



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»

Alignment with EU OSH Acquis *Challenges & Opportunities*

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Антоніу Сантуш / António Santos
Менеджер проекту / Project manager

www.ilo.org/UkraineEUProject

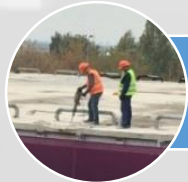
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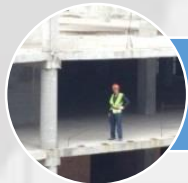
Context



EU OSH Legal Framework

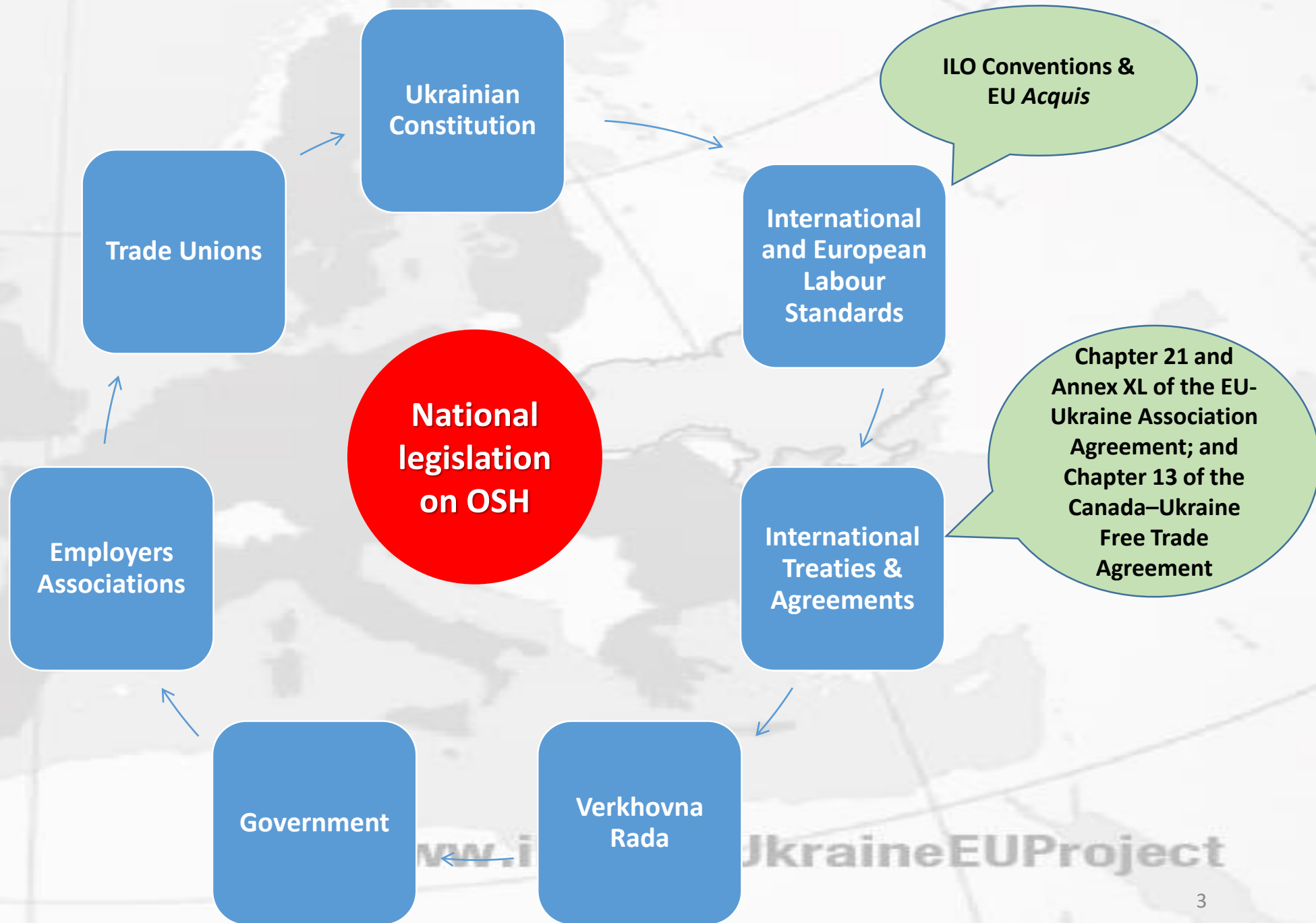


Main challenges

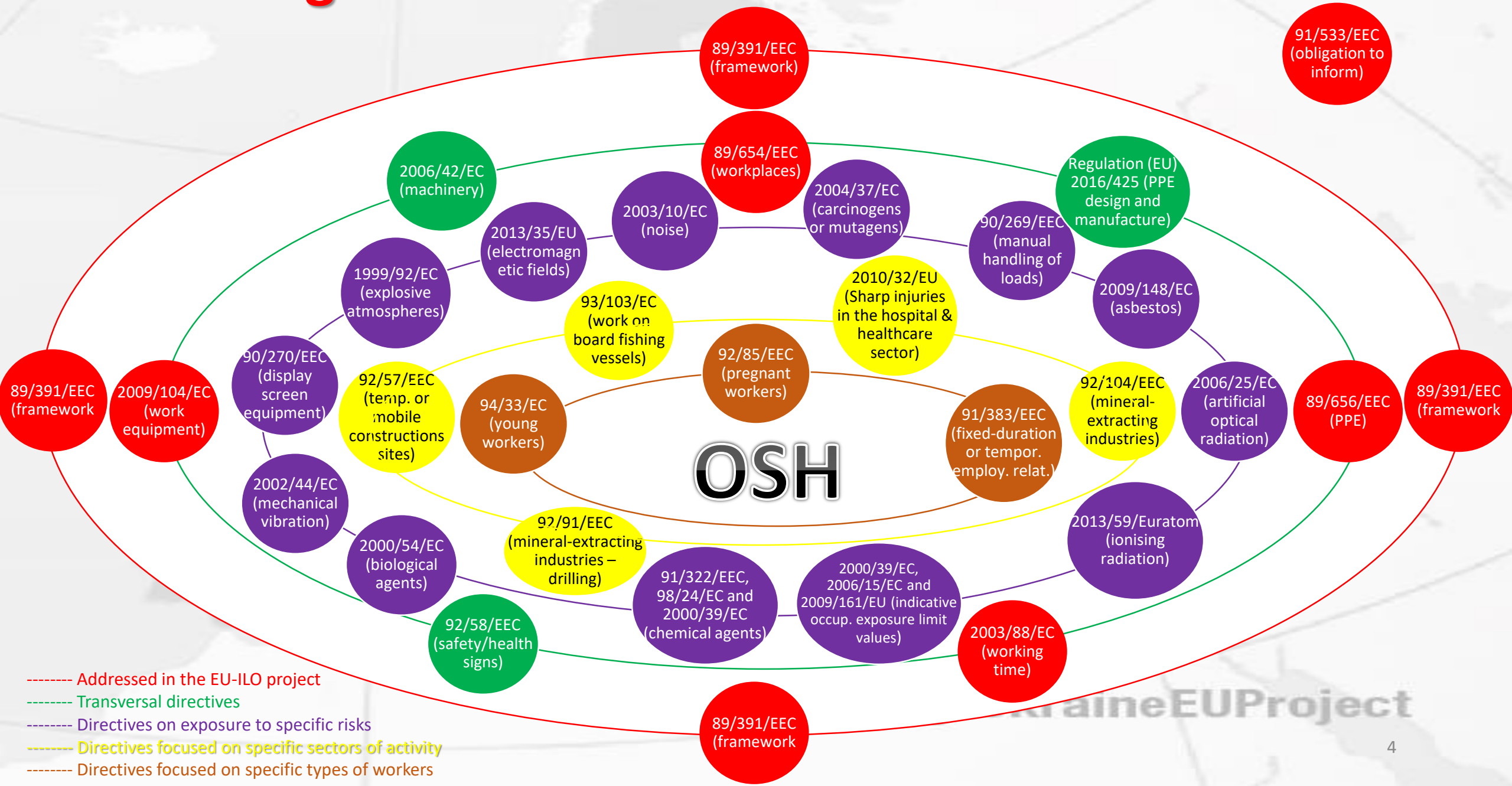


Main opportunities

Context



EU OSH Legal Framework



Global alignment level

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

N.º		TITLE	LEVEL OF COMPLIANCE								RECOMMENDATIONS FOR FURTHER ACTION							
			FULL		PARTIALLY		NON PROVIDED		CONTRADICTIONARY		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																	
	1.2. TOTAL OF DIRECTIVE 89/391/EEC																	
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																	
	2.2. ANNEX I DIRECTIVE 89/654/EEC PROVISIONS																	
	2.3. ANNEX II DIRECTIVE 89/654/EEC PROVISIONS																	
	2.4. TOTAL OF DIRECTIVE 89/654/EEC																	
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. ANNEX I DIRECTIVE 2009/104/EC PROVISIONS																	
	1.3. ANNEX II DIRECTIVE 2009/104/EC PROVISIONS																	
