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ELEVENTH ITEM ON THE AGENDA

Report of the Director-General

Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by the Republic of Moldova of the Labour Inspection Convention, 1947 (No. 81), submitted under article 24 of the ILO Constitution by the National Confederation of Trade Unions of Moldova (CNSM)

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I. Introduction

1. In a communication dated 18 June 2013, the National Confederation of Trade Unions of Moldova (CNSM) addressed a representation to the International Labour Office, in accordance with article 24 of the ILO Constitution, alleging non-observance by the Republic of Moldova of the Labour Inspection Convention, 1947 (No. 81).
2. Convention No. 81 was ratified by the Republic of Moldova on 12 August 1996 and is 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, paragraph 1, of the above Standing Orders, the Director-General acknowledged receipt of the representation, informed the Government of the Republic of Moldova 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 tripartite committee to examine the matter. The Governing Body appointed Ms Carmen Dumitriu (Government member, Romania), Ms Lidija Horvatić (Employer member, Croatia), and Mr Bogdan Iuliu Hossu (Worker member, Romania) as members of the tripartite committee. Following the election of the members of the Governing Body in June 2014, Mr Bogdan Iuliu Hossu was replaced by Ms Silvana Cappuccio (Worker member, Italy).
7. The Government of the Republic of Moldova submitted information in reply to the representation on 11 November 2013 and 16 June 2014. Complementary information was provided by the Government in a communication dated 8 August 2014. The CNSM submitted its comments concerning this complementary information in a communication dated 13 October 2014.
8. The Committee met on 19 and 24 March 2015 to examine the case and adopt its report.

II. Examination of the representation

A. The complainant's allegations

9. In its communication dated 18 June 2013, the complainant organization alleges non-observance by the Government of the Republic of Moldova of Convention No. 81, indicating that several provisions of Law No. 131 of 2012 on state control of entrepreneurship activities (Law on State Control) are incompatible with Convention No. 81, in particular with Articles 12 and 16.
10. The CNSM indicates that Law No. 140-XV of 2001 on labour inspection (Law on Labour Inspection) establishes the labour inspectorate and determines its objectives and responsibilities, including its methods and procedures for carrying out monitoring of the observance of legislation. The Law outlines the rights of labour inspectors, including the right to visit freely at any time, day or night, workplaces, without notifying the employer. The CNSM also refers to the provisions contained in the Labour Code of 2003 related to labour inspection (contained in Title XIII). The trade union asserts that the Law on Labour Inspection, as well as the provisions concerning labour inspection in the Labour Code, are in conformity with Convention No. 81.
11. The CNSM states that, pursuant to the adoption of the Law on State Control in 2012, the labour inspectorate is now subject to the provisions of this Law. It provides an excerpt of the annex of the Law, which indicates that the state labour inspectorate is included in the list of the bodies to which the Law applies. It alleges that subjecting the labour inspectorate to the provisions of the Law on State Control is contrary to the principles of Convention No. 81, and refers in this regard to sections 3(g), 7(2) and (3), 14(1) and 18(1) of the Law.
12. The CNSM indicates that section 3(g) of the Law on State Control provides that controls shall only be performed if absolutely necessary for carrying out the functions of the monitoring authority, and only when other means to verify compliance have been exhausted. Section 7(2) provides that the supervisory authority (such as the labour inspectorate) shall send a request to the body empowered with the right to initiate controls (and empowered to grant a mandate for control) in order to be able to perform a control action. Section 7(3) provides that the mandate to perform a control will be issued if the control requested is included in the schedule of controls of that supervisory authority, or if the conditions set by the law for unannounced controls are met. Section 14 of the Law provides that the same supervisory authority is not entitled to perform a control of the same entity more than once in a calendar year. Section 18 of the Law provides that notice of the decision to carry out a control shall be sent to the entity subject to control at least five working days prior to the carrying out of the control.
13. The CNSM asserts that these provisions are not in conformity with Article 12 of Convention No. 81, as they do not permit labour inspectors with the proper credentials to enter freely and without previous notice any workplace liable to inspection, or to enter by day any premises which they may have reasonable cause to believe are liable to inspection. The CNSM also indicates that the performance of controls exclusively according to a schedule and not more than once a calendar year is not in conformity with Article 16 of Convention No. 81, which provides that workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.
14. The CNSM also states that during the elaboration of the Law on State Control, it submitted, in December 2012, its observations on the draft to the Government and requested that the state labour inspectorate be removed from the remit of the Law. The

