment of wages and other payments provided for in the Labour Law of three times the minimum wage in force at the time of the violation (currently UAH3,654 = \$135).

20. In its reply to the additional information submitted by the Federation of Trade Unions of Ukraine, the Government states that data provided by local governments show a positive trend in the reduction of wage arrears. As at 16 May 2016, wage arrears stood at UAH1.392 billion (\$51,555,556) while at the beginning of 2016 they amounted to UAH1.880 billion (\$69,629,630). In particular, on 16 May 2016, the wage arrears owed to workers in economically active enterprises amounted to UAH723.3 million (\$26,788,889). Wage arrears in enterprises that are in bankruptcy amounted to UAH623.9 million (\$23,107,407). In economically non-active enterprises, which suspended their production and economic activities in 2015 and previous years, wage arrears stood at UAH44.2 million (\$1,637,037). A significant portion of wage arrears (UAH887 million) (\$32,851,852) has not been paid to workers from enterprises in the Donetsk and Luhansk provinces.
21. The Government stresses that arrears now affect a significantly smaller number of workers. The number of workers in economically active enterprises to whom wages had not been paid stood at 382,100 workers as of 1 January 2015. The Commission on the Settlement of Wage, Pension, Stipend and Other Social Benefit Arrears and the corresponding temporary commissions set up by central and local governments, which held almost 7,000 meetings, made a significant contribution to settling wage arrears. As a result of the work of these commissions, UAH1.8 billion (\$66,666,667) have been paid to workers. Moreover, in the course of the same year, state labour inspectors inspected 501 enterprises with wage arrears that amounted to more than UAH500 million (\$18,518,519), and UAH125 million (\$4,629,630) in wage arrears were settled in relation to 46,000 workers. At 1 April 2016, the number of workers to whom wages had not been paid amounted to 178,800. In the first four months of 2016, state labour inspectors inspected 529 enterprises with wage arrears that amounted to UAH592,390,000 (\$21,940,370). On the basis of requests by state labour inspectors, enterprises with wage arrears settled arrears in full or in part in relation to 57,810 workers representing an amount of UAH202,538,000 (\$7,501,407).
22. As regards the ratification of Part III of Convention No. 173, the Government indicates that this issue is under examination. In order to establish a guarantee institution attached to the Ministry of Social Policy, a working group has been set up to elaborate legislation to satisfy the claims of employees where an employer is insolvent. The Government stated, however, that work in this area was currently suspended, since the level of the only social contribution has been halved. In addition, specific difficulties were encountered with the raising of social insurance funding, which was planned to be implemented together with the guarantee institution. Once the situation stabilizes, preparations for the draft law will continue.
23. Finally, the Government indicates that in order to accelerate the settlement of wage arrears, a draft instruction of the Cabinet of Ministers has been prepared proposing a number of measures to improve the state of affairs regarding the timely payment of wages and settlement of arrears. The draft instruction is being coordinated with the government authorities concerned.

III. The Committee's conclusions

24. The conclusions are based on the Committee's review of the complainant's allegations and the replies transmitted by the Government during the present procedure.
25. The Committee notes that the allegations of the complainants relate mainly to arrears in the payment of wages in violation of the provisions set out in Convention No. 95, including the insufficiency of the measures adopted by the Government and the negative impact of high inflation.

