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Institutional Section

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TWELFTH ITEM ON THE AGENDA

### Report of the Director-General

#### Second Supplementary Report: Report of the Meeting of Experts on Cross-border Social Dialogue (Geneva, 12–15 February 2019)

##### Purpose of the document

The document provides information on the tripartite Meeting of Experts on Cross-border Social Dialogue that took place in Geneva from 12 to 15 February 2019. In its appendix, the document contains the conclusions of the meeting, which include a set of recommendations by the experts for follow-up purposes. The Governing Body is invited to approve the conclusions and to decide how to enable the Office to give practical effect to them (see draft decision in paragraph 16).

**Relevant strategic objective:** Social dialogue and tripartism.

**Main relevant outcome/cross-cutting policy driver:** Outcome 7: Promoting safe work and workplace compliance including in global supply chains. Outcome 4: Promotion of sustainable enterprises. Cross-cutting policy driver: Social dialogue.

**Policy implications:** Subject to approval by the Governing Body, the conclusions and recommended follow-up will provide guidance for future work by the Office on promoting cross-border social dialogue, including by adjusting its social dialogue-related workplan.

**Legal implications:** None.

**Financial implications:** The follow-up to the conclusions will have implications for the workplan of the Office, with extra-budgetary funding being sought for its operationalization as appropriate.

**Follow-up action required:** See the draft decision in paragraph 16.

**Author unit:** Governance and Tripartism Department (GOVERNANCE).

**Related documents:** GB.328/INS/5/1(Add.); GB.329/INS/3/2; GB.333/INS/9; GB.334/INS/15(Rev.).



## Background

1. In 2013, the International Labour Conference called on the Office to convene a meeting of experts on cross-border social dialogue to analyse contemporary experiences, challenges and trends, as well as the role and value added of the ILO. <sup>1</sup> In November 2016, the Governing Body specified that a meeting on cross-border social dialogue should address decent work in global supply chain issues, including human rights due diligence. <sup>2</sup> In June 2018, the Governing Body approved the holding of the meeting in the first quarter of 2019, to analyse contemporary experiences, challenges and trends characterizing cross-border social dialogue initiatives, as well as the role and added value of the ILO and to seek guidance from ILO constituents on the future work of the Organization in this area. <sup>3</sup>
2. Accordingly, the Meeting of Experts on Cross-border Social Dialogue was convened in Geneva from 12 to 15 February 2019. It was attended by eight experts nominated by the Governments of Bangladesh, France, Mexico, Morocco, the Netherlands, the Republic of Korea, South Africa and the United States (accompanied by five advisers); eight experts nominated after consultations with the Employers' group (accompanied by three advisers and two members of the group's secretariat); and eight experts nominated after consultation with the Workers' group (accompanied by two advisers and three members of the group's secretariat). The Meeting was also attended by 17 Government observers and five representatives of three official international organizations. <sup>4</sup>
3. The Meeting was chaired by an independent Chairperson, Mr Jean-Jacques Elmiger (Switzerland). The Vice-Chairpersons were Ms Anousheh Karvar (Government, France), Ms Renate Hornung-Draus (Employer, Germany) and Ms Christy Hoffman (Worker, United States).
4. The Office prepared a report to serve as a basis for the Meeting's deliberations. <sup>5</sup> The report provided a review of existing standards, the practices developed at various levels and the instances that pave the way for cross-border social dialogue. It placed emphasis on: the variety of forms of cross-border social dialogue, including cross-border social dialogue in regional economic communities, bilateral and multilateral trade agreements and interregional arrangements; cross-border social dialogue related to international instruments relevant to the promotion of fundamental principles and rights at work and human rights due diligence; cross-border social dialogue through transnational company agreements; and multi-stakeholder dialogue related to corporate social responsibility/responsible business conduct policies and initiatives adopted by enterprises.
5. The experts discussed the outcomes, challenges and trends associated with the various forms of cross-border social dialogue and analysed the role and added value of the ILO. Among other things, it was noted that cross border social dialogue has existed since the creation of the ILO, when the practice of bringing together representatives of governments, employers

<sup>1</sup> ILO: [Resolution concerning the recurrent discussion on social dialogue, International Labour Conference](#), 102nd Session, Geneva, 2013, para. 12(14).

<sup>2</sup> [GB.328/PV](#), para. 83(a)(v).

