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► **EU-ILO PROJECT**

**“TOWARDS SAFE, HEALTHY
AND DECLARED WORK IN UKRAINE”**

Labour Inspection

**On-line training series
International and EU Labour Standards
Background paper**

July, 2020

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► EXECUTIVE SUMMARY

The improvement of working conditions at workplaces, reducing the occurrence and damaging consequences of work-related accidents and occupational diseases and enhancing the living conditions of people have been guiding the efforts of policy makers around the world, over the last 100 years¹.

These efforts have been embodied in several international and European labour standards and national legislation on labour relations and occupational safety and health (OSH).

However, and despite the importance commonly recognized to such international and national labour standards, the truth seems to be that, without proper implementation and enforcement, they may be pointless and remain just pieces of paper.

As such, within the international and European legal architecture on labour relations and OSH, the key role of promoting the improvement of working conditions and the monitoring and enforcing of the compliance with labour and OSH regulations was assigned to labour inspection.

In this context, the present background paper, prepared under the scope of the Activity 2.2.2 of the EU funded and ILO implemented technical cooperation project “Towards safe, healthy and declared work in Ukraine”², is aimed at supporting the module on “Labour Inspection”, within the framework of the projects’ Summer Marathon of Online Trainings on International and EU Labour Standards.

¹ Hämäläinen, P., Leena Saarela, K., & Takala, J. (2009). Global trend according to estimated number of occupational accidents and fatal work-related diseases at region and country level. *Journal of Safety Research*, 40(2), 125–139. <https://doi.org/10.1016/j.jsr.2008.12.010> (Hämäläinen et al., 2009).

² Additional information at: <https://ilo.org/shd4Ukraine> and <https://www.facebook.com/shd4Ukraine>.

It intends to provide project stakeholders, in particular policy decision makers and legal acts' drafting experts, with insights and technical advice and guidance on how to better align Ukrainian legal framework with International Labour Standards on Labour Inspection³.

It is expected that it may also contribute to the development of more enabling conditions for the approximation of Ukrainian legislation to the aforesaid standards and, in this way, for facilitating the transition from undeclared to declared work, fostering the implementation of the EU-Ukraine Association Agreement and advancing decent working conditions for all in Ukraine.

It starts by addressing the origins of labour inspection, along with its relevance and with the advantages of setting up an effective system of labour inspection.

It then follows the presentation of the essential aspects of the main international labour standards on labour inspection, in particular, the Labour Inspection Convention, 1947 (No. 81), Labour Inspection (Agriculture) Convention, 1969 (No. 129) and Protocol of 1995 to the Labour Inspection Convention, 1947.

The major implications of such standards for policy decision makers and legal acts' drafting experts are then discussed. Especially when it comes to regulating such aspects of the system of labour inspection as: functions; scope; structure, organization, means and operation; status and equality of labour inspection staff; labour inspectors' recruitment and working conditions; labour inspectors' powers; labour inspectors' obligations; advice and enforcement; and reporting responsibilities.

³ In particular, regarding the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129) and the Protocol of 1995 to the Labour Inspection Convention, 1947.

Finally, it concludes with the presentation of some examples of several aspects of the labour inspection system in different countries.

It should not be seen, however, as an ILO code of practice or a set of official guidelines, nor as a replacement of the positions of the ILO supervisory bodies.

Kyiv, 8 July 2020

António J. Robalo Santos

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“Towards safe, healthy and declared work in Ukraine”

ILO Office for Central and Eastern Europe

► LABOUR INSPECTION

The roots

Labour legislation is a consequence of the industrial revolution that began in Europe at the end of the eighteenth century and continued throughout the nineteenth. The innumerable strikes and riots, often degenerating into violent revolts, which marked the nineteenth century, led Governments to realise that the State should intervene in the organization of labour relations and on the determination of working conditions, inducing the set up and development of labour inspection services to supervise the application of the first protective laws (ILO, 2010b).

The earliest national legislation to improve working conditions is the British parliament “Act to preserve the morals of apprentices”⁴, of 1802. Although voluntary committees, made up of local notables, supervised its application, it was ineffective. In 1833, the British Government appointed the first four (labour) “inspectors”, who paid particular attention to the long working hours for adults and children. In 1844, the inspectors became civil servants, and the system was subsequently replicated throughout Europe, with different practices and a wide diversity in the powers and duties of the inspection services (ILO, 2010b).

In 1890, representatives of 15 countries attended a conference in Berlin, to adopt the first standards on improving working conditions and on inspection services, within which it was affirmed that laws in each State should be supervised by an adequate number of specially qualified officers, appointed by government and independent of employers and workers. This initiative was given further impetus, in 1919, with the creation of the ILO (ILO, 2010b; League of Nations, 1919).

In fact, since its beginning, the ILO has made labour inspection one of its priorities. The Treaty of Versailles, which set up the ILO, declared

⁴ Where “morals” were defined in terms of safety, health and welfare; and “apprentices” were child workers.

that an improvement of conditions of labour was urgently required and stressed that the failure of any nation to adopt human conditions of labour was an obstacle in the way of other nations which desired to improve the conditions in their own countries and state, under Article 427, ninth point, of Part XIII, that it was particularly important that “each State should make provision for a system of inspection (...), in order to ensure the enforcement of the laws and regulations for the protection of the employed”. It is also important to recall, in this regard, that under Article 10(2)(b) of the ILO Constitution, the International Labour Office undertook to assist governments in the improvement of labour inspection systems (ILO, 1919, 2006a, 2010b; League of Nations, 1919).

As such, at its First Session, in 1919, the International Labour Conference showed the importance of labour inspection, by expressing the wish that Members should establish, as soon as possible, not only a system of efficient factory inspection, but also a government service specially charged with the duty of safeguarding the health of the workers. Four years later, in 1923, the Conference adopted the Labour Inspection Recommendation, 1923 (No. 20), which laid down the general principles for the organization and functioning of a national system of inspection. Although it was a Recommendation, rather than a Convention, and thus not binding for member States, it paved the way for and enormously influenced the later adoption, in 1947 and 1969, respectively, of much more comprehensive instruments for labour inspection, including Convention Nos. 81 (which is considered, ever since its adoption, the universal reference instrument on labour inspection) and 129, along with their accompanying Recommendations Nos. 81 and 133 (ILO, 1923, 1947b, 1947a, 1969b, 1969a, 2006a, 2010b).

Its relevance

The international labour standards, maintained and developed by the ILO, are aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity, through the provision of a framework for the regulation of labour relations at national level, which is essential for ensuring that economic growth provides benefits to all.

However, and despite the importance commonly recognized to such international and national labour standards, the truth seems to be that, without proper implementation and enforcement, they may be pointless and remain just pieces of paper (Anderson, 2007; ILO, 2007; Jensen, 2004; Richthofen, 2002; Suard, 2016).

The latter seems particular true in view of the results of the Second European Survey of Enterprises on New and Emerging Risks (EU-OSHA, 2014). In fact, the survey findings indicate that the major reasons for addressing Occupational Safety and Health (OSH) in the European Union (EU) are the fulfillment of legal obligations (85% of the establishments) and avoiding fines from the labour inspectorates (78%), as noted by Suard (2016), Irastorza et al. (2016) and the European Parliament (2015).

In fact, and regardless of the relevance widely acknowledged to such international, European and national labour standards, it seems reasonable to assume that, without proper enforcement, compliance would be compromised (Anderson, 2007; ILO, 2007; Jensen, 2004; Niskanen et al., 2014; Richthofen, 2002).

As such, within the international and European legal architecture on labour relations and OSH, the key role of promoting the improvement of working conditions and the monitoring and enforcing of the compliance with labour and OSH regulations was assigned to labour inspection (European Council, 1989; European Parliament, 2014; ILO, 1947a, 1969a, 1978, 1981).

In this connection, the European Parliament underlines the need for a stronger focus on the implementation and enforcement of labour standards, as an important component in the protection of workers' health and productivity which, moreover, is considered an indispensable prerequisite for compliance with OSH requirements that protect workers' health, whereas labour inspections play an important role (European Parliament, 2015).

Considering that the violation of OSH legal requirements often leads to accidents at work (Frick, 2011), labour inspection is understood as an

important instrument to promote safer and healthier working conditions and, in this way, to prevent work-related accidents and occupational diseases (Alli, 2008; ILO, 1996, 2003, 2005, 2006c, 2007, 2011; Richthofen, 2002; Takala, 2005).

Indeed, and despite the recognition that OSH conditions and their impact on the occurrence of work-related accidents and occupational diseases are influenced by multiple factors (Tösine & Wedege, 2013) and that a coherent national system of occupational risk prevention involves the cooperation of several actors besides the labour inspection (e.g. employers, trade unions, industry representatives, OSH professional organizations and other government agencies and departments), it is widely recognized that labour inspectorates play a central, indispensable and critical role in the improvement of the working conditions at workplaces (Tösine & Wedege, 2013) by enforcing the law, working in partnership with the other actors and coordinating the implementation and evaluation of policy measures, within the framework of such national system (ILO, 1947a, 1969a, 1978, 1981).

The role of labour inspection in the enforcement of labour legislation and hence in the determination of an employment relationship is also becoming increasingly important. In this regard, the ILO Recommendation No. 198 (ILO, 2006b) sets up the structure in which national policies should rely on in order to determine the criteria for the determination of an employment relationship (ILO, 2006b, 2013a).

The supremacy of facts over the form became the backbone of the employment relationship and should be considered as a basic principle under a legal system. Labour inspectors deal with this reality of facts at workplaces on a daily basis, and every time an inspection visit is carried out, they are considered the most accurate governance tool to adequately address the growing concern on the variety of forms of employment contracts (ILO, 2013a).

In addition, labour inspectorates are important allies for dealing with the problem of undeclared work. Improving the application and enforcement

of workers' rights and protections through a more robust and responsive labour inspection action remains a necessary and important part of addressing undeclared work (ILO, 2013b).

As an essential part of the labour administration system, labour inspection exercises the fundamental function of labour law enforcement and effective compliance, ensuring fairness in the workplace and promoting economic and social development (ILO, 2011).

