



Проект фінансується
Європейським Союзом



Проект виконується
Міжнародною організацією праці

EU-ILO Project

«Enhancing the labour administration capacity to improve working conditions and tackle undeclared work»

Ukrainian National OSH Profile and Alignment Level to Selected EU Directives *Main findings and challenges*

National Forum | Federation of Trade Unions of Ukraine | May 23rd, 2018

Антоніу Сантуш / António Santos
Менеджер проекту / Project manager

www.ilo.org/UkraineEUProject

Contents

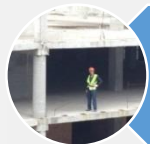
OSH Profile main challenges



Context



Principles



Purpose & Scope



National System for
Occupational Risk Prevention



Labour Inspection



Other Concerns

Tables of Concordance



EU OSH Legal Framework



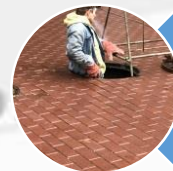
Principles and purposes



Main challenges

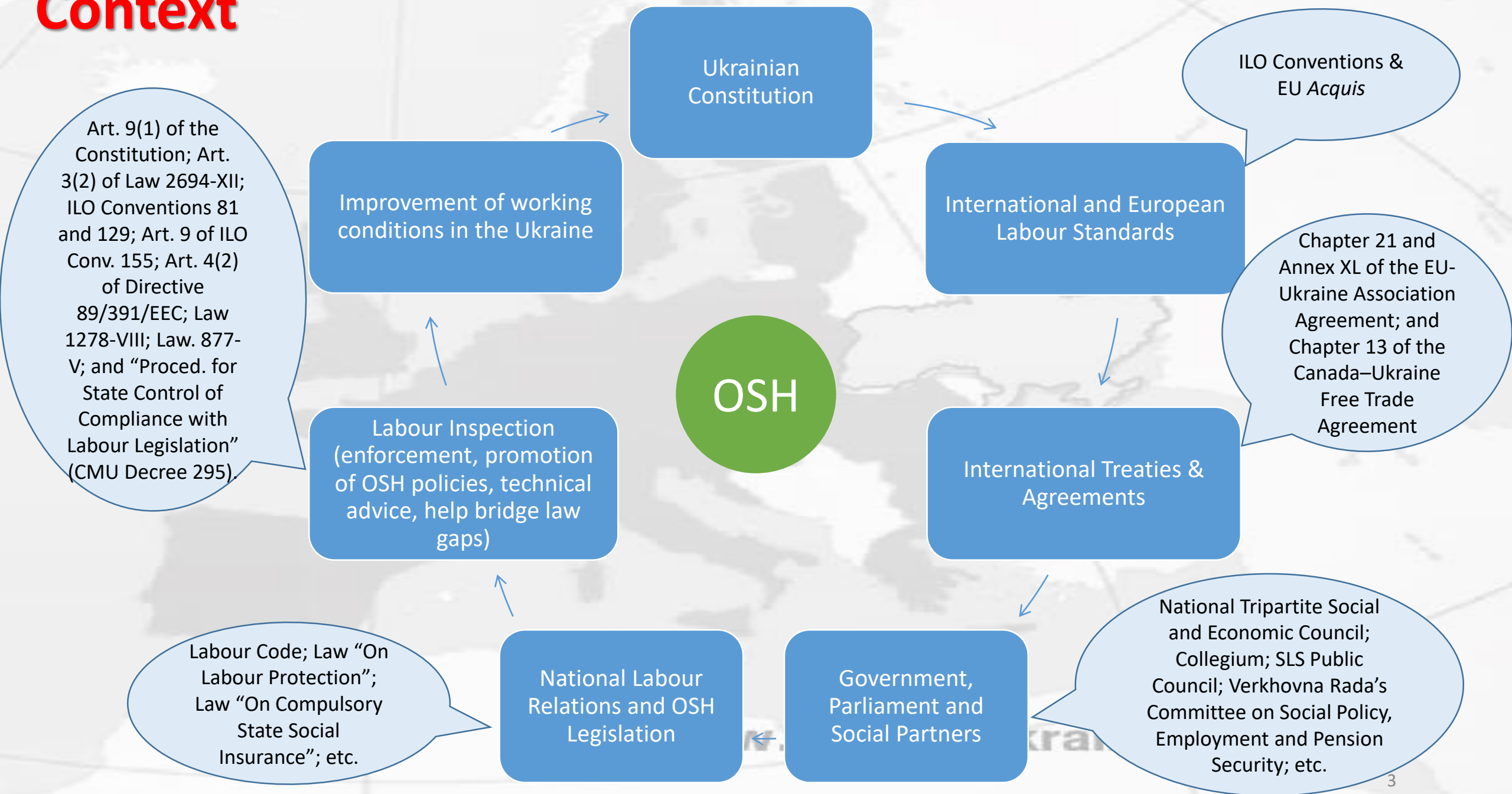


Alignment Status



Implementation Process

Context



Principles

Segmented approach (Law, LI, Prev. Services)

- Labour
- Labour protection
- Occupational health



Need for a more holistic and integrated OSH approach

Fuzzy focus downstream approach

- Protection
- Reparation
- Compensation
- Correction



Need for upstream approach based on: (1) Prevention; (2) Risk management (avoidance, assessment and control); (3) Improvement of OSH

Shared responsibility approach

- Employers
- Workers
- Service providers



Non-transferable responsibility of employers for ensuring the safety and health of workers in every aspect related to work

Principles

Employers' obligations

- To protect workers' safety and health

To take (and continuously adjust to changing circumstances) the measures to ensure workers' OSH with strictly compliance with the GPP

Avoid risks

Evaluate the risks which cannot be avoided

Combat risks at source

Adapt the work to the individual

Adapt to technical progress

Replace the dangerous by non or less dangerous

Develop a coherent overall prevention policy

Give collective protective measures priority over individual

Give appropriate instructions to the workers

Purpose & Scope

Current purpose

- To protect the safety and health of workers



Need to refocus on: the improvement of the workers' working conditions

Restricted to some workers

- With labour contracts according to the legislation
- Engaged in work with harmful and hazardous working conditions
- Engaged in work connected with contamination or adverse weather conditions
- Engaged in work requiring occupational selection