26. The following provision of Convention No. 95 is relevant for the examination of the representation:

Article 12, paragraph 1

1. Wages shall be paid regularly. Except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award.

1. Wage arrears and insufficient measures to remedy the situation

27. Concerning the wage arrears situation, the Committee notes that according to the complainants, despite the fact that this arrears issue was considered by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on the Application of Standards (CAS) and that measures have been taken by successive governments, the timely payment of wages remains a serious social and economic problem which predominantly affects industrial workers, particularly from the coal mining, mechanical engineering as well as transport, scientific and technical sectors. The Committee also notes the allegations that: (a) as of March 2015, the total wage arrears amounted to more than UAH1.575 billion (\$58,333,333) without regard to the temporarily occupied territories; (b) 201,300 workers were not paid at economically active enterprises; and (c) as of 1 February 2016, the debt had increased to UAH2,092.5 million (\$77,500,000). The Committee notes the Government's indication in this regard that: (a) the problems of wage arrears is not new and that although the situation improves from time to time due to various factors, the military activity currently taking place in Donetsk and Luhansk provinces and the occupation of Crimea has had a negative impact on social matters, in particular the increasing of wages arrears in 2014; (b) the existing arrears are however 25 per cent lower than at the highest of the financial crisis in 2008; (c) as of 1 July 2015, statistics show that arrears stood at UAH1.915 billion (\$70,925,926), 46 per cent of which was owed to the workers of enterprises in Donetsk and Luhansk provinces; and (d) in 2016 there have been improvements in the situation of wage arrears: they affected a significantly smaller number of workers and they stood at UAH1.392 million (\$51,555,556) as of 16 May 2016, while at the beginning of 2016 they amounted to UAH1.880 million (\$69,629,630). As a result of the work of the Commission on the Settlement of Wage, Pension, Stipend and Other Social Benefit Arrears, UAH1.8 billion (\$66,666,667) has been paid to workers in 2015.

28. Concerning the measures adopted to remedy the wage arrears situation, the Committee notes that according to the complainants: (a) the Government failed to take effective measures for the implementation of previous conclusions of the CAS in order to ensure the State protection of the legitimate rights of workers; and (b) the decisions taken by the Labour Arbitration and Conciliation Commission in the framework of two collective labour disputes regarding employers' payment of wage arrears are not being implemented (the Joint Representative Body of all Ukrainian associations of trade unions at the national level had entered, in April 2015, into these disputes with the Government and the Joint Representative Body of employers at national level in order to settle the problem of payment of wages debts to workers). In this regard, the Committee notes the Government indications that: (a) the clearance of wage arrears is analysed each week by the Ministry of Social Policy; (b) proposals are being developed on issuing instructions to central and local authorities to improve the effectiveness of their work to liquidate arrears; (c) reports on the state of timely payment of wages and clearing debts are submitted and heard by the Commission on Clearing Arrears in Wages (cash allowances), Pensions, Stipends and Other Social Payments. For the period from January to August 2015, these Commissions held 4,147 sessions at which 8,265 managers of enterprises were warned of disciplinary action,

33 contracts were dissolved and 2,705 other effective actions were taken; (d) Parliament decided to strengthen liability of employers for violations of the Labour Law. In this regard, an Act amending several laws on social insurance has been enacted and entered into force on 1 January 2015 introducing legal regulation of payroll wage bills which in particular strengthened the liability of employers for the late payment of wages; (e) sanctions are provided for under the Code of Administrative Offences, the Criminal Code and the Labour Code in case of late or non-payment of wages; (f) in order to establish additional guarantees to protect the rights of workers in the occupied territories, the Government has prepared a decision on the procedure for clearing their wage arrears and paying pensions; and (g) in the first four months of 2016, wage arrears representing an amount of UAH202,538,000 (\$7,501,407) were paid to 57,810 workers as a result of the action of the labour inspection.

29. The Committee recalls that the CEACR and the CAS have been examining for several years problems related to the regular payment of wages in Ukraine and that an ILO technical assistance mission visited the country in 2011 in order to inquire into the causes and extent of the wage arrears problem, assess the action being taken to redress the situation, and collect up-to-date statistical information and documentation. Following this mission, while noting with interest that the overall amount of wage arrears was generally in a decreasing trend, the CEACR considered that the situation continued to require rigorous monitoring. In its most recent examination of the situation, in 2012, the CEACR was encouraged that according to official statistics the overall amount of wage arrears continued to be on a decreasing trend. It requested the Government to pursue its efforts in a sustained and resolute manner in order to deliver large parts of the national economy from the vicious circle of wage arrears (see the observation of the CEACR on Convention No. 95, ILO, ILC, Report III (Part 1A), 102nd Session, 2013, page 703).
30. Noting that the problem of wage arrears is pervasive throughout the country, the Committee recalls that Convention No. 95 seeks to prevent wage arrears that not only deprive workers of cash and therefore lower consumption, but also imply poor tax revenues and reduced public spending, thus leading to a vicious circle that affects the entire economic and social tissue of the society (*General Survey on protection of wages – standards and safeguards relating to the payment of labour remuneration*, 2003, ILC, 91st Session, paragraph 366). The Committee also recalls that the best form of wages protection is the assurance of regular payment, which allows workers to organize their lives with a reasonable degree of certainty and security, and that any delay in the payment of wages – even more so the accumulation of large wage arrears – clearly goes against the letter and spirit of the Convention and renders the application of most of its remaining provisions meaningless (see the conclusions of the Conference Committee on the Application of Conventions and Recommendations in ILC, 99th Session, 2010, *Record of Proceedings*, Part II/65).
31. The Committee notes with concern the observation made by the CEACR in 2017 on the application of the Labour Inspection Convention, 1947 (No. 81), and recalls that giving effect to the requirements of Article 12(1) of Convention No. 95 called for a set of measures: effective monitoring by labour inspection services and sufficiently effective and dissuasive sanctions to prevent and punish infringements.
32. In the current circumstances and in light of the information provided, while acknowledging the efforts undertaken by the Government and the difficulties arising out of the military activity taking place in the country, the Committee considers that additional effective measures are needed to fully eradicate wage arrears in the country. ***The Committee therefore requests the Government to pursue its efforts and adopt without delay all the additional necessary measures required for the full implementation of the Convention, including implementation of the decisions adopted by the Labour Arbitration and Conciliation Commission.***