Labour inspection has, in this respect, a twofold nature. On the one hand, it supervises the enforcement of legal provisions, particularly with regard to workers' rights. This is not restricted to working and employment conditions and Occupational Safety and Health (OSH). It may also include social services, migrant workers, vocational training, social security and other matters. On the other hand, labour inspection provides technical information and advice, as well as training.

This dual nature means that labour inspection systems play a key role in the world of work and should be able to effectively remedy a wide range of labour problems. They are a tool for fairness in the workplace and good governance, and are particularly important in the current economic and social turmoil, induced by the COVID-19 pandemic.

Within the international and European legal framework, labour inspection ensures that rights at work are turned into reality, that laws are respected and that actors know their rights and obligations, thus protecting employees' rights, ensuring health and safety at the workplaces, combating unsafe working environments and, therefore, preventing the occurrence of accidents at work and occupational diseases (European Parliament, 2014).

It is therefore generally accepted, and thus expected, that labour inspectorates, provided with the necessary resources and carrying out their duties effectively (monitoring and enforcing the labour legislation, giving information and technical advices, promoting awareness-raising campaigns and implementing occupational risks prevention policies), should be able to positively influence the working conditions of workers, improving their OSH conditions at the workplaces and, consequently,

producing positive outcomes, in particular in terms of reducing the incidence rates of work-related accidents and occupational diseases (Anderson, 2007; Frick, 2011; ILO, 2007; Jensen, 2004; Levine et al., 2012; Niskanen et al., 2014; Richthofen, 2002; Suard, 2016; Tösine & Wedege, 2013).

According to the ILO, labour inspection constitutes an indispensable component of a national labour administration system, playing an important role in the application of standards, policies, systems and programs, either confirming that action on the ground is taking place as foreseen, identifying shortfalls and means of resolving any problems or using sanctions to enforce correct implementation (ILO, 2007).

In this respect, Richthofen (2002) argues that labour inspection could also play an additional role, going a little bit further from its traditional approach (of visiting, monitoring, enforcing, advising and inquiring), both through the design and implementation of policies and procedures aimed at promoting the cooperation with and between other social actors (e.g. representative associations of employers and workers, professional, trade and industrial associations, insurance companies) and through the development and promotion of the concepts of costs and benefits associated with the promotion of safer and healthier workplaces, to convince management that ‘safety pays’ and that ‘good health is good for business’.

Advantages of an effective labour inspection system

An efficient and effective labour inspection system ensures both workers’ welfare and improved financial results through higher productivity (ILO, 2010a).

Labour inspection provides a comprehensive solution to a wide variety of the problems that have arisen in response to globalization. An effective labour inspection system, combined with socially responsible enterprises and sound industrial relations can constitute the basis of a win-win strategy for promoting sustainable development.

An effective labour inspection system promotes a level playing field for all, preventing that irresponsible employers - which fail to comply with legal provisions relating to general conditions of work and occupational safety and health and abstain from the necessary investments - may prejudice the workers and engage in unfair competition with complying employers. Labour inspection system ensures, in this respect, that such behaviours are prevented or punished.

In addition, as notes ILO (2010a) the investment on the creation of good working environment and on the application of OSH regulations is a precondition for success of the employers which aim for sustainable growth. In particular, for the following reasons:

- ▶ Disputes, accidents and diseases reduce efficiency and give a negative return on investment;
- ▶ A good working environment attracts and retains qualified workers and leads to increasing productivity;
- ▶ A safe and healthy working environment promoting equality of treatment helps to build confidence and trust amongst customers and investors;
- ▶ Access and successful competition in the most attractive national and international markets cannot be achieved with low quality production methods, poor working conditions and an unsafe and unhealthy working environment; and
- ▶ Activists, consumer groups and multinational companies increasingly demand decent working conditions and compliance with labour standards in global supply chains.

Moreover, there is increasing evidence and awareness that although prevention in the world of work may lead to short term costs, these are largely offset by the medium and long-term benefits for the enterprise as well as society as a whole. These benefits include not only huge savings

(in terms of direct, indirect and opportunity costs related to work-related accidents, occupational diseases, presentism, absenteeism, staff turnover and retraining, financial penalties, image damages, etc.), but also the sustainment of working capacity, increases in productivity and quality, improvements in the motivation of workers, the stability of employment, etc. (ILO, 2010a).

Indeed, by improving working conditions at workplaces, an effective labour inspection presents considerable benefits and sound advantages, not only at the human level, but also at the social, economic and financial levels, and not only for the workers, but also for the employers, the state and society in general.

The above benefits may include, in particular, the following (ILO, 2018):

1. Decreases in the number and incidence rates of fatal and non-fatal work-related accidents and occupational diseases;
2. Reductions in direct and indirect costs arising from those events, namely regarding:
 - a. Emergency services;
 - b. Rehabilitation services;
 - c. Disability, early retirement and other pensions;
 - d. Health care, hospital, and rehabilitation expenses;
 - e. Compensation costs;
 - f. Work-related accident and occupational disease insurance costs;
 - g. Opportunity costs, related to the loss of production, hence, revenues, due to the absence of the victims;
 - h. Increased training costs to train the workers that substitute the victims;

- i. Impact of the victims absence and substitution in terms of economies of scale and experience;
 - j. Indirect costs related to damages to the image and reputation of the employers and the state related with the occurrence of such events;
 - k. Indirect costs associated to the impact of such events on the motivation and commitment of the workers.
- 3. Improvement of the work ability and capacity of the workforce;
- 4. Development of social security sustainability and revenues:
 - a. By ensuring the transition of those in the informal and undeclared economies (workers and employers) to formal and declared ones, therefore raising the number of social security contributions and reducing the social security expenditures (e.g., with unemployment benefits and other benefits that were wrongly assigned to informal and undeclared workers and businesses);
 - b. Through the increase of the work capacity of the workforce which, therefore, instead of receiving early benefits from the social security, will now contribute for a longer period;
 - c. By reducing the social security direct costs related to work-related accidents and occupational diseases (e.g., rehabilitation costs; early retirement pensions; disability and other pensions; etc.).
- 5. Enhancement of the public finance balance and reduction of tax rates, through:
 - a. The increase of tax revenues, due to the reduction of the informal economy and of the undeclared work;
 - b. The decrease of state budget expenditures, through the reduction of the direct and indirect costs due to work-related accidents and

occupational diseases (e.g., health care costs, emergency services expenditures; etc.);

- c. The increase of business revenues, resulting from: the increase of sales due to access to new markets (e.g., European Common Market, Canada, etc.); the elimination of unfair competition and the improvement of the market environment; and the increase of productivity resulting from the improvement of working conditions and consequent reduction of work-related accidents and occupational diseases.
6. Businesses access to new and more competitive markets, as well as to global value chains, where the requirements usually include the alignment of national legislation and businesses' practices with the international and EU Labour Standards on human rights, labour relations, OSH and labour inspection (e.g., European Common Market, Canada, UN Global Compact Partners, etc.);
 7. Expansion of revenues and net income of businesses, mainly through:
 - a. The elimination of the unfair competition from the businesses that do not comply with labour relations and OSH regulations;
 - b. Increased competitive advantage, founded on a more motivated workforce, on a fairer market, and on the reduction of tax rates and social security contributions (allowed by the improvement of social security and public finances equilibrium);
 - c. The increase of productivity via the reduction of fixed and variable costs related to work-related accidents and occupational disease (e.g., 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.);

- d. Increased revenues due to access to new markets (e.g., European Common Market); and
- e. Increased net profits, due not only to increased revenues and reduction of costs, but also resulting from the reduction of income taxes (allowed by the improvement of public finance).

► MAIN INTERNATIONAL LABOUR STANDARDS ON LABOUR INSPECTION

The proper application of labour legislation depends on an effective labour inspectorate. Labour inspectors examine how national labour standards are applied in the workplace and advice employers and workers on how to improve the application of national law in such areas as working time, wages, occupational safety and health, and child labour. In addition, labour inspectors bring to the notice of national authorities gaps and defects in national law. They play an important role in ensuring that labour law is applied equally to all employers and workers.

Labour inspection is one of the core functions of a system of labour administration and has been the subject of international standard setting since the ILO was founded, with references in the Treaty of Versailles⁵ and the ILO Constitution⁶ (ILO, 1919).

ILO has adopted, over the years, numerous instruments dealing with the structure and functioning of the system of labour inspection. Either specifically focusing on labour inspection⁷; or referring to it, as an important mean of prevention and labour law compliance⁸ (ILO, 2011).

⁵ Part XIII of the Treaty of Versailles, establishing the ILO, provides (in Article 427, Ninth) that “[each] State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed” (League of Nations, 1919).

⁶ Under article 10(2)(b) of the Constitution of the International Labour Organization, the functions of the Office include helping governments improve their administrative practices and systems of labour inspection: “Subject to such directions as the Governing Body may give, the Office shall ... accord to governments at their request all appropriate assistance within its power in connection with the framing of laws and regulations on the basis of the decisions of the Conference and the improvement of administrative practices and systems of inspection.”

⁷ Labour Inspection (Health Services) Recommendation, 1919 (No. 5) (withdrawn); Labour Inspection Recommendation, 1923 (No. 20); Labour Inspection Convention, 1947 (No. 81); Protocol of 1995 to the Labour Inspection Convention, 1947 (P. 81); Labour Inspection (Agriculture) Convention, 1969 (No. 129); and Labour Inspection (Seafarers) Convention, 1996 (No. 178).

⁸ In total, and excluding shelved and withdrawn instruments, more than 55 Conventions, one Protocol and around 50 Recommendations contain, at least, one reference to labour inspection.

The basis for the establishment of a system of labour inspection comprises the Labour Inspection Convention, 1947 (No. 81) (ILO, 1947a), the Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ILO, 1969a), along with their accompanying Recommendations and the Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81).

Conventions Nos. 81 and 129 have been designated as priority ILO Conventions, which means that member States are encouraged to ratify them because of their importance in the functioning of the international labour standards system. More recently, the ILO Declaration on Social Justice for a Fair Globalization (ILO, 2008) puts special emphasis on the ILO instruments regarded as “most significant from the viewpoint of governance covering tripartism, employment policy and labour inspection”⁹. These instruments, including Conventions Nos. 81 and 129, are now referred to as the governance Conventions.