	1.4. TOTAL OF DIRECTIVE 2009/104/EC																	
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																	
	1.2. ANNEX I DIRECTIVE 89/656/EEC PROVISIONS																	
	1.3. ANNEX II DIRECTIVE 89/656/EEC PROVISIONS																	
	1.4. ANNEX III DIRECTIVE 89/656/EEC PROVISIONS																	
	1.5. TOTAL OF DIRECTIVE 89/656/EEC																	
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																	
	5.2. TOTAL OF DIRECTIVE 2003/88/EC																	
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																	
	6.2. TOTAL OF DIRECTIVE 91/533/EEC																	
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%

Main challenges

Segmented approach
(Law, LI, Prev. Services)

- Labour relations issues
- Labour protection issues
- Occupational health issues



Need for a more holistic and integrated approach: S + H = OSH

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

Responsibility approach for OSH

- Shared responsibility of:
 - Employers
 - Workers
 - Service providers



New paradigm:
(1) Non-transferable responsibility of employers for ensuring the safety and health of workers in every aspect related to work
(2) Obligations of employers
(3) Obligations of workers

Main challenges

Current purpose

- To “protect” the safety and health of workers



Need to refocus on:

- (1) Prevention of occupational risks
- (2) Improvement of the workers' working conditions

Personal scope - 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) Apprentice, internships, trainees, volunteers;
- (4) Economically dependent service providers; etc.

Personal scope - Restricted to some employers

- Enterprises
- High-risk facilities
- Specific sectors of activity, with harmful and hazardous working conditions or connected with contamination or adverse weather condition

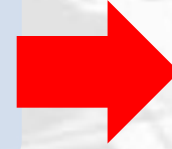


Need to extend the scope to all employers of all branches of activity in the private, public, cooperative and 3.^o sectors (including self-employed with employees)

Main challenges

Current OSH legal framework

- Too fragmented (in dozens of legal acts and by-laws)
- Gaps and contradictory legal provisions

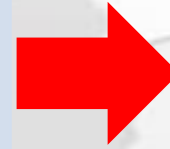


Need to :

- (1) Simplify and concentrate legislation in a fewer number of legal acts
- (2) Implement an “umbrella” OSH law to avoid gaps

Ineffective labour inspection system

- *Moratoriums* on inspection activity (Law 1278-VII)
- Restrictions to labour inspectors' activities and powers (Law. 877-V; and CMU Decree 295)
- Current decentralization process (“Proced. for State Supervision over Compliance with Labour Legislation” - CMU Decree 295)