- Working in high-risk facilities



Need to expand the scope to all workers, including: (1) Without a labour contract (but with an employment relationship – ILO Recom. 198); (2) Self-employed; (3) Practitioner, apprentice, internships, trainee, volunteers; (4) Economically dependent service providers; etc.

Restricted to some employers

- Enterprises
- High-risk facilities
- Specific sectors of activity



Need to extend the scope to all employers of all branches of activity in the private, public, cooperative and 3.rd sectors (including self-employed with employees)

National System for Occupational Risk Prevention

General principles that should be followed

Worker entitlement to perform work in conditions that respect his/her safety and health, ensured by the employer (or, when appropriate, by who manages the premises)

Development promotes the humanization of work in healthy and safe conditions

Prevention of occupational risks must be based on a correct and constant risk assessment

Formulation and implementation of a National Strategy for OSH

Definition of the technical conditions governing the design, manufacture, import, sale, assignment, installation, organization, use and processing of the material components of the work according to the nature and degree of the risks, as well as the obligations of the persons responsible for such

Definition of substances, agents or processes that should be prohibited, limited or subject to authorization or the supervision of the competent authority

National System for Occupational Risk Prevention

General principles that should be followed

Definition of worker exposure limits to chemical, physical and biological agents and the technical standards for the sampling, measurement and evaluation of results

Promotion and monitoring of the health of the worker

Increase of the technical and scientific research applied in the field of OSH (especially regarding the emergence of new risk factors)

Education, training and information for promoting improvements in OSH

Raising the awareness of society in order to create a genuine culture of prevention

The efficiency of the public system of inspection of compliance with the law on OSH

National System for Occupational Risk Prevention

Areas & Entities that should be involved



Goal:

To implement the right to OSH, by safeguarding the consistency of measures and the effectiveness of the intervention of the entities (public, private or cooperative) that integrate the national network for the prevention of occupational risks.