<sup>3</sup> [GB.333/PV](#), para. 145.

<sup>4</sup> The list of participants will be made available on the Meeting's [website](#).

<sup>5</sup> ILO: [Report for discussion at the Meeting of Experts on Cross-border Social Dialogue](#) (Geneva, 12–15 February 2019), Geneva, 2019.

and workers at the international level to seek solutions to labour and social issues became a key feature of the Organization. The ILO has subsequently supported its constituents in their efforts to engage with each other using the increasing number of channels for cross-border social dialogue.

## Overview of the Meeting's conclusions

6. The Meeting unanimously adopted a set of conclusions (see appendix), the overall aim of which is to enhance the contribution of cross-border social dialogue to the promotion of decent work in an increasingly interconnected world of work.
7. Acknowledging the many different forms and levels of social dialogue, the experts stressed that robust social dialogue at the national and local levels involving legitimate social partners was needed in order for cross-border social dialogue to be successful and for its outcomes to be implemented effectively. They also acknowledged that a central goal of cross-border social dialogue should be to drive meaningful and sustainable improvements for workers on the ground, with the active engagement of the social partners at the local level, and that governments and national labour administrations can play an important role in supporting cross-border social dialogue initiatives. The experts concluded that the effectiveness of cross-border social dialogue depends on respect for the autonomy of the social partners, the capacity and willingness of the parties to engage in good faith dialogue, an enabling environment, labour law enforcement and workplace compliance at the national level and appropriate linkages between social dialogue at the local, sectoral, national, regional and global levels.
8. The experts also discussed the principle of corporate respect for human rights including human rights due diligence, as spelled out in the United Nations (UN) *Guiding Principles on Business and Human Rights*, and how it can relate to social and multi-stakeholder dialogue. They recalled that the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) also emphasizes that all enterprises should carry out human rights due diligence with the meaningful consultation of relevant stakeholders including workers' organizations. In addition, the experts acknowledged that transnational company agreements are creating conditions conducive to respect for the fundamental principles and rights at work, including rights to freedom of association and collective bargaining within multinational enterprises operations and activities, and that, where they exist, transnational company agreements can also contribute to the corporate responsibility to respect human rights and to perform human rights due diligence. They concluded that a high number of corporate social responsibility/responsible business conduct policies and initiatives exist in many enterprises in order to fulfil their responsibility to respect human rights, and that such initiatives have evolved in conjunction with international instruments, particularly the UN *Guiding Principles*. They also concluded that several corporate social responsibility/responsible business conduct initiatives are developed in consultation with a wide range of stakeholders.
9. The conclusions contain a set of recommendations both for the constituents and for the Office, aimed at providing guidance on the future work of the Organization in this area.<sup>6</sup> A summary of the recommendations is provided below.

<sup>6</sup> The recommendations are set out in paras 12–14 of the conclusions.

## For the constituents

10. Governments should promote an enabling environment for cross-border social dialogue and: ensure that the fundamental principles and rights at work, in particular freedom of association and the effective recognition of the right to collective bargaining, are effectively embedded in national law and practice; build the capacity of labour administrations and labour inspectorates in relation to cross-border social dialogue; ensure effective access to justice, including to judicial and non-judicial remedies; adopt national policies and regulations that are conducive to cross-border social dialogue; enhance the role of the social partners in the formulation and effective implementation of national laws and regulations; and consult the national social partners during the negotiation, implementation and monitoring of the labour provisions of bilateral and multilateral trade and investment agreements. Governments should also promote effective linkages between different forms and levels of social dialogue, and strengthen their complementarity. Where appropriate, they should support existing national economic and social councils and similar institutions and expand their mandate to include cross-border social dialogue-related issues. They should promote all aspects of the MNE Declaration and, whenever meaningful or relevant in the national context, appoint national focal points on a tripartite basis, or make use of similar processes, for the effective promotion of the MNE Declaration and for the facilitation of the involvement of the social partners in relation to the principles of the MNE Declaration.
11. Workers' and employers' organizations should: raise awareness of the content of initiatives promoting social dialogue and sound labour relations at the cross-border level; provide information on the content of the initiatives to the stakeholders affected by them and encourage the parties concerned to do so; explore the conclusion of cross-border sectoral agreements; ensure appropriate involvement of local constituents in cross-border social dialogue, especially in developing economies; and raise awareness of the voluntary company–union dialogue facilities under the MNE Declaration for the discussion of issues of mutual concern. The parties concerned by transnational company agreements should consider developing dispute resolution mechanisms under such agreements and other agreements in order to enhance compliance and support their constituents to establish grievance mechanisms that could be accessible to all workers of the company.