CNSM indicates that this proposal was rejected, and that the Government replied that the purpose of the Law was to prevent cases of abuse by the relevant authorities in the carrying out of their control functions. In this respect, the CNSM includes as annexes to its representation several communications it exchanged with the Government.¹

15. The CNSM also refers to the Government's proposal to amend the Law on Labour Inspection,² in order to bring it into compliance with the provisions of the Law on State Control. The purpose of this amendment was to delete section 11²(2) of the Law on Labour Inspection, which provided that unannounced controls could be carried out on the initiative of the labour inspector without a mandate for control. The CNSM states in a letter annexed to the representation, sent by the CNSM to the Prime Minister on 31 January 2013,³ that the amendment would have the effect of prohibiting labour inspectors from carrying out unannounced controls without having a mandate for control, and is not in conformity with Article 12 of the Convention.

B. The Government's reply

16. In a communication dated 11 November 2013, the Government indicated that it had convened a working meeting in November 2013, in order to discuss the complaint, inviting representatives of the CNSM, the state labour inspectorate, the Ministry of Health and the union of health professionals. The Government indicated that, as a result of the meeting, it had initiated amendments to the Law on State Control. In a communication dated 16 June 2014, the Government specified that it was in the process of drafting proposed amendments to amend the Law on State Control. These amendments would aim to exclude "collisions" with sectoral acts, including the Law on Labour Inspection, and to ensure compliance with Convention No. 81.
17. In July 2014, the Office sent a letter requesting complementary information on the proposed amendments to the Law on State Control. In a communication dated 8 August 2014, the Government communicated a "first draft" of these amendments (draft amendments to the Law on State Control).
18. Pursuant to the draft amendments, a new section 1(5) would be inserted into the Law that states that the provisions of the Law on State Control would not be "applicable if some inherent characteristics of certain activities of state control on labour, security and health at work are inevitably in contradiction with its provisions. In this case, the control in this field will be made under the Law on Labour Inspection, taking into account, as possible, the provisions of the present law". Section 14 of the Law on State Control would be amended to state "the same monitoring body has no right to exercise control of the same persons more than once within a calendar year except in cases foreseen by law" (proposed changes underlined). Section 18 of the Law would be supplemented with a paragraph that would state that section 18(1), which requires that the decision to carry out a control be sent to the entity subject to control at least five working days prior to the carrying out of the control, "would not be applicable in cases foreseen by law". As regards section 19, a new

¹ The annexes to the CNSM's representation include two letters sent by the CNSM to the Prime Minister of the Republic of Moldova, on 14 December 2011 and 31 January 2013 respectively, as well as the Government's reply to both from the Ministry of the Economy, dated 30 December 2011 and 8 February 2013.

² The amendment to the Law on Labour Inspection was subsequently adopted, in 2013, by Law No. 139.

³ Annex 5 of the representation.

section 19(2) would be added to the Law (with the current section 19(2) becoming section 19(3)). It would state that the authority with supervisory functions “can undertake unannounced controls without a risk evaluation in the case of certain situations that represent an obvious imminent danger to health and life, as would be the case following certain petitions from citizens or organizations alleging violations of these rights”. The new section 19(3) (previously section 19(2)) would also be amended to state that “unannounced controls may not be carried out on the basis of [unverified information and/or] information coming from an anonymous source except in the case that the information invokes danger to persons’ life and health.” (proposed deletion in square brackets and proposed addition underlined).

19. The Government indicated that a final draft of the amendments, following ongoing dialogue between the Ministry of Labour, Social Protection and Family and the Ministry of Economy, would be submitted at a later date.