Main concerns regarding labour inspection system

Moratoriums (Law 1278-VII)

- Prevent labour inspectors from discharging their duties
- Hampers the effectiveness of the labour inspection system



Refrain from imposing *moratoriums* to labour inspection visits

Restrictions to labour inspectors' activities and powers (Law. 877-V; and CMU Decree 295)

- Cannot conduct inspection visits at any time of day or night without prior notice
- Cannot perform inspection visits on the absence of the employer
- Cannot perform inspection visits with the frequency, scope, extension and deepness they understand necessary
- Cannot impose fines if detected infractions are corrected
- Cannot immediately suspend works in the event of imminent danger to the health or safety of the workers



Entrust labour inspectors, in law and in practice, with the powers foreseen in ILO Conventions Nos. 81 and 129

Decentralization process ("Proced. for State Supervision over Compliance with Labour Legislation" - CMU Decree 295)

- Placement of labour inspection under the supervision and control of a central authority
- Labour inspectors' status as civil servants and working conditions
- Labour inspectors' recruitment solely on the basis of their qualifications for the performance of their duties
- Labour inspectors' initial and continuous training
- Sufficiency of the means and resources allocated to labour inspection system
- Labour inspectors' powers



Ensure that the current decentralization process is developed in accordance with ILO Conventions 81 and 129, (e.g., through the organic growth of the current SLS territorial bodies)

Other concerns

Unreliable and inconsistent statistics on occupational accidents and diseases

- Different criteria for collection, classification and recording of data
- Complex process of data collection
- Non-comparability of national statistics
- Official inquiries not done exclusively by labour inspectors
- If SLS fails to take a decision within 24 hours in the case of a “special investigation”, the latter will be done by the employer or the Fund → conflict of interests

Need to: (1) Implement a reliable system for recording and notification of occupational accidents and diseases (in accordance with ILO Code of Practice, ILO Protocol 155, and ILO Resolution concerning statistics of occupational injuries); (2) Align with Eurostat ESAW methodology; (3) Review CMU Regulation 294.

Female labour (Arts. 175 and 175 of Labour Code; Art. 10 of the Law “On Labour Protection”; “Limits of lifting and moving” - MH Order No. 241; and “List of works which employment of women is prohibited” - MH Order No. 256)

- Impose unjustified and disproportionate limits to the equal treatment of men and women in matters of employment and occupation
- Contrary to the fundamental principles of equality between men and women and non-discrimination on the basis of sex (cf. Arts. 2 and 3(2) of the Treaty establishing the European Community and Directives 2006/54/EC and 92/85/EEC)

Need to align national legislation with EU Directives 2006/54/EC (equal opportunities and equal treatment of men and women in matters of employment and occupation) and 92/85/EEC (OSH of pregnant workers and workers who have recently given birth or are breastfeeding)

