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“Towards safe, healthy and declared work in Ukraine”

Draft Law
“On Amending Some Legislative Acts
on the Procedure of State Supervision (Control)
of Compliance with the Labour Legislation”
proposed by the Ministry of Development of Economy, Trade and Agriculture

EU-ILO Project technical recommendations
on its better alignment with International and European
Labour Standards and best practices

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EXECUTIVE SUMMARY

Background

This draft Law, “On Amending Some Legislative Acts on the Procedure of State Supervision (Control) of Compliance with the Labour Legislation”, was prepared by the Ministry of Development of Economy, Trade and Agriculture (ME) and submitted for consultation to social partners, prior to its submission to the Cabinet of Ministers of Ukraine (CMU), for adoption, and to its subsequent submission, to the Verkhovna Rada of Ukraine (VRU), for consideration.

According to its explanatory note, it is aimed at improving the effectiveness of the state supervision (control) of the compliance with the labour legislation and at implementing the provisions of the ILO Labour Inspection Convention¹, 1947 (No. 81) and of the ILO Labour Inspection (Agriculture) Convention², 1969 (No. 129).

The present technical recommendations and advice to this draft law are provided within the scope of the EU-ILO Project “[Towards safe, healthy and declared work in Ukraine](#)”, under the activity 2.1.1 (of Output 2.1).

They are intended to promote its better alignment with the main applicable International³ and European⁴ labour standards and best practices, thus supporting Ukraine in the implementation of the EU - Ukraine Association Agreement⁵, the Canada - Ukraine Free Trade Agreement⁶ and Article 9(1) of the Constitution of Ukraine, according to which “*International treaties in force, consented by the Verkhovna Rada of Ukraine as binding, shall be an integral part of the national legislation of Ukraine*”.

They build on the technical recommendations provided by this Project, in February 2021, to a previous version of this text amending the “Chapter XVIII - State Supervision (Control) of Compliance with the Labour Legislation” of the Code of Labour Laws, inserted as “Section IX - Final provisions” of the ME draft Law “On Occupational Safety and Health of Workers”.⁷

In addition, they take stock on the Observations⁸ of ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), concerning the application of Conventions 81

¹ Ratified by the Law of Ukraine No. 1985-IV, of 8 September 2004.

² Ratified by the Law of Ukraine No. 1986-IV, of 8 September 2004.

³ In particular, with the ILO [Labour Inspection Convention, 1947 \(No. 81\)](#); ILO [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#); and Article 9 of the ILO [Occupational Safety and Health Convention, 1981 \(No. 155\)](#).

⁴ Most especially, with Article 4 of the EU Council [Directive 89/391/EEC](#), of 12 June 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work.

⁵ In particular, Articles 419 and 424, as well as the Annex XL to Chapter 21.

⁶ Notably, Articles 13.5(1)(a) and 13.5(1)(b).

⁷ This EU-ILO Project 3rd set of technical recommendations to the ME draft Law “On Occupational Safety and Health of Workers” can be retrieved from: https://www.ilo.org/budapest/what-we-do/projects/declared-work-ukraine/WCMS_774341/lang--en/index.htm.

⁸ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#), concerning application of Conventions 81 and 129 in Ukraine; and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), on the conclusions of the CAS on the application of Conventions Nos 81 and 129 by Ukraine.

and 129 by Ukraine, as well as on the Government of Ukraine own assessment of the situation⁹, according to which *“the provisions of the Law of Ukraine “On the Basics of State Supervision (Control) in Economic Activities” limit the labour inspectors’ powers as defined by the Conventions Nos. 81 and 129, due to which realization of some principles enshrined in these Conventions is hindered and efficiency of inspection activities to ensure the application of legal provisions is reduced”*.

They are also based on several contributions of the previous EU-ILO Project [“Enhancing the Labour Administration Capacity to Improve Working Conditions and Tackle Undeclared Work”](#), most especially in what concerns the analysis and recommendations contained in [“Ukrainian Labour Inspection Legal Framework - Analysis and Recommendations”](#); [“White Paper on EU Directives and Reform of OSH and Labour Relations’ Legislation”](#) (in Part III - Labour Inspection System); [“Brief notes on the main aspects of the alignment between Ukrainian national legislation and selected EU directives”](#) (in point 3 of Chapter I - General Considerations); and [“National Occupational Safety and Health Profile of Ukraine”](#) (Sections 3.2.1, 12.3 and 13.3).

Finally, they also follow an on-line training session, within the “Summer Marathon of Online Trainings on International and European Labour Standards”, specifically focused on “Labour Inspection”. The latter was carried out by the EU-ILO Project on 23rd July 2020 and attended by around 860 experts from the government, parliament, trade unions, employers’ organizations, research institutions and academia.¹⁰

The present technical recommendations should not be seen as official comments of the ILO or as a replacement of the positions of the supervisory bodies of the ILO.

Moreover, the expert technical opinions expressed therein neither reflect the official opinion of the European Union nor its responsibility can be attributed to the European Union.

Main positive aspects

Looking at the provisions of the draft Law under analysis, in light of the main applicable International and European Labour Standards and best practices, it is possible to identify some positive aspects, in particular:

1. The development of a draft Law with the expressed objective of better implementing the ILO C81 and C129;
2. The tentative effort of excluding the applicability of some provisions of the Law 877 Law No. 877 “On the Basics of State Supervision (Control) in Economic Activities” to labour inspection;

⁹ Cf. section “Problems to be resolved” of the *“Concept of the labour protection management system reform in Ukraine”*, adopted by the by the Order of the Cabinet of Ministers of Ukraine (CMU) No. 989-p, of 12 December 2018.

¹⁰ The video records and supporting materials of this online training session, including its “Background paper” and the main applicable International and European Labour Standards, can be retrieved from: https://www.ilo.org/budapest/what-we-do/projects/declared-work-ukraine/WCMS_751580/lang--en/index.htm.

3. The enlargement of the functions of the system of labour inspection beyond the traditional supervision and control of compliance with labour legislation, through the incorporation of additional critical tasks, such as the provision of technical advice and information to workers and employers and the improvement of the legal framework on labour;
4. The acknowledgement of the need to better regulate the labour inspectors' powers and better approximate them to the provisions of the ILO C81 and C129;
5. The efforts directed towards a better clarification and regulation of the working conditions of labour inspectors, namely regarding their career, remuneration, qualifications and training;
6. The elimination of a recurrent and contra productive provision, present in other versions of this and other legal acts, which was contradictory to ILO C81 and C129, foreseeing that if an employer corrected a detected violation within a given time, the employer could not be sanctioned for its practice.

Main aspects to improve

As for the aspects that need to be further addressed and improved, in order to be better aligned with the aforesaid international and European labour standards and best practices, they include, *inter alia*, the following:

1. Throughout the text of this draft Law [including the title of the Chapter XVIII of the Code of Labour Laws (CLL), Article 259 of CLL, Article 260 of CLL, ... etc.], the term **“Supervision (control) of compliance with the labour legislation”**, should be replaced by **“Promotion and supervision (control) of compliance with the labour legislation”**, as recommended, in order to take into account and to better clarify that the main functions of the system of labour inspection are not just to supervise, control and enforce compliance with the labour legislation, but also to promote such compliance. Mainly through the provision of technical information and advice to employers and workers on the most effective ways of complying with that legislation (including through carrying out information actions and awareness-raising campaigns); and through the promotion of the improvement of labour legislation, by notifying the competent authority about defects or abuses not specifically covered by existing legal provisions and by submitting proposals for its improvement. The implementation of such recommendations would also allow to better align this draft Law with Article 3(1) of the ILO Labour Inspection Convention, 1947 (No. 81) and Article 6(1) of the ILO Labour Inspection (Agriculture) Convention, 1969 (No. 129) and improve its internal consistency, in terms of terminology and inherent philosophy and principles. In addition, the term **“visited entities” used throughout the text should be replaced by the most appropriate expression “employers, workers and other relevant entities”**, because labour inspection functions (e.g. information and technical advice, improvement of labour legislation, desk inspections etc.) do not necessarily imply performing an inspection visit and are not provided only to “visited entities”, but also to the ones that were not visited. For example, technical information and advice can be provided by phone, in meetings in the

labour inspectorate premises, by email, through the internet or social media, or through other means that does not imply an inspection visit.

2. It is foreseen [in paragraphs 1) and 2) of part 2 of this draft Law] that the basic principles of state supervision (control) [regulated by the Law of Ukraine 877 “On the Basics of State Supervision (Control) in Economic Activities”] should apply to the exercise of state supervision (control) of compliance with labour legislation by the central executive authority that implements the state supervision (control) of compliance with the labour legislation and, in particular, to the requirements of Article 1, Article 3, the first, fourth, sixth-eighth, the second subparagraph of the tenth part, the thirteenth and fourteenth of Article 4, Article 41, the first, sixth and tenth parts of Article 7, Article 9, the first-eighth, tenth-eleventh, and twenty-first-twenty-fourth subparagraphs of the first part of Article 10, Articles 13-18, the first part of Article 19, 20 and 21 of the Law 877. **It is therefore recommended to delete the above provisions, because the system of labour inspection should be taken out of the scope of the Law 877 “On the Basics of State Supervision (Control) in Economic Activities”, for the following reasons:**
 - a. The Law of Ukraine 877 **is, in itself, incompatible with the specific nature, requirements and specificities of the system of labour inspection**, as the Law 877 is focused on regulating the relations between some state authorities of supervision and control and “business entities” (controlled entities), during state activities of supervision/control, whereas:
 - i. **The object of labour inspection is much more wider**, as it includes, besides “business entities”: “business entities” representative organizations; workers and their representative organizations; “entities” that are not registered as “business entities” but that “do business” in the informal economy (and their respective workers); employers that are not “business entities” (e.g., public administration entities, non-governmental organizations, civil associations, not-for profit organizations) along with their representative organizations, their workers and their workers’ representative organizations; and other public and private organizations within the remit of the labour inspection mandate (e.g., OSH service providers and their representative organizations, training and research institutions and their representative organizations, Academia) regardless of being, or not, “business entities”;
 - ii. **The functions of the system of labour inspection go much beyond the supervision and control of the compliance** with labour legislation and also include, *inter alia*, the provision of technical information and advice to employers, workers and their representative organizations on the most effective ways of complying with that legislation (including through carrying out information actions and awareness-raising campaigns); and the promotion of the improvement of labour legislation, by notifying the competent authority about defects or abuses not specifically covered by existing legal provisions and by submitting proposals for its improvement.

- b. **The Law 877 contains several provisions that are contradictory with the ILO C81 and C129**, as noted the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). Indeed, CEACR observed¹¹ that the Law 877 (along with Ministerial Decrees 295 and 823) provide for several restrictions on the powers of labour inspectors (**including on the free initiative of labour inspectors to undertake inspections without prior notice, on the frequency of labour inspections, on the maximum duration of labour inspections, on the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning, and on the inspectors' ability to impose liability and sanctions if corrective action is taken by the violating entity within a specified time limit**) and strongly urged the Government **to take the necessary measures and adopt appropriate reforms to bring the labour inspection services and the national legislation into conformity with Articles 12(1)(a) and (b), 16 and 17 of ILO C81 and Articles 16(1)(a) and (b), 21 and 22 of ILO C129, and to ensure that no additional restrictions are adopted**. The above assessment was also made by the Government of Ukraine, who considered that *"the provisions of the Law of Ukraine "On the Basics of State Supervision (Control) in Economic Activities" limit the labour inspectors' powers as defined by the Conventions Nos. 81 and 129, due to which realization of some principles enshrined in these Conventions is hindered and efficiency of inspection activities to ensure the application of legal provisions is reduced"*¹². Such assessment is also consistent with the conclusions and technical recommendations contained in several analysis and studies carried out by the EU-ILO Project "Enhancing the Labour Administration Capacity to Improve Working Conditions and Tackle Undeclared Work", regarding the legal framework of labour Inspection in Ukraine¹³.
- c. **The following mentioned Articles of the Law 877 are contradictory with Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129**, impose restrictions to the free initiative of labour inspectors to undertake inspections without prior notice and do not take into account situations where the inspection visit is carried out without prior notice [as provided for in Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129], either because labour inspectors consider that such a notification may be prejudicial to the performance of their duties, or in situations where the inspection visit is carried out by initiative of a labour inspector immediately following a complaint or an information received, or following its own observation, and there is no time to register the inspection and/or to obtain its referral prior to carrying it out, or the prior performance of such registration and/or the prior issuance of such referral could be

¹¹ Cf. [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

¹² Vide section "Problems to be resolved" of the *"Concept of the labour protection management system reform in Ukraine"*, adopted by the by the Order of the Cabinet of Ministers of Ukraine (CMU) No. 989-p, of 12 December 2018.

