

Fourth meeting of the tripartite working group on the full, equal and democratic participation in the ILO's tripartite governance

► Background note: measures to implement the Instrument for the Amendment of the Constitution of the ILO, 1986 (the 1986 Amendment) upon its entry into force

Introduction

1. As requested at the third meeting of the working group on the full, equal and democratic participation in the ILO's tripartite governance (TWGD)¹, this Note provides an overview of the measures needed to implement the Instrument for the Amendment of the Constitution of the ILO, 1986 (the 1986 Amendment) upon its entry into force. Such measures include, first, amendments to the Standing Orders of the International Labour Conference and of the Governing Body, and second, the adoption or revision of protocols by governments of each of the four regional electoral colleges.

Amendments to the Standing Orders of the International Labour Conference and of the Governing Body

2. When the International Labour Conference at its 72nd Session (1986) adopted the 1986 Amendment, it also adopted consequential and other related amendments to the Standing Orders of the Conference (ILCSO) which would come into force at the session of the Conference following the entry into force of the 1986 Amendment.²
3. Because of subsequent amendments adopted by the Conference to its Standing Orders since 1986, most of the consequential and other related amendments have either already been included in the Standing Orders or have been overtaken by such later amendments. It is also noted that while the 1995 amendments to the Conference Standing Orders were adopted on a provisional/interim basis pending the entry into force of the 1986 Amendment and the entry into force of the Amendment was to render them ineffective, they have been included in the recently-concluded comprehensive review of the ILCSO and as a result, the new ILCSO adopted in June 2021 have now incorporated most of those 'provisional' amendments.
4. Therefore, the Standing Orders of the Conference and the Standing Orders of the Governing Body (GBSO) should be reviewed to identify any necessary amendments in

¹ Third meeting of the tripartite working group on the full, equal and democratic participation in the ILO's tripartite governance, [Summary record of proceedings](#), para. 33.

² International Labour Conference, 72nd Session, 1986, [Record of Proceedings](#), pp. LIX-LXV.

anticipation of the entry into force of the 1986 Amendment. These amendments would need to be submitted for adoption at a time when the entry into force of the 1986 Amendment would appear forthcoming even though it is difficult to foresee with any degree of certainty the timeframe within which the remaining nine ratifications might be received.

5. More concretely, amendments are required to the provisions of the ILCSO relating to Governing Body elections and to the provisions of the GBSO and the Introductory Note concerning the composition of the Governing Body. The provisions of the GBSO on quorum and the minimum number of members who may request in writing a special meeting of the Governing Body should also be revised. The composition of the General Affairs Committee of the Conference, whose composition as far as the government group is concerned mirrors that of the Governing Body, would need to be revised accordingly.
6. In addition, since the 1986 Amendment foresees the submission of the Director-General's appointment to the Conference for approval, the rules governing the appointment of the Director-General in Annex III to the GBSO should be revised and new provisions should be inserted into the ILCSO on confirmation procedure.
7. Moreover, the ILCSO provisions concerning the voting quorum in the plenary would need to be revised in view of the fact that under the 1986 Amendment, abstentions will also be counted for in the calculation of quorum in addition to the number of votes for and against. Similarly, ILCSO provisions concerning majority decisions would need to be amended since apart from decisions by simple and two-thirds majority, the 1986 Amendment provides also for decisions by three-fourths majority; in all three cases, majority is qualified as the decision has to be concurred in by at least a certain percentage of the delegates attending the Conference.
8. A related issue that needs to be addressed is the timing of the first Governing Body elections following the entry into force of the 1986 Amendment. This raises principally the question of whether the 122 elected Governing Body members (56 regular and 66 deputy members) serving at the time of the entry into force of the 1986 Amendment could remain in office until the next Governing Body elections are due to be held or whether elections should anyway be held for the appointment of all 132 Governing Body members at the ILC session immediately following the entry into force of the 1986 Amendment even if this may not happen to be a Governing Body election year.
9. A comparative table of the current composition of the Governing Body and that following the entry into force of the 1986 Amendment is in the Appendix.

Adoption/ revision of regional protocols

10. It is recalled that the 1986 Amendment provides for the adoption of protocols by the governments of each regional electoral college. These protocols shall specify the means of implementing the principles set out in the 1986 Amendment, i.e. equitable geographical distribution, size of population, economic activity, and special characteristics of the region. The protocols may also be used to resolve any disputes on electoral process or results within regional and subregional levels and have to be deposited with the Director-General.