Other concerns

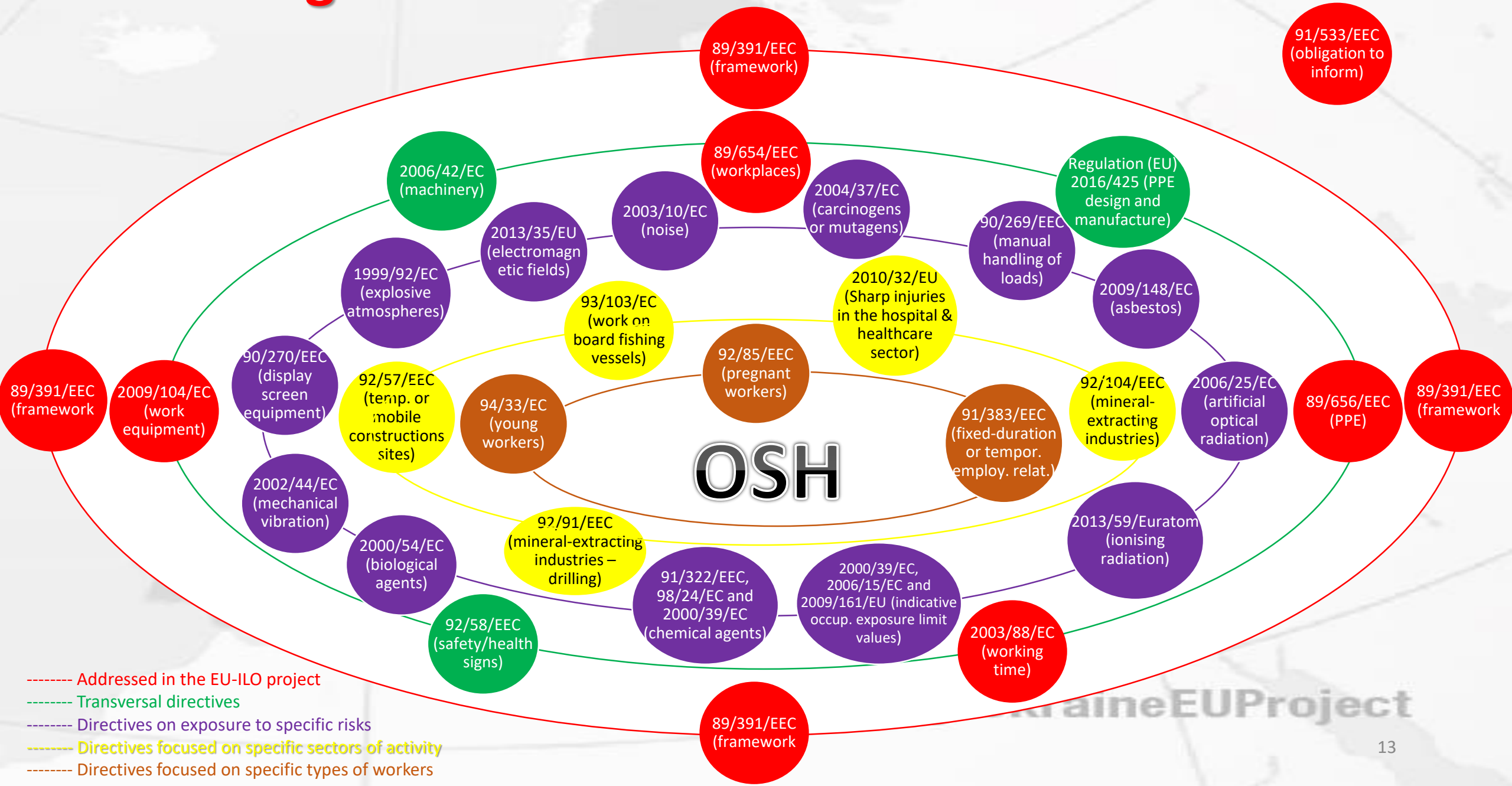
- National legislation only applies to “legal and natural persons that use hired labour according to legislation” and their working individuals (i.e., it only applies when there is a labour contract)
- It does not apply to workers (and thus to their employers) that have no labour contract but that have an employment relationship (e.g., total undeclared workers, bogus self-employed, bogus civil contracts, bogus service providers, bogus volunteers, bogus trainees, bogus internships, etc)
- The latter are therefore unprotected by the national legislation on OSH and labour relations



Need to: (1) **Incorporate** in national legislation (labour code and/or OSH regulations) the **ILO Recommendation 198**, on the employment relationship (to combat covert/masked employment relationships and to ensure adequate protection and decent working conditions to all workers; (2) Create mechanisms and specific **criteria to determine the existence of an employment relationship**; (3) Establish a **legal presumption of the existence of an employment relationship**, whenever (regardless of the formal, sign or written arrangements) **are present certain indicators** of the existence of an employment relationship, such as, but not restricted to, the following:

- (a) The activity provider has to obey to the orders of the respective beneficiary;
- (b) The activity provider is subject to disciplinary authority of the beneficiary of the activity;
- (c) The activity is held in the place of its beneficiary or in a place determined by him;
- (d) The work equipment and instruments used belong to the beneficiary of the activity;
- (e) The activity provider has to comply with start and end hours of the activity provision;
- (f) Is paid to the activity provider, with determined periodicity, a right amount;
- (g) The activity provider performs management or leadership roles in the organizational structure of the beneficiary of the activity;
- (h) The activity provider depends economically on the beneficiary of the activity;
- (i) The activity provider develops his activities exclusively to the beneficiary of the activity;
- (j) The activity provider have paid holidays, its subsidy and receives a Christmas bonus;
- (k) The activity provider is subject to the absences' regime of the beneficiary of the activity;
- (l) The activity provider may not substitute himself in the execution of the activity;
- (m) The activity provider does not assume the risks of the execution of the activity;
- (n) The activity provider does not have the power to determine the price of the activity.

EU OSH Legal Framework



Principles and purposes

More favourable conditions

- Establish **minimum OSH requirements** to promote the improvement of the health and safety of workers
- Apply without prejudice to existing or future national and EU provisions which are more favourable to the workers
- Their implementation shall not constitute grounds for lowering the level of protection already afforded to workers

Umbrella Framework Directive

- **EU OSH framework directive** provisions **apply** in full to **all the areas** covered by the individual Directives, **without prejudice** to **more stringent and/or specific provisions** contained in those **individual directives**

Scope

- **All employers** of all branches of activity in the private, public, cooperative and social sectors, including self-employed with one or more employees
- **All workers** (including the ones without labour contract but with an employment relationship, as well as to practitioners, apprentices, internships, trainees, volunteers and economically dependent service providers)

Principles and purposes

Employers' non-transferable obligation for ensuring workers' OSH in every aspect related to work, with strict observance of the sequential and hierarchical GPP, in particular regarding:

Design

- Facilities
- Layout of production process

Selection

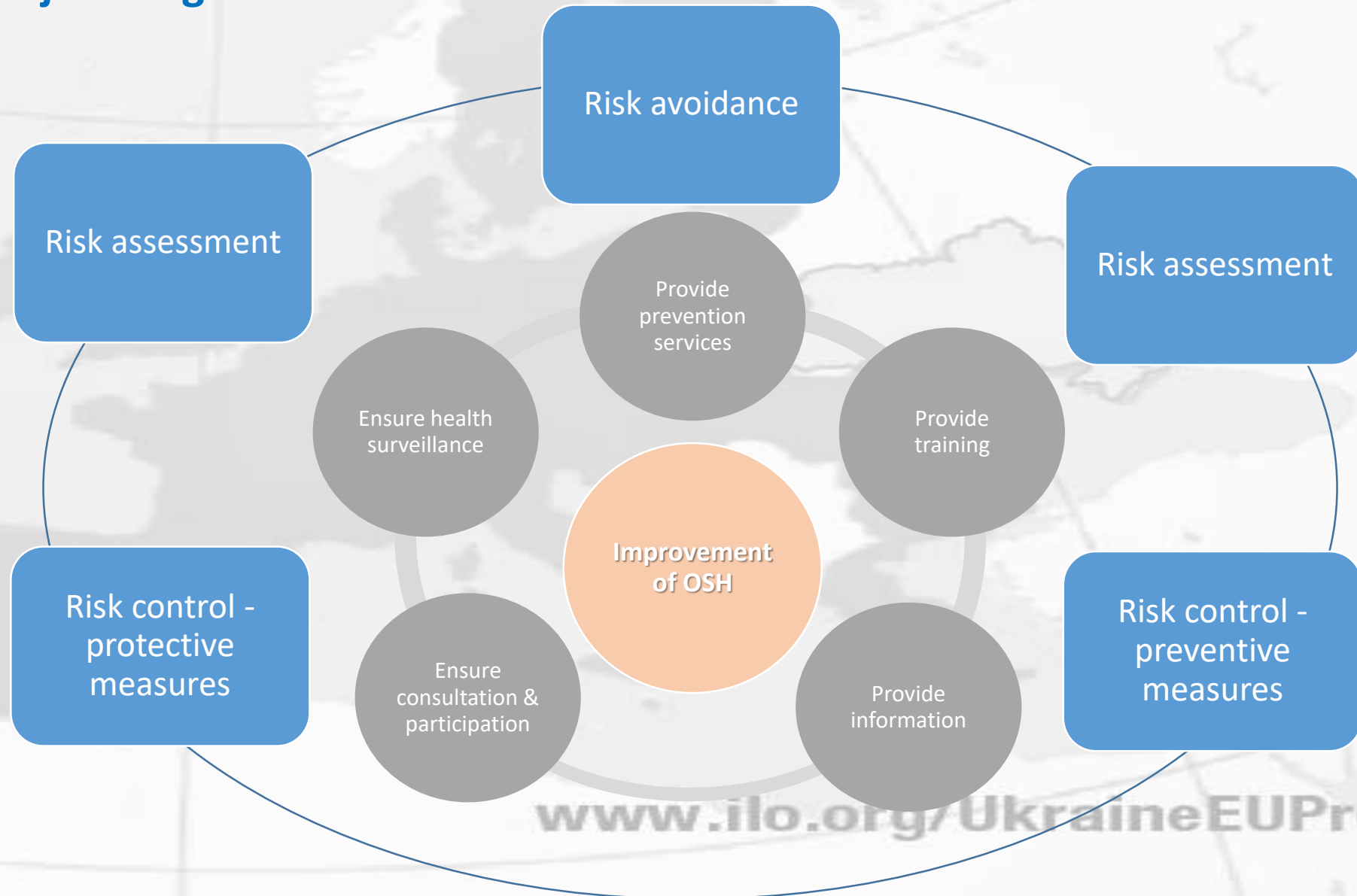
- Production methods
- Technology and work equipment
- Agents & substances to use, store or produce