¹³ See, in particular: ["Ukrainian Labour Inspection Legal Framework - Analysis and Recommendations"](#); ["White Paper on EU Directives and Reform of OSH and Labour Relations' Legislation"](#) (in Part III - Labour Inspection System); ["Brief notes on the main aspects of the alignment between Ukrainian national legislation and selected EU directives"](#) (in point 3 of Chapter I - General Considerations); and ["National Occupational Safety and Health Profile of Ukraine"](#) (Sections 3.2.1, 12.3 and 13.3)

prejudicial to the performance of their duties: **Article 7(1)** - that foresees that before “the planned or unplanned measure, the body of state supervision (control) shall issue an order/resolution/decreed which shall include the name of the business entity to be inspected, and the subject of inspection”; **Article 10(4)** - that foresees that the business entity shall have the right to “receive a copy of the certificate/request on the planned or unplanned measure”; **Article 10(21)** - which provides that the business entity have the right to “demand suspension of execution of a measure of state supervision (control)” if [as foreseen in **Article 10(24)**], the officials, during carrying out unplanned measures of state supervision (control), verify “issues other than those whose verification was the basis for the original measure”; and **Article 10(5)** - which provides that the business entity have the right to “prevent the officials (...)” from “carrying out the state supervision” if: they “fail to provide copies of documents required under this Law” (including the inspection visit referral/order) [**Article 10(7)**]; “the business entity has not received a notice about carrying out of the planned measure of state supervision” [**Article 10(8)**]; they “failed to make an entry on carrying out of a measure of the state supervision (control) in the register of state supervision (control)” [**Article 10(9)**]; they “carry out another unplanned measure of state supervision (control) for the same fact (facts) that was (were) the reason for the unplanned measure that has been conducted” [**Article 10(11)**]; “the body of state supervision (control) has not approved or published on its official website a standard report, which provides a list of questions depending on the degree of risk” [**Article 10(12)**]; and if they “have not provided a copy of the concurrence of the central executive body, which ensures public policy on state supervision (control) in the area of economic activities or a relevant state collegial body to carry out an unplanned measure of state supervision (control)” [**Article 10(13)**];

- d. **The following Articles of the Law 877, to which the draft Law provision refers to, are contradictory with Article 16 of ILO C81 and Article 21 of ILO C129**, according to which “workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions”. They do not take into account that the duration, frequency and scope of the inspection visits or a desk inspection depend on a series of variables including, but not limited to: means, resources and number of labour inspectors involved; number and complexity of the legal provisions to be controlled and enforced; number and geographical dispersion of concerned workers, workplaces, agents (physical, biological or chemical), work equipment and tools; layout of the workplaces; number, nature, complexity and geographical dispersion of the occupational risks to which workers are or might be exposed to (noise, mechanical vibrations, chemical or biological agents, ionizing or non-ionizing radiations, explosive atmospheres, magnetic fields, musculoskeletal disorders risk factors, etc.); number and complexity of unexpected situations verified during a given inspection visit or desk inspection (e.g., violations of other legal provisions, unforeseen occupational risks, etc.), willingness of the employer, workers and other inspected entities to cooperate; etc. As such, duration, frequency and scope of inspection visits, regardless of having been previously registered or not, shall be left

to labour inspectors, which should have right to extend its grounds, duration and frequency to control and enforce other legal provisions on the basis of the situations they verify during the inspection visit, as well as to conduct inspection visits as frequently and as thoroughly as necessary to ensure the effective application of the relevant legal provisions. The mentioned Articles of the Law 877 that are contradictory with Article 16 of ILO C81 and Article 21 of ILO C129 are the following: **Article 10(5)** - which provides that the business entity have the right to "prevent the officials (...)" from "carrying out the state supervision" if: "the state supervision (control) is carried out with breach of the statutory requirements on frequency of such measures" [**Article 10(6)**]; "the duration of the planned activity of state supervision (control) or the total duration of measures during the year exceeds the maximum duration set by Part 5, Article 5 of this Law, or the duration of unplanned activities of state supervision (control) exceeds the maximum duration set by Part 4, Article 6 of this law" [**Article 10(10)**]; "the body of state supervision (control) carries out another unplanned measure of state supervision (control) for the same fact (facts) that was (were) the reason for the unplanned measure that has been conducted by state supervision (control)" [**Article 10(11)**]. Also **Article 10(21)** - which provides that the business entity have the right to "demand suspension of execution of a measure of state supervision (control)" if: "the official of state supervision (control) is in breach of the maximum duration of the measure defined by this law" [**Article 10(22)**]; and if the officials, during carrying out unplanned measures of state supervision (control), verify "issues other than those whose verification was the basis for the original measure" [**Article 10(24)**].

- e. **The following referred Articles of the Law 877 are contradictory with Article 12(2) of ILO C81 and Article 16(3) of ILO C129**, according to which "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", as it should be left to labour inspectors to decide who they should involve in the inspection visits and when: **Article 10(14)** - which provides that the business entity have the right "to be present during the carrying out of measures of state supervision (control), to engage third parties during the implementation of such measures"; **Article 10(20)** - "to demand from officials of state supervision (control) to make an entry" on the "log of measures of state supervision (control)" about such measure", "before their start"; **Article 14(1)** - which imposed that "Sampling of products shall be made by officials of the body of state supervision (control) in the presence of the head of a business entity - legal entity, its separate subdivision or authorized person (an individual - entrepreneur or his authorized representative)"; **Article 14(2)(2)** - that foresees that "The entity shall have the right to be present during all actions by officials of the body of state supervision (control) during sampling of products and petition over those actions, to be recorded in the sampling report"; and **Article 20(2)** - which provides that "business entities shall be entitled to engage third parties to protect their rights and interests during the implementation of measures of state supervision (control, during the implementation

of measures of state supervision (control)“, who “shall be entitled” “to be present during the carrying out of measures of state supervision (control)” and “to review the documents and materials related to state supervision (control)”.

- f. **The following Articles of the Law 877, referred to in the above provision of this draft Law, are contradictory with Article 12(1)(c)(iv) of ILO C81 and Article 16(1)(iii) of ILO C129**, which provides that “labour inspectors (...) shall be empowered to take or remove for purposes of analysis samples of products, materials and substances used or handled, subject to the employer or his representative being notified of any products, materials or substances taken or removed for such purposes”: **Articles 13(1), 14(1), 14(2) and 14(2)(2)**. In fact, and according to Article 12(1)(c)(iv) of ILO C81 and Article 16(1)(iii) of ILO C129, the taking and removal of samples by labour inspectors shall only be subjected to the notification of the employer or its representative, and should not be, therefore, subjected to neither a “written justified resolution of the head of the body of state supervision (control) or his deputy” [as foreseen in Article 13(1) of the Law 877] nor to the prior submission of a “resolution on collecting product samples and explain the sampling procedure to the business entity” [as foreseen in Article 14(2) of the Law 877], to the mandatory presence “of the head of a business entity - legal entity, its separate subdivision or authorized person (an individual - entrepreneur or his authorized representative” [as foreseen in Article 14(1) of the Law 877], or to the business entity “right to be present during all actions by officials of the body of state supervision (control) during sampling of products and petition over those actions” [as foreseen in Article 14(2)(2) of the Law 877].
- g. **The first part of Article 19 of the Law 877, referred to in the above provision of this draft Law, regarding the “consultation support of business entities” are contradictory with Article 3(1)(b) of ILO C81 and Article 6(1)(b) of ILO C129**, mainly because the labour inspection main function of providing “technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions”, as foreseen in these provisions of ILO Conventions 81 and 129: (1) are not aimed at “business entities” in general, but specifically to “business entities” that are employers (and their workers), to other employers which are not “business entities” (such as public administration entities, non-governmental organizations, civil associations, not-for profit organizations, and respective workers), as well as to other public and private organizations (regardless of being or not “business entities”) which fall under the remit of labour inspection (including workers and employers representative organizations); (2) does not concern information on “requirements for performance of the appropriate business activities”, but only the ones enforceable by labour inspectors (i.e., regarding labour legislation); (3) are not restricted to the provision of “written” information, but may also include verbal technical information, recommendations and advice provided, for example, in the course of inspection visits; and (4) does not impose any time limit (and notably not one of 15 calendar days) for the provision of the requested information, which may be insufficient, depending on the volume, type and complexity of the information required and eventual need for additional documentation or even the performance of

one or more inspection visits, especially when (as in this case) the information provided can exempt the recipient of responsibilities if the recipient follows the provided technical information and advice.

- h. Finally, and considering that, according to the Article 9(1) of the Constitution of Ukraine “*International treaties in force, consented by the Verkhovna Rada of Ukraine as binding, shall be an integral part of the national legislation of Ukraine*” and that both ILO C81 and C129 were ratified by Ukraine, then both ILO C81 and C129 are an integral part of the national legislation of Ukraine. Therefore, as Law 877 “On the Basics of State Supervision (Control) in Economic Activities” is contradictory with ILO C81 and C129, as we have seen above (besides having also a lower legal force than the ratified international treaties), it should not apply to labour inspection activities** (or, at least, the articles of the Law 877 that are contradictory with the provisions of the ILO C81 and 129).

As such, and as an **alternative solution** to the one recommended above (although not so highly recommended as the one provided earlier - of taking out the system of labour inspection altogether, and from the outset, under the scope of the Law of Ukraine 877) would be **to reword the proposed two provisions**, subjecting the activity of the central executive authority that implements the state supervision (control) of compliance with the labour legislation **only to the requirements of the following provisions** of the Law 877: Article 1, Article 3, the first, fourth, and sixth-eighth parts, the second subparagraph of the tenth part, and the thirteenth and fourteenth parts of Article 4, Article 41, the first, sixth and tenth parts of Article 7, Article 9, the first, second, fifteen to nineteen eighth, tenth-eleventh, and twenty-first-twenty-fourth and twenty-third subparagraphs of the first part of Article 10, second and third parts of Article 13, third to sixth parts of Article 14, Articles 13-15 to 18, the first part of Article 19, 20 and Article 21.

3. This draft Law also foresees (in the proposed second part of Article 259 of the CLL) that the **basic principles of state supervision** (control) (regulated by the Law 877) should **apply** to the **exercise of the state supervision** (control) of compliance with labour legislation, in terms of the **relations not regulated in the Code of Labour Laws. For the same reasons expended in the previous point 2, it is advisable to delete this provision. Another solution** (although not as highly advisable as the latter), **might be to reword this provision by adding, at its end, that such provisions only apply if they are not contrary to the provisions of the Code of Labour Laws and to the provisions of the ILO C81 and C129.**
4. As for the **exercise of control of the compliance with labour legislation by local governments** [foreseen in the draft Law proposed Article 259(4) of CLL], and in order to better align this draft Law with ILO C81 and C129 and to ensure the consistency of the application of labour legislation across the entire territory of Ukraine, it is advisable:
- a. **To amend part 1 of Article 260 of the CLL**, as recommended, in order to ensure that the exercise of the functions of labour inspection by local governments is **placed under the supervision and control of a central authority** [as foreseen in Article 4(1) of ILO C81 and Article 7(1) of ILO C129];

- b. To insert the recommended additional part 5 of Article 259 of the CLL, in order to ensure that **labour inspectors of the local governments have the same powers** (Articles 12 and 13 of ILO C81 and Articles 16 and 18 of ILO C129) **and obligations** (Article 15 of ILO C81 and Article 20 of ILO C129) **and are subject to the same legal provisions as state labour inspectors** concerning, for example, their status (as public servants) and conditions of service in a way that ensures their stability of employment and their independence from changes of government and of improper external influences (Article 6 of ILO C81 and Article 8 of ILO C129), being **recruited solely on the basis of their qualifications for the performance of their duties** [Article 7(1) of ILO C81 and Article 9(1) of ILO C129] and being **provided with the necessary training** [Article 7(3) of ILO C81 and Article 9(3) of ILO C129] **and means** (Article 11 of ILO C81 and Article 15 of ILO C129), etc.
5. Regarding the **tasks of state supervision** (control) of compliance with the labour legislation (Article 260 of the CLL), it is important to provide that, besides inspection visits, provision of technical advice and information and improvement of labour legislation, they **also include the performance of desk inspections, carrying out information actions and launching national, thematic, regional, local and/or sectoral information and awareness-raising campaigns**, as recommended.
6. As for the **regulation of labour inspectors' tasks, duties, qualification grades, remuneration components, promotion, training, recruitment requirements, etc.** (addressed in the proposed parts 2 to 4 of Article 261 and Article 263¹ of the CLL), **they should be amended and/or replaced, as recommended**, because these aspects, although relevant, refer exclusively to labour inspectors (and their employer) and do not pertain to the regulation of the rights and obligations of the subjects of employment relationships at general (employers and employees) which are the object of the CLL. As such, **these aspects, more closely related with the specific working conditions of the labour inspectors, should not be regulated within the CLL. They should be regulated**, however, **within a specific Law** (such as the proposed "labour inspector's occupational standard"), in order to secure its adequate legal power/force and ensure its effectiveness and sustainability.
7. Regarding the **power of labour inspectors to perform inspection visits without prior notice, the wording proposed** [in paragraph 1) of part 9 of Article 261 of the CLL], **should be amended, as recommended**, for the following reasons:
 - a. To better align this provision with Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129:
 - i. By replacing "visit freely" by "enter freely", because the reasons to enter into a workplace might not be just for performing an inspection visit, but also: to provide information and technical advice; to carry out an information action or an awareness-raising campaign; to make an inquiry about a work-related accident or an occupational disease; to deliver a notification or order to the employer, to collect documents; etc;

5. Regarding the **tasks of state supervision** (control) of compliance with the labour legislation (Article 260 of the CLL), it is important to provide that, besides inspection visits, provision of technical advice and information and improvement of labour legislation, they **also include the performance of desk inspections, carrying out information actions and launching national, thematic, regional, local and/or sectoral information and awareness-raising campaigns**, as recommended.

