
MERCOSUR WSG No. 10 "Labour affairs, employment and social security"

MERCOSUR Social and Labour Declaration

THE HEADS OF STATE OF THE STATES PARTIES TO THE COMMON MARKET OF THE SOUTHERN CONE [MERCOSUR], MEETING IN THE CITY OF BRASILIA, ON THE NINETEENTH DAY OF DECEMBER 1998,

Whereas the States parties to MERCOSUR recognize in the Treaty of Asunción (1991) that the expansion of their domestic markets, through integration, is a vital condition for accelerating the processes of economic development together with social justice;

Whereas the States parties note, in the same Treaty, the need to promote the modernization of their economies in order to expand the supply of available goods and services and consequently improve the living conditions of their populations;

Whereas the States parties, as well as being Members of the International Labour Organization (ILO), have ratified the principal Conventions guaranteeing the fundamental rights of workers, and have adopted to a large extent, recommendations aimed at promoting skilled jobs, healthful working conditions, social dialogue and workers' welfare;

Whereas the States parties also support the "ILO Declaration on Fundamental Principles and Rights at Work" (1998), which reaffirms the Members' commitment to respect, promote and implement the rights and obligations contained in the Conventions which are recognized as being fundamental both within and outside the Organization;

Whereas the States parties are committed to the declarations, covenants, protocols and other treaties that constitute the legal heritage of humanity,

including the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), **the American Declaration of the Rights and Duties of Man (1948), the Inter-American Charter of Social Guarantees (1948), the Charter of the Organization of American States -O AS (1948) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988);**

Whereas various international forums, including the Copenhagen Social Summit (1995), have stressed the need to set up mechanisms to follow up and assess the social aspects of economic globalization in order to ensure harmony between economic progress and social welfare;

Whereas the adherence of the States parties to the principles of political democracy and the rule of law, and to unconditional respect for the civil and political rights of the individual, constitutes the inalienable basis of the integration underway;

Whereas integration has certain social dimensions and effects, the recognition of which implies the need to anticipate, analyse and solve the various problems arising as a result of integration;

Whereas the Ministers of Labour of MERCOSUR have stated in their meetings that regional integration cannot be confined to the commercial and economic spheres, and must also incorporate social issues, as regards the adaptation of the regulatory frameworks for labour to the new circumstances resulting from integration and the process of economic globalization, as well as the recognition of a minimum floor of workers' rights within MERCOSUR, in line with the fundamental ILO Conventions;

Whereas the States parties have decided to consolidate in a common instrument, progress already made on the social dimension of the integration process and to lay the foundations for future and ongoing progress in the social sphere, primarily through the ratification and implementation of the principal ILO Conventions;

ADOPT THE FOLLOWING PRINCIPLES AND RIGHTS IN THE FIELD OF LABOUR, WHICH WILL CONSTITUTE THE "MERCOSUR SOCIAL AND LABOUR DECLARATION", WITHOUT PREJUDICE TO ANY OTHERS THAT THE NATIONAL OR INTERNATIONAL PRACTICES OF THE STATES PARTIES HAVE ESTABLISHED OR WILL ESTABLISH:

Individual rights

Non-discrimination

Article 1 - All workers are guaranteed the effective equality of rights, treatment and opportunity in employment and occupation, without distinction or exclusion on the grounds of race, national origin, colour, sex or sexual orientation, age, belief, political or trade union views, ideology, economic situation or any other social or family circumstance, in accordance with the legal provisions in force.

The States parties undertake to guarantee the application of this principle of non-discrimination. In particular, they commit themselves to adopt measures for eliminating discrimination with respect to disadvantaged groups in the labour market.

Promotion of equality

Article 2 - Persons with special needs shall be treated in a dignified and non-discriminatory manner, so as to favour their integration in society and the labour market.

The States parties commit themselves to adopting effective measures, particularly as regards education, training, retraining and vocational reorientation, the adaptation of the work environment and access to collective goods and services, in order to ensure that persons with special needs have the opportunity to engage in productive activity.

Article 3 - The States parties undertake to guarantee, through labour practices and legislation, equality of treatment and opportunity for men and women.

Migrant and cross-border workers

Article 4 — All migrant workers, irrespective of nationality, are entitled to the same assistance, information, protection and equality of rights and working conditions as recognized for the nationals of the country in which they are engaging in their activities.