C. The complainant’s comments on the complementary information provided by the Government

20. The CNSM, in a communication dated 13 October 2014, states that it does not support the draft amendments to the Law on State Control, and that these amendments do not reflect the proposals made by the CNSM. The complainant indicates that the state labour inspectorate should be removed entirely from the application of the Law on State Control. It asserts that several terms used in the draft amendments are ambiguous and not appropriate for legislation, including the terms “inherent characteristics” and “specific activities”.
21. Moreover, the draft amendments do not restore the provisions that had been deleted from the Law on Labour Inspection, pursuant to amendments to this Law adopted in 2013. In this regard, the CNSM indicates that the Law on Labour Inspection should once again be amended in order to restore the deleted section 11²(2), which permitted unannounced inspections by labour inspectors without a mandate for control. The CNSM accordingly considers that the draft amendments need to be improved.
22. The CNSM also refers to another draft bill to amend the Law on State Control (a copy of which is not provided by the trade union) for which the state labour inspectorate is a co-sponsor. It indicates that the “disclosure of motives” of this draft bill states that employers have realized that the Law on State Control has reduced the monitoring and operational capacity of the state labour inspectorate, resulting in more frequent breaches of labour and occupational safety and health legislation, and that this has prejudiced the rights of workers. This is evidenced by the increase in occupational accidents and workers’ complaints and petitions. The number of petitions brought by workers increased by 50 per cent compared to 2012, and there have been nine more serious occupational accidents in 2013 compared with 2012, as well as ten more fatal accidents. Further, the “disclosure of motives” indicates that “if in 2012, state inspections had contributed to the detection of over one thousand persons engaged in undeclared work, this number was reduced to 287 in 2013”, and that this was due in part to the excessive formalities caused by the Law on State Control, which lead to a considerable decrease in the efficiency of controls.

III. The Committee’s conclusions

23. The Committee has based its conclusions on its review of the complainant organization’s allegations, the reply and complementary information transmitted by the Government and

the comments of the organization on this complementary information. 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

24. The Committee notes that the complainant organization claims that the application to the labour inspectorate of Law No. 131 of 2012 on state control of entrepreneurship activities (Law on State Control), as well as the amendments to Law No. 140-XV of 2001 on labour inspection (Law on Labour Inspection) adopted in 2013 by Law No. 139, are not in compliance with the requirements of Articles 12 and 16 of Convention No. 81. The Committee also notes that the Government, in its communications, does not specifically refer to Articles 12 and 16 of the Convention, but does provide the draft amendments to the Law on State Control, which it indicates are aimed at achieving compliance with Convention No. 81.

25. The Committee recalls that Article 12(1) provides that:

1. Labour inspectors provided with proper credentials shall be empowered:
 - (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
 - (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; ...

26. Article 16 of Convention No. 81 provides that:

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

27. The Committee will first give an overview of the legislative provisions relating to labour inspection in the country (Part B), followed by an analysis of the relevant legal provisions with respect to the requirements of Article 12 (Part C), and subsequently Article 16 (Part D), of Convention No. 81. Finally, it will examine the possible impact on this legislative framework of the draft amendments to the Law on State Control, in light of the requirements of the Convention (Part E).

B. Overview of the relevant legal provisions

28. The Committee notes that the issues raised by the CNSM concern section 3(g), section 7(2) and (3), section 14(1) and section 18(1) of the Law on State Control, as well as section 11² of the Law on Labour Inspection.

(i) *Law on Labour Inspection*

29. The Committee notes that the Law on Labour Inspection defines the organization, objectives and responsibilities of the state labour inspectorate. It notes in particular that section 3 of the Law on Labour Inspection defines the tasks assigned to the labour inspectorate as:

(a) ensuring the application of legal provisions and other regulations relating to working conditions and the protection of workers; (b) disseminating information on the most effective means of achieving compliance with legal provisions; and (c) of informing the Ministry of Labour, Social Protection and Family on difficulties connected to the application of the labour legislation.

30. Section 8 sets out the rights of labour inspectors when performing their functions. Section 8(1)(a) provides that labour inspectors, when performing the function of a labour inspector, and upon the presentation of their badge, have the right:

to have unhindered access at any time, day or night, without prior notice to the employer, to workplaces and production premises.

31. Section 11²(1) provides that:

state control over the observance of legislative acts and other normative acts in the field of occupational safety and health, shall be carried out under the decision and order for inspection issued by: (a) the Director of the state labour inspectorate; (b) the Deputy Director of the state labour inspectorate; (c) the Chief of the territorial labour inspection; and (d) the Deputy Chief of the territorial labour inspection.