In short, Convention 81 requires ratifying states to maintain a system of labour inspection for workplaces in industry and commerce; states can make exceptions with regard to mining and transport. It sets out a series of principles respecting the determination of the fields of legislation covered by labour inspection, the functions and organizations of the system of inspection, recruitment criteria, the status and terms and conditions of service of labour inspectors, and their powers and obligations. The labour inspectorate has to publish and communicate to the ILO an annual report indicating the general functioning of its services on a number of issues.

ILO Convention 129, similar in content to Convention No. 81, requires ratifying states to establish and maintain a system of labour inspection in agriculture. Labour inspection coverage may also be extended to tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers; persons participating in a collective economic enterprise, such as members of a cooperative; or members of the family of

⁹ They include: the Labour Inspection Convention, 1947 (No. 81); the Employment Policy Convention, 1964 (No. 122); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

the operator of the agricultural undertaking, as defined by national laws or regulations.

Both Conventions 81 and 129 are mainly focused on the structure and functioning of the system of labour inspection that should be implemented by ILO Constituents.

In addition to the definition of the primary functions of labour inspection these conventions provide for its placement under the supervision and control of a central authority.

They also foresee the necessary arrangements for the promotion of the co-operation and collaboration of the labour inspection with other government services and employers' and workers' organizations.

Conventions 81 and 129 also provide for the need to ensure that labour inspectors have the necessary qualifications, are recruited on that basis and are provided with the necessary status, training and powers to effectively discharge their duties.

Moreover, they foresee the mandatory notification of labour inspectorates regarding work-related accidents and occupational diseases and the liability for prompt legal proceedings without previous warning and for application of adequate penalties to any person who violates or neglects to observe legal provisions enforceable by labour inspectors or for obstructing labour inspectors in the performance of their duties (ILO, 1947a, 1969a).

They impose to labour inspectors the duty of professional secrecy and an incompatibilities regime.

Finally, they provide for some periodic reporting responsibilities, concerning the labour inspection activities performed.

The Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81), on the other hand, extend the application of the provisions of the Labour Inspection Convention, 1947 (No. 81) to workplaces considered as non-commercial (which means neither industrial nor commercial in the sense

of the Convention), thus covering all categories of workplaces that are not considered industrial or commercial. It also allows ratifying states to make special arrangements for the inspection of enumerated public services.

One specific technical area that has been a recurrent focus of international labour standard setting is Occupational Safety and Health (OSH). The Occupational Safety and Health Convention, 1981 (No. 155), is central to ILO action in the area of OSH, and many of its provisions are complemented and expanded by an array of other ILO instruments.

Labour administrations have a special responsibility in developing and enforcing OSH legislation and promoting compliance, particularly through their labour inspection systems.

For example, ILO Convention No. 155 specifies that the enforcement of OSH laws and regulations shall be secured by an adequate and appropriate system of inspection, which, according to the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), should be guided by the provisions of Conventions Nos 81 and 129.

The Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) foresees, in this respect, that “the national system for occupational safety and health shall include, among others, mechanisms for ensuring compliance with national laws and regulations, including systems of inspection” [Article 4(2)(c)].

More recently, the adopted HIV and AIDS Recommendation, 2010 (No. 200), refers to the role that labour administration services, including the labour inspectorates, should play in implementing the instrument’s guidelines, in particular, by “developing national policies and programmes on HIV/AIDS and the world of work, combating discrimination and promoting equality of opportunity and treatment” (Paragraph 44).

The Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), on the other hand, foresees that, for its effective enforcement, the necessary measures shall be taken to ensure adequate inspection [Article 11(1)], while the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)

provides that “Appropriate measures shall be taken to ensure the proper administration of regulations or provisions concerning the weekly rest, by means of adequate inspection or otherwise” [Article 10(1)] and the Holidays with Pay Convention (Revised), 1970 (No. 132) establishes that “Effective measures (...) shall be taken to ensure the proper application and enforcement of regulations or provisions concerning holidays with pay, by means of adequate inspection or otherwise” (Article 14).

In the same line, the Reduction of Hours of Work Recommendation, 1962 (No. 116) foresees that “For the effective enforcement of the measures taken to reduce hours of work progressively (...) appropriate measures should be taken to ensure the proper administration of the provisions concerning hours of work by means of adequate inspection or otherwise” [Paragraph 21(a)].

In this context, it is also worth mentioning the Employment Relationship Recommendation, 2006 (No. 198), which calls on the competent authorities to adopt measures to ensure respect for and implementation of laws and regulations concerning the employment relationship, for example, through labour inspection services and their collaboration with the social security administration and the tax authorities (Paragraph 15).

The paramount importance of labour inspection system on the promotion and enforcement of compliance with laws and regulations is also recognized in the European arenas, in particular:

1. In Article 4 of the European Council Directive No. 89/391/EEC, of 12 June 1989, concerning the introduction of measures to encourage improvements in the safety and health of workers at work (European Council, 1989), which foresees the obligations of the states for ensuring the legal subjection of employers, workers and workers’ representatives to the legal provisions necessary to implement its provisions and for ensuring adequate controls and supervision;
2. In the European Parliament Resolution No. 2013/2112(INI), of 14 January 2014, on effective labour inspections as a strategy to improve working conditions in Europe (European Parliament, 2014); and

3. In the EU Strategic Framework on Health and Safety at Work 2014-2020 (European Commission, 2014; European Parliament, 2015) which sets, as one of the EU OSH key objectives, the improvement of the enforcement of OSH legislation by Member States.

Labour Inspection Convention, 1947 (No. 81)

The Labour Inspection Convention, 1947, which is applicable to industrial and commercial workplaces¹⁰, foresees that each Member of the ILO, in which this Convention is in force, should maintain a system of labour inspection (C081, Articles 1 and 22–24).

It defines the primary duties of the system of labour inspection, as follows (Art. 3):

1. To secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters;
2. To supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions¹¹;
3. To bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

It also notes that, in case any further duties are entrusted to labour inspectors, they shall not be such as to interfere with the effective discharge of their above primary duties or to prejudice in any way the

¹⁰ It is important to highlight, at this point, that the Protocol P081, of 1995, to the Labour Inspection Convention, 1947, extended the scope of application of the latter to activities in the “non-commercial services sector”, i.e., to “activities in all categories of workplaces that are not considered as industrial or commercial for the purposes of the Convention [C081]”. Equally essential is to note that, according to Article 2(2), national laws or regulations may exempt mining and transport undertakings (or parts of such undertakings) from the application of this Convention.

¹¹ The term “legal provisions” includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by labour inspectors.

authority and impartiality which are necessary to inspectors in their relations with employers and workers.

The ILO Convention No. 81 also provides that labour inspection shall be placed under the supervision and control of a central authority¹² (Art. 4) and that arrangements should be made in order to ensure its effective co-operation with other Government services and public or private institutions engaged in similar activities and the collaboration between its officials and employers and workers or their organisations (Art. 5).

As for inspection staff, Convention 81 foresees that:

1. It shall be composed of public officials, whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences (Art. 9);
2. Both men and women shall be eligible for appointment to the inspection staff and, where necessary, special duties may be assigned to men and women inspectors (Art. 8).

Furthermore, Article 9 provides that duly qualified technical experts and specialists (including specialists in medicine, engineering, electricity and chemistry) shall be involved in the work of inspection¹³, for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers.

In what concerns labour inspectors, they shall:

1. Be recruited with sole regard to their qualifications for the performance of their duties, whereas the means of ascertaining such qualifications shall be determined by the competent authority [Arts. 7(1) and 7(2)];

¹² In the case of a federal State, the term “central authority” may mean either a federal authority or a central authority of a federated unit.

¹³ In such manner as may be deemed most appropriate under national conditions.

2. Be adequately trained for the performance of their duties [Art. 7(3)];
3. Be in sufficient number to secure the effective discharge of the duties of the inspectorate and shall be determined with due regard for (Art. 10):
 - a. The importance of the duties which inspectors have to perform (in particular, the number, nature, size and situation of the workplaces liable to inspection; the number and classes of workers employed in such workplaces; and the number and complexity of the legal provisions to be enforced);
 - b. The material means placed at the disposal of the inspectors; and
 - c. The practical conditions under which visits of inspection must be carried out in order to be effective.
4. Be furnished with local offices, suitably equipped in accordance with the requirements of the service, and accessible to all persons concerned [Art. 11(1)(a)];
5. Be provided with the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist [Art. 11(1)(b)];
6. Be reimbursed of any travelling and incidental expenses which may be necessary for the performance of their duties [Art. 11(2)].

Moreover, ILO Convention 81 also foresees that labour inspectors, in order to properly discharge their duties, should be entrusted with the following powers:

1. To enter freely and without previous notice at any hour of the day or night any workplace liable to inspection [Art. 12(1)(a)];
2. To enter by day any premises which they may have reasonable cause to believe to be liable to inspection [Art. 12(1)(b)];

3. To carry out any examination, test or enquiry which they may consider necessary, in particular:
 - a. To interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions [Art. 12(1)(c)(i)];
 - b. to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work (in order to see that they are in conformity with the legal provisions), and to copy such documents or make extracts from them [Art. 12(1)(c)(ii)];
 - c. To enforce the posting of notices required by the legal provisions [Art. 12(1)(c)(iii)];
 - d. To take or remove for purposes of analysis samples of materials and substances used or handled (subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose) [Art. 12(1)(c)(iv)].
4. To take steps with a view to remedying defects observed in plant, layout or working methods which they may have reasonable cause to believe constitute a threat to the health or safety of the workers [Art. 13(1)];
5. Subject to any right of appeal to a judicial or administrative authority which may be provided by law, to make or to have made orders requiring¹⁴:
 - a. Such alterations to the installation or plant, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating to the health or safety of the workers [Art. 13(2)(a)]; or

¹⁴ Where this is not compatible with the administrative or judicial practice of the Member State, inspectors shall have the right to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force [Article 13(3)].

- b. Measures with immediate executory force in the event of imminent danger to the health or safety of the workers [Art. 13(2)(b)].