11. Three of the four regions (Africa, Asia and Europe) have adopted protocols in anticipation of the adoption of the 1986 Amendment. Europe, in particular, has adopted a global protocol concerning the distribution of seats between Western and Eastern Europe, and two subregional protocols governing respectively Western and Eastern Europe.³ No protocol has as yet been adopted in the Americas region even though there has been agreement in principle on the bases of a future protocol.⁴
12. Member States should give consideration to the possibility of reviewing and adjusting the protocols already concluded in view of the emergence of new Member States and other developments that have taken place since their conclusion some forty years ago.
13. As was explained in the Governing Body in 1994, “while the adoption of a protocol is in principle compulsory for the electoral colleges, the Conference did not consider that the lack of a protocol for the Americas was an obstacle to the adoption of the amendment to the Constitution. Moreover, should the Instrument enter into force at a time when one of the regions has not agreed on a protocol, clearly that region would be equally bound by the constitutional principles, of which the protocol is only a reflection in terms of the realities and needs of the region.”⁵

Next steps

14. As indicated above, there is no certainty about the time of the possible entry into force of the 1986 Amendment. Therefore, adopting a new set of consequential amendments to the Standing Orders of the Conference and of the Governing Body at a time when the likelihood of the entry into force of the 1986 Amendment in the near future still appears uncertain carries the risk that these revised consequential amendments may require further modifications by the time the 1986 Amendment comes finally into effect.
15. One possible approach would be that when a further threshold is reached, for instance three or five additional ratifications needed, the Governing Body may request the Office to prepare draft consequential amendments to the ILC SO for approval and subsequent adoption by the Conference on the understanding that those amendments would take effect at the ILC session following the entry into force of the 1986 Amendment.
16. Considering that the consequential amendments are non-controversial and of a rather formal nature, the process for their preparation, approval and final adoption would not exceed a period of six to nine months (this would include examination of draft amendments at one or two consecutive Governing Body sessions and a final consideration at the following session of the Conference).
17. On the basis of the above overview, four main observations may be made:

³ The global protocol for Europe is at ILC, 67th Session, 1981, [Provisional Record No. 38](#), p. 16.

The preliminary draft Protocol for the African Region is at ILC, 70th Session, 1984, [Provisional Record No. 2](#), pp. 8-9.

The Protocols for the Asian and Pacific Region and for Eastern Europe are at ILC, 69th Session, 1983, [Provisional Record No. 38](#), pp. 21-22.

The protocol for Western Europe is at ILC, 69th Session, 1983, [Provisional Record No. 2](#), p. 11.

⁴ ILC, 69th Session, 1983, [Provisional Record No. 38](#), Appendix V, p. 38/22.

⁵ GB.259/14/4, para. 24.

- first, the entry into force of the 1986 Amendment may not be imminent but specific preparatory work is required for the effective implementation of its provisions once it enters into force;
- second, in light of the information available regarding the prospects of further ratifications, constituents need to consider when would be the suitable time for preparing the necessary amendments to the Standing Orders of the Conference and of the Governing Body;
- third, constituents also need to determine whether elections for the new composition of the Governing Body under the 1986 Amendment would have to take place at the session of the Conference immediately following the entry into force of the constitutional amendment or whether such elections should be held at the expiry of the term of office of the Governing Body members serving at the time of the entry into force of the 1986 Amendment;
- fourth, the four regional government groups may wish to initiate coordinated reflection on the need to review and possibly update any existing protocol as provided for in the 1986 Amendment, or negotiate and conclude such a protocol.

Appendix

Current composition (122 members)

Non-Government members	Government members		
EMPLOYERS 14 regular members + 19 deputy members	AFRICA 0 non-elective 6 elective seats 8 deputy members	AMERICAS 2 non-elective 5 elective seats 5 deputy members	10 permanent (non-elective) seats Members of chief industrial importance
WORKERS 14 regular members + 19 deputy members	ASIA/PACIFIC 3 non-elective 4 elective seats 8 deputy members	EUROPE 5 non-Elective 3 elective seats 7 deputy members	

COMPOSITION

GOVERNMENTS

EMPLOYERS

Composition according to 1986 amendment (132 members)

Non-Government members	Government members ⁶	
EMPLOYERS 28 regular members + 10 deputy members	AFRICA 13 regular members all elective seats – no deputy members	AMERICAS 12 regular members all elective seats – no deputy members
WORKERS 28 regular members + 10 deputy members	ASIA/PACIFIC 15 regular members all elective seats – no deputy members	EUROPE 14 regular members all elective seats – no deputy members

WORKERS

TOTAL

	Regular	Deputy	Regular	Deputy	Regular	Deputy	Regular	Deputy	R+D
Present	28	28	14	19	14	19	56	66	122
Post entry into force	56	0	28	10	28	10	112	20	132

⁶ The initial allocation provided for in the 1986 Amendment is 13 seats for Africa, 12 for the Americas and alternately 15 and 14 seats for Asia and Europe. The two remaining seats would rotate: one between Africa and the Americas and the other between Asia and Europe.