32. The Committee also notes that the Law on Labour Inspection was amended in 2013, pursuant to Law No. 139. Prior to the adoption of Law No. 139, section 11²(1) of the Law was followed by section 11²(2), which stated that unannounced controls could be carried out on the initiative of the labour inspector and without a mandate for control. Section 11²(2) was deleted pursuant to section 7 of Law No. 139.

(ii) Law on State Control

33. The Committee notes that the Law on State Control was adopted in 2012. Section 1 of the Law states that its purpose is to strengthen the legal and institutional basis for the State's monitoring of business activities, and that the Law intends to establish the basic principles of control, as well as procedures for the undertaking of such controls. In this connection, the Committee notes the Government's statement, in a letter dated 30 December 2011 addressed to the CNSM, and annexed to the representation, that the Law aimed to prevent cases of abuse of authority with respect to entrepreneurs in the performance of control functions by the State. The Committee notes that the Law on State Control applies to the activities of 33 State institutions, listed in its annex.⁴ It notes that, pursuant to paragraph 27 of its annex, the Law applies to the activities of the state labour inspectorate.

C. Examination of the conformity of the legislation with Article 12 of the Convention

34. In examining conformity with Article 12 of the Convention, the Committee will analyse the relevant legal provisions first to assess: (i) whether labour inspectors with the proper credentials are empowered to enter freely any workplace liable to inspection, or to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and, subsequently, (ii) whether inspectors may do so without previous notice.

⁴ The 33 institutions to which the Law on State Control applies include the tax authorities, the customs service, the pharmaceutical inspectorate, the national medical insurance company, the state inspection for construction, the tourism agency, the consumer protection agency, the national agency for transport safety, the agency for port inspection, the national centre for personal data protection and the council for television and radio.

(i) Free entry into workplaces**(a) Amendments to the Law on Labour Inspection**

- 35.** The Committee notes the indication of the CNSM that the amendments made to the Law on Labour Inspection (pursuant to Law No. 139 of 2013) are not in conformity with Article 12 of the Convention. The CNSM states that these amendments to section 11² of the Law on Labour Inspection were made with a view to aligning that Law with the Law on State Control.
- 36.** The Committee notes that section 7 of Law No. 139 provides for the deletion of section 11²(2) of the Law on Labour Inspection. Section 11²(2) had previously stated that unannounced controls may be carried out on the initiative of the labour inspector, and without a mandate for control.
- 37.** In this regard, the Committee notes that the amendment to section 11² of the Law on Labour Inspection removes the possibility for labour inspectors to undertake an unannounced inspection on their own initiative and without a mandate for control.

(b) Law on State Control

- 38.** The Committee notes the allegation of the CNSM that the Law on State Control is not in conformity with Article 12 of Convention No. 81, as it does not permit labour inspectors with the proper credentials to enter freely any workplace liable to inspection.
- 39.** In this regard, the Committee notes that section 7(1) of the Law on State Control provides that:

the mandate for control shall be issued by the monitoring body to the authority with supervisory functions.

- 40.** Section 7(2) of the Law provides that:

the authority with supervisory functions shall send a request to the body empowered with the right to initiate controls (and empowered to grant a mandate for control) in order to be able to perform a control action.

- 41.** Section 7(3) provides that:

the mandate to perform a control will be issued if the control requested is included in the schedule of controls of that authority with supervisory functions, or if the conditions set by the law for unannounced controls are met.

- 42.** In this connection, the Committee notes that section 2 of the Law on State Control defines the term “authority with supervisory functions” as a body concerned with the application of legislation and compliance in its field of competence, which has the power of control (provided by legal acts), but does not have the power to initiate a control or to grant a mandate for control. Section 2 also defines the mandate for control as the administrative act provided by the monitoring body to the authority with supervisory functions, to enable that authority to implement a control. Pursuant to paragraph 27 of the annex of the Law, the state labour inspectorate constitutes an authority with supervisory functions.
- 43.** The Committee accordingly notes that section 7 of the Law on State Control requires the labour inspectorate to request a mandate of control prior to the undertaking of an inspection.