In order to secure the exemption, integrity, independence, authority and impartiality of labour inspectors, which is essential in their relations with employers and workers, Convention 81 foresees an incompatibility, professional secrecy and confidentiality regime for labour inspectors¹⁵, which provides that they shall:

1. Be prohibited from having any direct or indirect interest in the undertakings under their supervision [Art. 15(a)];
2. Be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties [Art. 15(b)];
3. Treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions [Art. 15(c)]; and
4. Give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint [Art. 15(c)].

The Convention 81, also foresees that, on the occasion of an inspection visit, inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties [Art. 12(2)].

It also prescribes that workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions (Article 16).

In addition, according to Article 14, the labour inspectorate shall be notified of work-related accidents and cases of occupational disease in

¹⁵ Which are subject to exceptions that can be made by national laws or regulations.

such cases and in such manner as may be prescribed by national laws or regulations.

In order to ensure proper application of legal provisions enforceable by labour inspectors and prevent the obstruction to their work, the Convention also foresees that:

1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning¹⁶ [Art. 17(1)];
2. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings [Art. 17(2)];
3. Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced (Art. 18).

In what concerns reporting responsibilities, ILO Convention 81 foresees that:

1. Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their inspection activities¹⁷ [Art. 19(1)];
2. The central inspection authority shall publish an annual general report on the work of the inspection services under its control, which:
 - a. Shall deal with the following and other relevant subjects in so far as they are under the control of the said authority [Art. 20(1) and 21]:

¹⁶ Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

¹⁷ These reports shall be drawn up in such manner and deal with such subjects as may from time to time be prescribed by the central authority; they shall be submitted at least as frequently as may be prescribed by that authority and in any case not less frequently than once a year [Art. 19(2)].

- i. Laws and regulations relevant to the work of the inspection service;
 - ii. Staff of the labour inspection service;
 - iii. Statistics of workplaces liable to inspection and the number of workers employed therein;
 - iv. Statistics of inspection visits;
 - v. Statistics of violations and penalties imposed;
 - vi. Statistics of work-related accidents;
 - vii. Statistics of occupational diseases.
- b. Shall be published within a reasonable time after the end of the year to which they relate (and in any case within twelve months) [Art. 20(2)];
- c. Copies shall be transmitted to the Director-General of the ILO within a reasonable period after their publication (and in any case within three months) [Art. 20(3)].

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

According to the Labour Inspection (Agriculture) Convention, 1969 (No. 129), each Member in which it is in force, shall maintain a system of labour inspection in agriculture, which should apply to agricultural undertakings¹⁸ in which employees or apprentices work, however they may be remunerated and whatever the type, form or duration of their contract [Arts. 3 and 4].

¹⁸ Agricultural undertaking means undertakings and parts of undertakings engaged in cultivation, animal husbandry including livestock production and care, forestry, horticulture, the primary processing of agricultural products by the operator of the holding or any other form of agricultural activity [Art. 1(1) of C129].

However, as foreseen in Article 5, the scope of this Convention may be extended by Member States, in order to include other categories of persons working in agricultural undertakings, such as:

1. Tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers;
2. Persons participating in a collective economic enterprise, such as members of a co-operative;
3. Members of the family of the operator of the undertaking¹⁹.

The main functions of the system of labour inspection in agriculture shall be (Art. 6):

1. To secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, weekly rest and holidays, safety, health and welfare, the employment of women, children and young persons, and other connected matters;
2. To supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions²⁰;
3. To bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions and to submit to it proposals on the improvement of laws and regulations.

In addition, this Convention foresees that national laws or regulations may give labour inspectors in agriculture advisory or enforcement functions, regarding legal provisions relating to conditions of life of workers and their families [Art. 6(2)].

¹⁹ As defined by national laws or regulations.

²⁰ The term “legal provisions” includes, besides laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by labour inspectors.

It also provides that any further duties which may be entrusted to labour inspectors in agriculture shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers [Art. 6(3)].

The ILO Convention No. 129 provides that labour inspection in agriculture shall be placed under the supervision and control of a central body²¹ (Art. 7). As foreseen, labour inspection in agriculture might be carried out by:

1. A single labour inspection department, responsible for all sectors of economic activity;
2. A single labour inspection department, which would arrange for internal functional specialization, through the appropriate training of inspectors called upon to exercise their functions in agriculture;
3. A single labour inspection department, which would arrange for internal institutional specialization, by creating a technically qualified service, the officers of which would perform their functions in agriculture; or
4. A specialized agricultural inspection service, the activity of which would be supervised by a central body vested with the same prerogatives in respect of labour inspection in other fields, such as industry, transport and commerce.

Moreover, the Convention 129 foresees that arrangements should be made by the competent authority:

1. To promote effective co-operation between the inspection services in agriculture and government services and public or approved institutions which may be engaged in similar activities [Art. 12(1)];

²¹ In the case of a federal State, the term “central body” may mean either one at federal level or one at the level of a federated unit.

2. Where necessary, and on condition that it does not prejudice the application of the principles of this Convention, either entrust certain inspection functions at the regional or local level on an auxiliary basis to appropriate government services or public institutions, or associate these services or institutions with the exercise of the functions in question [Art. 12(2)];
3. To promote collaboration between officials of the labour inspectorate in agriculture and employers and workers, or their organisations where such exist (Art. 13); and
4. To ensure that labour inspection services in agriculture are associated in the preventive control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety (Art. 17).

As for the labour inspection staff in agriculture, Convention 129 foresees that:

1. It shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences [Art. 8(1)];
2. It may include officials or representatives of occupational organizations, whose activities would supplement those of the public inspection staff²² [Art. 8(2)];
3. Both men and women shall be eligible for appointment to the labour inspection staff in agriculture and, where necessary, special duties may be assigned to men and women inspectors (Art. 10).

²² In this case, the persons concerned shall be assured of stability of tenure and be independent of improper external influences.

Furthermore, Article 11 provides that duly qualified technical experts and specialists, who might help to solve problems demanding technical knowledge, are associated in the work of labour inspection in agriculture²³.

In what specifically relates to labour inspectors in agriculture, Convention 129 provides that they shall:

1. Be recruited with sole regard to their qualifications for the performance of their duties²⁴ [Art. 9(1)];
2. Be adequately trained for the performance of their duties and measures shall be taken to give them appropriate further training in the course of their employment [Art. 9(3)];
3. Be in sufficient number to secure the effective discharge of the duties of the inspectorate and is determined with due regard for (Art. 14):
 - a. The importance of the duties which inspectors have to perform (in particular, the number, nature, size and situation of the agricultural undertakings liable to inspection; the number and classes of persons working in such undertakings; and the number and complexity of the legal provisions to be enforced);
 - b. The material means placed at the disposal of the inspectors; and
 - c. The practical conditions under which visits of inspection must be carried out in order to be effective.
4. Be furnished with local offices, so located as to take account of the geographical situation of the agricultural undertakings and of the means of communication, suitably equipped in accordance with the requirements of the service, and, in so far as possible, accessible to the persons concerned [Art. 15(1)(a)];

²³ In such manner as may be deemed most appropriate under national conditions

²⁴ The means of ascertaining such qualifications shall be determined by the competent authority [Art. 9(2)].

5. Be provided with the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist [Art. 15(1)(b)];
6. Be reimbursed of any travelling and incidental expenses which may be necessary for the performance of their duties [Art. 15(2)].

Moreover, ILO Convention 129 also foresees that labour inspectors, in order to properly discharge their duties, should be entrusted with the following powers:

1. To enter freely and without previous notice at any hour of the day or night any workplace liable to inspection²⁵ [Art. 16(1)(a)];
2. To enter by day any premises which they may have reasonable cause to believe to be liable to inspection²⁶ [Art. 16(1)(b)];
3. To carry out any examination, test or enquiry which they may consider necessary, in particular:
 - a. To interview, alone or in the presence of witnesses, the employer, the staff of the undertaking or any other person in the undertaking on any matters concerning the application of the legal provisions [Art. 16(1)(c)(i)];
 - b. To require²⁷ the production of any books, registers or other documents²⁸ relating to conditions of life and work (in order to see that they are in conformity with the legal provisions) and to copy such documents or make extracts from them [Art. 16(1)(c)(ii)];

²⁵ Labour inspectors, however, shall not enter the private home of the operator of the undertaking, except with the consent of the operator or with a special authorisation issued by the competent authority [Art. 16(2)].

²⁶ *Ibidem*.

²⁷ In such manner as national laws or regulations may prescribe.

²⁸ The keeping of which is prescribed by national laws or regulations.

- c. To take or remove for purposes of analysis samples of products, materials and substances used or handled²⁹ [Art. 16(1)(c)(iii)].
- 4. To take steps with a view to remedying defects observed in plant, layout or working methods in agricultural undertakings, including the use of dangerous materials or substances, which they may have reasonable cause to believe constitute a threat to health or safety [Art. 18(1)].
- 5. Subject to any right of appeal to a judicial or administrative authority which may be provided by law, to make or have made orders requiring^{30,31}
 - a. Such alterations to the installation, plant, premises, tools, equipment or machines, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating to health or safety [Art. 18(2)(a)]; or
 - b. Measures with immediate executory force, which can go as far as halting the work, in the event of imminent danger to health or safety [Art. 18(2)(b)].

In order to secure the exemption, integrity, independence, authority and impartiality of labour inspectors, which is essential in their relations with employers and workers, Convention 129 also foresees an incompatibility, professional secrecy and confidentiality regime for labour inspectors³², which provides that labour inspectors shall:

- 1. Be prohibited from having any direct or indirect interest in the undertakings under their supervision [Art. 20(a)];

²⁹ Subject to the employer or his representative being notified of any products, materials or substances taken or removed for such purpose.

³⁰ Where this is not compatible with the administrative or judicial practice of the Member State, inspectors shall have the right to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force [Article 18(3)].

³¹ The defects noted by the inspector when visiting an undertaking, the orders he is making or having made, as well as the ones regarding which he intends to apply to the competent authority, shall be immediately made known to the employer and the representatives of the workers [Art. 18(4)].

³² Which are subject to exceptions that can be made by national laws or regulations.

2. Be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties [Art. 20(b)];
3. Treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions [Art. 20(c)]; and
4. Give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint [Art. 20(c)].

The Convention 129 also foresees that, on the occasion of an inspection visit, inspectors shall notify the employer or his representative, and the workers or their representatives, of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties [Art. 16(3)].

