

**FOR DECISION**

## FIFTH ITEM ON THE AGENDA

**Composition of the Governing Body**

1. The resolution adopted at the 11th African Regional Meeting of the International Labour Organization (Addis Ababa, 24–27 April 2007) on Africa's representation in the Governing Body of the International Labour Office<sup>1</sup> was considered by the Governing Body during its 299th (June 2007) and 300th (November 2007) Sessions, both in the Committee on Legal Issues and International Labour Standards (LILS)<sup>2</sup> and in the plenary,<sup>3</sup> and during its 301st Session (March 2008).<sup>4</sup>
2. The debate highlighted a desire to find an early solution to the question of the representation of African governments at the Governing Body. The fact that, in practice, no African government is represented among the ten members of chief industrial importance referred to in article 7, paragraph 2, of the Constitution of the International Labour Organization was seen as discriminatory.
3. Ultimately, the Governing Body requested the Director-General to prepare a concrete proposal on the composition of the Governing Body, which could expeditiously address both the number of non-elective seats and their geographical distribution for submission at the 303rd Session (November 2008) of the Governing Body.<sup>5</sup>
4. In light of the debate and the instructions given by the Governing Body, the Office considers that of the different options presented to the Governing Body in March 2008, an amendment to article 7 of the Constitution, adopted in accordance with the procedure set forth in article 36 of the Constitution, would be the most appropriate and could lend itself to early action. Such an amendment should address both the issue of non-elective seats and their geographical distribution. In this process, the effects of a new amendment on the 1986 Instrument of Amendment, which has not yet entered into force and may not receive the required number of ratifications to enter into force, should be specified. A new amendment could also include transitional provisions.

<sup>1</sup> GB.300/6.

<sup>2</sup> GB.300/LILS/4. This document analyses, from an historical perspective, the major legal and political issues linked to the composition of the Governing Body of the ILO.

<sup>3</sup> GB 300/13.

<sup>4</sup> GB 301/5.

<sup>5</sup> GB.301/PV, p. 19.

5. The Office considers that, in order to comply with the request of the Governing Body to reach an expeditious solution, a proposed amendment to the Constitution would need to be backed by a wide and strong consensus. A proposal entailing significant differences of views, thus rendering the ratification of the amendment difficult, would not meet this essential requirement.
6. Bearing this in mind, the Office concludes that a suitable solution to the issue could be found in the enlargement of the number of members of chief industrial importance referred to in article 7, paragraph 2, of the Constitution, which could be increased from ten to 12, while maintaining unchanged the total number (28) of Government Governing Body members. At the same time, a geographical requirement should be added which would have the effect that all four regions (Africa, Americas, Asia and Pacific, and Europe) should be represented among the non-elective members of chief industrial importance. For example, one could imagine a system requiring a minimum of two Government members from each of the four regions to be included among the 12 members of chief industrial importance.
7. Under the results based on current data, the establishment of two non-elective seats for African members would have no practical effect on the Americas, Asia and Pacific, and Europe regions, as now represented.
8. As far as the African region is concerned, two countries from that region could be included among the 12 members of chief industrial importance, by the procedure referred to in article 1.3 of the Standing Orders of the Governing Body.<sup>6</sup> Consequently the number of regular elective seats for that region would be reduced by two (from six to four). The entry into force of the amendment would trigger only a few changes to the Standing Orders of the Conference and to the Standing Orders of the Governing Body.
9. Since the ILO Constitution, in its current text, does not define regions, the Office suggests that the new amendment refer to the present four regions recognized in application of article 38 of the Constitution and to the current lists of members used for that purpose, leaving to the Governing Body the task of amending the lists in case of need.<sup>7</sup>
10. As a transitional measure, and in order to ensure legal stability, the new instrument of amendment could stipulate that it would take effect at the end of the period of office of the Governing Body during which it enters into force.

<sup>6</sup> The Standing Orders of the Governing Body on the selection of members of chief industrial importance are as follows:

“1.3.1. The Governing Body shall not decide any question relating to the selection of the members of chief industrial importance unless the question of modification of the list of such members has been included in the agenda of the session as a specific item and the Governing Body has before it a report by its Officers on the question to be decided.

1.3.2. The Officers of the Governing Body shall, before recommending to the Governing Body any modification of the list of Members of chief industrial importance, take the advice of a committee appointed by the Governing Body and including experts qualified to advise on the most appropriate criteria of industrial importance and on the relative industrial importance of States assessed on the basis of such criteria.”

The consideration concerning the composition of such committees of experts “has always been to secure the highest level of statistical authority while not including in the Committee anyone from a State which may prove to be either just above or just below the line of demarcation between a State of chief industrial importance and other countries”. See minutes of the 172nd Session of the Governing Body (May–June 1968), p. 37, and GB.300/LILS/4, paras 12–23.

<sup>7</sup> GB.280/LILS/1, Appendix III.

11. Under article 46 of the Standing Orders of the International Labour Conference, any proposal for the amendment of the Constitution of the International Labour Organization has to be included in the agenda of the Conference by the Governing Body at least four months before the opening of the session at which it is to be considered in accordance with article 14 of the Constitution. The relevant decision should therefore be taken at this session of the Governing Body if the issue is to be presented to the 98th Session of the Conference in June 2009.

12. *The Governing Body may wish to:*

- (a) *express its views on the above and in particular decide whether it agrees to the proposed course of action for presenting to the International Labour Conference a draft instrument of amendment of article 7 of the Constitution of the International Labour Organization along the lines indicated above;*
- (b) *if the decision in (a) is affirmative, decide to place an item concerning the amendment of article 7 of the Constitution of the International Labour Organization on the agenda of the 98th Session of the International Labour Conference (June 2009), together with any consequential change to the Standing Orders of the Conference;*
- (c) *instruct the Office to prepare a draft instrument of amendment to the ILO Constitution, in light of the discussion of the proposals in this document, as well as proposals for any consequential changes to the Standing Orders of the International Labour Conference and of the Governing Body, for review at the 304th Session of the Governing Body (March 2009), through the LILS Committee, with a view to submission to the International Labour Conference at its 98th Session (June 2009) of the proposed instrument of amendment and revisions of the Standing Orders.*

Geneva, 1 October 2008.

*Point for decision:* Paragraph 12.