(c) Requirements of the Convention with respect to the free undertaking of inspections

44. The Committee recalls that the CEACR, in its General Survey of 2006, examined various restrictions on inspectors' free initiative, including the requirement to obtain a formal authorization issued by a higher authority. In this respect, the CEACR stated that the different restrictions placed in law or in practice on inspectors' right of entry into workplaces could only stand in the way of achieving the objectives of labour inspection as set out in the labour inspection Conventions, and urged the countries concerned to take the necessary steps to eliminate these restrictions.⁵
45. The Committee considers that the effect of section 7(3) of the Law on State Control, together with the deletion of section 11²(2) of the Law on Labour Inspection, is that labour inspectors do not have the freedom to undertake an inspection on their own initiative, in all cases, including in situations where they have reason to believe that an undertaking is in violation of the legal provisions. The Committee considers that it could be difficult to ensure the protection of workers (the primary objective of labour inspection) if labour inspectors are unable to intervene on their own initiative. The Committee considers that the requirement to obtain prior permission (in this case, a mandate for control) to conduct an inspection in all cases constitutes a restriction on the free initiative of inspectors to undertake an inspection.
46. It accordingly observes that the legal framework does not enable an inspector to enter freely, at any hour of the day or night, any workplace liable to inspection, pursuant to Article 12(1)(a) of the Convention, nor does it enable a labour inspector to enter, by day, any premises which they may have reasonable cause to believe is liable to inspection, pursuant to Article 12(1)(b) of the Convention.
47. *The Committee therefore considers that the requirement to obtain prior permission to undertake an inspection in all cases, pursuant to section 7 of the Law on State Control and following the deletion of section 11²(2) of the Law on Labour Inspection, constitutes a restriction on the free initiative of inspectors to undertake an inspection, including where they have reason to believe that an undertaking is in violation of the legal provisions. It accordingly finds that this restriction is not compatible with Article 12(1)(a) and (b) of the Convention.*

(ii) Unannounced visits

(a) Law on State Control

48. The Committee notes that the CNSM identifies section 18 of the Law on State Control as being incompatible with Convention No. 81.
49. The Committee notes, in this regard, that section 18(1) of the Law on State Control provides that a notice of the decision to carry out a control shall be sent to the entity subject to control at least five working days prior to the carrying out of the control. Section 18(2) provides that section 18(1) shall not apply in the case of an unannounced control, undertaken pursuant to section 19 of the Law.

⁵ ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), International Labour Conference, 95th Session, Geneva, 2006, paras 265 and 266.

50. The Committee observes that section 19 of the Law on State Control provides that the authority with supervisory functions can decide, based on a risk assessment, to undertake an unannounced control, irrespective of the established schedule of control, in certain circumstances. Pursuant to section 19(1) of the Law, unannounced controls are permitted in the following cases: (i) follow-up inspections (if it is necessary to verify that recommendations of a previous scheduled inspection have been implemented); (ii) if reliable information (supported with evidence) is available indicating that there has been a violation of the legislation or a situation of emergency which represents an imminent danger to life and/or property or damage to the environment exceeding a specific monetary value; (iii) if the concerned entity has not provided information required under obligatory reporting provisions; (iv) if it is necessary to verify information received during another control of an entrepreneur with whom the entity subject to inspection has economic relations, and only if there is no other method for receiving such information, and if the information is of crucial importance for achieving the objectives of control; and (v) in the case of a request for control from the entity subject to control. Section 19(2) provides that unannounced controls may not be carried out on the basis of unverified information and/or information coming from an anonymous source. Section 19(3) states that unannounced controls cannot be carried out if the authority with the supervisory functions has other direct or indirect methods for getting the necessary information. The Committee therefore observes that section 19 of the Law on State Control empowers inspectors to undertake unannounced inspections in limited circumstances.