It also prescribes that agricultural undertakings shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions (Article 21).

In addition, according to Article 19, labour inspectorate in agriculture shall be notified of occupational accidents and cases of occupational disease occurring in the agricultural sector³³.

In order to ensure proper application of legal provisions enforceable by labour inspectors in agriculture and to prevent the obstructions to their work, the Convention 129 also foresees that:

1. Persons who violate or neglect to observe those provisions shall be liable to prompt legal or administrative proceedings without previous warning³⁴ [Art. 22(1)];
2. It shall be left to the discretion of labour inspectors to give warning

³³ In such cases and in such manner as may be prescribed by national laws or regulations.

³⁴ Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

and advice instead of instituting or recommending proceedings³⁵ [Art. 22(2)];

3. Adequate penalties for violations of the legal provisions enforceable by labour inspectors in agriculture and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced (Art. 24).

As for reporting responsibilities on the activities performed by labour inspection in agriculture, the ILO Convention 129 prescribes that:

1. Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their activities in agriculture³⁶ [Art. 25(1)];
2. The central inspection authority shall publish an annual report on the work of the inspection services in agriculture, either as a separate report or as part of its general annual report, which:
 - a. Shall deal in particular with the following subjects, in so far as they are under the control of the said authority [Art. 26(1) and 27]:
 - i. Laws and regulations relevant to the work of labour inspection in agriculture;
 - ii. Staff of the labour inspection service in agriculture;
 - iii. Statistics of agricultural undertakings liable to inspection and the number of persons working therein;
 - iv. Statistics of inspection visits;
 - v. Statistics of violations and penalties imposed;

³⁵ It is important to note, in this connection, that, according to Article 23, when labour inspectors in agriculture are not themselves authorised to institute proceedings, they shall be empowered to refer reports of infringements of the legal provisions directly to an authority competent to institute such proceedings.

³⁶ These reports shall be drawn up in such manner, deal with such subjects and be submitted with the frequency prescribed by that authority and at least once a year [Art. 25(2)].

- vi. Statistics occupational accidents, including their causes;
 - vii. Statistics of occupational diseases, including their causes.
- b. Shall be published within a reasonable time after the end of the year to which they relate (and, in any case, within twelve months) [Art. 26(2)];
 - c. Copies shall be transmitted to the Director-General of the ILO within three months after their publication [Art. 26(3)].

Protocol of 1995 to the Labour Inspection Convention, 1947

Considering that ILO Convention 81 only applies to industrial and commercial workplaces and ILO Convention 129 only applies to workplaces in commercial and non-commercial agricultural undertakings, whereas workers in the non-commercial services sector may also be exposed to substantial occupational risks, the General Conference of the International Labour Organization adopted, in 22 June 1995, the Protocol 81 of 1995 to the Labour Inspection Convention, 1947, extending the application of the provisions of ILO Convention 81 to activities in the non-commercial services sector, in order to ensure that this sector is also subject to an effective and impartial system of labour inspection.

In this context, the Protocol provides that each ratifying Member State shall extend the application of the provisions of the ILO Convention 81 to activities in the non-commercial services sector³⁷, being the Protocol applicable to all workplaces that do not already fall within the scope of the that Convention [Articles 1(1) and 1(2) of the Protocol].

However, the Protocol foresees that, if the application of the Convention 81 to some categories of public services raises special problems of a substantial nature, Members States, after consultation with the representatives of

³⁷ Which refers to activities in all categories of workplaces that are not considered as industrial or commercial for the purposes of ILO Convention 81 [Art. 1(2) of the Protocol].

employers and workers, may exclude, wholly or partly, from its scope, the following categories: (a) essential national (federal) government administration; (b) the armed services, whether military or civilian personnel; (c) the police and other public security services; and (d) prison services, whether prison staff or prisoners when performing work [Art. 2(1)].

In addition to the possibility of the above exclusions on the scope of application of Convention 81, the Protocol also provides for the possibility of Member States, after consultation with workers' and employers' representatives, to make special arrangements for the inspection of workplaces of the above public services, in order to regulate the powers of labour inspectors, regarding [Art. 4(1)]:

1. Inspectors having appropriate security clearance before entering;
2. Inspection by appointment;
3. The power to require the production of confidential documents;
4. The removal of confidential documents from the premises; and
5. The taking and analysis of samples of materials and substances.

In what specifically concerns the inspection of workplaces of the armed services and the police and other public security services, special arrangements can also be made, after consultation with workers' and employers' representatives, so as to allow any of the following limitations on the powers of labour inspectors [Art. 4(2)]:

1. Restriction of inspection during manoeuvres or exercises;
2. Restriction or prohibition of inspection of front-line or active service units;
3. Restriction or prohibition of inspection during declared periods of tension;
4. Limitation of inspection in respect of the transport of explosives and armaments for military purposes.

Regarding specifically the inspection of workplaces of prison services, member States may also make special arrangements, after consultation with workers' and employers' representatives, to permit restriction of inspection during declared periods of tension [Art. 4(3)].

Member States may also make special arrangements for the inspection of workplaces of fire brigades (and other rescue services) to allow the restriction of inspection during the fighting of a fire or during rescue or other emergency operations (Art. 5).

The Protocol also foresees (Art. 6) that labour inspectorate shall be able to advice on the formulation of effective measures to minimize risks during training for potentially hazardous work and to participate in monitoring the implementation of such measures.

► IMPLICATIONS FOR POLICY DECISION-MAKERS AND LEGAL ACTS' DRAFTING EXPERTS

Preliminary notes

Ukraine ratified both ILO Conventions Nos. 81 and 219 on Labour Inspection, in 10 November 2004. However, it has not ratified yet the Protocol of 1995 (P081) to the Labour Inspection Convention, 1947.

In 2019, the Committee of Experts on the Application of Conventions and Recommendations (CRACR), adopted an Observation regarding the application of the above ILO Conventions on Labour Inspection by Ukraine, in which strongly urged Government to take the necessary measures and adopt appropriate reforms to bring the labour inspection services and the national legislation into conformity with the provisions of Conventions Nos. 81 and 129, including with Articles 4, 6, 7, 10, 11, 12(1)(a) and (b), 16 and 17 of Convention No. 81 and Articles 7, 8, 9, 14, 15, 16(1)(a) and (b), 21 and 22 of Convention No. 129, and to ensure that no additional restrictions are adopted (ILO, 2019).

Main concerns refer to the organization of the labour inspection system under the supervision and control of a central authority, in the context of the ongoing partial decentralization of labour inspection functions to self-government bodies, the need to ensure that inspection staff is composed of public officials whose status and conditions of service assure them stability of employment and independence of changes of government and of improper external influences and that labour inspectors are recruited with sole regard to their qualifications for the performance of their duties and provided with adequately training – as foreseen in Articles 4, 6, 7, of Convention No. 81 and Articles 7, 8, 9 of Convention No. 129.

They also include the need to provide labour inspection with the material means and human resources necessary to achieve an adequate coverage of workplaces by labour inspection and, in particular, that workplaces are inspected as often and as thoroughly as necessary to ensure the effective application of the relevant legal provisions, as stipulated in Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129.

Finally, they also comprise the restrictions and limitations imposed on labour inspection, not only through recurring moratoriums on inspection visits, but also through the limitation of the powers of labour inspectors to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection, to enter by day in any premises which they may have reasonable cause to believe to be liable to inspection, to define the duration, frequency and scope of inspection visits, to decide whether to give warning and advice or to institute or recommend proceedings, and to hold liable to prompt legal proceedings without previous warning persons who violate or neglect to observe legal provisions enforceable by labour inspectors, as foreseen in Articles 12(1)(a) and (b), 16 and 17 of Convention No. 81 and Articles 16(1)(a) and (b), 21 and 22 of Convention No. 129.

For more in-depth information on the Ukrainian legislation on labour inspection and recommendations on how to better align it with the applicable International Labour Standards on Labour Inspection we suggest the following publication: “Ukrainian Labour Inspection Legal Framework — Analysis and Recommendations”³⁸ (ILO, 2018).

Concepts

Legal provisions

The term legal provisions includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law

³⁸ Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/projectdocumentation/wcms_632756.pdf.

is conferred and which are enforceable by labour inspectors (C081, Art. 27; C129, Art. 2).

Agricultural undertaking

The term “agricultural undertaking” means undertakings and parts of undertakings engaged in cultivation, animal husbandry including livestock production and care, forestry, horticulture, the primary processing of agricultural products by the operator of the holding or any other form of agricultural activity [C129, Art. 1(1)].

Activities in the non-commercial services sector

The term «activities in the non-commercial services sector» refers to activities in all categories of workplaces that are not considered as industrial or commercial for the purposes of the Labour Inspection Convention, 1947 (No. 81) [P081, Art. 1(2)].

Main aspects of the system of labour inspection

Functions of labour inspection

The primary functions of the system of labour inspection are the following:

1. To secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
2. To supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
3. To bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

In case any other duties are entrusted to labour inspection, they shall not compromise the effective discharge of the above primary duties or to prejudice the authority and impartiality of labour inspectors.

Labour inspection scope

The system of labour inspection shall apply to all workplaces³⁹ in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors, in particular, in the following categories:

1. Industrial workplaces;
2. Commercial workplaces;
3. Agricultural undertaking; and
4. Activities in the non-commercial services sector.

Structure, organization, means and operation

Labour inspection should:

1. Be placed under the supervision and control of a central authority⁴⁰.
2. Have a sufficient number of labour inspectors⁴¹ to secure the effective discharge of the duties of the inspectorate, taking into account:
 - a. The importance of the duties which inspectors have to perform (in particular, the number, nature, size and situation of the work-

³⁹ In case national laws or regulations did not exclude wholly or partly specific sectors, activities or types of workplaces from its application, such as: mining and transport undertakings (or parts of such undertakings); essential national (federal) government administration; armed services, whether military or civilian personnel; police and other public security services; or prison services (whether prison staff or prisoners when performing work).

⁴⁰ So far as is compatible with the administrative practice of the country and, in the case of a federal State, the term “central authority” may mean either a federal authority or a central authority of a federated unit.