2. Negative impact of inflation on the wage arrears situation

33. Concerning the impact of inflation on the wage arrears situation, the Committee notes that according to the complainants, due to high inflation (almost 25 per cent in 2014) and increased tariffs for gas in the country, even in case of payment of wage arrears workers will lose half of their earnings. It notes that the Government has provided no information regarding this allegation. The Committee recalls that workers who are unpaid for many months or even years, are entitled not only to the payment of their full wages due, but also to appropriate compensation for the injury suffered. Steps to make good such injury need to be taken especially in conditions of high inflation where any delay in the payment of wages results in a real contraction of the worker's income (see ILO, *General Survey on protection of wages – standards and safeguards relating to the payment of labour remuneration*, op. cit., paragraph 372). ***The Committee therefore requests the Government to ensure that workers affected by wage arrears will receive appropriate compensation for the losses incurred by the delayed payment.***
34. ***Finally, in view of the complexity and long-standing nature of the issue under examination, the Committee encourages the Government to fully involve the social partners in the search for solutions to the problem of wage arrears.*** In this context, the Committee also recalls that the Government may avail itself of ILO technical assistance, including the possibility of inviting an ILO mission that could examine the situation on the ground and contribute to the full implementation of the Convention.

3. Wage arrears in the context of bankruptcy

35. With respect to wage arrears in the context of bankruptcy, the Committee notes that the complainants indicate that the current mechanism of compensation for wage arrears remains flawed despite the ratification of Conventions Nos 95 and 173 and calls for the ratification of Part III of Convention No. 173. The Committee notes the Government's indication in this regard that the issue of the ratification of Part III of Convention No. 173 is under examination. It notes that the process of preparation of legislation to protect workers' claims in case of insolvency through the establishment of a guarantee institution attached to the Ministry of Social Policy was suspended due to difficulties encountered with the raising of social insurance funding. The Committee notes the information provided by the parties.

IV. The Committee's recommendations

36. ***In the light of the conclusions set out in paragraphs 24 to 35 above, the Committee recommends that the Governing Body:***
- (a) approve the present report;***
 - (b) request the Government to pursue its efforts and adopt without delay all necessary measures aimed at the full implementation of the Convention, including implementation of the decisions adopted by the Labour Arbitration and Conciliation Commission as well as ensuring effective monitoring by labour inspection services and sufficiently effective and dissuasive sanctions to prevent and punish infringements;***

- (c) *request the Government to ensure that workers affected by wage arrears will receive appropriate compensation for the losses incurred by the delayed payment;*
- (d) *encourage the Government to fully involve social partners in the search for solutions to the problem of wage arrears;*
- (e) *remind the Government that it may avail itself of ILO technical assistance, including the possibility of inviting an ILO mission that could examine the situation on the ground and contribute to the full implementation of the Convention;*
- (f) *request the Government to supply detailed information to the Committee of Experts on the Application of Conventions and Recommendations in its next report under article 22 of the Constitution of the ILO on the application of Convention No. 95; and*
- (g) *make public the present report and close the representation procedure.*

Geneva, 20 March 2017

(Signed) Mr Luis Carlos Melero García

Ms Garance Pineau

Mr Kelly Ross

Points for decision: Paragraph 36