## For the Office

12. The ILO is called upon to develop various actions, guided by the diverse needs and realities of its tripartite constituents. Knowledge generation and dissemination may include conducting research, notably on: the content, scope and impact of various cross-border social dialogue initiatives; challenges and opportunities in regional or subregional social dialogue processes and institutions; and challenges and opportunities in sectoral agreements, including in the maritime sector. The Office is also asked to establish a single and user-friendly ILO repository of knowledge on cross-border social dialogue.
13. Training, capacity-building and development cooperation may include: the development of a compendium based on good practices of different forms of cross-border social dialogue; regional and sectoral meetings, and other means available to the ILO, particularly Decent Work Country Programmes; training on cross-border social dialogue; supporting social partners' initiatives at the level of regional economic communities; building the capacity of national social dialogue institutions in relation to the various forms of cross-border social dialogue; supporting member States, upon request, in establishing national focal points on a tripartite basis or using similar tools or processes to promote the MNE Declaration, and providing these focal points with appropriate training; and enhancing the capacity of national labour administrations and inspectorates of member States in the area of cross-border social dialogue. The Office is also called upon to operationalize paragraph 23(c) of the conclusions

concerning decent work in global supply chains adopted by the International Labour Conference at its 105th Session (2016) under which the ILO should support and facilitate, upon joint request, the process of negotiation and follow-up of international framework agreements.

14. Promotional campaigns and advocacy action developed by the Office should be aimed at: promoting cross-border social dialogue, including transnational company agreements; strengthening efforts to promote the MNE Declaration, placing priority on identifying and maintaining, with tripartite involvement, a list of facilitators for the company–union dialogue; promoting cross-border social dialogue across UN bodies, including in the context of UN reform and the Sustainable Development Goals; and advocating the involvement of national social partners in the negotiation, implementation and follow-up of trade and investment agreements and in relation to specific issues, such as fair labour migration policies, providing assistance upon request.
15. In considering standard-setting action, the experts recalled that, as agreed by the Governing Body and in line with the 2016 conclusions concerning decent work in global supply chains, the ILO would convene a meeting of experts to explore the next steps in the area of promoting decent work in global supply chains, and to consider, inter alia, what guidance, programmes, measures, initiatives or standards are needed to promote decent work and facilitate the reduction of decent work deficits in global supply chains.

## Draft decision

### 16. *The Governing Body:*

- (a) *approved the conclusions of the Meeting of Experts on Cross-border Social Dialogue contained in the appendix to document GB.337/INS/12/2 and authorized the Director-General to publish and disseminate them widely; and*
- (b) *requested the Director-General to take into consideration the action recommended in the conclusions in the design and implementation of future programmes and budgets of the ILO.*

## Appendix

### Conclusions of the Meeting

The Meeting of Experts on Cross-border Social Dialogue, having met in Geneva from 12 to 15 February 2019, analysed contemporary experiences, challenges and trends characterizing cross-border social dialogue initiatives, developed between or among governments, workers and employers or their representatives beyond national borders, to promote decent work and sound labour-management relations. The Meeting also analysed the role and added value of the ILO in order to provide guidance on the future work of the Organization in this area.

The Meeting adopts, this fifteenth day of February 2019, the following conclusions:

1. Recognizing the fundamental role of social dialogue under the Philadelphia Declaration, the Declaration on Fundamental Principles and Rights at Work, the Declaration on Social Justice for a Fair Globalization, the present conclusions build on and aim to contribute to the implementation of the conclusions concerning the first recurrent discussion on social dialogue adopted at the 102nd Session of the International Labour Conference (ILC) in 2013, the conclusions concerning decent work in global supply chains adopted at the 105th Session of the ILC in 2016, and the conclusions concerning the second recurrent discussion on social dialogue and tripartism adopted at the 107th Session of the ILC in 2018. The present conclusions aim at enhancing the contribution of cross-border social dialogue to the promotion of decent work in an increasingly interconnected world of work.