6. As for the **regulation of labour inspectors' tasks, duties, qualification grades, remuneration components, promotion, training, recruitment requirements, etc.** (addressed in the proposed parts 2 to 4 of Article 261 and Article 263¹ of the CLL), **they should be amended and/or replaced, as recommended**, because these aspects, although relevant, refer exclusively to labour inspectors (and their employer) and do not pertain to the regulation of the rights and obligations of the subjects of employment relationships at general (employers and employees) which are the object of the CLL. As such, **these aspects, more closely related with the specific working conditions of the labour inspectors, should not be regulated within the CLL. They should be regulated, however, within a specific Law** (such as the proposed "labour inspector's occupational standard"), in order to secure its adequate legal power/force and ensure its effectiveness and sustainability.

7. Regarding the **power of labour inspectors to perform inspection visits without prior notice, the wording proposed** [in paragraph 1) of part 9 of Article 261 of the CLL], **should be amended, as recommended,** for the following reasons:

- a. To better align this provision with Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129:

- i. By replacing “visit freely” by “enter freely”, because the reasons to enter into a workplace might not be just for performing an inspection visit, but also: to provide information and technical advice; to carry out an information action or an awareness-raising campaign; to make an inquiry about a work-related accident or an occupational disease; to deliver a notification or order to the employer, to collect documents; etc;

- ii. By deleting “where hired labour is used”, because, before entering the workplace, the labour inspectors cannot be entirely sure if hired labour is in fact used at that workplace. They may have a suspicion of that, but they can only corroborate such suspicion with evidence, which can only be collected after entering the workplace (not before). Other options is to add “or where they have reasons to believe that hired labour is used there”; and
 - iii. Most especially, by deleting at the beginning of the provision, the expression “during an inspection visit,” because it introduces confusion, ambiguity and legal uncertainty, as regards the meaning of the all provision. In fact, if it is obvious that “during an inspection visit” a labour inspector should be able to “visit freely and without previous notice, at any time of day or night any workstations (workplaces) as well as enter any production, service and administrative premises”, because the labour inspector is already there!...The adding of the expression “during an inspection visit,” however, changes the sense of the provision, in a way that is contradictory to Article 12(1)(a) of ILO C81 and to Article 16(1)(a) of ILO C129, which are aimed at ensuring that labour inspectors shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. This means that labour inspectors should be allowed to enter freely without prior notice at any hour of the day or night at any workplace **before initiating the inspection visit itself (and not just during it)!**
- b. One of the main aspects that led the ILO CEACR to consider that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provide for several restrictions on the powers of labour inspectors, was precisely the fact that they restrict (as this new wording for this provision also does) **“the free initiative of labour inspectors to undertake inspections without prior notice”**. CEACR strongly urged the Government, in this respect, ***“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”***, in particular with Articles 12(1)(a) of ILO C81 and Articles 16(1)(a) of ILO C129 ***“and to ensure that no additional restrictions are adopted”***.¹⁴
 - c. Both ILO Conventions 81 and 129 were ratified by Ukraine and, as such, according to Article 9(1) of the Constitution of Ukraine, **both Conventions “(...) shall be an integral part of the national legislation of Ukraine”**.
8. As for the **powers of labour inspectors to review documents** [paragraph 3) of part 9 of Article 261 of the CLL], **to interrogate** [paragraph 4) of part 9 of Article 261 of the CLL] **and to take samples** [paragraph 7) of part 9 of Article 261 of the CLL] **(should be amended, as recommended**, they should be revised, as recommended, in order to better align them with, respectively: Article 12(1)(c)(ii) of ILO C81 and Article 16(1)(c)(ii) of ILO C129; Article

¹⁴ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

12(1)(c)(i) of ILO C81 and Article 16(1)(c)(i) of ILO C129; and Article 12(1)(c)(iv) of ILO C81 and Article 16(1)(c)(iii) of ILO C129.

9. Concerning the **powers of labour inspectors, the following should be inserted**, as recommended:

a. As new paragraph 3) of part 9 of Article 261 of the CLL, to better align with Article 12(1)(c) of ILO C81 and Article 16(1)(c) of ILO C129 - **To carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed;**

b. As new subparagraphs i. and ii. of new paragraph 11) of part 9 of Article 261 of the CLL, in order to better align it with Articles 13(1) and 13(2) of ILO C81 and Articles 18(1) and 18(2) of ILO C129 and to ensure consistency with the proposed subparagraphs 1) and 2) of part 2 of Article 32 of the ME draft Law "On Occupational Safety and Health of Workers" (aimed at transposing to the internal juridical order of Ukraine the EU Council Directive 89/391/EEC) - **With a view to remedying defects found during an inspection visit that the labour inspectors believe constitute a threat to the safety and health workers: to demand alterations to installation, plant, premises, tools, work equipment, machines, layout or working methods, use of dangerous materials or substances and workstation/workplace, to be carried out within a reasonable time limit**, as may be necessary to secure compliance with the provisions of the legislation on safety and health of workers; or **to take measures with immediate executory force in the event of substantiated imminent and serious danger to the health and safety of workers, including stoppage, termination or restriction of performance of works and/or operation of work equipment of enterprises, certain production facilities, workshops, sections, workstations/workplaces, buildings, structures or premises, manufacture and operation of machinery, mechanisms, equipment, transport and other means of production, performance of certain works, use of new dangerous substances, and sales of products.**

c. As new paragraph 18) of part 9 of Article 261 of the CLL, to better align with Article 17(2) of ILO C81 and Article 22(2) of ILO C129 - **To decide to give warning and advice instead of instituting or recommending administrative penalties.**

10. As for the right to **involve law-enforcement bodies, according to a specific procedure** [as foreseen in the proposed paragraph 11) of part 9 of Article 261 of the CLL and in the proposed paragraph 31) to be added to the first part of Article 23 of the Law of Ukraine "On the National Police" according to Article 3 of this draft Law], **both provisions should be reworded**, as recommended, **in order to:**

a. Ensure that such **assistance may be required / obtained urgently in unexpected cases**, during inspection visits, because usually labour inspectors cannot foresee, before the inspection visit, if they will need assistance during it;

b. Make sure that the **procedure for requesting and obtaining assistance is indeed effective**. For that, however, the procedure needs to be compatible with what really

happens in the field and foresee the possibility of requesting it (by phone, email, message texting, etc.) and obtaining it during the course of an inspection visit (and not only before), without prejudice of further formalities to be taken care of after the inspection visit, in order to better substantiate the request. Otherwise, labour inspectors will not be able to have assistance in case of unexpected, unforeseen or urgent need, because they did not request (and substantiate) it before the inspection visit.

- c. To ensure that the **procedure is flexible enough to allow the request and the provision of assistance in unforeseen, unexpected and urgent cases.**

11. Regarding the **provisions of this draft Law that impose restrictions and limitations to the duration, frequency, scope and free initiative of the labour inspectors to undertake inspection visits without prior notice** - either by imposing a time limit for the duration of the inspection visits or a specific frequency for its performance, or by requiring the pre-verification of a given ground (and not allowing its extension during the inspection), its prior registration, the prior issuance and/or presentation of a referral, etc.) -, **should be amended, complemented or deleted, as the specific and detailed recommendation (in the subsequent table) may be, because:**

- a. They are **contradictory with:**

- i. Article 16 of ILO C81 and Article 21 of ILO C129, according to which “workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions”;
- ii. Articles 12(1)(a) and 12(1)(b) of ILO C81 and Articles 16(1)(a) and 16(1)(b) of ILO C129, restricting the free initiative of labour inspectors to undertake inspection visits, through the impositions of limitations, pre-conditions and requirements for their performance, such as the pre-existence of a given ground)and the impossibility of its extension during the inspection), maximum duration and frequency of inspection visits, their previous registration, the prior issuance of the respective referral, etc.

- b. They do not take into account that the **duration, frequency and scope of the inspection visits or a desk inspection depend on a series of variables** including, but not limited to: means, resources and number of labour inspectors involved; number and complexity of the legal provisions to be controlled and enforced; number and geographical dispersion of concerned workers, workplaces, agents (physical, biological or chemical), work equipment and tools; layout of the workplaces; number, nature, complexity and geographical dispersion of the occupational risks to which workers are or might be exposed to (noise, mechanical vibrations, chemical or biological agents, ionizing or non-ionizing radiations, explosive atmospheres, magnetic fields, musculoskeletal disorders risk factors, etc.); number and complexity of unexpected situations verified during a given inspection visit or desk inspection (e.g., violations of other legal provisions, unforeseen occupational risks, etc.), willingness of the employer, workers and other inspected entities to cooperate; etc.

As such, duration, frequency and scope of inspection visits, regardless of having been previously registered or not, shall be left to labour inspectors, which should have right to extend its grounds, duration and frequency to control and enforce other legal provisions on the basis of the situations they verify during the inspection visit, as well as to conduct inspection visits as frequently and as thoroughly as necessary to ensure the effective application of the relevant legal provisions.

- c. They do not take into account situations where the inspection visit is carried out without prior notice [as provided for in Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129], either because labour inspectors consider that such a notification may be prejudicial to the performance of their duties, or in situations where the inspection visit is carried out by the initiative of a labour inspector immediately following a complaint or an information received, or following its own observation, and there is no time to register the inspection and/or to obtain its referral prior to carrying it out, or the prior performance of such registration and/or the prior issuance of such referral could be prejudicial to the performance of their duties.

Examples of such provisions include, at least, but are not limited to, the following:

- d. Paragraph 1) of part 9 of Article 261 of the CLL;
- e. Paragraph 7) of part 2 of Article 262 of the CLL;
- f. Paragraph 4) of part 2 of Article 264 of the CLL;
- g. Paragraph 13) of part 2 of Article 264 of the CLL;
- h. Paragraphs 2), 3) and 9) of part 1 of Article 265 of the CLL;
- i. Parts 1, 2, 5, and 7 to 9 of Article 266 of the CLL.

It is important to recall again, in this regard, that the main aspects that prompt ILO CEACR to consider that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provided for several restrictions on the powers of labour inspectors, was the fact that they imposed limitations on the free initiative of labour inspectors to undertake inspections without prior notice, on the duration of the inspection visits and on the frequency of labour inspections. Therefore, CEACR strongly urged the Government to take the necessary measures and adopt appropriate reforms to bring the labour inspection services and the national legislation into conformity with, *inter alia*, Articles 12(1)(a) and (b) and 16 of ILO C81 and Articles 16(1)(a) and (b) and 21 of ILO C129, and to ensure that no additional restrictions are adopted.¹⁵ It is also worth remembering, at this stage, that both ILO Conventions 81 and 129 were ratified by Ukraine and, as such, "(...) shall be an integral part of the national legislation of Ukraine", according to Article 9(1) of the Constitution of Ukraine.

12. As for the **employers' right to appeal against decisions of labour inspection, it is important to ensure that, in the cases concerning the notification of the employer to take safety and**

¹⁵ Cf. [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#), on the application of ILO C81 and C129 by Ukraine.

health preventive and protective measures within a reasonable time limit and/or to immediate stop works, in order to secure the safety, health and life of the workers [foreseen in paragraphs 1) and 2) of part 2 of Article 32 of the Law “On Occupational Safety and Health of Workers” and in the recommended new sub-paragraphs i. and ii. of the recommended new paragraph 11) of part 9 of Article 261 of the CLL], **the employers’ reservations, complaints, or resources to the court, do not have suspensive effect**. In fact, if an order to immediately suspend works (issued in the case of very serious and imminent danger to the life and health of workers) could be appealed against with suspensive effect, by the time that such appeal was decided, it would not serve any purpose because, by that time, workers would most probably be already dead or seriously injured...

13. Finally, and **regarding the liability for violations of the labour legislation and respective procedure** (Articles 268 and 269 of the CLL), main recommendations include:
 - a. Reword paragraph 7) of the second part of Article 268 of the CLL, as recommended, **in order to avoid that all the violations foreseen in Article 35 of the Law of Ukraine “On Occupational Safety and Health of Workers”** (which is also considered as a component of “labour legislation”, pursuant to Article 3(1) of the draft Law “On Occupational Safety and Health of Workers”) **might be sanctioned with a fine in the amount of a minimum wage** (as provided for in this paragraph).
 - b. **Reword the subparagraph of paragraph 7) of part 2 of Article 268** of the CLL, as recommended, in order to improve clarity, **specifying that it applies to each and every violation**;
 - c. **Revise the amount of “a minimum wage”, established as the amount of fine in the residual provision** [paragraph 7) of part 2 of Article 268 of the CLL] applicable to the violation of the requirements of the labour legislation other than those provided by paragraphs 1-6 of part 2 of Article 268 of the CLL, because that amount is inconsistent with the amount of “a half minimum wage” foreseen in the equivalent provision of Article 35(4)(16) of the law "On Occupational Safety and Health of Workers", for other infringements of that law not specifically specified in the preceding paragraphs.
 - d. Analyze the provisions to which this residual fine [foreseen in paragraph 7) of part 2 of Article 268 of the CLL] applies, in order to **provide that, as much as possible, the different violations (along with their corresponding sanctions) are specified in individual legal provisions and not grouped into this residual provision**, ensuring that violations (at least the most serious) are properly individualized and its sanctioning is foreseen in a specific legal provision.
 - e. To introduce mechanisms that allow to **adjust the amount of the fines to the size of the employers** (e.g., on the basis of the number of employees, turnover or annual budget, in the case of public administration organizations or entities);
 - f. To **increase the amount of the fine with the financial gain of the employer with the commitment of the infraction**, in order to avoid that committing the violation and paying the fine is more advantageous than complying with the legal provisions, thus dissuading non-compliance;
 - g. To **introduce non-monetary accessory sanctions**, more directed to the vital interests of the employers, in order to dissuade non-compliance;

- h. As for **repeated violations, the amount of the fine should be calculated** not in absolute terms [as it is done in paragraph 8) of part 2 of Article 268 of the CLL], but **with relative reference to the fine imposed for the previous violation**, for example, the double of the fine provided for in the law for the previous violation, in order to dissuade the repetition of infractions and to align this provision with the equivalent provision foreseen in paragraph 6 of Article 35 of Section VII of the ME Draft Law of Ukraine "On Occupational Safety and Health of Workers";
- i. **As for the benefit given to the offender (of a discount of 50% if the fine is paid within 10 days)**, the provision should be amended, as recommended, **in order to make sure that the offender, in order to benefit from paying just half of the fine and in order for the resolutions being deemed as complied with, in addition to the payment of half the fine, has also to ensure and prove, within the same time period, that s/he eliminated the violations that justified the imposition of the fine.**

The more detailed recommendations, concerning the main aspects referred to above, as well as many others, along with their respective rationale, are presented in the next section.