(b) Requirements of the Convention with respect to the undertaking of unannounced inspections

51. The Committee notes that according to the preparatory work leading to the adoption of the Convention, the first guarantee for the right of free access to premises is that inspectors should be able to, on production of their authority, exercise this right without giving previous notice. The report further states that:

... only an unforeseen visit could enable the supervising official to discover the real normal conditions of employment and working conditions of an undertaking. If the inspector were required to give notice to the employer in advance of an impending visit, the employer would be able to conceal any trace of an offence which he habitually committed. This would be contrary to the spirit of labour legislation, which naturally requires all those subject to it to comply constantly with its provisions. Moreover, only unexpected visits can give the parties concerned the assurance – or the apprehension – that supervision will be exercised constantly, even though, on account of shortage of staff, it is carried out only at considerable intervals. The unexpected nature of the visit thus counterbalances to some extent its infrequency.⁶

52. The Committee also wishes to recall, with reference to paragraph 267 of the CEACR's General Survey of 2006, that the fact that Convention No. 81 provides that inspectors should be allowed to enter workplaces without previous notice does not mean that, where deemed useful or necessary by the inspector, the employer or his or her representative cannot be informed of the time and purpose of the inspection. In this respect, the Committee notes the CEACR's indication that combining unannounced visits with scheduled visits can be an effective practice.⁷

⁶ *Organisation of labour inspection in industrial and commercial undertakings*, Preliminary Report, International Labour Conference, 26th Session, Geneva, 1940, p. 116.

⁷ ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), International Labour Conference, 95th Session, Geneva, 2006.

53. The Committee observes that sections 18 and 19 of the Law on State Control provide for the undertaking of visits both with and without previous notice. However, it observes that unannounced visits may only be performed in limited circumstances. In this regard, it notes that the possibility for inspectors to undertake unannounced visits appear to be quite narrow, as specified in section 19(1), and in particular preclude, under section 19(2), the undertaking of an unannounced inspection visit pursuant to an anonymous complaint.
54. The Committee is of the view that the decision on whether a visit should be undertaken with or without notice should be solely based on which is better suited to achieving an effective control of the legal provisions that are enforceable by labour inspectors.
55. *Recalling the importance of fully empowering labour inspectors to make visits without previous notice, in order to guarantee effective supervision, the Committee considers that the restrictions on the undertaking of unannounced inspections contained in sections 18 and 19 of the Law on State Control are incompatible with the requirements in Article 12(1)(a) and (b) of the Convention with respect to the undertaking of inspections by labour inspectors without the provision of notice to the employer.*

D. Examination of the conformity of the legislation with Article 16 of the Convention

56. In relation to the application of Article 16, the Committee notes the CNSM's assertion that the Law on State Control, in limiting inspections to a schedule of not more than one inspection per entity per calendar year (according to its section 14(1)), is not in conformity with Article 16 of the Convention. It also notes that the CNSM refers to section 3(g) which provides that other methods of verification should be exhausted prior to undertaking of an inspection.

(i) Schedule of inspections

(a) Law on State Control

57. The Committee notes that section 14(1) of the Law on State Control, on the periodicity of scheduled inspections, states that the same control body is not entitled to perform a control of the same entity more than once in a calendar year. However, section 14(2) of the Law states that unannounced inspections, carried out pursuant to the provisions of the Law relating to unannounced inspections, and follow-up inspections, are exempt from the provision of section 14(1).⁸ In this respect, the Committee notes that section 19 regulates the undertaking of unannounced inspections, and indicates that these inspections are carried out irrespective of the established schedule of control. The Committee accordingly observes that, in the Law, the concepts of unannounced inspections and unscheduled inspections are equivalent.
58. With respect to a schedule of inspections, section 15(1)–(3) of the Law on State Control states that each authority with supervisory functions shall develop a quarterly schedule for inspections, which is approved by the body that monitors inspections, and this schedule shall be placed on the website of the State Register of Control. Section 15(4) provides that supervisory bodies are not permitted to alter this schedule or perform an inspection not

⁸ Section 14(3) of the Law on State Control also states that section 14(1) does not apply in the case of the reorganization or liquidation of the entity subject to control.

foreseen in the schedule. Section 16 provides that the schedule for inspections shall be developed based on a number of criteria, including: the degree of danger of the activities performed by the entity subject to control; the number of persons employed; the qualifications of those employed; the volume of production; the number of previous violations detected; the presence of reliable and verified evidence of possible violations or suspicious operations; the types of activities performed by the entity subject to inspection; and the date of the last inspection.

(b) Requirements of Article 16 of the Convention

59. The Committee observes that the criteria used when preparing a schedule for inspections appears to include a number of important factors that should be taken into account when planning inspections. In this regard, the Committee considers that inspection plans can be a useful tool for a labour inspectorate to maximize its effectiveness, establish priorities and focus resources. However, such inspection plans should not prevent the undertaking of a sufficient number of unscheduled and unannounced inspections prompted by complaints or other reports, in order to ensure the effective application of the relevant legislative provisions.