Work

- Organization of work and working time
- Working conditions
- Social relationships
- Influence of factors related to the working environment

Principles and purposes

Employers' major obligations:



Main challenges

Current OSH legal framework

- Too fragmented (in dozens of legal acts and by laws)
- Lack of structural logic and relationships
- Complexity, gaps and contradictory legal provisions

Scope

- Limited to specific workers
- Restricted to specific employers

Contradictory provisions

- Non subjection of all employers and workers to the EU framework directive
- Existence of adequate controls and supervision
- Workers obligations and female work
- Scope and definitions
- Annual leave

Ineffective labour inspection system

- Moratoriums on inspection activity
- Lack of powers of the labour inspectors
- Decentralization process

Lack or inconsistency of definitions

- Employer & worker
- Workplace vs workstation
- Work equipment vs production equipment
- Working time, rest period, night worker, break vs daily rest, shift worker, mobile worker, offshore work, adequate rest

Global alignment level

EU Directives 89/656/EEC, 89/654/EEC, 2009/104/EC, 89/656/EEC, 2003/88/EC and 91/533/EEC

DIRECTIVE ARTICLE		LEVEL OF COMPLIANCE								RECOMMENDATIONS FOR FURTHER ACTION							
N.º	TITLE	FULL		PARTIALLY		NON PROVIDED		CONTRADICTORY		MAINTAIN		COMPLEMENT		REMOVE		PROVIDE FOR	
		N.º	%	N.º	%	N.º	%	N.º	%	N.º	%	N.º	%	N.º	%	N.º	%
DIRECTIVE PROVISIONS																	
1	COUNCIL DIRECTIVE Nos. 89/391/EEC, 89/391/EEC, OF OF 12 JUNE 1989, ON THE INTRODUCTION OF MEASURES TO ENCOURAGE IMPROVEMENTS IN THE SAFETY AND HEALTH OF WORKERS AT WORK																
	1.1. DIRECTIVE PROVISIONS	0	0.0%	26	26.8%	71	73.2%	4	4.1%	0	0.0%	26	26.8%	4	4.1%	70	72.2%
	1.2. TOTAL OF DIRECTIVE 89/391/EEC	0	0.0%	26	26.8%	71	73.2%	4	4.1%	0	0.0%	26	26.8%	4	4.1%	70	72.2%
2	EU COUNCIL DIRECTIVE NO. 89/654/EEC, OF 30 NOVEMBER 1989, CONCERNING THE MINIMUM SAFETY AND HEALTH REQUIREMENTS FOR THE WORKPLACE																
	2.1. DIRECTIVE PROVISIONS	0	0.0%	4	22.2%	14	77.8%	0	0.0%	0	0.0%	4	22.2%	0	0.0%	14	77.8%
	2.2. ANNEX I DIRECTIVE 89/656/EEC PROVISIONS	45	43.3%	21	20.2%	38	36.5%	0	0.0%	45	43.3%	21	20.2%	0	0.0%	38	36.5%
	2.3. ANNEX II DIRECTIVE 89/656/EEC PROVISIONS	23	41.8%	11	20.0%	21	38.2%	0	0.0%	23	41.1%	11	19.6%	0	0.0%	22	39.3%