It is our expectation that these technical recommendations may contribute to an improved legislation, better aligned with the main applicable International and European labour standards and best practices, which can effectively advance decent working conditions in the country.

Kyiv, 3 April 2021

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"Towards safe, healthy and declared work in Ukraine"

ILO Office for Central and Eastern Europe

EU-ILO PROJECT DETAILED RECOMMENDATIONS

OSH draft Law provision's wording	Recommended wording	Rationale
LAW OF UKRAINE		
On Amending Some Legislative Acts on the Procedure of State Supervision (Control) of Compliance with the Labour Legislation		
The Verkhovna Rada of Ukraine <i>r e s o l v e s t o</i> :		
I. Amend the following legislative acts of Ukraine:		
1. The Code of Labour Laws of Ukraine (Vidomosti Verkhovnoi Rady URSR, 1971, annex to No. 50, p. 375, as subsequently amended):		
1) reword Article 4 as follows:		
"Article 4. Labour legislation		
.....		
2) reword Chapter XVIII as follows:		
Chapter XVIII - SUPERVISION (CONTROL) OF COMPLIANCE WITH THE LABOUR LEGISLATION	Chapter XVIII - PROMOTION AND SUPERVISION (CONTROL) OF COMPLIANCE WITH THE LABOUR LEGISLATION	Should be changed, as recommended, in order to better align it with Article 3(1) of the ILO Labour Inspection Convention, 1947 (No. 81) and Article 6(1) of the ILO Labour Inspection (Agriculture) Convention, 1969 (No. 129), as well as to improve consistency with the following Article 260, because the main functions of the system of labour inspection are not just to supervise, control and enforce compliance with the labour legislation, but also <u>to promote such compliance</u> . Mainly through the provision of technical information and advice to employers and workers on the most effective ways of complying with that legislation (including through carrying out
Article 259. Supervision (control) of compliance with the labour legislation	Article 259. Promotion and supervision (control) of compliance with the labour legislation	

OSH draft Law provision's wording	Recommended wording	Rationale
		information actions and awareness-raising campaigns); and through the promotion of the improvement of labour legislation, by notifying the competent authority about defects or abuses not specifically covered by existing legal provisions and by submitting proposals for its improvement.
.....		
The legislative provisions on the basic principles of state supervision (control) shall apply to the exercise of the state supervision (control) of compliance with the labour legislation in terms of the relations not regulated hereby.	This provision should be deleted, because the Law of Ukraine 877 “On the Basics of State Supervision (Control) in Economic Activities” (Vidomosti Verkhovnoi Rady Ukrainy, 2007, No. 29, p. 389, as subsequently amended), <u>should not apply to the system of labour inspection, for the following reasons:</u> 1. The Law of Ukraine 877 <u>is, in itself, incompatible with the specific nature, requirements and specificities of the system of labour inspection</u>, as the Law 877 is focused on regulating the relations between some state authorities of supervision and control and the business entities (controlled entities), during state activities of supervision/control, whereas: a. <u>The object of labour inspection is much more wider</u>, as it includes, besides “business entities”: “business entities” representative organizations; workers and their representative organizations; “entities” that are not registered as “business entities” but that “do business” in the informal economy (and their respective workers); employers that are not “business entities” (e.g., public administration entities, non-governmental organizations, civil associations, not-for profit organizations) along with their representative organizations, their workers and their workers’ representative organizations; and other public and private organizations within the remit of the labour inspection mandate (e.g., OSH service providers and their representative organizations, training and research institutions and their representative organizations, Academia) regardless of being, or not, “business entities”; b. <u>The functions of the system of labour inspection go much beyond the supervision and control of the compliance</u> with labour legislation and also include, <i>inter alia</i>, the provision of technical information and advice to employers, workers and their representative organizations on the most effective ways of complying with that	

OSH draft Law provision's wording	Recommended wording	Rationale
	legislation (including through carrying out information actions and awareness-raising campaigns); and the promotion of the improvement of labour legislation, by notifying the competent authority about defects or abuses not specifically covered by existing legal provisions and by submitting proposals for its improvement. 2. The Law 877 contains several provisions that are contradictory with the ILO C81 and C129 [which were both ratified by Ukraine and, as such, “shall be an integral part of the national legislation of Ukraine”, as established by Article 9(1) of the Constitution of Ukraine], as noted the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). Indeed, CEACR noted with concern, in this respect, that: “the Act No. 877 of 1 January 2017 concerning the fundamental principles of state supervision and monitoring of economic activity (which applies to a number of inspection bodies, including the labour inspection services), and Ministerial Decree No. 295 of 26 April 2017 on the procedure for state control and state supervision of compliance with labour legislation (applying section 259 of the Labour Code and section 34 of the law on self-governing bodies) provide for several restrictions on the powers of labour inspectors, including with regard to the free initiative of labour inspectors to undertake inspections without prior notice (section 5 of Decree No. 295 and section 5(4) of Act No. 877), the frequency of labour inspections (section 5(1) of Act No. 877), and the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning (sections 27 and 28 of Decree No. 295)”¹⁶. In this context, and in order to ensure that no such restrictions are applied, the Committee urged the Government “to take the necessary measures so that Act No. 877 of 1 January 2017 and Ministerial Decree No. 295 of 26 April 2017 are brought into conformity with 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 and to ensure that no additional restrictions are adopted”¹⁷. The Committee also reminded the Government that “it can continue to avail itself of ILO technical assistance for this purpose”¹⁸. More recently, in 2019, the Committee remind that “Act No. 877 of 2007 on Fundamental Principles of State Supervision and Monitoring of Economic Activity (Act No. 877) and Ministerial Decree No. 295 on the procedure for state control and state supervision of compliance with labour legislation of 2017 (Decree No. 295), provide for several restrictions on the powers of labour inspectors. These include restrictions with regard to: (i) the free initiative of labour inspectors to undertake inspections without prior	

¹⁶ Vide [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), on the application of ILO C81 and C129 by Ukraine.

¹⁷ *Ibidem*.

¹⁸ *Ibidem*.

OSH draft Law provision's wording	Recommended wording	Rationale
	<i><u>notice (section 5 of Decree No. 295 and section 5(4) of Act No. 877); (ii) the frequency of labour inspections (section 5(1) of Act No. 877); and (iii) the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning (sections 27 and 28 of Decree No. 295).</u></i> The Committee also noted, with deep concern, that the adoption of Ministerial Decree No. 823, of 21 August 2019, on the Procedure for State Control of Compliance with Labour Legislation <i><u>"also provides for similar restrictions on the powers of labour inspectors, including with regard to the free initiative of labour inspectors to undertake inspections without prior notice (section 8), the maximum duration of labour inspections (section 10), and limits on the inspectors' ability to impose liability and sanctions if corrective action is taken by the violating entity within a specified time limit (sections 27 and 28)"</u></i>, and strongly urged the Government <i><u>"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 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, and to ensure that no additional restrictions are adopted"</u></i>.¹⁹ 3. The assessment of the previous point, moreover, is consistent to that of the Government of Ukraine, as laid down in the section "Problems to be resolved" of the "Concept of the labour protection management system reform in Ukraine", adopted by the by the Order of the Cabinet of Ministers of Ukraine (CMU) No. 989-p, of 12 December 2018, in which <u>the Government of Ukraine considered that "the provisions of the Law of Ukraine "On the Basics of State Supervision (Control) in Economic Activities" limit the labour inspectors' powers as defined by the Conventions Nos. 81 and 129, due to which realization of some principles enshrined in these Conventions is hindered and efficiency of inspection activities to ensure the application of legal provisions is reduced"</u>. 4. The preceding assessment is also <u>consistent with the conclusions and technical recommendations contained in several analysis and studies</u> carried out by the EU-ILO Project <u>"Enhancing the Labour Administration Capacity to Improve Working Conditions and Tackle Undeclared Work"</u>, regarding the legal framework of labour Inspection in Ukraine, in particular: <u>"Ukrainian Labour Inspection Legal Framework - Analysis and Recommendations"</u>; <u>"White Paper on EU Directives and Reform of OSH and Labour Relations' Legislation"</u> (in Part III - Labour	

¹⁹ Cf. Observation (CEACR) - adopted 2019, published 109th ILC session (2021). Observation concerning the application of Conventions 81 and 129 in Ukraine. Available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4024791:NO.

OSH draft Law provision's wording	Recommended wording	Rationale
	Inspection System); “Brief notes on the main aspects of the alignment between Ukrainian national legislation and selected EU directives” (in point 3 of Chapter I - General Considerations); and National Occupational Safety and Health Profile of Ukraine (Sections 3.2.1, 12.3 and 13.3). As an alternative solution (although not so highly recommended as the technical advice already provided above - of the non-application of the Law 877 to the system of labour inspection -, especially considering the arguments already expended in the point 1 above), the proposed provisions could be better reworded, as follows: “The legislative provisions on the basic principles of state supervision (control) shall apply to the exercise of the promotion and supervision (control) of compliance with the labour legislation in terms of the relations not regulated hereby, provided that they are not contrary to the provisions of this law and to the provisions of the ILO Labour Inspection Convention, 1947 (No. 81) and ILO Labour Inspection (Agriculture) Convention, 1969 (No. 129).”	
Measures of state supervision (control) of compliance with the labour legislation shall be implemented in the form of inspection visits of visited entities.	State measures for the promotion and supervision (control) of compliance with the labour legislation shall be implemented through inspection visits, desk inspections, provision of technical information and advice to employers and workers, launching of information and awareness-raising campaigns and notifying the competent authority of defects or abuses not specifically covered by existing legal provisions and submission of proposals for to the competent authority for its improvement.	Should be changed, as recommended, in order to better align it with Article 3(1) of the ILO C81 and Article 6(1) of the ILO C129, as well as to improve consistency with the following Article 260, because labour inspection measures to promote, supervise, control and enforce compliance with the labour legislation, are not just carrying out inspection visits, but also include: conduction desk inspections; providing technical information and advice to employers and workers on the most effective ways of complying with that legislation; launching of information actions and awareness-raising campaigns; and improving the labour legislation, by notifying the competent authority about its defects or abuses not specifically covered and by submitting proposals for its improvement.

OSH draft Law provision's wording	Recommended wording	Rationale
In cases established by law, control of compliance with the labour legislation shall be exercised by local governments.		If this provision is to be maintained, it should be accompanied by the insertion of the recommended following part, in order to ensure
	Where the exercise of labour inspection functions is entrusted to local governments, including executive bodies of city councils in cities of oblast significance and of village, town and city councils of amalgamated territorial communities and their labour inspectors, as foreseen in the previous part, the provisions of Chapter XVIII of this Law and of other legislative acts of Ukraine adopted pursuant thereto shall apply to such exercise and to their labour inspectors.	that the exercise of the functions of labour inspection by local governments is also aligned with ILO C81 and C129, promoting the consistency on the application of labour legislation across the entire territory of Ukraine. Besides the need to ensure that the exercise of the functions of labour inspection by local governments is placed under the supervision and control of a central authority [as foreseen in Article 4(1) of ILO C81 and Article 7(1) of ILO C129]], it is also paramount to ensure that labour inspectors of the local governments meet the same requirements. Besides having the same powers (Articles 12 and 13 of ILO C81 and Articles 16 and 18 of ILO C129) and obligations (Article 15 of ILO C81 and Article 20 of ILO C129), labour inspectors of the local governments should also be subject to other provisions of this law concerning, for example, being public servants, which status and conditions of service ensure stability of employment and their independence from changes of government and of improper external influences (Article 6 of ILO C81 and Article 8 of ILO C129), recruited solely on the basis of their qualifications for the performance of their duties (Article 7(1) of ILO C81 and Article 9(1) of ILO C129) being provided with the necessary training (Article 7(3) of ILO C81 and Article 9(3) of ILO C129) and means (Article 11 of ILO C81 and Article 15 of ILO C129), etc.

