



Standing Orders questions

Note concerning standing orders questions submitted by the Governing Body of the International Labour Office at the 92nd Session of the Conference

1. At its 289th Session (March 2004), the Governing Body recommended that the Conference, for a trial period of at least three years, replace the provisions of its Standing Orders concerning the Credentials Committee with the new provisions reproduced in the appendix.¹ These provisions are the result of a process of deliberation requested by the Credentials Committee at the 90th and 91st Sessions of the Conference with a view to improving its work and effectiveness.²

A. Purpose of the proposed interim provisions

2. The interim provisions proposed to the Conference are intended to strengthen the control and monitoring functions of the Credentials Committee in order to ensure that constitutional obligations regarding the appointment of Conference delegations are adhered to, on the one hand, and to enable the Committee to examine objections concerning incomplete delegations, on the other. These provisions are also accompanied by a number of practical measures which the Governing Body has asked the Office to adopt.

(a) *Strengthening the control and monitoring functions*

3. According to the Standing Orders of the Conference, when the Credentials Committee considers that the credentials of a delegate or adviser have not been established in a manner consistent with constitutional obligations, the sole means available to it to ensure that those obligations are met is to propose the invalidation of the credentials in question. This mechanism has certain limitations and drawbacks, both juridical and practical, which have prompted the Governing Body to propose strengthening of the powers of the

¹ GB.289/11.

² ILO: Third report of the Credentials Committee, International Labour Conference, 90th Session, *Provisional Record* No. 5D; Second report, International Labour Conference, 91st Session, *Provisional Record* No. 5C. As regards examination of the question by the Governing Body, see also the following Governing Body documents: GB.286/LILS/3, GB.286/13/1, GB.288/LILS/4, GB.288/10/1 and GB.289/LILS/1/1.

Conference, through the Credentials Committee, to monitor situations deemed to be not in conformity with article 3 of the Constitution of the ILO.

4. For the purpose of this monitoring, the Governing Body recommended introducing a means of referring objections presented to the Credentials Committee to the Committee on Freedom of Association in cases where what is alleged in the complaint concerns observance of the principles of freedom of association. The Governing Body also recommended that the Conference be authorized to request reports on a year-by-year basis from governments concerned by an objection or complaint.
5. In order to ensure that any recourse to these mechanisms has a sufficiently broad tripartite basis, the procedure proposed by the Governing Body provides that such an initiative should be taken by the Credentials Committee only in cases where there is unanimous agreement for this within the Committee. In addition, any unanimous recommendation by the Credentials Committee must also be approved by a decision of the Conference.
6. As regards specifically the possibility of referring an objection to the Committee on Freedom of Association during the March meeting of the Governing Body,³ the Governing Body considered that any such referral should in addition be subject to the condition that the case has not already been examined by the Committee on Freedom of Association. That condition has therefore been added to the draft of the proposed new interim provisions reproduced in the appendix.

(b) *The mandate of the Credentials Committee as regards incomplete delegations*

7. Under the terms of article 3 of the Constitution, at every session of the Conference, each member State is required to appoint a complete tripartite delegation that is representative of the tripartite actors of the country concerned. While the Credentials Committee does, under the terms of the Standing Orders, have the power to examine objections regarding the representativeness of a given delegate or adviser, its mandate does not include examination of the possible reasons in certain cases for the absence of an Employers' or Workers' representative from a particular delegation. This is because its mandate as defined under articles 5 and 26 of the Conference Standing Orders is limited to examination of objections "concerning the appointment of a delegate or adviser" whose name and functions are indicated in the credentials of the member State in question.
8. In order to fill this gap, the Credentials Committee requested that its mandate be worded to include an express reference to complaints based on failure to designate the Employers' or Workers' delegate in a national delegation. This is the purpose of the interim provisions proposed by the Governing Body under article 5, paragraph 2(b) and article 26, paragraph 1(a).

(c) *Practical measures*

9. In proposing the aforementioned legal provisions, the Governing Body has decided to link them to a series of practical measures which require no changes to the Standing Orders.

³ See 333rd Report of the Committee on Freedom of Association, GB.289/9, Part I, paras. 11-13.