The States parties undertake to adopt measures to establish common standards and procedures relating to the movement of workers in border areas and to take necessary action to improve the employment opportunities and working and living conditions of such workers.

Elimination of forced labour

Article 5 - All persons are entitled to freely chosen work and to exercise any occupation or profession in accordance with the applicable national provisions.

The States parties undertake to eliminate any type of work or service exacted from an individual under threat of any penalty and for which the individual in question has not offered himself or herself voluntarily.

They also undertake to adopt measures to ensure the abolition of all use of labour that favours, authorizes or tolerates forced or compulsory labour.

In particular, they undertake to suppress all forms of forced or compulsory labour that may be used:

- (a) as a means of political coercion or education, or as a punishment for not holding or expressing certain political opinions, or for expressing opposing ideological views of a political, social or economic nature;
- (b) as a method of mobilizing and using labour for purposes of economic development;
- (c) as a means of labour discipline;
- (d) as a punishment for having participated in strikes;
- (e) as a means of racial, social, national or religious discrimination.

Work of children and young persons

Article 6 - The minimum age for admission to work shall be established in accordance with the national legislation of the States parties, but may be no lower than the age at which obligatory schooling ends.

The States parties undertake to adopt policies and action that will bring about the abolition of child labour and progressively raise the minimum age for entry into the labour market.

The work of minors shall be subject to special protection by the States parties, particularly as regards the minimum age for entry into the labour market and other measures to facilitate their full physical, intellectual, professional and moral development.

The hours of work for minors, restricted in accordance with national legislation, shall not be extended through overtime or night work.

Minors shall not be required to work in an environment that is unhealthy,

dangerous or immoral, and which might affect the full development of their physical and mental faculties and morals.

The age for admission to work that has any of the aforementioned characteristics shall be no lower than 18 years.

Employers' rights

Article 7 - The employer has the right to organize and manage the enterprise from an economic and technical point of view, in accordance with national law and practice.

Collective rights

Freedom of association

Article 8 - All employers and workers have the right to establish and to join organizations of their own choosing, in accordance with prevailing national legislation.

The States parties undertake to ensure, through legal provisions, the right to freedom of association, refraining from any interference in the establishment and management of the organizations, beyond the recognition of their legitimacy to represent and defend the interests of their members.

Trade union freedom

Article 9 - Workers shall enjoy adequate protection against any acts of anti-union discrimination in relation to their employment.

The following shall be guaranteed:

- (a) freedom of affiliation, non-affiliation and disaffiliation, without this compromising entry into employment or continuation in employment;
- (b) the prevention of dismissal of or prejudice to workers on grounds of their trade union membership or their participation in trade union activities;

(c) the right to be represented by a trade union, in accordance with the legislation and collective labour agreements in force in the States parties.

Collective bargaining

Article 10 - Employers or their organizations, and workers' organizations or representatives, have the right to negotiate and conclude collective agreements to regulate working conditions, in accordance with national law and practice.

Strikes

Article 11 - All workers and trade union organizations are guaranteed the exercise of the right to strike, in accordance with applicable national provisions. Mechanisms for the prevention or settlement of disputes or the regulation of this right shall not prevent its exercise nor detract from its purpose.

Promotion and development of preventive procedures and procedures for the resolution of disputes by the parties to them

Article 12 - The States parties undertake to encourage and develop preventive, alternative arrangements for the resolution of individual and collective labour disputes by the parties to them, promoting the use of independent and impartial dispute settlement procedures.

Social dialogue

Article 13 - The States parties undertake to encourage social dialogue in the national and regional spheres, instituting effective mechanisms for consultation among representatives of governments, employers and workers for the purpose of guaranteeing, through social consensus, conditions favourable to sustainable economic growth and social justice in the region and the improvement of the living conditions of their populations.

Employment promotion

Article 14 - The States parties undertake to promote economic growth, expand the internal and regional markets and implement active policies to promote and create employment, in order to raise the standard of living and correct social and regional imbalances.

Protection of the unemployed

Article 15 - The States parties undertake to institute, maintain and improve protective mechanisms to target unemployment, in line with the national legislation and circumstances of each country, and in order to guarantee benefits for workers affected by involuntary unemployment and at the same time facilitate their access to job placement services and retraining programmes to facilitate their return to productive activity.