OSH draft Law provision's wording	Recommended wording	Rationale
		In this respect, is important to note that CEARC “requested the Government, in line with the 2018 conclusions of the Committee on the Application of Standards of the International Labour Conference, to ensure that the inspection functions of the local authorities are placed under the supervision and control of the SLS. In this regard, the Committee once again notes the information provided by the Government in its report on the efforts made to avoid duplication of inspections between the SLS and local authorities”. In this connection, the Committee urged the Government “to indicate the measures taken to ensure that the inspection functions of the local authorities are placed under the supervision and control of the SLS. The Committee once again requests the Government to indicate the legal provisions governing the status and conditions of “authorized officials” working as labour inspectors (Article 6 of Convention No. 81 and Article 8 of Convention No. 129), and how it is ensured that their status and conditions of service are such as to guarantee their independence from any improper external influence. The Committee also requests further information on the manner in which it is ensured that “authorized officials” working as labour inspectors have adequate qualifications for the effective performance of inspection duties (Article 7(1) of Convention No. 81 and Article 9(1) of Convention No. 129). In this regard, the Committee requests information related to the labour inspectors working for local authorities, including the number of local

OSH draft Law provision's wording	Recommended wording	Rationale
		<i>authorities employing these inspectors and the number of inspectors at each authority; the compensation levels and tenures of employment for local authority labour inspectors compared with SLS inspectors; and whether training programmes for SLS inspectors are also required for local authority inspectors.”²⁰</i>
.....		
Article 260. The state labour inspection		
The state labour inspection functions shall be assigned to the central executive authority that implements the state policy on state supervision (control) of compliance with the labour legislation, which .	The state labour inspection functions shall be assigned to, and placed under the supervision and control of , the central executive authority that implements the state policy on state supervision (control) of compliance with the labour legislation.	Should be changed, in order to better align with Article 4(1) of ILO C81 and Article 7(1) of ILO C129. In this respect, is important to note that CEARC <i>“requested the Government, in line with the 2018 conclusions of the Committee on the Application of Standards of the International Labour Conference, to ensure that the inspection functions of the local authorities are placed under the supervision and control of the SLS. In this regard, the Committee once again notes the information provided by the Government in its report on the efforts made to avoid duplication of inspections between the SLS and local authorities”</i> . In this connection, the Committee urged the Government <i>“to indicate the measures taken to ensure that the inspection functions of the local authorities are placed under the supervision and control of the SLS”</i> . The Committee once again requested the Government to <i>“indicate the legal provisions governing the status and conditions of “authorized officials” working as labour inspectors</i>

²⁰ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#), on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
		(Article 6 of Convention No. 81 and Article 8 of Convention No. 129), and how it is ensured that their status and conditions of service are such as to guarantee their independence from any improper external influence". The Committee also requested "further information on the manner in which it is ensured that "authorized officials" working as labour inspectors have adequate qualifications for the effective performance of inspection duties (Article 7(1) of Convention No. 81 and Article 9(1) of Convention No. 129). In this regard, the Committee requested "information related to the labour inspectors working for local authorities, including the number of local authorities employing these inspectors and the number of inspectors at each authority; the compensation levels and tenures of employment for local authority labour inspectors compared with SLS inspectors; and whether training programmes for SLS inspectors are also required for local authority inspectors.".²¹
For the purpose of performing the tasks of state supervision (control) of compliance with the labour legislation, the state labour inspection shall:	For the purpose of performing the tasks of promoting and supervising (controlling) compliance with the labour legislation, the state labour inspection shall:	Should be changed, as recommended, in order to better align it with Article 3(1) of the ILO C81 and Article 6(1) of the ILO C129, because the main tasks of labour inspection is not just to supervise, control and enforce compliance with the labour legislation, but also <u>to promote such compliance</u>, notably through the provision of technical information and advice to employers and workers on the most effective ways of complying with that legislation (including through carrying out

²¹ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#), on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
		information actions and awareness-raising campaigns); and through the promotion of the improvement of labour legislation, by notifying the competent authority about defects or abuses not specifically covered by existing legal provisions and by submitting proposals for its improvement.
1) carry out the measures of state supervision (control) (inspection visits) of compliance with the labour legislation;	1) carry out inspection visits and desk inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions;	Should be changed, as recommended: 1. Because, as point out above, measures of promotion, supervision and control of compliance with labour legislation should not be restricted to inspection visits, but should also include, inter alia: desk inspections, provision of technical information and advice to employers and workers, conducting information and awareness-raising campaigns and notifying the competent authority of defects or abuses not specifically covered by existing legal provisions and submit to the competent authority proposals for their improvement. 2. In order to align with Article 16 of ILO C81 and Article 21 of ILO C129. This is particularly important, considering the Observations ²² of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), concerning the application of the ILO C81 and C129 by Ukraine, especially in what concerns the legal provision of several restrictions on the powers

²² Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
		of labour inspectors, including with regard to the free initiative of labour inspectors to undertake inspections without prior notice, the frequency of labour inspections, the maximum duration of labour inspections and the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning.
2) inform visited entities, workers and other persons about the most effective methods of complying with the labour legislation, provide technical information and recommendations, including in terms of ensuring equal rights and opportunities of women and men;	2) provide technical information and advice to employers, workers and other relevant entities about the most effective means of complying with the labour legislation, including in terms of ensuring equal rights and opportunities of women and men;	Should be changed, in order to: 1. Better align with Article 3(1)(b) of ILO C81 and Article 6(1)(b) of ILO C129; 2. To highlight that it is about “technical” information and advice (not just information); 3. Replace “visited entities, workers and other persons” by “employers, workers and other relevant entities”, because the information and technical advice can be provided not only to “visited” employers, workers or other entities, but also to the ones that were not visited. This technical information and advice can be provided by phone, in meetings in the labour inspectorate premises, by email, through the internet or social media, or through other means that does not imply an inspection visit. 4. To specify that this technical information and advice main recipients are the employers and workers, although it can also include “other relevant entities”, considering the remit of labour inspection, such as trade unions, employers organizations, expert organizations, etc.
3)		

OSH draft Law provision's wording	Recommended wording	Rationale
4)		
5)		
6)		
7) ensure informing the public authorities, trade union associations, and individuals on the labour legislation compliance situation;	7) ensure informing the public authorities, trade unions' and employers' organizations , and individuals on the labour legislation compliance situation;	Should be amended, as recommended, to include "employers' organizations" and better align this provision with Article 5(b) of ILO C81 and Article 13 of ILO C129.
8)		
	9) organize and launch national, regional, sector-specific and thematic information and awareness-raising campaigns in the areas of labour relations and occupational safety and health.	Should be inserted, in order to ensure consistency with part 3 of Article 270 of this law.
9) exercise other powers provided for by law.	10)	To renumber the paragraph.
The number of state labour inspectors must ensure the effective implementation of state supervision (control) measures with regard for:		
1) the number, nature, size and situation of the entities liable to inspection visits;	1) the number, nature, size and situation of the employers' workplaces and of other entities' premises liable to inspection;	To better align with Art. 10(a)(i) of ILO C81 and Art. 14(a)(i) of ILO C129, whilst foreseen other entities (e.g., expert entities on safety and health of workers) and providing that inspections can be done either through inspection visits to workplaces and, when appropriate, through desk inspections.
2) the number and categories of workers employed at such entities;	2) the number and categories of workers employed at such workplaces ;	To better align with Art. 10(a)(ii) of ILO C81 and Art. 14(a)(ii) of ILO C129.
3)		
4)		
5) other conditions under which inspection visits are carried out.	5) other conditions under which inspection visits and desk inspections have to be carried out in order to be effective.	To better align with Art. 10(c) of ILO C81 and Art. 14(c) of ILO C129.

OSH draft Law provision's wording	Recommended wording	Rationale
Article 261. State labour inspectors		
State labour inspectors shall be officials of the central executive authority that implements the state policy on state supervision (control) of compliance with the labour legislation, whose official duties envisage the exercise of the functions of state supervision (control) of compliance with the labour legislation and who have succeeded in knowledge testing according to the procedure set forth by the central executive authority that ensures the formulation of the state policy on the exercise of state supervision and control of compliance with the requirements of the labour legislation.	State labour inspectors shall be officials of the central executive authority that implements the state policy on the promotion and supervision (control) of compliance with the labour legislation, whose official duties envisage the exercise of the functions of promotion and supervision (control) of compliance with the labour legislation and who have succeeded in knowledge testing according to the procedure set forth by the central executive authority that ensures the formulation of the state policy on the promotion and supervision and control of compliance with the requirements of the labour legislation.	Should be changed, as recommended, in order to better align it with Article 3(1) of the ILO C81 and Article 6(1) of the ILO C129, because the main tasks of labour inspection is not just to supervise, control and enforce compliance with the labour legislation, but also <u>to promote such compliance</u> , notably through the provision of technical information and advice to employers and workers on the most effective ways of complying with that legislation (including through carrying out information actions and awareness-raising campaigns); and through the promotion of the improvement of labour legislation, by notifying the competent authority about defects or abuses not specifically covered by existing legal provisions and by submitting proposals for its improvement.
Requirements to the qualification knowledge and special knowledge of labour inspectors, their tasks and duties shall be defined in the labour inspector's occupational standard.	Requirements to the qualification knowledge and special knowledge of labour inspectors, their tasks, duties, qualification, grades, remuneration and promotion shall be defined in the labour inspector's occupational standard.	Should be amended, as recommended, because labour inspectors' qualification, training, grades, remuneration and promotion are not aspects concerning the regulation of the rights and obligations of employers and employees and, as such, should not be regulated within the Code of Labour Laws. They should be regulated within other legal act, notably in the proposed "labour inspector's occupational standard".
Labour inspectors shall be assigned qualification grades. Six labour inspector qualification grades shall be assigned:	Should be deleted.	Should be deleted from here, and regulated within other legal act, notably in the proposed "labour inspector's occupational standard", because labour inspectors' qualification, training, grades, remuneration and promotion are not
- labour inspector (no grade);		
- grade II labour inspector;		

OSH draft Law provision's wording	Recommended wording	Rationale
- grade I labour inspector; - senior labour inspector; - leading labour inspector; - chief labour inspector.		aspects concerning the regulation of the rights and obligations of employers and employees and, as such, should not be regulated within the Code of Labour Laws.
The labour inspector's occupational standard and the procedure for qualification grade assignment shall be approved by the central executive authority that ensures the formulation of the state policy on the exercise of state supervision and control of compliance with the requirements of the labour legislation.	The labour inspector's occupational standard, establishing the requirements for the qualification knowledge and special knowledge of labour inspectors, their tasks, duties, training, qualification, grades, remuneration and promotion, as well the procedure for qualification grade, shall be set forth by law.	Should be changed, as recommended, because the proposed labour inspector's occupational standard should also regulate, in addition, some other aspects that should not be regulated within the Code of Labour Laws (such as the requirements for the qualification knowledge and special knowledge of labour inspectors, their tasks, duties, qualification, training, grades, remuneration and promotion), therefore requiring a legal act with a higher level of legal power, in order to be effective and sustainable.
State labour inspectors shall exercise state supervision (control) of compliance with the labour legislation in the entire territory of Ukraine.	State labour inspectors shall promote and supervise (control) of compliance with the labour legislation in the entire territory of Ukraine.	Should be changed, as recommended, in order to better align it with Article 3(1) of the ILO C81 and Article 6(1) of the ILO C129, because the main tasks of labour inspection is not just to supervise, control and enforce compliance with the labour legislation, but also <u>to promote such compliance</u> , notably through the provision of technical information and advice to employers and workers on the most effective ways of complying with that legislation (including through carrying out information actions and awareness-raising campaigns); and through the promotion of the improvement of labour legislation, by notifying the competent authority about defects or abuses not specifically covered by existing legal provisions and by submitting proposals for its improvement.
The powers of state labour inspectors shall be confirmed by an official ID card issued by the central executive authority that implements the state policy on state supervision (control) of compliance with the labour legislation.	The powers of state labour inspectors shall be confirmed by an official ID card issued by the central executive authority that implements the state policy on the promotion and supervision (control) of compliance with the labour legislation.	
The state labour inspector's official ID card form and the procedure of its issuance shall be approved by the central executive authority that ensures the formulation of the state policy on the exercise of state supervision and control of compliance with the requirements of the labour legislation.	The state labour inspector's official ID card form and the procedure of its issuance shall be approved by the central executive authority that ensures the formulation of the state policy on the promotion and supervision and control of compliance with the requirements of the labour legislation.	