	2.4. TOTAL OF DIRECTIVE 89/654/EEC	68	38.4%	36	20.3%	73	41.2%	0	0.0%	68	38.2%	36	20.2%	0	0.0%	74	41.6%
3	DIRECTIVE NO. 2009/104/EC, OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, OF 16 SEPTEMBER 2009, CONCERNING THE MINIMUM SAFETY AND HEALTH REQUIREMENTS FOR THE USE OF WORK EQUIPMENT BY WORKERS AT WORK																
	1.1. DIRECTIVE PROVISIONS	1	2.9%	4	11.8%	25	73.5%	4	11.8%	1	2.6%	7	18.4%	4	10.5%	26	68.4%
	1.2. ANNEX I DIRECTIVE 89/656/EEC PROVISIONS	17	23.6%	46	63.9%	9	12.5%	0	0.0%	17	23.6%	46	63.9%	0	0.0%	9	12.5%
	1.3. ANNEX II DIRECTIVE 89/656/EEC PROVISIONS	9	15.5%	25	43.1%	24	41.4%	0	0.0%	9	15.5%	25	43.1%	0	0.0%	24	41.4%
	1.4. TOTAL OF DIRECTIVE 2009/104/EC	27	16.5%	75	45.7%	58	35.4%	4	2.4%	27	16.1%	78	46.4%	4	2.4%	59	35.1%
4	COUNCIL DIRECTIVE NO. 89/656/EEC, OF 30 NOVEMBER 1989, ON THE MINIMUM HEALTH AND SAFETY REQUIREMENTS FOR THE USE BY WORKERS OF PERSONAL PROTECTIVE EQUIPMENT AT THE WORKPLACE																
	1.1. DIRECTIVE PROVISIONS	4	10.0%	7	17.5%	29	72.5%	0	0.0%	4	10.0%	7	17.5%	0	0.0%	29	72.5%
	1.2. ANNEX I DIRECTIVE 89/656/EEC PROVISIONS	54	37.2%	28	19.3%	63	43.4%	0	0.0%	54	37.2%	28	19.3%	0	0.0%	63	43.4%
	1.3. ANNEX II DIRECTIVE 89/656/EEC PROVISIONS	4	6.3%	30	46.9%	30	46.9%	0	0.0%	4	6.3%	30	46.9%	0	0.0%	30	46.9%
	1.4. ANNEX III DIRECTIVE 89/656/EEC PROVISIONS	83	91.2%	3	3.3%	5	5.5%	0	0.0%	83	91.2%	3	3.3%	0	0.0%	5	5.5%
	1.5. TOTAL OF DIRECTIVE 89/656/EEC	145	42.6%	68	20.0%	127	37.4%	0	0.0%	145	42.6%	68	20.0%	0	0.0%	127	37.4%
5	DIRECTIVE NO. 2003/88/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, OF 4 NOVEMBER 2003, CONCERNING CERTAIN ASPECTS OF THE ORGANIZATION OF WORKING TIME																
	5.1. DIRECTIVE PROVISIONS	8	7.3%	4	3.6%	94	85.5%	4	3.6%	8	13.6%	4	6.8%	4	6.8%	43	72.9%
	5.2. TOTAL OF DIRECTIVE 2003/88/EC	8	7.3%	4	3.6%	94	85.5%	4	3.6%	8	13.6%	4	6.8%	4	6.8%	43	72.9%
6	EU COUNCIL DIRECTIVE NO. 91/533/EEC, OF 14 OCTOBER 1991, ON AN EMPLOYER'S OBLIGATION TO INFORM EMPLOYEES OF THE CONDITIONS APPLICABLE TO THE CONTRACT OR EMPLOYMENT RELATIONSHIP																
	6.1. DIRECTIVE PROVISIONS	1	2.6%	8	20.5%	30	76.9%	0	0.0%	1	3.3%	8	26.7%	0	0.0%	21	70.0%
	6.2. TOTAL OF DIRECTIVE 91/533/EEC	1	2.6%	8	20.5%	30	76.9%	0	0.0%	1	3.3%	8	26.7%	0	0.0%	21	70.0%
7	GLOBAL	249	26.7%	217	23.3%	453	48.7%	12	1.3%	249	28.5%	220	25.1%	12	1.4%	394	45.0%