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10. The first of these measures is intended to ensure that the Credentials Committee is able to begin its work earlier on in the Conference. It involves bringing forward the date of publication of the list of delegations, from which the deadline for the presentation of objections is calculated. Under the terms of article 26 of the Standing Orders, for an objection to be receivable, it must be lodged within 72 hours of publication of the name and function of the individual to whose nomination objection is taken in the provisional list of delegations published on the opening day of the Conference, or within 48 hours following publication of the delegate's name in the revised or final list appearing on the seventh and penultimate days, respectively, of the Conference. It often happens that objections are received just before the deadline, that is on the first Friday of the Conference or on the second (for practical reasons the Credentials Committee cannot examine objections that appear for the first time in the final list). Given that examination of an objection can begin only after the reply from the government concerned has been received, and that the government has at least two days to prepare its reply, the Committee cannot begin its examination before the beginning of the second or third week of the Conference, depending on whether the objection concerns credentials appearing in the first or second list.
 11. In order to allow the Credential Committee more time to examine cases referred to it, the Governing Body at its 289th Session (March 2004) requested that, from the 92nd Session of the Conference onwards, publication of the lists be brought forward by one week. Starting this year, the Office will publish a preliminary official list one week before the opening of the Conference. Given that the delegations will not yet be in Geneva, the Office will see to it that the list is widely distributed through the secretariats of the groups and the permanent missions of member States in Geneva, and also by publishing it online on the ILO web site. The period of 72 hours provided for in article 26 will therefore begin one week before the opening of the session, so that governments cited in objections can be invited immediately to give their response. The Credentials Committee will thus have complete case files at its disposal as soon as it is appointed. A preliminary revised list will be published the day after the opening session of the Conference, a second on the Wednesday of the second week and the final list will as usual be published the day before the Conference closes.
 12. The other practical measures approved by the Governing Body are intended to improve the visibility of the Credentials Committee and its means of action. There are two such measures, namely:
 - Publication of a detailed information brochure on the role, functions and practice of the Credentials Committee. This is intended to be sent as an attachment to the invitations to each session of the Conference. It is intended that it should be ready for the invitation to the 93rd Session of the Conference and will include a reference to the interim changes that may be adopted by the Conference during the 2004 session.
 - Development of a data bank containing the reports of the Credentials Committee from previous sessions of the Conference. An initial version containing the reports of the 30 previous sessions of the Conference in English, French and Spanish should be available on the ILO public web site during 2004.

B. Practical arrangements

13. The Governing Body considered that any change should be made on an interim basis so that there would be no need for definitive amendments to the Standing Orders until the amendments had been evaluated and, where appropriate, adjusted. In view of the

disadvantages and constraints associated with the procedure for suspending provisions of the Standing Orders provided for in article 76, the Governing Body considered that the Conference could adopt a number of provisions in the place of existing ones for a predetermined period of three years. At the end of that period, the provisions would lapse automatically unless the Conference took a decision to renew them, it being understood that the Conference could also modify or annul them at any time.

- 14.** If the Conference adopts the proposed provisions on these conditions, they will come into effect from the 93rd Session of the Conference in June 2005 and will remain in force, in the absence of any decision to the contrary by the Conference, until the end of the Conference in June 2007, after which the Governing Body will have to evaluate the system with a view to reporting to the Conference in June 2008.
- 15.** In order to avoid the confusion that might, during that period, arise from the coexistence of two sets of provisions (those in the Standing Orders that are not formally abrogated or suspended, and the interim provisions intended to replace them for a certain period), the annex should be published separately with a view to being published with the Constitution of the ILO and the Standing Orders of the Conference.

Appendix

Interim provisions concerning verification of credentials, effective from the 93rd Session (June 2005) to the 96th Session (June 2007) of the International Labour Conference

INTERNATIONAL LABOUR CONFERENCE VERIFICATION OF CREDENTIALS

ARTICLE 5

Credentials Committee

1. The Conference shall, on the nomination of the Selection Committee, appoint a Credentials Committee consisting of one Government delegate, one Employers' delegate and one Workers' delegate.
2. The Credentials Committee shall examine, in accordance with the provisions of section B of Part II:
 - (a) the credentials of persons accredited to the Conference;
 - (b) any objection relating to the credentials of delegates and their advisers or to failure to deposit credentials of an Employers' or Workers' delegate;
 - (c) any complaint of non-observance of paragraph 2(a) of article 13 of the Constitution;
 - (d) the monitoring of any situation with regard to observance of the provisions of article 3 or article 13, paragraph 2(a), of the Constitution about which the Conference has requested a report.

PART II

Standing Orders concerning special subjects

SECTION B

Verification of credentials

ARTICLE 26

Examination of credentials

1. The credentials of delegates and their advisers and of all other accredited members of the delegation of a member State shall be deposited with the International Labour Office at least 15 days before the date fixed for the opening of the session of the Conference.
2. A brief report upon these credentials shall be drawn up by the Chairman of the Governing Body. It shall, with the credentials, be made available for inspection on the day before the opening of the session of the Conference and shall be published on the day of the opening of the session.

3. The Credentials Committee appointed by the Conference in pursuance of article 5 of the Standing Orders of the Conference shall consider the credentials, as well as any appeal, objection, complaint or report concerning them.