60. With respect to the number of unscheduled and unannounced visits that may be carried out, the Committee recalls that section 19 of the Law on State Control provides the specific criteria and limitations for the undertaking of such inspections. The Committee observes, with reference to paragraphs 50 and 55 above, that the criteria for the undertaking of such inspections appear to be narrow, and do not include in particular the possibility of undertaking such an inspection pursuant to an anonymous complaint or on the basis of unverified information. Therefore, while recognizing the benefits of a system that combines both scheduled and unscheduled/unannounced visits, the Committee observes that the limitations on the undertaking of unscheduled visits, coupled with the restrictions on the number of permitted scheduled visits, could constitute an obstacle to the undertaking of inspection visits as is necessary to ensure the effective application of the relevant legal provisions.

61. *The Committee considers that the undertaking of inspection visits according to a schedule is not incompatible with Article 16 of the Convention, to the extent that this schedule does not preclude the undertaking of a sufficient number of unscheduled visits. It also considers that the particular limitations on the carrying out of unscheduled inspections contained in section 19 of the Law on State Control constitute an impediment to the carrying out of inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.*

(ii) **Exhaustion of methods of verification prior to inspection**

(a) Law on State Control

62. The Committee notes that section 3 of the Law on State Control outlines 12 basic principles for inspections, including that inspections shall only be performed if absolutely necessary for carrying out the functions of the monitoring authority, and only when other means to verify compliance with the law have been exhausted (section 3(g)).⁹

⁹ The other principles outlined in section 3 of the Law on State Control are: prevention of violations of legislation through monitoring advice; objectivity and impartiality; monitoring on the basis of

(b) Requirements of Article 16 of the Convention

- 63.** The Committee notes that, according to the preparatory work leading to the adoption of the Convention:

... it is necessary ... to make certain that inspections are carried out at sufficiently frequent intervals, so that the inspector's supervision is continuous in character. A visit of inspection, even when the inspector finds no occasion to make an observation or issue an order, is still useful. It gives the inspector an opportunity for taking preventive steps and giving advice and instruction. On the other hand, if visits are infrequent, their deterrent effect is reduced, and employers may be encouraged to break the law.¹⁰

The Committee recalls that the objective of the Convention is the effective enforcement of the legal provisions relating to conditions of work and the protection of workers, and that this should be the primary criteria when determining whether an inspection should be carried out.

- 64.** *The Committee accordingly considers that the limitations placed on the undertaking of inspections until other means to verify compliance with the law have been exhausted, pursuant to section 3(g) of the Law on State Control, appear not to be compatible with the principle contained in Article 16 of the Convention.*

E. Examination of the draft amendments to the Law on State Control, in light of the requirements of the Convention

- 65.** The Committee notes that, following the representation submitted by the CNSM, the Government elaborated draft amendments to the Law on State Control. The Government provided a concise draft of these amendments with its communication dated 8 August 2014. The Committee notes the Government's indication that these amendments constitute a first draft, and that a final draft would be submitted at a later date. It also notes that the CNSM does not support these draft amendments and considers that they need to be improved.
- 66.** With regard to the content of the draft amendments, the Committee refers to paragraph 18 above, which outlines the specific revisions proposed by these amendments. The Committee notes that these draft amendments relate to several of the issues in the legal framework identified above, and concern in particular the following questions: the scope of application of the Law on State Control (section 1(5)), the frequency of controls (section 14), the provision of notice prior to the undertaking of an inspection (section 18) and the possibility of carrying out unannounced controls (section 19). It also notes that the

risk assessment; presumption of compliance for the person subject to inspection; regulatory transparency; acting within the mandate provided to perform controls; proportionality respect to the duration of monitoring; recording all actions and monitoring undertaken; the right to appeal a decision taken and receive compensation in the case of damage; the prohibition of vested interest of the inspector; and preventing damage or the suspension of activities for the person subject to inspection.