OSH draft Law provision's wording	Recommended wording	Rationale
The register of state labour inspector official ID cards shall be maintained by the central executive authority that implements the state policy on state supervision (control) of compliance with the labour legislation, and shall be published on the authority's official website.	The register of state labour inspector official ID cards shall be maintained by the central executive authority that implements the state policy on the promotion and supervision (control) of compliance with the labour legislation, and shall be published on the authority's official website.	
State labour inspectors provided with an official ID card shall have the right to:	State labour inspectors provided with an official ID card shall have the power to:	For clarity, and also to ensure terminological consistency with the title of the Article and to better align with Article 12(1) of ILO C81 and Article 16(1) of ILO C129
1) during an inspection visit , visit freely and without previous notice, at any time of day or night any workstations (workplaces) as well as enter any production, service and administrative premises where hired labour is used ;	This provision should be reworded, as follows: "1) enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;" This provision should be reworded, as recommended above, for the following reasons: 1. To better align with Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129; a. By replacing "visit freely" by "enter freely", because the reasons to enter into a workplace might not be just for performing an inspection visit, but also: to provide information and technical advice; to carry out an information action or an awareness-raising campaign; to make an inquiry about a work-related accident or an occupational disease; to deliver a notification or order to the employer, to collect documents; etc; b. By deleting "where hired labour is used" because, before entering the workplace, the labour inspectors cannot be entirely sure if hired labour is in fact used at that workplace. They may have a suspicion of that, but they can only corroborate such suspicion with evidence, which can only be collected after entering the workplace (not before). Other options is to add "or where they have reasons to believe that hired labour is used there"; and c. Most especially, by deleting the expression "during an inspection visit," because it introduces confusion, ambiguity and legal uncertainty, as regards the meaning of the all provision. In fact, if it is obvious that "during an inspection visit" a labour inspector should be able to "visit freely and without previous notice, at any time of day or night any	

OSH draft Law provision's wording	Recommended wording	Rationale
	workstations (workplaces), as well as enter any production, service and administrative premises”, because the labour inspector is already there!...The adding of the expression “during an inspection visit,”, however, changes the sense of the provision, in a way that is contradictory to Article 12(1)(a) of ILO C81 and to Article 16(1)(a) of ILO C129, which are aimed at ensuring that labour inspectors shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. This means that labour inspectors should be allowed to enter freely without prior notice at any hour of the day or night at any workplace <u>before initiating the inspection visit itself (and not just during it)!</u> 2. One of the main aspects that led the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) to consider that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provide for several restrictions on the powers of labour inspectors, was precisely the fact that they restrict (as this draft proposed new wording for this provision also does) “<u>the free initiative of labour inspectors to undertake inspections without prior notice</u>”. Consequently, CEACR strongly urged the Government “<u>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</u>”, in particular with Articles 12(1)(a) of ILO C81 and Articles 16(1)(a) of ILO C129 “<u>and to ensure that no additional restrictions are adopted</u>”.²³ 3. Both ILO Conventions 81 and 129 were ratified by Ukraine and, as such, according to Article 9(1) of the Constitution of Ukraine, both Conventions “(…) <i>shall be an integral part of the national legislation of Ukraine</i>”.	
2)		
	3) carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed;	Should be inserted, in order to better align with Article 12(1)(c) of ILO C81 and Article 16(1)(c) of ILO C129. Consequently, also to renumber the paragraph.
3) review originals and make copies (including electronic) of any acts of visited entities related to workers’ rights, collective contracts or labour	4) require the presentation of any books, registers or other documents, including acts, collective contracts, labour agreements and other	To better align with Article 12(1)(c)(ii) of ILO C81 and Article 16(1)(c)(ii) of ILO C129. Also to renumber the paragraph.

²³ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

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agreements as well as documents the keeping of which is prescribed by the labour legislation;	documents the keeping of which is prescribed by national laws or regulations relating to conditions of life and work, and to copy such documents , including electronic, or make extracts from them ;	
4) interrogate, alone or in the presence of witnesses, the visited entity and/or workers, representatives of trade unions, their organizations and associations members whereof are employed at the visited entity, and obtain necessary explanations, reports, materials or other information from them concerning the status of compliance with the labour legislation requirements, their violations, and the measures taken to eliminate such violations;	5) interrogate, alone or in the presence of witnesses, the employer and its representatives , the workers and their representatives , the visited entity representatives, and any other person in the workplace , on any matters concerning the application of the legal provisions and obtain the necessary explanations, reports, materials or other information from them concerning the application of legal provisions ;	To better align with Article 12(1)(c)(i) of ILO C81 and Article 16(1)(c)(i) of ILO C129. Also to renumber the paragraph.
5)	6)	To renumber the paragraph.
6)	7)	To renumber the paragraph.
7) take samples of materials and substances used or handled;	8) to take samples of products , materials and substances used or handled for purposes of analysis, subject to the employer or his representative being notified of any products, materials or substances taken for such purposes ;	To better align with Article 12(1)(c)(iv) of ILO C81 and Article 16(1)(c)(iii) of ILO C129. Also to renumber the paragraph.
8) based on findings of an inspection visit, recognize work as being performed within an employment relationship, regardless of the name and type of contractual relations between the parties;	9) based on findings of an inspection visit, recognize work as being performed within an employment relationship, regardless of the absence of an written employment agreement and notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties ;	To better align with point 9 of ILO Recommendation 198. Also to renumber the sub-paragraph.

OSH draft Law provision's wording	Recommended wording	Rationale
9) submit to visited entities binding orders concerning elimination of any violations of the labour legislation detected;	10) submit to employers and other entities binding orders concerning elimination of any violations of the labour legislation detected;	To separate employers from other potential objects of visits (such as expert organizations). Also to delete "visited" ensuring that binding order can be issued by labour inspectors to employers in cases where they were not visited, if the violation can be proved by other means such as, but not limited to, for example, desk inspections. Also to renumber the sub-paragraph.
	11) With a view to remedying defects found during an inspection visit that the labour inspectors believe constitute a threat to the safety and health workers, the labour inspectors shall have the right to require:	This paragraph should be introduced, in order to: 1. Better align with Articles 13(1) and 13(2) of ILO C81 and Articles 18(1) and 18(2) of ILO C129; and to 2. Ensure consistency with the proposed sub-paragraphs 1) and 2) of part 2 of Article 32 of the ME draft Law "On Occupational Safety and Health of Workers", aimed at transposing to the internal juridical order of Ukraine the EU Council Directive 89/391/EEC.
	i. Such alterations to installation, plant, premises, tools, work equipment, machines, layout or working methods, use of dangerous materials or substances and workstation/workplace, to be carried out within a reasonable time limit, as may be necessary to secure compliance with the provisions of the legislation on safety and health of workers; or	
	ii. Measures with immediate executory force in the event of substantiated imminent and serious danger to the health and safety of workers, including stoppage, termination or restriction of performance of works and/or operation of work equipment of enterprises, certain production facilities, workshops, sections, workstations/workplaces, buildings, structures or premises, manufacture and operation of machinery,	

OSH draft Law provision's wording	Recommended wording	Rationale
	mechanisms, equipment, transport and other means of production, performance of certain works, use of new dangerous substances, and sales of products.	
10);	12)	To renumber the paragraph.
11) involve according to the procedure approved by the Cabinet of Ministers of Ukraine, law-enforcement bodies to stop any unlawful actions of the visited entity and persons who prevent them from discharging their official duties;	13) request assistance to, and obtain it from , law-enforcement bodies to stop any unlawful actions of the employer or any other visited entity and/or of persons who prevent them from discharging their official duties, or if such is expected to occur , according to the procedure approved by the Cabinet of Ministers of Ukraine.	It should be changed to foresee not just the right to request, but also to obtain the assistance from law-enforcement bodies. Should also be changed to ensure that such support should be required and obtained, not only when the situation occurs, <i>de facto</i> , but also when it is expected to occur, in order to ensure the protection of the life, safety and health of labour inspectors before it really happens. Moreover, as for the procedure, it should be possible to request and obtain this assistance urgently in unexpected and unforeseen cases, during inspection visits, because usually labour inspectors cannot foresee, before the inspection visit, if they will need assistance during its course. In order to be effective, the procedure for requesting and obtaining assistance has to be compatible with what really happens in the field and should provide for the possibility of requesting it urgently and unexpectedly (by phone, email, message texting, etc.) and obtaining it during the course of an inspection visit, and not only before - without prejudice of further formalities to be taken care of after the assistance has been provided or the inspection visit is concluded -, in order to better substantiate the request. Otherwise, labour inspectors will always request that assistance, even when they

OSH draft Law provision's wording	Recommended wording	Rationale
		do not have reasons to believe that they will need it, because they know that, if they do not request it in advance, they will not be able to request and obtain it during the inspection visit. However, if the request has to be substantiated, they will not be able to substantiate it before the inspection visit. As such, the establishment of a procedure to request the assistance of law-enforcement bodies, in practice, will not work! Finally, to renumber the paragraph.
12);	14)	To renumber the paragraph.
13) obtain free of charge any statistical and other reporting data, information, documents and materials necessary to exercise their powers, from visited entities, bodies authorized to manage property, and public authorities;	15) obtain free of charge any statistical and other reporting data, information, documents and materials necessary to exercise their powers, from employers and other visited entities, bodies authorized to manage property, and public authorities;	Should be changed, to separate employers from other potential objects of visits (such as expert organizations) and to renumber the paragraph.
14);	16)	To renumber the paragraph.
14)	17)	To renumber the paragraph.
	18) decide to give warning and advice instead of instituting or recommending administrative penalties.	This provision should be inserted here, in order to better align with Article 17(2) of ILO C81 and Article 22(2) of ILO C129. It is important to recall, in this regard, that one of the main aspects that led ILO CEACR to consider that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provide for several restrictions on the powers of labour inspectors, was the fact that they restrict <u>"the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning"</u> . In this connection, <u>CEACR strongly urged the</u>

OSH draft Law provision's wording	Recommended wording	Rationale
		<i>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”, inter alia, with Article 17 of ILO C81 and Article 22 of ILO C129 “and to ensure that no additional restrictions are adopted”.</i> ²⁴
In the course of performing the duties provided for by paragraphs 1 and/or 2 of the fifth part of this Article, state labour inspectors may obtain access to a person's accommodation only given the person's consent or a reasoned court decision.	When discharging their duties, state labour inspectors may access worker's accommodation, provided that they have the concerned worker's consent or a reasoned court decision.	Should be changed, not only because the fifth part of this Article does not have paragraphs, but also because it should be specified that it refers, specifically, to a “worker's accommodation” (and not, in general, a “person's accommodation”) and also because the situations in which labour inspectors might need to access worker's accommodations should be more general, i.e., “when discharging their duties”, in order to take account to other situations, such as collecting their testimonial, deliver a notification, provide technical information and advice, collecting documents, etc.
Article 262. Main obligations of state labour inspectors		
.....		
1)		
2)		
3) keep confidential the information about the existence, source and content of any complaint concerning defects or violation of the labour legislation due to which the inspection visit is	3) keep confidential the information about the existence, source and content of any complaint concerning defects or violation of the labour legislation due to which the inspection visit is	The final part of this paragraph (“unless the source itself gave its consent to disclosure of such information”) should be deleted, in order to better align with Article 15(c) of ILO C81 and

²⁴ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

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carried out, unless the source itself gave its consent to disclosure of such information;	carried out, unless the source itself gave its consent to disclosure of such information.	Article 20(c) of ILO C129, because even when the complainants give their consent to disclose such information, labour inspectors should not do it. If complainants want to do it, they can do it themselves.
4) inform visited entities, workers and other persons concerning the most effective methods of complying with the labour legislation, provide technical information and recommendations including in terms of ensuring equal rights and opportunities of women and men;	4) provide technical information and advice to employers, workers and other relevant entities about the most effective means of complying with the labour legislation, including in terms of ensuring equal rights and opportunities of women and men;	Should be changed, in order to better align with Article 3(1)(b) of ILO C81 and Article 6(1)(b) of ILO C129. In addition, it should be deleted "visited", as this information and technical advice can and should be provided not only to visited employers, workers or other entities, but also to the ones that were not visited (this information and technical advice can be provided by phone, in meetings in the labour inspectorate premises, by email, or through the internet or social media). Moreover, it is important to specify that this technical information and advice main recipients are the employers and workers but it can also include "other relevant entities", such as trade unions, employers organizations, expert organizations, etc.
	5) notify the employer or his representative or, where appropriate, the visited entity or his representative, of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.	This paragraph should be inserted, in order to better align with Article 12(2) of ILO C81 and Article 16(3) of ILO C129.
State labour inspectors shall be prohibited from:		
1)		
2)		
3)		
4)		

OSH draft Law provision's wording	Recommended wording	Rationale
5)		
6)		
7) carrying out an inspection visit beyond the time limits established hereby.	This provision (along with the proposed paragraph 4) of part 2 of Article 264 and part 5 of Article 266) should be deleted, because: 1. Is contradictory to Article 16 of ILO C81 and Article 21 of ILO C129, according to which “<i>workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions</i>”; 2. The duration of inspection visits or desk inspection depends on a series of variables including, but not limited to: means, resources and number of labour inspectors involved; number and complexity of the legal provisions to be controlled and enforced; number and geographical dispersion of concerned workers, workplaces, agents (physical, biological or chemical), work equipment and tools; layout of the workplaces; number, nature, complexity and geographical dispersion of the occupational risks to which workers are or might be exposed to (noise, mechanical vibrations, chemical or biological agents, ionizing or non-ionizing radiations, explosive atmospheres, magnetic fields, musculoskeletal disorders risk factors, etc.); number and complexity of unexpected situations verified during a given inspection visit or desk inspection (e.g., violations of other legal provisions, unforeseen occupational risks, etc.), willingness of the employer, workers and other inspected entities to cooperate; etc. 3. One of the main aspects that led ILO CEACR to consider that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provide for several restrictions on the powers of labour inspectors, was the fact that <u>they impose a “maximum duration of labour inspections”</u>. <i>CEACR strongly urged the 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”, inter alia, with Article 16 of ILO C81 and Article 21 of ILO C129 “and to ensure that no additional restrictions are adopted”</i>.²⁵ 4. Both ILO Conventions 81 and 129 were ratified by Ukraine and, as such, according to Article 9(1) of the Constitution of Ukraine, both Conventions “(...) <i>shall be an integral part of the national legislation of Ukraine</i>”.	

