



THIRD ITEM ON THE AGENDA

Consolidation of rules applicable to the Governing Body

1. At its 289th (March 2004) Session, the Governing Body considered a series of proposals relating to the functioning of the Governing Body,¹ including the consolidation in a single document of the different rules and practices that regulate the composition, structures and procedures of the Governing Body. While the Governing Body agreed on the principle of such consolidation, no decision was taken as to its contents and the form it should take.

I. Contents of a possible consolidation

2. The functioning of the Governing Body is subject to a complex set of rules, spread across different texts and publications, as well as by a series of long-standing practices and arrangements. These can be organized into the five categories listed below. With the exception of the provisions within the first category (adopted by the Conference and mandatory for the Governing Body), the rules in all other categories have been adopted by the Governing Body itself and can be modified by it.

(a) Constitution of the ILO, Standing Orders of the Conference and Financial Regulations

3. The Constitution of the ILO contains a series of provisions relating to the composition and term of office of the Governing Body (article 7), supplemented by a section in the Standing Orders of the Conference devoted to the election of Governing Body members (section G, articles 48-54). The same constitutional provision stipulates that the Governing Body may establish its own Standing Orders. The Constitution also refers in various provisions to the functions incumbent on the Governing Body, such as the appointment of the Director-General (article 8), the determination of the agenda of the Conference (article 14), and its role in the establishment of reports on international labour standards (articles 19 and 22) and in the examination of representations and complaints under articles 24 and 26 of the Constitution.

¹ GB.289/3/2(Rev.).

4. The Financial Regulations, adopted by the Conference in 1946, also contain provisions relating to the responsibilities of the Governing Body for the preparation of the programme and budget, control over the use of funds, the appointment of the External Auditor and the approval of the Financial Rules.
5. The Constitution of the ILO and the Standing Orders of the Conference are published by the Office as a book along with the agreement between the United Nations and the ILO. These texts are also available on the ILO's public web site. The Financial Regulations are published by the Office as a separate booklet.

(b) Standing Orders of the Governing Body

6. The Standing Orders of the Governing Body were adopted by the Governing Body at its 3rd Session in 1920. Since then, they have been amended as required on several occasions. The latest amendment, in 1999, provided for the setting up of a committee of the whole to allow representatives of governments that are not members of the Governing Body to express their views in a discussion of the annual review under the follow-up to the Declaration or in the Working Party on the Social Dimension of Globalization.
7. The Standing Orders of the Governing Body are published and updated by the Office in a self-contained publication. They are also available online on the ILO's web site (<http://www.ilo.org/public/english/standards/relm/gb/refs/so.htm>).
8. The Standing Orders currently in force consists of 25 articles in numerical order (22 numbered and three bis provisions, namely articles 5bis, 9bis and 12bis) with no subdivision by thematic heading. These provisions relate to the selection, role and functions of the Officers (articles 1 and 2), the role of deputy and substitute members as well as the filling of vacancies (articles 3-5), participation of non-members of the Governing Body in its debates (articles 5bis and 9bis), participation of international governmental and non-governmental organizations (articles 6 and 7), the public or private nature of its sittings and documents (articles 8 and 14), the frequency and place of its meetings (articles 20 and 21), the determination of its agenda (article 9) and that of the Conference (articles 10-12bis and 18), procedural issues such as resolutions, amendments, motions, votes and quorum (articles 15, 17 and 19), and a series of miscellaneous provisions such as those regarding the determination of members of chief industrial importance (article 13), consultation with the United Nations (article 16) and the establishment of the Programme, Financial and Administrative Committee (article 22).
9. The Standing Orders of the Governing Body are silent, however, on a number of important issues. Such is the case where express provision is already made in the Constitution of the ILO or the Standing Orders of the Conference (e.g. composition of the Governing Body). In other cases, practice has established certain rules without codification (e.g. the existence of committees other than the Programme Financial and Administrative Committee).

(c) 1993 decisions arising from the Working Party on Improvements in the Functioning of the Governing Body

10. It will be recalled that in 1993 the Governing Body took a series of decisions on the recommendation of its Working Party on Improvements in the Functioning of the Governing Body. These decisions related mainly to the restructuring of Governing Body committees, the procedure for the adoption of committee reports by the Governing Body, the procedure for the determination of the agenda of the Conference, the frequency and

timing of Governing Body sessions and the increased role of the Officers of the Governing Body.

11. Apart from their publication in the minutes of the 256th (May 1993) Session of the Governing Body, these decisions were reflected in a Guide on the Governing Body published by the Office. The publication of this Guide was discontinued by the end of the 1990s and replaced by a brochure entitled *Introduction to the Governing Body*, the latest update of which is that of March 2002. Information very similar to that contained in the brochure is available online at <http://www.ilo.org/public/english/standards/reim/gb/refs/gbguide.htm>.