Implementation process

1

- Each directive should be transposed through just one national law (exception: need to provide for technical regulations)

2

- Should be guided by a Ukrainian National Strategy / Concept for the Promotion of OSH
- Should follow a formulated “road map”

3

- First directive to transpose should be the EU OSH Framework Directive: (1) is the “umbrella directive” that sets the OSH architecture; (2) defines the building blocks of the EU OSH framework; (3) establishes general provisions for all employers, sectors, types of workers and risks (without prejudice to more stringent and/or specific provisions of the individual directives)

Implementation process

4

- Second set of directives to transpose should be the transversal ones: 89/654/EEC (workplaces); 2009/104/EC (use of work equipment); 89/656/EEC (use of PPE); 2003/88/EC (on working time); 92/58/EEC, on safety and health signs; 2006/42/EC, on machinery; Regulation (EU) 2016/425, on PPE design and manufacture; etc.

5

- Third set of directives to transpose should include the ones focused on the exposure to specific risks: 2000/54/EC (biological agents); 2003/10/EC (noise); 2002/44/EC (mechanical vibration); 90/270/EEC (display screen equipment); 90/269/EEC (manual handling of loads); 2013/59/Euratom (ionising radiation); 2013/35/EU (electromagnetic fields); 2006/25/EC (artificial optical radiation); 91/322/EEC, 98/24/EC and 2000/39/EC (chemical agents); 2004/37/EC (carcinogens or mutagens); 2009/148/EC (asbestos); etc.

6

- Fourth set of directives to transpose should be the ones focused on specific sectors of activity: 92/57/EEC (temporary or mobile construction sites); 93/103/EC (work on board fishing vessels); 2010/32/EU (Sharp injuries in the hospital & healthcare sector); 92/104/EEC (mineral-extracting industries); 92/91/EEC (mineral-extracting industries through drilling); etc.

Implementation process

7

- Fifth set of directives to transpose should be focused on the protection of OSH of specific types of workers: 94/33/EC (young workers); 92/85/EEC (pregnant workers); 91/383/EEC (workers with a fixed-duration or temporary employment relationship); etc.

8

- Provision of training on the forthcoming national OSH legal framework to the competent public authorities, social partners and other main national stakeholders in the areas of OSH and labour relations

9

- Launch of a nationwide information and awareness-raising campaign on the EU legislation being transposed to the Ukraine, in order to facilitate the understanding and, thus, compliance



Дякую за увагу!
Thank you for your attention!
Gracias por su atención!
Obrigado pela vossa atenção!

robalo@ilo.org

[**www.ilo.org/UkraineEUProject**](http://www.ilo.org/UkraineEUProject)