ARTICLE 26BIS

Objections

1. An objection in pursuance of article 5, paragraph 2(b), shall not be receivable in the following cases:

- (a) if the objection is not lodged with the Secretary-General within 72 hours from 10 a.m. of the date of publication of the official list of delegations on the basis of which the objection to the inclusion or exclusion of the name and function of a person is submitted. If the objection is based on a revised list, the time limit shall be reduced to 48 hours;
- (b) if the authors of the objection remain anonymous;
- (c) if the author of the objection is serving as adviser to the delegate to whose nomination objection is taken;
- (d) if the objection is based upon facts or allegations which the Conference, by a debate and a decision referring to identical facts or allegations, has already discussed and recognized to be irrelevant or devoid of substance.

2. The procedure for the determination of whether an objection is receivable shall be as follows:

- (a) the Credentials Committee shall consider in respect of each objection whether on any of the grounds set forth in paragraph 1 the objection is irreceivable;
- (b) if the Committee reaches a unanimous conclusion concerning the receivability of the objection, its decision shall be final;
- (c) if the Credentials Committee does not reach a unanimous conclusion concerning the receivability of the objection, it shall refer the matter to the Conference which shall, on being furnished with a record of the Committee's discussions and with a report setting forth the opinion of the majority and minority of its members, decide without further discussion whether the objection is receivable.

3. The Credentials Committee shall consider whether every objection deemed to be receivable is well founded and shall as a matter of urgency submit a report thereon to the Conference.

4. If the Credentials Committee or any member thereof submits a report advising that the Conference should refuse to admit any delegate or adviser, the President shall submit this proposal to the Conference for decision, and the Conference, if it deems that the delegate or adviser has not been nominated in conformity with the requirements of the Constitution, may, in accordance with paragraph 9 of article 3 thereof, refuse by two-thirds of the votes cast by the delegates present to admit the delegate or adviser. Delegates who are in favour of refusing to admit the delegate or adviser shall vote "Yes"; delegates who are opposed to refusing to admit the delegate or adviser shall vote "No".

5. Pending final decision of the question of his admission, any delegate or adviser to whose nomination objection has been taken shall have the same rights as other delegates and advisers.

6. If the Credentials Committee considers unanimously that the issues raised by an objection relate to a violation of the principles of freedom of association which has not already been examined by the Governing Body's Committee on Freedom of Association, it may propose referral of the question to that Committee. The Conference shall decide, without discussion, on such proposals for referral.

7. When, in the light of the examination of an objection, the Credentials Committee unanimously considers that it is necessary to monitor the situation, it may propose this to the Conference, which shall decide, without discussion, on the proposal. If it is so decided, the

Government concerned shall report on such questions that the Credentials Committee judges necessary, to the subsequent session of the Conference when it submits the delegation's credentials.

ARTICLE 26TER

Complaints

1. The Credentials Committee may consider complaints that a Member has failed to comply with paragraph 2(a) of article 13 of the Constitution where:

- (a) the Member is alleged to have failed to pay the travelling and subsistence expenses of one or more of the delegates that it has nominated in accordance with article 3, paragraph 1, of the Constitution; or
- (b) the complaint alleges a serious and manifest imbalance as between the number of Employer or Worker advisers whose expenses have been covered in the delegation concerned and the number of advisers appointed for the Government delegates.

2. A complaint referred to in paragraph 1 shall not be receivable in the following cases:

- (a) if the complaint is not lodged with the Secretary-General of the Conference before 10 a.m. on the seventh day following the opening of the Conference and the Committee considers that there is insufficient time to deal with it properly; or
- (b) if the complaint is not lodged by an accredited delegate or adviser alleging non-payment of travel and subsistence expenses in the circumstances set out under (a) or (b) of paragraph 1 or by an organization or person acting on his or her behalf.

3. The Credentials Committee shall, in its report, present to the Conference any conclusions that it has unanimously reached on each complaint considered by it.

4. When, in the light of the examination of an objection, the Credentials Committee unanimously considers that it is necessary to monitor the situation, it may propose this to the Conference, which shall decide, without discussion, on the proposal. If it is so decided, the Government concerned shall report on such questions that the Credentials Committee judges necessary, to the subsequent session of the Conference when it submits the delegation's credentials.

ARTICLE 26QUATER

Monitoring

The Credentials Committee also monitors any situation relating to respect by a member State for the provisions of articles 3 or 13(2)(a) of the Constitution with regard to which the Conference has requested the government concerned to report. With this objective, the Committee shall report to the Conference on the evolution of the situation. It may unanimously propose any one of the measures contained in paragraphs 4 to 7 of article 26bis or paragraphs 3 and 4 of article 26ter. The Conference shall decide, without discussion, on such proposals.

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