⁴¹ The technical services of the ILO responsible for labour inspection consider that the number of labour inspectors in relation to workers should be approximately the following: in industrial market economies: 1/10,000; in rapidly industrializing economies: 1/15,000; in transition economies: 1/20,000; and in least developed countries: 1/40,000 (ILO, 2006a).

places liable to inspection; the number and classes of workers employed in such workplaces; and the number and complexity of the legal provisions to be enforced);

- b. The material means placed at the disposal of the inspectors; and
 - c. The practical conditions under which visits of inspection must be carried out in order to be effective.
3. Inspect the workplaces as often and as thoroughly as is necessary to ensure the effective application of relevant legal provisions;
 4. Be notified of work-related accidents and cases of occupational disease;
 5. Ensure that, on the occasion of an inspection visit, inspectors notify the employer (or his representative) and the workers' representatives, of their presence, unless they consider that such notification may be prejudicial to the performance of their duties;
 6. Involve, in the inspection work, duly qualified technical experts and specialists (including specialists in medicine, engineering, electricity and chemistry), to secure enforcement of legal provisions relating to the protection of workers' safety and health and to investigate the effects of processes, materials and methods of work on workers' safety and health;
 7. Cooperate with other Government services and public or private institutions engaged in similar activities;
 8. Ensure collaboration between its officials and with employers, workers and their organisations.

Labour inspection staff status and equality

Labour inspection staff should:

1. Be composed of public officials, whose status and conditions of service ensure stability of employment and independence regarding changes of government and improper external influences;

2. Integrate both men and women and, where necessary, special duties may be assigned to men and women inspectors.

Labour inspectors' recruitment and working conditions

Labour inspectors should:

1. Be recruited with sole regard to their qualifications for the performance of their duties;
2. Be adequately trained for the performance of their duties (including inception and continuous training);
3. Be furnished with local offices, suitably equipped in accordance with the requirements of the service, and accessible to all persons concerned;
4. Be provided with the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist;
5. Be reimbursed of any travelling and incidental expenses which may be necessary for the performance of their duties.

Labour inspectors' powers

In order to properly discharge their duties, labour inspectors should be entrusted with the following powers:

1. To enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
2. To enter by day any premises which they may have reasonable cause to believe to be liable to inspection;
3. To carry out any examination, test or enquiry which they may consider necessary, in particular:
 - a. To interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions;

- b. to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work (in order to see that they are in conformity with the legal provisions), and to copy such documents or make extracts from them;
 - c. To enforce the posting of notices required by the legal provisions;
 - d. To take or remove for purposes of analysis samples of materials and substances used or handled (subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose).
- 4. To take steps with a view to remedying defects observed in plant, layout or working methods which they may have reasonable cause to believe constitute a threat to the health or safety of the workers.
- 5. Subject to any right of appeal to a judicial or administrative authority which may be provided by law, to make or to have made orders requiring⁴²:
 - a. Such alterations to the installation or plant, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating to the health or safety of the workers; or
 - b. Measures with immediate executory force in the event of imminent danger to the health or safety of the workers.

Labour inspectors' obligations

In order to secure the exemption, integrity, independence, authority and impartiality of labour inspectors, which is essential in their relations with employers and workers, they have the following obligations:

1. Integrity, independence and impartiality — according to which, labour inspectors should be prohibited from having any direct or indirect interest in the undertakings under their supervision;

⁴² Where this is not compatible with the administrative or judicial practice of the Member State, inspectors shall have the right to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force [Article 13(3)].

2. Professional secrecy — according to which, labour inspectors may not reveal, even after leaving the service, any manufacturing or commercial secrets or working processes, which may come to their knowledge in the course of their duties;
3. Confidentiality regarding the source of complaint — according to which labour inspectors have to treat as absolutely confidential the source of any complaint, and shall give no intimation to the employer or his representative that an inspection visit was made in consequence of the receipt of such a complaint;
4. Professionalism and competency — according to which, labour inspectors are expected to perform their duties with the highest standards of professionalism, which requires a very good selection and recruitment processes, on the basis of the quality of their qualifications (on entry) for the performance of their duties, complemented with adequate initial and continuous training.

Advice and enforcement

In order to ensure proper application of legal provisions enforceable by labour inspectors:

1. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings;
2. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning;
3. Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

Reporting responsibilities

Labour inspection should ensure that:

1. Labour inspectors⁴³ submit to the central inspection authority reports on their inspection activities⁴⁴;
2. The central inspection authority publishes an annual general report on the work and relevant subject matters of the inspection services under its control, including on: laws and regulations relevant to the work of the inspection service; staff of the labour inspection service; and relevant statistics (e.g., of workplaces liable to inspection and the number of workers employed therein; of inspection visits; of violations and penalties imposed; of work-related accidents and their causes; and of occupational diseases and their causes).

⁴³ Or local inspection offices (as the case may be).

⁴⁴ These reports should be drawn up, address the issues and be submitted with the periodicity (at least once a year) prescribed by that authority.

► EXAMPLES FROM OTHER COUNTRIES⁴⁵

Mandate of labour inspection

The main area of competence of labour inspectorates in industrial and commercial workplaces are working conditions (hours, wages, safety, health and welfare, weekly rest, holidays, and the employment of children, young persons, and women)⁴⁶ and the protection of workers while engaged in their work⁴⁷.

In addition, labour inspectors may also have enforcement functions regarding legal provisions concerning conditions of life of agricultural workers and their families⁴⁸, as well as in other areas which might have some relationship or connection with working conditions and protection of workers, such as training of workers, social services in agriculture, cooperatives, and compulsory school attendance⁴⁹.

In this context, and depending on the national context, the remit of labour inspection can vary substantially from one country to the other.

France

The general mission of labour inspectors and controllers is to ensure compliance with labour laws. In particular, they ensure compliance with the Labour Code, but also compliance with collective agreements.

⁴⁵ Additional information on different systems of labour inspection can be retrieved from: https://www.ilo.org/labadmin/info/WCMS_DOC_LAB_INF_CTR_EN/lang--en/index.htm.

⁴⁶ According to Article 2 (1) and 3(1)(a) of Convention No. 81 and Article 6 (1)(a) of Convention No. 129.

⁴⁷ The term “protection of workers while engaged in their work” refers to additional matters, more closely related to social protection and to the fundamental rights of workers throughout their employment, including the right to organize and engage in collective bargaining, conditions of termination of employment, and social security (ILO, 2006a).

⁴⁸ See Article 6, paragraph 2, of Convention No. 129.

⁴⁹ As foreseen in Article 3(1)(a) of Convention No. 81 and Article 6(1)(a) of Convention No. 129 and Paragraph 2 of Recommendation No. 133 (which supplements Convention No. 129).

They also have an advisory and information mission, which leads them to inform employers, employees and staff representatives about their rights and obligations.

Labour inspectors also have a conciliation function, mainly within the framework of a broader objective of prevention.

As the French Labour Inspectorate system is generalist, labour inspectors are required to intervene in many areas, including:

1. Occupational health and safety in the context of the prevention of occupational hazards and working conditions;
2. Quality and effectiveness of the law;
3. Social dialogue, within the framework of collective labour relations;
4. The fight against illegal work; and
5. Employment and vocational training.

Germany

In Germany, labour inspection at State level covers the enforcement of occupational safety and health laws in relation to workplaces in the private and public sector, OSH organization in enterprises, investigation of work-related accidents and occupational diseases, control of technical safety of machinery and safety and health requirements of new factory premises and installations within licensing procedures. They also control legislation regarding working time, maternity protection, child labour, protection of adolescent workers and home work.

In addition, they are also engaged in consumer protection, performing market surveillance in accordance with EU rules and, in some States, they may also play a role in environmental protection and environmental hazard management.

However, labour inspectors at State level do not enforce provisions regarding collective agreements, social security and employment contracts (e.g., payment of wages or dismissal).

Moreover, railways, nuclear stations, workplaces in the military services and on offshore installations are not subject to the control of the general labour inspection service, and mining and for public administration workplaces are covered by specific inspection services.

Finally, the supervisory staff of the accident insurance bodies play a strong preventative role, enforcing occupational safety and health laws and prevention bylaws of the accident insurance bodies and, in some cases, may have perform other functions, if further competencies have been delegated to them.

Latvia

According to Point 2 of the Statutes on State Labour Inspection⁵⁰, the state labour inspectorate enforces laws and regulations concerning labour, social protection, and the use and maintenance of hazardous facilities.

Lithuania

The Labour Inspectorate is responsible for enforcing legislation on labour conditions and safety and health issues, as well for overseeing compliance with collective agreements. It also has responsibilities over the prevention of accidents at work and occupational diseases.

Labour inspectors provide advice to workers and employers on how better to implement labour and OSH legislation and collective bargaining agreements. Labour inspectors are also mandated to submit comments and proposals regarding draft laws under preparation in the areas of occupational safety and health and working conditions.

⁵⁰ Approved by Regulation No. 53, of 14 March 1995.

Labour inspectors are also competent for supervising undeclared work and coordinating the activities of institutions working on the subject.

Portugal

The Portuguese Authority for Work Condition (ACT), has the mission of promoting the improvement of working conditions, through the monitoring of compliance with labour legislation in private labour relations, the promotion of occupational risk prevention policies, as well as the control of the compliance with occupational safety and health legislation in all sectors of activity and in the services and bodies of the central, direct and indirect, and local public administration, including public institutes, in the modalities of personalized services or public funds (Portuguese Government, 2012).

Slovenia

The Slovenian Labour Inspectorate is an administrative body within the Ministry of Labour, Family and Social Affairs (central authority) responsible for the enforcement of labour law. The employment inspectorate enforces working conditions, while the health and safety at work inspectorate enforces OSH standards.

The Labour Inspectorate supervises the implementation of laws, other regulations, collective contracts and general acts that govern employment relations, wages, worker participation in management, strikes and worker safety.

It also provides employers and workers with assistance in connection with implementing laws and other regulations, collective contracts and general acts within its jurisdiction. In addition to their principal duties, the Employment Relationships Act assigns mediation duties to labour inspectors for the settlement of individual labour disputes.