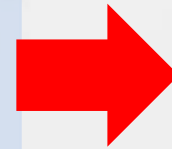


Need to:

- (1) Further implement ILO Conv. 81 and 129 (on labour inspection) and ILO Conv. 155 (on OSH)
- (2) Align with article 4(2) of EU OSH Framework Directive 89/391/EECE

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
- “Special investigation” by employers/Fund (conflict of interests)



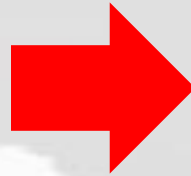
Need to:

- (1) Implement a reliable system for recording and notification of occupational accidents and diseases (follow ILO Code of Practice, ILO Protocol 155, and ILO Res. concerning statistics of occupational injuries)
- (2) Align with Eurostat ESAW methodology
- (3) Review CMU Regulation 294

Main challenges

Material scope

- Focused on:
 - Production activities
 - Production equipment



Design

- Facilities
- Layout of production process
- Work equipment, PPE

Selection

- Production methods
- Technology, work equipment, PPE, etc
- 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

Main challenges

Female labour

- Current legislation (Arts. 174 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):
 - Imposes unjustified and disproportionate limits to the equal treatment of men and women in matters of employment and occupation
 - Is 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:

- (1) EU Directive 2006/54/EC (equal opportunities and equal treatment of men and women in matters of employment and occupation)
- (2) EU Directive 92/85/EEC (OSH of pregnant workers and workers who have recently given birth or are breastfeeding)

Main challenges

Employment relationship

- 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, to combat covert/masked employment relationships and ensure 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

Main challenges

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

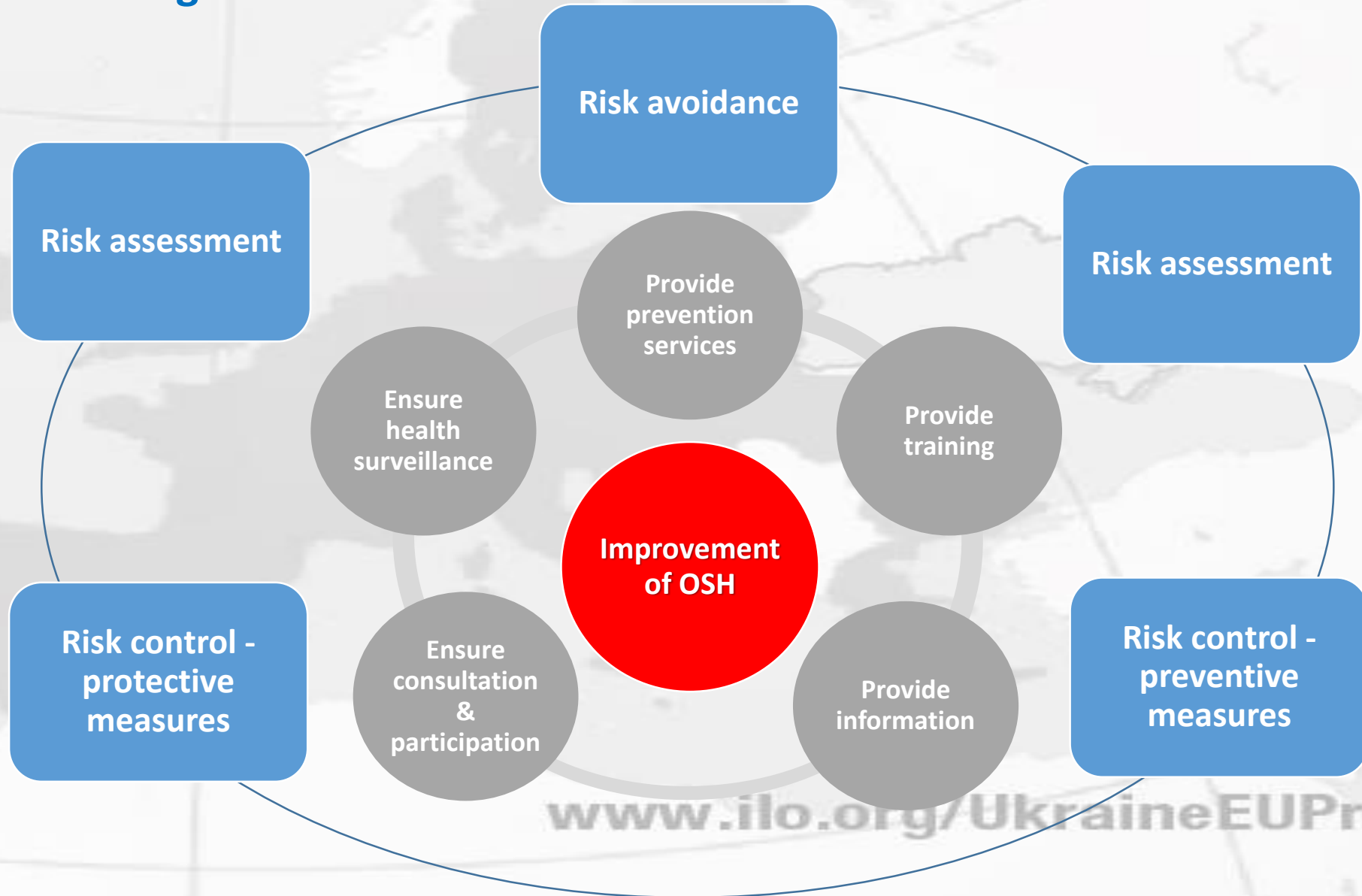
Develop a coherent overall prevention policy