²⁵ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
Article 263. Independence of state labour inspectors	Article 263. Independence and means of state labour inspectors	Should be changed for better clarity the content of the article.
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.....		
1)		
2)		
3)		
4)		
5)		
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Article 263¹. Labour remuneration of state labour inspectors	This article should be deleted and replaced by the one recommended below (Article 263¹ - Specificities of labour inspectors working conditions”), because labour inspectors’ remuneration (along with their qualifications, training, grades and promotion) are not aspects concerning the regulation of the rights and obligations of employers and employees and, as such, should not be regulated within the Code of Labour Laws. The remuneration of labour inspectors is a very important issue. ILO Conventions Nos. 81 and 129, for example, remind Member States of the need to ensure that the conditions of service of labour inspectors are such that they are independent of changes of government and of improper external influences and that labour inspectors should be reimbursed for any travelling and incidental expenses which may be necessary for the performance of their duties. In addition a recent ILO publication “A study on labour inspectors’ careers” (pp. 48-49), notes that ILO Recommendation No. 20 draws attention to labour inspectors’ “remuneration”, but it only links it to freedom from any improper external influences, i.e. a fair salary as a mean to avoid the temptation of treating certain employers leniently in exchange of favours. It also points out that CEACR warns that insufficient remuneration for the Labour Inspectorate may result in a higher turnover among labour inspectors and make it more difficult to attract highly qualified individuals. It stresses that the Committee also remarks that individual labour inspectors may be treated with	
A state labour inspector’s wage shall consist of a position salary, long service supplement, civil servant rank supplement, qualification grade supplement, bonus (if any) as well as other supplements according to the legislation.		
The labour inspector’s minimum salary rate may not be lower than two minimum wages.		
Qualification grade supplements shall be set as percentage of the salary:		
- labour inspector (no grade) - no supplement;		
- grade II labour inspector - 15 percent;		
- grade I labour inspector - 25 percent;		
- senior labour inspector - 50 percent;		
- leading labour inspector - 75 percent;		

OSH draft Law provision's wording	Recommended wording	Rationale
- chief labour inspector - 100 percent.	disrespect on account of their low salaries. According to this publication, CEACR stresses that labour inspectors' remuneration should be commensurate with their responsibilities, and at least as good as that of other civil servants at comparable levels in the same country. It also links performance related incentives, granted to teams and individuals, as being a recognition, reinforcement and rational use of employees' skills. The above ILO publication offers guidance and shares some best practices on remuneration packages for labour inspectors, including on performance-based incentive schemes, career development, recruitment, training, etc. Notwithstanding the above, this article should be deleted and replaced by the one proposed below (Article 263¹. Specificities of labour inspectors working conditions) because, as already mentioned earlier, labour inspectors' remuneration, along with their qualifications, training, grades and promotion, are not aspects concerning the regulation of the rights and obligations of employers and employees and, as such, should not be regulated within the Code of Labour Laws, but through a specific legal act (such as the proposed "labour inspector's occupational standard"), with the proper legal power (in order to support its effectiveness and sustainability).	
	Article 263¹. Specificities of labour inspectors working conditions	This Article should be inserted, in order to: 1. Replace the proposed "Article 263¹-Labour remuneration of state labour inspectors", because labour inspectors' remuneration (as well as labour inspectors' qualifications, training, grades and promotion, are not aspects concerning the regulation of the rights and obligations of employers and employees and, as such, should not be regulated within the Code of Labour Laws, but through a specific legal act (notably within the proposed "labour inspector's occupational standard") with proper legal power (in order to be effective and sustainable); 2. To align with Articles 6 and 7 of ILO C81, Articles 8 and 9 of ILO C129) and international best practices.
	The working conditions of labour inspectors shall be such that ensures stability of employment and independence of changes of government and of improper external influences.	
	Labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties, according to the procedure foreseen in the labour inspector's occupational standard to be set forth by law.	
	The means of ascertaining such qualifications shall be determined by the foreseen in the labour inspector's occupational standard to be set forth by law.	
	Labour inspectors' grades, promotion scheme, minimum wage rate and remuneration	

OSH draft Law provision's wording	Recommended wording	Rationale
	components, including position salary, long service supplement, civil servant rank supplement, qualification grade supplement, bonuses and other legal supplements shall be regulated in the labour inspector's occupational standard to be set forth by law.	
	Labour inspectors shall benefit from adequate initial and continuous training for the performance of their duties, which shall be prescribed by the labour inspector's occupational standard to be set forth by law .	
Article 263². Liability of state labour inspectors	Should be deleted.	This Article should be deleted, for the reasons exposed below.
A state labour inspector shall be liable, by way of recourse, in the amount of the compensation paid from a respective budget because of unlawful decisions, actions or omission of such a labour state inspector, as confirmed according to the procedure established by law.	Should be deleted.	This provision should be deleted. Taking into account the specificities of the functions of the labour inspectors, their responsibilities and their status (as public servants), their liability for compensations should be regulated either in a specific law regulating the labour inspection (including remuneration, recruitment, training, career path, etc.) or within a specific law on liability of public servants. In that occasion, it should also be advisable to consider the regulation of an insurance scheme to which labour inspectors could transfer their responsibility regarding compensation of claims to an insurance company. <u>In any case, it should not be regulated within the Code of Labour Laws that regulates the relations between employers and workers.</u>
If a state labour inspector systematically (repeatedly within a year) makes decisions declared by a court as illegal, with action	Should be deleted.	This provision should be deleted, as the disciplinary responsibility of labour inspectors

OSH draft Law provision's wording	Recommended wording	Rationale
(omission) declared as unlawful, or violates provisions of this Code, disciplinary measures shall be applied to such a state labour inspector according to law.		should not be regulated on the Code of Labour Laws. In addition, the grounds for holding a labour inspector responsible should not be the fact that a court disagrees with the understanding, position or procedures adopted by a labour inspector, if labour inspector acted according to the law and followed the right procedures, taking into account the circumstances within which the facts were observed and the decisions taken.
Article 264. Visited entity	Article 264. Inspected entity	Should be changed, as the entity might be object of a desk inspection, which does not necessarily imply a visit.
The visited entity shall be legal persons (including their structural and stand-alone units which are not legal persons); persons carrying out (implementing, undertaking) an economic activity without state registration; and natural persons using hired labour.	The inspected entity shall be legal persons (including their structural and stand-alone units which are not legal persons); persons carrying out (implementing, undertaking) an economic activity without state registration; and natural persons using hired labour.	
During an inspection visit, the visited entity shall have the right to:	During an inspection visit or desk inspection , the inspected entity shall have the right to:	
1)		
2) receive a copy of referral for an inspection visit;	This provision should be reworded, as follows: “2) receive a copy of referral for an inspection visit or desk inspection, in the cases where the inspection was previously scheduled and notified;” This provision should be reworded, as recommended above, in order to: 1. Better align with Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129; 2. Take into account situations where the inspection visit is carried out without prior notice [as provided for in Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129], either because labour inspectors consider that such a notification may be prejudicial to the performance of their duties, or in situations where the inspection visit is carried out by initiative of a labour inspector	

OSH draft Law provision's wording	Recommended wording	Rationale
	immediately following a complaint or an information received, or following its own observation, and there is no time to register the inspection prior to carrying it out, or such prior registration could be prejudicial to the performance of their duties. 3. Take into consideration that one of the main aspects that led the ILO CEACR to consider that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provide for several restrictions on the powers of labour inspectors, was the fact that they restricted (as this provision also does) <i>“the free initiative of labour inspectors to undertake inspections without prior notice”</i>. Consequently, CEACR strongly urged the Government <i>“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”, in particular with Articles 12(1)(a) of ILO C81 and Articles 16(1)(a) of ILO C129 “and to ensure that no additional restrictions are adopted”</i>.²⁶ 4. Better align with Article 9(1) of the Constitution of Ukraine, according to which <i>both ILO Conventions 81 and 129 ratified by Ukraine “(...) shall be an integral part of the national legislation of Ukraine”</i>.	
3)		
4) require termination of the inspection visit if the maximum time limit for that measure, as specified hereby, is exceeded;	This provision (along with the proposed paragraph 7) of part 2 of Article 262 and part 5 of Article 266) should be deleted, because: 1. Is contradictory to Article 16 of ILO C81 and Article 21 of ILO C129, according to which <i>“workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions”</i>; 2. Do not take into account that the duration of inspection visits and desk inspection depends on a series of variables including, but not limited to: means, resources and number of labour inspectors involved; number and complexity of the legal provisions to be controlled and enforced; number and geographical dispersion of concerned workers, workplaces, agents (physical, biological or chemical), work equipment and tools; layout of the workplaces; number, nature, complexity and geographical dispersion of the occupational risks to which workers are or might be exposed to (noise, mechanical vibrations, chemical or biological agents, ionizing or non-ionizing radiations, explosive atmospheres, magnetic fields, musculoskeletal disorders risk factors, etc.); number and	This provision (along with the proposed paragraph 7) of part 2 of Article 262 and part 5 of Article 266) should be deleted, because:

²⁶ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
	complexity of unexpected situations verified during a given inspection visit or desk inspection (e.g., violations of other legal provisions, unforeseen occupational risks, etc.), willingness of the employer, workers and other inspected entities to cooperate; etc. 3. One of the main aspects that led ILO CEACR to consider that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provide for several restrictions on the powers of labour inspectors was the fact that they impose a “maximum duration of labour inspections”. <i>CEACR strongly urged the 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”, inter alia, with Article 16 of ILO C81 and Article 21 of ILO C129 “and to ensure that no additional restrictions are adopted”.</i>²⁷ 4. Both ILO Conventions 81 and 129 were ratified by Ukraine and, as such, according to Article 9(1) of the Constitution of Ukraine, both Conventions “(...) shall be an integral part of the national legislation of Ukraine”.	
5)		
6)		
7)		
8)		
9)		
10)		
11)		
12)		
13) not allow a state labour inspector to carry out an inspection visit if the inspector does not have an official ID card and a referral for the inspection visit;	This provision should be reworded, by deleting its last part “and a referral for the inspection visit”, as follows: “13) not allow a state labour inspector to carry out an inspection visit if the inspector does not have an official ID card and a referral for the inspection visit;” This provision should be reworded, as recommended above, in order to:	

²⁷ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
	- Better align with Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129; - Take into account situations where the inspection visit is carried out without prior notice [as provided for in Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129], either because labour inspectors consider that such a notification may be prejudicial to the performance of their duties, or in situations where the inspection visit is carried out by initiative of a labour inspector immediately following a complaint or an information received, or following its own observation, and there is no time to register the inspection and/or to obtain its referral prior to carrying it out, or the prior performance of such registration and/or the prior issuance of such referral could be prejudicial to the performance of their duties. - Take into consideration that one of the main aspects that led the ILO CEACR to consider that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provide for several restrictions on the powers of labour inspectors, was the fact that they restricted (as this provision also does) <i>"the free initiative of labour inspectors to undertake inspections without prior notice"</i>. Consequently, CEACR strongly urged the Government <i>"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"</i>, in particular with Articles 12(1)(a) of ILO C81 and Articles 16(1)(a) of ILO C129 <i>"and to ensure that no additional restrictions are adopted"</i>.²⁸ - Better align with Article 9(1) of the Constitution of Ukraine, according to which <u>both ILO Conventions 81 and 129 ratified by Ukraine "(...) shall be an integral part of the national legislation of Ukraine"</u>.	
14)		
15)		
Article 265. Grounds for carrying out inspection visits		
Inspection visits shall be carried out on the following grounds:	Inspection visits and desk inspections shall be carried out on the following grounds:	Should be changed for clarity.
1);		

²⁸ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
2) a decision of the state supervision (control) authority head on carrying out an inspection visit solely to find any violations provided for by Art. 268(2)(1) of this Code, as made on the basis of analysis of the information obtained from public authorities and from other sources access to which is not restricted by legislation;	These two paragraphs should be changed and merged into just one, as follows: 2) a decision of the central executive authority that implements the state policy on the promotion and supervision (control) of compliance with the labour legislation, aimed at ensuring the discharge of the functions of labour inspection;	These two paragraphs should be amended, as recommended above, because:
3) a decision of the state supervision (control) authority head on carrying out an inspection visit, as made on the basis of analysis of substantiated information obtained from a trade union concerning violation of its member's rights;	These two paragraphs should be amended, as recommended above, because: 1. They are contradictory with Articles 12(1)(a) and 12(1)(b) of ILO C81 and Articles 16(1)(a) and 16(1)(b) of ILO C129; 2. They restrict the free initiative of labour inspectors to undertake inspections, provided for in Articles 12(1)(a) and 12(1)(b) of ILO C81 and Articles 16(1)(a) and 16(1)(b) of ILO C129, through the imposition of pre-conditions to the performance of inspection visits, thus restricting the free initiative of labour inspectors and preventing them from discharging their duties; 3. According to Articles 12(1)(a) and 12(1)(b) of ILO C81 and Articles 16(1)(a) and 16(1)(b) of ILO C129, the decision of the head of the labour inspectorate (or of any labour inspector, for that matter) to conduct an inspection visit, should not be restricted to "solely to find any violations provided for by Art. 268(2)(1) of this Code" and/or subordinated to the "analysis of the information obtained from public authorities and from other sources access to which is not restricted by legislation" or to the "analysis of substantiated information obtained from a trade union concerning violation of its member's rights", <u>but should allow the discharge of all labour inspection functions in all workplaces liable for inspection, as foreseen in Articles 2(1) and 3(1) of ILO C81 and Articles 3 to 5 and 6(1) of ILO C129;</u> 4. One of the main aspects that led the ILO CEACR to consider that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provide for several restrictions on the powers of labour inspectors, was precisely the fact that they restrict (as these two provisions also does) <i>"the free initiative of labour inspectors to undertake inspections without prior notice"</i>. CEACR strongly urged the Government, in this regard, <i>"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"</i>, in particular with Articles 12(1)(a) and (b) of ILO	