¹⁰ *Organisation of labour inspection in industrial and commercial undertakings*, Preliminary Report, International Labour Conference, 26th Session, Geneva, 1940, p. 231.

draft amendments do not propose revisions to the provisions in national law requiring a mandate prior to the undertaking of an inspection.¹¹

67. With regard to the scope of application of the Law, the Committee recalls that the draft amendments would insert a new section 1(5) into the Law on State Control that states that the provisions of the Law would not be “applicable if some inherent characteristics of certain activities of state control on labour, security and health at work are inevitably in contradiction with its provisions. In this case, the control in this field will be made under the Law on Labour Inspection, taking into account, as possible, the provisions of the present law”. The Committee observes that the amendments do not define what constitutes an “inherent characteristic” of the activities of the state labour inspectorate. The Committee accordingly considers that this unclear concept of “inherent characteristics” would make it difficult to determine where, in cases of contradiction, the Law on Labour Inspection would apply instead of the Law on State Control.
68. With regard to the frequency of controls, the Committee notes that pursuant to the draft amendments, section 14 of the Law on State Control would be amended to state “the same monitoring body has no right to exercise control of the same persons more than once within calendar year except in cases foreseen by law” (proposed changes underlined). With reference to its considerations made in paragraph 61 above, the Committee observes that the legislation in force does not appear to identify the specific “cases” for which the frequency of visits could be more than once a year.
69. With respect to the provision of notice, the Committee notes that the proposed amendments would supplement section 18 of the Law to state that section 18(1), which requires that the decision to carry out a control be sent to the entity subject to control at least five working days prior to the carrying out of the control, “would not be applicable in cases foreseen by law”. With reference to its considerations raised in paragraph 55 above, the Committee observes that the legislation in force also does not appear either to identify the specific “cases” for which notice of five working days prior to the undertaking of a control would not be applied.
70. With regard to the possibility to carry out unannounced controls, the Committee recalls that the amendments would revise section 19 of the Law to state that the authority with supervisory functions “can undertake unannounced inspections without a risk evaluation in the case of certain situations that represent an obvious imminent danger to health and life, as would be the case following certain petitions from citizens or organizations alleging violations of these rights”. Section 19(3) (previously section 19(2)) would also be revised to state that “unannounced controls may not be carried out on the basis of [unverified information and/or] information coming from an anonymous source except in the case that the information invokes danger to persons’ life and health” (proposed deletion in square brackets and proposed addition underlined). The Committee notes that the proposed amendments to section 19 of the Law on State Control would marginally expand the situations under which unannounced visits could be undertaken by labour inspectors. Nonetheless, and with reference to paragraph 55 above, it observes that the circumstances under which unannounced visits could be undertaken remain limited, and would allow unannounced inspections based on an anonymous complaint only if the person making the complaint refers to a danger to a person’s life and health.
71. ***The Committee accordingly considers that the draft amendments, as currently worded, do not address the issues referred to in paragraphs 47, 55, 61 and 64 above, concerning the application of Articles 12 and 16 of the Convention.***

¹¹ Section 7 of the Law on State Control and section 11² of the Law on Labour Inspection, as amended.

Noting the Government's indication that the draft amendments to the Law on State Control are preliminary, the Committee invites the Government to take the necessary steps to continue to discuss these matters with the social partners at the national level, with a view to bringing the national legal framework into conformity with the Convention. It also encourages the Government to consider availing itself of ILO technical assistance during the further elaboration of this draft.

IV. The Committee's recommendations

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

- (a) approve the present report;*
- (b) invite the Government, in light of the conclusions set out in paragraphs 47, 55, 61, 64 and 71, to take such measures without delay as may be necessary to ensure the effective implementation of Articles 12 and 16 of the Labour Inspection Convention, 1947 (No. 81);*
- (c) invite the Government to consider availing itself of ILO technical assistance, particularly with regard to the further elaboration of amendments to the Law No. 131 of 2012 on state control of entrepreneurship activities;*
- (d) 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 Articles 12 and 16 of Convention No. 81; and*
- (e) make this report publicly available and close the procedure initiated by the representation made by the National Confederation of Trade Unions of Moldova (CNSM) alleging the non-observance by the Republic of Moldova of Convention No. 81.*

Geneva, 24 March 2015

(Signed) C. Dumitriu
Chairperson

L. Horvatić

S. Cappuccio