### ***Contemporary experiences, challenges and trends***

2. Social dialogue is at the heart of the ILO's mandate. Cross-border social dialogue is an essential aspect of this mandate, while preparing for the future.
3. Over the past century, spaces for cross-border social dialogue have multiplied in response to deepening globalization and regional integration. This has created opportunities for promoting international labour standards (ILS) and the fundamental principles and rights at work, and for addressing decent work deficits. The exercise of freedom of association and the right to collective bargaining remains a challenge and there is a continued need to respect, promote and realize the fundamental principles and rights at work.
4. Cross-border social dialogue occurs in various forms and at different levels. Its effectiveness depends on respect for the autonomy of the social partners, the capacity and willingness of the parties to engage in good faith dialogue, an enabling environment, labour law enforcement and workplace compliance at the national level and appropriate linkages between social dialogue at local, sectoral, national, regional and global levels.

### ***Multilateral instruments for a fair globalization, decent work and cross-border social dialogue***

5. Cross-border social dialogue, including among actors in supply chains, contributes to the effective implementation of many international instruments such as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises. The MNE Declaration, which is consistent with the UNGPs, emphasizes that all enterprises should carry out human rights due diligence with the meaningful consultation of relevant stakeholders including workers' organizations.

### ***Cross-border social dialogue in regional economic communities, interregional groups/forums, bilateral and multilateral trade and investment agreements***

6. Regional, subregional and interregional social dialogue are major forms of cross-border social dialogue. In the European Union (EU), cross-border social dialogue has had a long-standing history. Initiatives have also been taken in other regional groupings, such as the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), the Association of Southeast Asian Nations (ASEAN), the Organization of American States (OAS), the Caribbean Community (CARICOM) and the Greater Mekong Sub region (GMS).
7. Consultative mechanisms in labour-related provisions in some bilateral and multilateral trade and investment agreements involve national employers' and workers' organizations in the implementation of such provisions. The effectiveness of these mechanisms depends on the capacity of the institutions and of the social partners involved, transparency, and adequate resources to facilitate cross-border social dialogue.

### ***Cross-border social dialogue through transnational company agreements***

8. Transnational company agreements (TCAs), including but not limited to international framework agreements (IFAs), are an important form of cross-border social dialogue. They are creating conditions conducive to respect for the fundamental principles and rights at work, including rights to freedom of association and collective bargaining within multinational enterprises' (MNEs) operations and activities. They can help to improve industrial relations in the operations covered by the agreements, among other objectives, in order to achieve decent work.
9. TCAs have implications for workers in many regions and countries. Where they exist, TCAs can also contribute to the corporate responsibility to respect human rights and to perform human rights due diligence. The impact of TCAs on working conditions (including in supply chains, where they are covered by the agreement) can be affected by the quality of labour administration and industrial relations.

### ***Corporate social responsibility and responsible business conduct initiatives***

10. For many years, a high number of corporate social responsibility (CSR) /responsible business conduct (RBC) policies and initiatives exist in many enterprises in order to fulfil their responsibility to respect human rights. CSR/RBC initiatives have evolved in conjunction with international instruments, particularly the UNGPs. Several CSR and RBC initiatives are developed in consultation with a wide range of stakeholders.
11. Governments increasingly play a role in providing frameworks and incentives for CSR/RBC. Some countries have enacted legislation, formulated national action plans on business and human rights or adopted other national policy initiatives and strategies to support the implementation of the UNGPs and human rights due diligence.

### ***Increasing the relevance, inclusiveness and effectiveness of cross-border social dialogue***

12. While respecting the autonomy of, and in consultation with, the social partners, national labour administrations can play an important role in making cross-border social dialogue initiatives relevant and inclusive, and their outcomes effective. Governments should promote an enabling environment for cross-border social dialogue and:

- (a) Ensure that the fundamental principles and rights at work, in particular freedom of association and the effective recognition of the right to collective bargaining, are effectively embedded in national law and practice;
  - (b) Build the capacity of labour administrations and labour inspectorates in relation to cross-border social dialogue and to address enforcement gaps;
  - (c) Ensure effective access to justice, including to judicial and non-judicial remedies;
  - (d) Enhance the role of the social partners in the formulation and effective implementation of national laws and regulations;
  - (e) Consult the national social partners during the negotiation, implementation and monitoring of the labour provisions of bilateral and multilateral trade and investment agreements. In line with the ILO Declaration on Social Justice for a Fair Globalization, the fundamental principles and rights at work should be respected and their violation should not be used as a comparative advantage; labour standards should not be used for protectionist trade purposes;
  - (f) Promote effective linkages between different forms and levels of social dialogue, and strengthen their complementarity;
  - (g) Where appropriate, support existing national economic and social councils and similar institutions and expand their mandate to include cross-border social dialogue-related issues;
  - (h) Promote all aspects of the MNE Declaration;
  - (i) Whenever meaningful or relevant in the national context, appoint national focal points on a tripartite basis, or make use of similar processes, for the effective promotion of the MNE Declaration and for the facilitation of the involvement of the social partners in relation to the principles of the MNE Declaration;
  - (j) Adopt national policies and regulations that are conducive to cross-border social dialogue.
13. Workers' and employers' organizations should:
- (a) Raise awareness about the content of initiatives promoting social dialogue and sound labour relations at the cross-border level;
  - (b) Provide information on the content of the initiatives to the stakeholders affected by them and encourage the parties concerned to do so;
  - (c) Explore the conclusion of cross-border sectoral agreements;
  - (d) Ensure appropriate involvement of local constituents in cross-border social dialogue, especially in developing economies;
  - (e) Raise awareness about the voluntary company-union dialogue facilities under the MNE Declaration for the discussion of issues of mutual concern;
  - (f) For the parties concerned: consider developing dispute resolution mechanisms under TCAs and other agreements in order to enhance compliance;
  - (g) Support their constituents to establish grievance mechanisms that could be accessible to all workers of the company.

### ***The role and added value of the ILO in the area of cross-border social dialogue***

14. Guided by the diverse needs and realities of its tripartite constituents and recognizing its unique convening power, the ILO should provide support, as appropriate, in the form of:

- A. Knowledge generation and dissemination, which may include:
- (i) Conducting research, notably on:
    - (a) The content, scope and impact of various cross-border social dialogue initiatives;
    - (b) Challenges and opportunities in regional or subregional social dialogue processes and institutions;
    - (c) Challenges and opportunities in sectoral agreements, including in the maritime sector.
  - (ii) Establishing a single and user-friendly ILO repository of knowledge on cross-border social dialogue, including an up-to-date database on TCAs.
- B. Training, capacity building and development cooperation, including through:
- (i) Developing a compendium based on good practices of different forms of cross-border social dialogue, including on how they can contribute to due diligence processes;
  - (ii) Regional and sectoral meetings, and other means available to the ILO, particularly Decent Work Country Programmes (DWCPs);
  - (iii) Developing and delivering training on cross-border social dialogue, in collaboration with the International Training Centre of the ILO in Turin. This should include training for actors involved in the reform of the UN;
  - (iv) Supporting social partners' initiatives at the level of regional economic communities;
  - (v) Building the capacity of national social dialogue institutions in relation to the various forms of cross-border social dialogue;
  - (vi) Supporting ILO member States, upon request, to establish national focal points on a tripartite basis or to use similar tools or processes to promote the MNE Declaration, and provide the focal points with appropriate training;
  - (vii) Enhancing the capacity of national labour administrations and inspectorates of member States in the area of cross-border social dialogue;
  - (viii) Operationalizing para. 23 (c) of the 2016 ILC conclusions concerning decent work in global supply chains, to support and facilitate, upon joint request, the process of negotiation and follow-up of IFAs.
- C. Promotional campaigns and advocacy, including through:
- (i) Promoting cross-border social dialogue, including TCAs, as a tool to address decent work deficits and advance labour rights;
  - (ii) Strengthen efforts to promote the MNE Declaration, placing priority on identifying and maintaining, with tripartite involvement, a list of facilitators for the company-union dialogue and the establishment and training of national focal points;
  - (iii) Promoting cross-border social dialogue across UN bodies, including in the context of UN reform and the Sustainable Development Goals (SDGs);
  - (iv) Advocating the involvement of national social partners in the negotiation, implementation and follow-up of trade and investment agreements, and in relation to specific issues, such as fair labour migration policies; providing assistance upon request.

D. Standard-setting action

- (i) As agreed by the ILO Governing Body, and in line with the 2016 ILC conclusions concerning decent work in global supply chains, a meeting of experts will be convened to explore next steps in the area of promoting decent work in global supply chains, and to consider, inter alia, “what guidance, programmes, measures, initiatives or standards are needed to promote decent work and/or facilitate reducing decent work deficits in global supply chains” (para. 25(c)).