Central authority

Coordination and cooperation within the labour inspection system and with other national and government agencies and public or private institutions engaged in similar activities is crucial to improve and leverage the overall effectiveness of a country's labour inspection services. For that, labour inspection should function and be organized as a system within the public administration and ensure consistency and coordination within the labour administration system and in particular among different inspection services (such as social security or tax inspection), as well as cooperation between the stakeholders, either public or private, that are directly or indirectly responsible for the enforcement of labour standards. A close collaboration should be also secured among agencies or institutions (e.g., tax authorities, the police force or the justice system) and consultation with the social partners (ILO, 2011).

The need to place labour inspection under the supervision and control of a central authority should be seen, in this context, as a mean to ensure effective coordination within the whole system. Experience shows that placing the inspection system under a central authority facilitates the establishment and implementation of policies with a view to securing uniform, nationwide compliance. It enables rational use of available resources, in particular by limiting unnecessary duplication of work and decision-making processes. It should, however, be pointed out that reference to a central authority should not in any way be taken to imply centralization or the placing of labour inspection under the direct and exclusive control of a central national authority (ILO, 2011).

The setup of labour inspection systems under the supervision and control of a central authority, aiming at ensuring coherence and consistency in the application of national legislation throughout the national territory is evident in several countries, as showed below.

France

In France, labour inspection is a State service under the authority of the Minister of Labour and under the responsibility of the General Directorate for Labour (DGT), which is the central authority of the system of labour inspection in all sectors, while the other ministries involved in inspection, such as the Ministry of Agriculture and Fisheries and the Ministry of Environment, Energy, Sustainable Development and Land Management, were given technical responsibility for preparing and adapting legislation and regulations⁵¹ (ILO, 2011).

The DGT prepares, facilitates and coordinates labour policy to improve collective and individual relationships and working conditions in companies, as well as the quality and effectiveness of the law that governs them.

The DGT is responsible for:

1. The implementation of ILO Conventions 81, 129 and 178;
2. Ensure the independence of labour inspectorate decisions and ensure the protection of its officers;
3. Determine the direction of labour policy;
4. Contribute to the definition of the principles of the organization of the territorial network;
5. Fixing the location and delineation of inspection «sections»: DGT provides support in carrying out their functions;
6. To ensure that the ethical rules of officers are actually respected.

⁵¹ Vide Decrees Nos. 2008–1503 and 2008–1510, of 30 December 2008, concerning the merging of the labour inspection services. See also “*Undeclared work and Labour Inspection — Distribution materials*”, at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms_726999.pdf.

The Labour Inspectorate then deploys on two other levels:

1. At the regional level — through the new Regional Directorates of Enterprise, Competition, Consumer Affairs, Labour and Employment (DIRECCTE).
2. At the departmental level — through territorial units and inspection sections and cooperation with other public and private authorities in the areas of labour, employment and vocational training.

At the regional level, the DIRECCTE is responsible for labour policy and inspection actions, competence among others.

Each DIRECCTE has three poles:

1. A «labour policy» pole;
2. A «business, employment and economy» pole; and
3. A pole «competition, consumption, fraud enforcement and metrology».

The regional level provides support to supervisors, particularly in the area of occupational risk prevention, through the:

- ▶ The creation of multidisciplinary regional cells to provide scientific, technical and methodological support to officers in the field of occupational health and safety;
- ▶ The medical inspectors of labour, placed with the regional director under the authority of the head of the medical inspection department of labour (DGT), who can monitor the application of labour laws;
- ▶ Prevention engineers and technicians.

At the departmental level, each DIRECCTE includes Territorial Units. The heads of these units implement, at the territorial level, public policy actions.

Within the territorial units, the inspection sections covering one or more units are then formed. Inspection sections are under the direct responsibility of a member of the DIRECCTE. Inspection action is really carried out within the framework of inspection sections that act directly at the corporate level.

In agricultural matters, there are sections responsible solely for the control of agricultural professions. In the case of land, air and river transport, control of inland navigation may be a regional responsibility, whereas, in the case of the main airports, control is entrusted to a specific section. In the field of labour and maritime transport, special sections specially dedicated to the field of maritime transport are generally envisaged.

Germany

As a federal State, Germany has a particular organization of its system of labour inspection: enforcement and implementation of federal laws and policies in the area of labour (including labour relations and OSH laws) fall within the remit of the sixteen federated States (“Länder”); the legislative and policy competencies in the field of labour (e.g., industrial relations, social security, employment and vocational training, and labour standards) and occupational safety and health are ensured at federal level⁵².

At federal level, the Department of Labour Law and Labour Protection (department III) within the Federal Ministry of Labour and Social Affairs is responsible for the preparation of labour and occupational safety and health legislation and for the development of a national policy in this field. It furthermore collects and publishes labour related statistics.

The federated States (“Länder”) are responsible for the implementation of federal laws, including federal social and labour laws. They are free to choose the administrative structure of their enforcement systems. The organisational set up of labour inspection varies therefore from one federated State to another. Labour inspection services may either be

⁵² *Vide* Articles 74(1)(12) and 83 of the German Constitution.

part of the general administrative structure of a “Land”; or set up as an independent agency. They operate under the supervision of the competent Ministry, within the “Länder” (acting as central authority), which is mostly the Ministry entrusted with the labour and social affairs portfolio.

In addition, the supervisory services of the accident insurance bodies also monitor occupational safety and health. Accident insurance bodies are self-governed, financially and administratively independent statutory insurance bodies, subject to State supervision. According to the Social Code (book 7), the accident insurance bodies are responsible for preventing accidents and occupational diseases. This responsibility includes also the right to enact prevention and protection bylaws with which the employers have to comply. Employers are by law held to affiliate and to pay contributions.

The accident insurance bodies are organised in three main groups, and each group is associated in an umbrella association which fulfils a coordination and support function. Industry is covered by the industrial employers’ liability insurance associations and the public sector by the public sector accident insurance bodies. Both are part of the umbrella association “German Social Accident Insurance”. Agriculture, on the other hand, is covered by the agricultural employers’ liability insurance associations, which are part of the “Agricultural Social Accident Insurance”.

The insurance bodies have supervisory staff, in order to enforce and implement the mentioned prevention activities and rules. They advise employers and employees, carry out inspection visits and perform OSH activities in companies. This staff are entrusted with the same rights, duties and functions as State labour inspectors.

In some cases, “Länder” have delegated their enforcement powers to the accident insurance bodies, entrusting them with the enforcement of the federal OSH law in specific sectors. This means that those insurance bodies enforce those laws in addition to performing their own competencies and monitoring their own prevention bylaws. Such a delegation

of enforcement powers took place, for instance, in workplaces of the agricultural sector.

The Federal Ministry of Labour and Social Affairs at federal level supervises the accident insurance bodies and its umbrella organizations.

Within the States (“Länder”), supervision of labour inspection services is ensured by the respective Ministries with a labour and social affairs portfolio. In some States, the responsibility for human resources resides with a Ministry distinct from that ensuring the technical supervision, and, in these cases, it is that Ministry that supervises labour inspection services in relation to human resources questions. Moreover, the Ministries with a labour portfolio at State level also coordinate the work with the regional accident insurance bodies and ensure the supervision of the accident insurance bodies at State level.

The federal States (“Länder”) fund, direct, organize and manage their own State labour inspectorates, running them as either independent agencies with a separate field structure or as part of the general State administration, which includes regional and local offices.

In the sixteen “Länder” there are approximately 3600 staff members.

The accident insurance bodies also have a regional structure, consisting of regional accident insurance associations.

Italy

In Italy, the two institutions responsible for programming and coordinating labour inspection activities are the Ministry of Labour and Social Policy and the General Directorate for Inspection Activities (DGAI).

The DGAI was established by the labour inspection reforms of 2004, with a view to increase the overall role of coordination of the Ministry of Labour at the central level. The DGAI supervises and coordinates labour inspection activities in accordance with directives issued by the Ministry of Labour itself in order to ensure consistency in inspection activities and the conduct of the various administrative supervisory bodies.

The labour inspection reform also introduced the Central Commission for the Coordination of Supervisory Activities, which advises the Minister of Labour on organizational adjustments to improve the effectiveness of labour inspection, including the use of a database to collect information on inspection visits.

Portugal

ACT is a central service of promotion of the improvement of working conditions, prevention, control, auditing and supervision, integrated in the direct administration of the State and within the competence of the Ministry of Labour, Solidarity and Social Security, administrative autonomy, which carries out its inspection action within the scope of powers of public authority in Continental Portugal, through a network of 32 decentralized services (Portuguese Government, 2012).

In the Portuguese autonomous region of the island of Madeira, the functions of labour inspection are provided by the Regional Directorate of Labour and Inspection Activity, which is a service of the direct administration of the Autonomous Region of Madeira, integrated in the Regional Department of Social Affairs and Inclusion of the Regional Government of Madeira (Regional Regulatory Decree No. 14/2016/M, of 2 May, Approving the Organic of the Regional Directorate of Labour and Inspection Activity of the Autonomous Region of Madeira, 2016).

In the Portuguese autonomous region of the island of Azores, the functions of labour inspection are provided by the Regional Labour Inspectorate of Azores (Regional Government of Azores, 2001), which is integrated in the Vice-Presidency for the employment and business competitiveness of the Regional Government of the Azores (Regional Government of Azores, 2012).

Spain

Spain is composed of 17 autonomous communities, most of which have control over labour-related matters. The system of labour inspection is based on the principle of inter-institutional collaboration between the State and the autonomous communities (ILO, 2011).

This collaboration takes place through two bodies: the Sectoral Conference on Employment and Labour Affairs comprising the general administration of the State and those of the autonomous communities; and the territorial commissions on labour and social security inspection in each autonomous community.

Powers and activities of labour inspectors

In order to discharge their duties effectively, labour inspectors need to be entrusted with the necessary powers, as laid down on ILO Conventions 81 and 129.

France

The powers of labour inspectors in France include, among others, the following⁵³:

1. Power to entry and inspect any workplace without prior notice;
2. Free to organise and conduct controls on their initiatives and decide what to do with them;
3. Right to accommodation facilities with permission of the occupant;
4. To investigate and questioning the employer and employees;
5. Access to registers and mandatory documents (extended to any document in certain investigations);
6. Access to certain files held by other authorities;
7. Right to communicate with third parties in the fight against illegal work;

⁵³ See, for example, “Undeclared work and Labour Inspection — Distribution materials”, at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms_726999.pdf.