Training and the development of human resources

Article 16 - All workers are entitled to career guidance, training and skills development.

The States parties undertake to institute, together with the entities concerned that voluntarily wish to do so, services and programmes for continuing vocational training and guidance, to enable workers to obtain the necessary qualifications for engaging in productive activity, and to perfect and upgrade their knowledge and skills, taking into due consideration changes resulting from technological progress.

The States parties also undertake to adopt measures for promoting coordination between vocational training and guidance programmes and services, on the one hand, and the public employment and unemployment protection scheme services, on the other, with the aim of improving the conditions for the integration of workers in the labour market.

The States parties commit themselves to providing and circulating meaningful labour market information at both the national and regional levels.

Occupational safety and health

Article 17 - All workers have the right to carry out their activities in a healthy and safe working environment which protects their physical and mental health and promotes their career development and work performance.

The States parties undertake to formulate, apply and update, on an ongoing basis and in collaboration with workers' and employers' organizations, policies and programmes relating to the health and safety of workers and the work environment, in order to prevent occupational accidents and illnesses, promoting environmental conditions that favour the development of workers' activities.

Labour inspection

Article 18 — All workers are entitled to appropriate protection in respect of their working conditions and work environment.

The States parties undertake to institute and maintain labour inspection services for the purpose of monitoring, throughout their territories, compliance with the standards guaranteeing the protection of workers and occupational safety and health.

Social security

Article 19 - The workers of MERCOSUR are entitled to social security, in accordance with the levels and conditions established by their respective national laws.

The States parties undertake to guarantee a minimum social safety net to protect their inhabitants against the contingencies of illness, old age, invalidity and death, while seeking to coordinate policies in the social sphere in such a way as to eliminate possible discrimination on the basis of the national origin of the beneficiaries.

Application and follow-up

Article 20 - The States parties undertake to respect the fundamental rights in this Declaration and to promote their implementation in accordance with national law and practice, collective accords and collective agreements. In order to achieve this it is recommended to establish, as an integral part of this Declaration, a Social and Labour Commission - an auxiliary tripartite body within the Common Market Group - which shall play a promotional role rather than involving sanctions, and shall have national and regional centres for promoting and following up on the application of the instrument. The Regional Social and Labour Commission will operate on the basis of consensus among the three sectors and have the following functions and responsibilities:

- (a) to examine, make observations on, and forward reports prepared by the States parties based on their commitments under this Declaration;
- (b) to draw-up plans, programmes of action and recommendations for promoting the *p* implementation of and compliance with the Declaration;
- (c) to examine observations and consultations relating to difficulties and inaccuracies in the implementation of and compliance with the provisions of the Declaration;
- (d) to examine questions involving the implementation of the terms of the Declaration and to provide clarifications thereon;
- (e) to prepare analyses and records concerning the implementation of and compliance with the Declaration;
- (f) to examine and prepare proposals for amending the text of the Declaration, and to forward them for action as appropriate.

The modalities for proceeding with matters to be examined under items (c) and (d) will be defined by the Regional Social and Labour Commission.

Article 21 - The Regional Social and Labour Commission shall meet at least once per year to examine reports submitted by the States parties and prepare documents for submission to the Common Market Group.

Article 22 - The Regional Social and Labour Commission shall draft by consensus, within a period of six months from the date of its establishment, its own rules and those of the national commissions, and submit them to the Common Market Group for approval.

Article 23 - The States parties shall prepare, through the intermediary of their labour ministers and in consultation with the most representative employers' and workers' organizations, annual reports containing:

- (a) a summary of changes in national legislation or practice as regards the implementation of the principles of this Declaration; and
- (b) a summary of progress made in promoting this Declaration and of the difficulties encountered in its implementation.

Article 24 - The States parties agree that this Declaration, in view of its dynamic nature and the progress made in the subregional integration process, shall be revised two years after its adoption on the basis of experience gained during the course of its implementation and on the basis of the proposals and concerns put forward by the Social and Labour Commission or other officials.

Article 25 - The States parties draw attention to the fact that neither this Declaration nor its follow-up mechanism shall be invoked or used for purposes other than those stipulated in it, and that it is prohibited, in particular, to apply it to trade, economic or financial matters.