(d) Rules relating to specific functions of the Governing Body

12. In some cases where the performance by the Governing Body of the functions assigned to it by the Constitution of the ILO has required the adoption of specific rules, the Governing Body has adopted them not as part of the body of its Standing Orders, but as specific sets of free-standing rules. Such is the case notably with:

- Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization. This text was adopted by the Governing Body in 1932; the version of these Standing Orders presently in force is reproduced by the Office or can be downloaded at <http://www.ilo.org/public/english/standards/norm/enforced/reprsnt/art24.htm>.
- *Procedure for the examination of complaints alleging infringements of trade union rights*. The procedures of the Committee on Freedom of Association are described in Governing Body decisions taken between its 117th (November 1951) and 209th (May-June 1979) Sessions, and in separate brochures and publications of the Office, the most comprehensive of which can be downloaded at http://www.ilo.org/public/english/standards/norm/sources/cfa_proc.htm.
- *Rules governing the election of the Director-General*. These were adopted by the Governing Body at its 240th (May-June 1988) Session, with a view to complementing the provisions of the Constitution and the Standing Orders concerning the appointment of the Director-General. These rules have been applied in all four elections held since their adoption.
- *Rules for the payment of travel expenses of members of the Governing Body and of certain committees and other bodies*. These rules were approved by the Governing Body in 1965 and amended in 1977 and 1980. They are reproduced by the Office and available on request.

13. In addition, the Governing Body has taken important decisions that regulate certain procedures, without their having been adopted as rules. These procedures are contained in the corresponding Governing Body documents or Records of Decisions. They are not always reproduced in any sort of publication, note or online. Examples of these include the following:

- The issue of the relationship between international non-governmental organizations and the International Labour Organization, referred to in article 12 of the Constitution, has been developed in a series of decisions and practices progressively adopted by the Governing Body. With regard, firstly, to international organizations of employers and workers, the Governing Body adopted, at its 105th (June 1948)

Session, a resolution defining the arrangements which shall apply to relations between the ILO and those organizations enjoying general consultative status and, at its 160th (November 1964) Session, the Governing Body defined the criteria for those enjoying regional consultative status. As regards other international non-governmental organizations, the Governing Body, at its 132nd (June 1956) Session, created the Special List. Explanations as to the different status and corresponding rights of each category can be found at <http://www.ilo.org/public/english/comp/civil/index.htm>.

- In the absence of a provision in the Constitution or the Standing Orders of the Conference for the participation in the General Conference of separate tripartite delegations from non-metropolitan territories, the Governing Body, in 1954, established a procedure to provide for such participation. Such a procedure is reproduced only in the record of the 124th (March 1954) Session of the Governing Body.
- Since the early 1970s, the Governing Body has also examined periodic reports on member States' failure to send a delegation or a complete tripartite delegation to the Conference, regional meetings or other tripartite meetings. It took the decision to establish this procedure pursuant to the resolution concerning the strengthening of tripartism in the overall activities of the ILO, adopted by the Conference at its 56th Session (1971).

(e) Practice

14. As mentioned in paragraph 9 above, there are a number of aspects concerning the functioning of the Governing Body that are governed by practice without codification. In addition to the very existence of committees other than the Programme, Financial and Administrative Committee, it is worth mentioning, inter alia, the role of the Officers of the Governing Body, rotation practices as to the chairmanship of the Governing Body and its committees, the autonomy of the groups in determining the composition of certain tripartite meetings convened by the Governing Body.

II. The form of consolidation

15. The consolidation of all, or part, of the rules and practices referred to above could proceed in several ways, depending on the scope, content and purpose of the exercise.
16. One solution could simply be to compile existing texts into a single publication. However, this **compilation**, even if it were to contain a comprehensive index, would not solve the uncertainty about the legal effect of the interaction between texts of a different nature, given that there is currently no provision determining the order of supremacy among the various sources of Governing Body rules. For example, the rules governing the adoption of committee reports are not part of the Standing Orders but are found in the 1993 decisions reflected in the brochure entitled *Introduction to the Governing Body*. In addition, some aspects of the functioning of the Governing Body that are governed by practice would remain unreported.
17. Another solution could be to review the existing Standing Orders, rules, decisions and practice with a view to adopting a **single, comprehensive legal text** embracing all aspects relating to the composition, role, functions and procedures of the Governing Body and its various subsidiary bodies referred to above.

- 18.** An intermediate solution can also be explored: the consolidation could take the form of a *compendium* of existing rules, including the current Standing Orders and other sets of rules (subject to amendments as necessary), and prefaced with an explanatory note in which certain practices could be reflected without being fixed as a legal rule.

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- 19.** *With a view to the preparation by the Office of an initial draft for examination by the Committee on Legal Issues and International Labour Standards at its March 2005 session, the Committee may wish to recommend to the Governing Body:*

- (a) *which of the subject, themes and sets of rules it wishes to include for the purpose of consolidating the rules applicable to the Governing Body;*
- (b) *the form (compilation, unification into a single legal text, compendium) that it considers best suited for the consolidation of the rules.*

Geneva, 30 August 2004.

Point for decision: Paragraph 19.