8. Request documents materials for analysis and verification and, if needed, use accredited agencies to check the status of premises and equipment;
9. Work or activity stoppages in the event of a serious and imminent danger situation for workers' life, safety or health;
10. In the context of the fight against undeclared work, ask people employed in the company or in the workplace as well as anyone whose statements they are required to collect in the course of their mission, to provide their identity and address.

Portugal

The main activities and powers of labour inspectors in Portugal are defined in the Statute of the Portuguese General Labour Inspection⁵⁴ and in the regulation of the labour inspection career⁵⁵.

They provide labour inspectors with the necessary powers of public authority and assigns them the activities and entrust them with the powers they need to discharge their duties, laid down in the ILO Conventions Nos. 81 and 129, as well as some others, including:

1. To visit and inspect any workplace at any time of the day or night, without prior notice, and develop the actions necessary for the assessment of working conditions.
2. To provide technical information and advice to employers, employees and their representatives about the most appropriate way to comply with the legislation.
3. To notify the employers so that, within a prescribed period, the modifications necessary to ensure the safety and health of workers at the workplace are carried out, as well as to adopt the necessary preventive measures in the field of occupational risk assessment.

⁵⁴ Approved by the Decree-Law No. 102/2000, of 2 June (Portuguese Government, 2000).

⁵⁵ Regulatory Decree No. 20/2001, of 22 December (Portuguese Government, 2001).

4. To adopt immediately executory measures, including the suspension of work in progress, in case of serious risk or serious probability of occurrence of work-related accidents or damages to worker's health.
5. To carry out joint verification visits and give opinions regarding the OSH aspects of the installation, modification and operation licensing of establishments.
6. To request (with immediate effect or to be shown afterwards, in the competent local branch), examine and copy documents and other records and make photographic records, video images and measurements.
7. To adopt, at any time of the inspection, the precautionary measures necessary and appropriate to prevent the destruction, the disappearance or the alteration of documents and other records, as well as of products, materials and substances.
8. To interrogate the employer, employees and any other person who is in the workplace, request their identification, notify witnesses, experts or any other persons to attend to the office of the ACT territorial competent branch, and to make arrests in flagrante delicto.
9. To receive the collaboration and be accompanied by experts, technicians and by the representatives of workers and employers associations.
10. To require the demonstration of work processes, request information on the composition of products, materials and substances used in workplaces and to collect and take samples for analysis.
11. To conduct inquiries in cases of occupational diseases, fatal work-related accidents or work-related accidents showing a particularly serious situation.
12. To apply the inspection procedures understood as the more suitable to the regularization of the situation in hand (e.g., request notice,

warning notice, improvement notice, suspension notice, notices to establish debts to workers and to social security, infraction notices and administrative infraction proceedings for sanctioning non-compliance).

13. To promote the collaboration of other bodies with competence in the field of working conditions and to participate to other competent authorities the observed infractions under their jurisdiction.
14. To control the fulfillment of the legal obligation of the employers of creation of OSH services and its operation.
15. To draw up reports, information and other documents resulting from the inspection activity.
16. To instruct processes concerning administrative permits related to working relationships and conditions.
17. To develop information, opinions and studies of diverse nature, within the competences of the Portuguese general labour Inspectorate.
18. To participate in working groups, committees, project teams and specific missions, for which it is designated.
19. To collaborate in the inspection activity planning, in accordance with the annual work plans, as well as in joint actions developed within the cooperation framework with other regional and interregional inspection systems.
20. To coordinate and perform inspections of regional, interregional and national scope.
21. To instruct the administrative infringement procedures (misdemeanour labour processes) entrusted to them.

Status, qualifications, selection and training of labour inspectors

As foreseen in ILO Conventions Nos. 81 and 129, inspection staff should have the status of public servants and conditions that ensure stability of employment and independence from changes of government and from improper external influences. In addition, they should be recruited with sole regard to their qualifications for the performance of their duties and adequately trained.

The following sections present some examples of the above in Europe.

France

In France, labour inspectors are classified as a Class A public servant⁵⁶.

The labour inspection corps is composed by inspectors and controllers.

Labour inspectors are recruited by external competition or internal promotion. Labour inspectors are trained with the National Institute of Labour, Employment and Vocational Training (INTEFP⁵⁷) for a period of 18 months. The labour inspection body has three grades: labour inspector, deputy director, director of labour. Some sectors are characterized by specialized inspectors (agriculture, transport, etc.).

Labour controllers are Category B public servants, recruited by external or internal competition, or by professional examination for administrative assistants with 15 years of seniority, or by way of secondment. Candidates, once admitted to the competition, are trained by the INTEFP for a period of 12 months, during which they enjoy the status of trainee labour controllers. Controllers are involved in the performance of work, employment and vocational training control missions and are directly subject to labour inspectors during the performance of these duties. They can replace

⁵⁶ Decree 770/2003, of 20 August 2003.

⁵⁷ L'Institut National du Travail, de l'Emploi et de la Formation Professionnelle.

inspectors in inspections to companies with less than 50 employees, but they do not have all the powers of the labour inspectors.

Germany

Labour inspectors are appointed as public servants of the “Land” concerned, and enjoy stability of employment. The supervisory staff of the State insurance bodies has a similar status.

Each “Land” recruits its own inspectors, appointing them to the posts as civil servants of the “Land”, following its own human resources strategy.

Depending on their level of previous education, future State labour inspectors are appointed to the middle grades (A 10/11) (education with a vocational diploma and first professional experience) or the higher grades (university degree in a technical/engineering discipline and first professional experience) (A 13) of the public service.

Future labour inspectors, during their initial two years of education, are appointed as public servants on probation.

During these two years, newly appointed inspectors follow theoretical training, which covers the subjects provided for in the Federal States Committee for Occupational Safety and Health (LASI) framework agreement, and practical training, accompanying senior colleagues during inspections visits. After one year, they may carry out labour inspections alone.

The practical part of the education and the final examination are organized in a free manner by each country, and experience on this subject is shared. Likewise, members of the selection panels are exchanged in order to guarantee objectivity in the selection process. However, the basic lines of the final examination are often similar: after the two years of education, the apprentice labour inspectors have to undergo a written examination, an oral examination in front of a selection panel, and have to carry out a labour inspection visit as a practical component of the final exam. Having passed, apprentice labour inspectors are appointed as public servants to the position of labour inspector.

New labour inspectors start their career in an inspection office, the promotion is possible to the position of the director of a labour inspection office or an inspection branch/ department. It is also possible to continue the career within the Ministry, which ensures the supervision of the labour inspection field structure, as the career path in the field ends with the position A 16.

Career plan and development and training might differ from one State to another, as this is part of the State competencies. However, within LASI, a frame training plan for the theoretical education of future labour inspectors was agreed upon between the States. It includes the subjects and number of training hours which each training plan at State level should include, notably EU, administrative and constitutional law, occupational safety and health, dangerous substances, labour protection including vulnerable groups of workers and working time; new technologies and negotiation skills. Although this framework agreement is not legally in practice it is followed and implemented. It is concluded for a period of approximately eight years and reviewed afterwards.

In order to exchange experiences, mutual internships are organized between State labour inspectorates and accident insurance bodies. Moreover, sometimes joint vocational training sessions are organized for the supervisory staff of both bodies.

The Eastern member States have coordinated their education for labour inspectors in a more closely manner, providing for instance joint training to their future labour inspectors.

Lithuania

Labour inspectors are public servants protected against dismissal. Every year, the Labour Inspectorate, in accordance with the Law on Public Service, draws up a plan for the training of civil servants and staff with employment contracts.

Newly hired labour inspectors receive 420 hours of training in accordance with the Programme for the Basic Training of Labour Inspectors. The main

topics covered by the theoretical training include the organisation of the labour inspector's work, labour law, the organisation of occupational health and safety in a company, the fundamentals of occupational hygiene, the technical legal framework and occupational safety in specific fields of industry and basic computer skills.

Portugal

ACT has a body of labour inspectors who hold the status of civil servants and are vested with the necessary powers of public authority. Its own status⁵⁸ also confers on this body of professionals the appropriate characteristics of technical autonomy and independence from the interests that may impair their action, as well as specific rules of professional deontology.

Applicants for labour inspectors must be entitled to at least a superior degree which is considered in the notice of opening of the competition.

In addition to initial one-year training provided to labour inspectors upon admission (on International, European and national labour relations and OSH regulations, constitutional law, criminal law, administrative law, infringement proceedings legislation, occupational risks and preventive and protective measures, ethics and professional deontology, inspection procedures, etc.), ACT has a vocational training plan in which diversified continuous training is contemplated (e.g., safety and health at work, soft skills, working conditions, the use of the information system, particular situations regarding labour relations or OSH, undeclared work, non-discrimination, trafficking in human beings, etc.) which aims to train professionals to optimize their performance.

Labour inspectors enter the career of senior labour inspector upon successful completion of a one-year internship. In order to enter this internship, labour inspectors have to be approved within a public competition (internal or external) for admission to the internship in which the following selection methods are used: curriculum evaluation;

⁵⁸ Approved by the Decree-law No. 102/2000, of 2 de June.

psychological fitness evaluation; written knowledge test; and professional selection interview.

The traineeship of the career of labour inspector comprises an initial training of one year. This training contains a theoretical phase of four months (where classroom training is provided), and a practical phase, lasting 8 months, in which the trainee inspector accompanies the daily work of a senior labour inspector (acting as pedagogical advisor) of a local branch, which is concluded with the presentation of a final report. At both stages the trainee inspector is subject to evaluation, and his appointment is determined by the final traineeship grade he obtains.

Slovenia

Labour inspectors are civil servants and are ensured protection against dismissal. Labour inspectors need to have a university degree in a legal, economic, medical or other relevant technical field and at least five years of work experience. Inspectors are also required to pass a professional qualification test every three years, in addition to a professional examination upon their appointment, for their contracts to be renewed.

Candidates need to pass an examination in order to be inspectors. The examination includes sections on inspection procedures; administrative and dispute procedures; conduct and decision-making in the application of sanctions.

The law foresees that inspectors be trained on a regular basis in order to properly perform their duties.

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