Give collective protective measures priority over individual

Give appropriate instructions to the workers

Main challenges

Employers' main obligations:



Main opportunities

1

- Reduction of the number and incidence rates of work-related accidents and occupational diseases

2

- Improvement of the work ability, labour capacity and longevity of the workforce

3

- Reduction of the direct and indirect costs resulting from work-related accidents and occupational diseases (compensation costs, insurance costs, training costs, loss of production opportunity costs, image and reputation indirect costs, opportunity costs in terms of economies of scale and experience, indirect costs related to the motivation and involvement of workers, etc.)

4

- Workforce productivity improves (due to: more motivation resulting from better working conditions; and less abstencionism, presentism, sick leaves, etc.)

Main opportunities

5

- Improvement of market competition and elimination of unfair competition

6

- Access of businesses to new and more attractive markets (e.g., European common market, Canadian market, etc.)

7

- Increase on foreign investment

8

- Increase on external demand

Main opportunities

9

- Increase on GDP

10

- Public finances balance improve and public debt decreases

11

- Interest rates decrease and investment increase

12

- Increase on employment rate and reduction of unemployment

Main opportunities

13

- Internal demand increases

14

- Tax and social security revenues increase (whilst maintaining the some tax rates)

15

- Better state services and social protection

16

- Tax and social contribution rates may be reduced (due to enlargement of tax base)

Main opportunities

17

- Improvement on businesses' revenues and net income, mainly through:
 - Elimination of unfair competition (from businesses that do not comply with labour relations and OSH regulations);
 - Increased competitive advantage (rooted on more motivated workforce; fair market; and reduction of tax rates and social security contribution rates - allowed by the improvement of social security and public finances *equilibrium*);
- Increased labour force productivity;
- Reduction of fixed and variable costs related to work-related accidents and occupational diseases;
- Increased revenues due to access to new markets (e.g., European common market, Canada, etc.); and
- Increased net profits, due not only to increased revenues and reduction of costs, but also resulting from the reduction of income tax rates (allowed by the improvement of public finances).



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

robalo@ilo.org

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