OSH draft Law provision's wording	Recommended wording	Rationale
	<u>C81 and Articles 16(1)(a) and (b) of ILO C129 “and to ensure that no additional restrictions are adopted”</u>.²⁹ 5. Both ILO <u>Conventions 81 and 129</u> were ratified by Ukraine and, as such, according to Article 9(1) of the Constitution of Ukraine, both Conventions “(...) <u>shall be an integral part of the national legislation of Ukraine</u>”.	
4)		
5)		
6)		
7)		
8)		
9) failure to comply with requirements stated in the order (no later than twenty working days from the last day of the time limit for the elimination of violations set forth in the order).	This provision should be reworded, by deleting its last part “(no later than twenty working days from the last day of the time limit for the elimination of violations set forth in the order)”, as follows: “9) failure to comply with requirements stated in the order.” “(no later than twenty working days from the last day of the time limit for the elimination of violations set forth in the order).” This provision should be amended, as recommended above, because, by restricting the powers of the labour inspectors to conduct inspection visits after “twenty working days from the last day of the time limit for the elimination of violations set forth in the order”: 1. <u>Is contradictory with Articles 12(1)(a) and (b) of ILO C81 and Articles 16(1)(a) and (b) of ILO C129 because it restricts the foreseen free initiative of labour inspectors to undertake inspections;</u> 2. <u>Is contradictory to Article 16 of ILO C81 and Article 21 of ILO C129, according to which “workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions”; and</u> 3. Does not take into account that some of the aspects that led the ILO CEACR to consider that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provide for several restrictions on the powers of labour inspectors, was the fact that they (as this provisions also	

²⁹ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
	does) limited <u>"the free initiative of labour inspectors to undertake inspections without prior notice"</u> and to <u>"the frequency of labour inspections"</u>. CEACR strongly urged the Government, in this regard, <u>"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"</u>, in particular with Articles 12(1)(a), 12(1)(b) and 16 of ILO C81 and Articles 16(1)(a), 16(1)(b) and 21 of ILO C129 <u>"and to ensure that no additional restrictions are adopted"</u>.³⁰ 4. Does not consider that both ILO <u>Conventions 81 and 129</u> were ratified by Ukraine and, as such, according to Article 9(1) of the Constitution of Ukraine, both Conventions <u>"(...) shall be an integral part of the national legislation of Ukraine"</u>.	
10) the visited entity's request.	10) the request of an employer, employer's representative organization or, where within the legal competence of the central executive authority that implements the state policy on the promotion and supervision (control) of compliance with the labour legislation, of other relevant entity.	Should be changed, as recommended, in order to ensure that labour inspections are restricted within the remit of labour inspection and targeting the subjects of employment relationships (workers, employers and their representatives) and other relevant entities, taking into account the labour inspection scope of functions. Moreover, to delete "visited", because its use presupposes that the said entities had to be visited before the verification of the proposed "ground" for conduction the visits.
	11) a workers's representative for safety and health of the workers complaint or a worker's trade union representative complaint;	To better align with Article 5 of ILO C81, Articles 12(1) and 13 of ILO C129 and Article 11(6) of EU Directive 89/391/EEC.
	12) the free initiative of the labour inspectors.	In order to better align with ILO C81 and C129 and recent CEACR comments to Ukraine, regarding labour inspection.
	When carrying out an inspection visit or a desk inspection, labour inspectors shall have the right to widen the scope of the inspection visit or desk	This new part should be inserted, in order to align with Article 16 of ILO C81 and Article 21 of ILO C129, according to which "workplaces shall be

³⁰ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
	inspection, depending on the situations they verify.	inspected as often and as <u>thoroughly</u> as is necessary to ensure the effective application of the relevant legal provisions”, <u>in all the areas</u> covered by the remit of the labour inspection, as laid down in Article 3(1) of ILO C81 and Article 6(1) of ILO C129. If labour inspectors are not allowed to widen the scope of the inspection visits, beyond the grounds that initially justified them, in the face of the situations that they may encounter during the inspection visits themselves, that would be contrary to Article 16 of ILO C81 and Article 21 of ILO C129, which foresees that they should conduct the inspection visits with the deepness they consider necessary to ensure that the legal provisions are being complied with. Moreover, if that was not the case: 1. What sense would make if a labour inspector that was conducting an inspection visit to check the safety and health regarding the use of a work equipment verified that in that same workplace there were 4 workers working in the top of a scaffold (without proper collective and personal protective equipment) which were exposed to an imminent and very serious risk of falling from height and die, and s/he could not intervene because the verification of the use of the scaffold (which existence he did not even knew about) was not inscribed as a ground for the inspection visit? Should s/he not intervene? Now let's imagine that s/he does not intervene and, during the inspection visit to the work

OSH draft Law provision's wording	Recommended wording	Rationale
		equipment, the 4 workers do really fall and die? <i>Quid juris?</i> 2. In addition, and from the efficiency point of view, what sense does it make, if a labour inspector, during an inspection visit with a given ground, verifies that other legal provisions, not covered by the grounds that led him there, are being not complied with? Should the labour inspector ignore those violations, just because they are not inscribed as a ground for the inspection visit? Or should the labour inspector return to that workplace in another occasion, with that other specific ground not foreseen before? And, in that case, with additional costs and, consequently, with a loss of efficiency and loss of effectiveness? And, in that case, what kind of general prevention functions should have labour inspection, when they cannot act, even if they verify violations of legal provisions? What is the message that is conveyed, with this practice, to both employers and workers?
.....		
Article 266. The procedure for carrying out inspection visits		
An inspection visit shall be subject to registration by the state labour inspection according to the procedure approved by the central executive authority that ensures the formulation of, and implements, the state policy on the exercise of state supervision and control of compliance with the requirements of the labour, employment,	An inspection visit shall be subject to registration by the state labour inspection prior to the visit or, where not possible due to its urgency or when it may may be prejudicial to the performance of their duties, immediately after, according to the procedure approved by the central executive authority that ensures the formulation of, and implements, the state policy on the exercise of	These two proposed parts (along with the part 8 of this Article, below) should be reworded, as recommended, because they restrict the free initiative of labour inspectors to carry out inspection visits at any time of day or night without prior notice and might prevent them from carrying inspections visits in due time, following situations that they become aware of

OSH draft Law provision's wording	Recommended wording	Rationale
labour migration and employment relationship legislation	state supervision and control of compliance with the requirements of the labour, employment, labour migration and employment relationship legislation	<u>and which require immediate and urgent inspection visits and, most especially, in order to:</u>
It shall be prohibited to carry out inspection visits not registered by the state labour inspection according the procedure set forth by law.	Where inspection visits or desk inspections cannot or should not be registered before being carried out, such registration shall be done as soon as possible.	1. Better align with Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129; 2. Take into account situations where the inspection visit is carried out without prior notice [as provided for in Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129], either because labour inspectors consider that such a notification may be prejudicial to the performance of their duties, or in situations where the inspection visit is carried out by initiative of a labour inspector immediately following a complaint or an information received, or following its own observation, and there is no time to register the inspection and/or to obtain its referral prior to carrying it out, or the prior performance of such registration and/or the prior issuance of such referral could be prejudicial to the performance of their duties. 3. Take into consideration that one of the main aspects that led the ILO CEACR to consider that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provide for several restrictions on the powers of labour inspectors, was the fact that they restricted (as this provision also does) <u>“the free initiative of labour inspectors to undertake inspections without prior notice”</u>. In this context, <u>CEACR strongly urged the Government “to take the necessary measures and adopt appropriate</u>

OSH draft Law provision's wording	Recommended wording	Rationale
		<i>reforms to bring the labour inspection services and the national legislation into conformity with the provisions of Conventions Nos 81 and 129”, in particular with Articles 12(1)(a) of ILO C81 and Articles 16(1)(a) of ILO C129 “and to ensure that no additional restrictions are adopted”.</i>³¹ 4. Better align with Article 9(1) of the Constitution of Ukraine, according to which both ILO Conventions 81 and 129 ratified by Ukraine “(...) shall be an integral part of the national legislation of Ukraine”.
When preparing for an inspection visit, the labour inspector may obtain information and/or documents related to the inspection visit subject, in particular by means of analyzing any available (public) information concerning the status of the visited entity's compliance with the labour legislation, concerning the inspection visits carried out before, any other information from other sources access to which is not prohibited by law.	When preparing for an inspection visit, the labour inspector may obtain information and/or documents related to the inspection visit subject, in particular by means of analyzing any available (public) information concerning the status of the visited entity's compliance with the labour legislation, information regarding previous inspections visits, as well as through other sources, including, but not limited to, workers, trade unions, employers, employers' organizations, and information held by other public authorities, provided that such access is not prohibited by law.	Should be changed, as recommended, in order to better align with Article 5 of ILO C81 and Article 13 of ILO C129, widening the sources of information and ensuring the cooperation with and the involvement of workers, employers and their representatives, and other public authorities, as needed.
.....		
Duration of an inspection visit may not exceed ten working days.	This provision (along with the proposed paragraph 7) of part 2 of Article 262 and proposed paragraph 4) of part 2 of Article 264) <u>should be deleted</u>, because:	

³¹ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
	1. Is contradictory to Article 16 of ILO C81 and Article 21 of ILO C129, according to which <i>“workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions”</i>; 2. Do not take into account that the duration of inspection visits and desk inspection depends on a series of variables including, but not limited to: means, resources and number of labour inspectors involved; number and complexity of the legal provisions to be controlled and enforced; number and geographical dispersion of concerned workers, workplaces, agents (physical, biological or chemical), work equipment and tools; layout of the workplaces; number, nature, complexity and geographical dispersion of the occupational risks to which workers are or might be exposed to (noise, mechanical vibrations, chemical or biological agents, ionizing or non-ionizing radiations, explosive atmospheres, magnetic fields, musculoskeletal disorders risk factors, etc.); number and complexity of unexpected situations verified during a given inspection visit or desk inspection (e.g., violations of other legal provisions, unforeseen occupational risks, etc.), willingness of the employer, workers and other inspected entities to cooperate; etc. 3. One of the main aspects that led ILO CEACR to consider that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provide for several restrictions on the powers of labour inspectors was the fact that <u>they impose a “maximum duration of labour inspections”</u>. <i>CEACR strongly urged the 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”, inter alia, with Article 16 of ILO C81 and Article 21 of ILO C129 “and to ensure that no additional restrictions are adopted”</i>.³² 4. Both ILO Conventions 81 and 129 were ratified by Ukraine and, as such, according to Article 9(1) of the Constitution of Ukraine, both Conventions <i>“(…) shall be an integral part of the national legislation of Ukraine”</i>.	
The state labour inspector may involve in inspection visits representatives of a trade union (if the ground for the inspection visit consists of information obtained from the trade union, or of its member's request), visited entities'	The state labour inspector may involve in inspection visits, if they do so find necessary, workers and their representative organizations of a trade union (if the ground for the inspection visit consists of information obtained from the trade union, or of its member's request),	This part should be amended, as recommended, in order to better align with Articles 5 and 9 of ILO C81 and Articles 11 to 13 of ILO C129. In fact, labour inspectors should be able to engage in inspection visits, when they do so find necessary, workers and their representative

³² Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

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organizations and their associations, and public authorities.	employers and their representatives organizations, visited entities' entities and their representative organizations and their associations, and public authorities and experts, as well as other private or public authorities or entities.	organizations, employers and their representatives organizations (not subjected to any pre-condition, in particular, regardless of the fact that "the ground for the inspection visit consists of information obtained from the trade union, or of its member's request"), visited entities and their representative organizations, and experts, as well as other private or public authorities or entities.
During an inspection visit, the matters the need to verify which provided a ground for the visit as well as the matters concerning the visited entity's compliance with the legislative requirements in terms of formalization of employment relationship shall be cleared up.	During an inspection visit, regardless of having been previously registered or not and without prejudice to the control of the compliance with the legislative requirements on formalization of employment relationships, state labour inspectors shall have the right to extend its grounds, duration and frequency to control and enforce other legal provisions on the basis of the situations they verify during the inspection visit, as well as to conduct inspection visits as frequently as necessary to ensure the effective application of the relevant legal provisions .	This provision should be amended, as recommended, because: 1. It is contradictory with Article 16 of ILO C81 and Article 21 of ILO C129, according to which "workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions", as it imposes restrictions on the scope, duration and frequency of inspection visits; 2. Labor inspectors should be allowed to widen the scope of the inspection visits or desk inspections, as well as their duration and frequency, depending, <i>inter alia</i>, on the situations they encounter on the workplaces during inspection visits; 3. The duration, scope of frequency of inspection visits or a desk inspections depends on a series of variables including, but not limited to: means, resources and number of labour inspectors involved; number and complexity of the legal provisions to be controlled and enforced; number and

OSH draft Law provision's wording	Recommended wording	Rationale
		geographical dispersion of concerned workers, workplaces, agents (physical, biological or chemical), work equipment and tools; layout of the workplaces; number, nature, complexity and geographical dispersion of the occupational risks to which workers are or might be exposed to (noise, mechanical vibrations, chemical or biological agents, ionizing or non-ionizing radiations, explosive atmospheres, magnetic fields, musculoskeletal disorders risk factors, etc.); number and complexity of unexpected situations verified during a given inspection visit or desk inspection (e.g., violations of other legal provisions, unforeseen occupational risks, etc.), willingness of the employer, workers and other inspected entities to cooperate; etc. 4. Some of the restrictions on the powers of the labour inspectors that ILO CEACR attributed to Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 were precisely the imposition of “<i>maximum duration of labour inspections</i>” and limitations to the “<i>frequency of labour inspections</i>”. CEACR strongly urged the Government “<i>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</i>”, <i>inter alia</i>, with Article 16 of ILO C81 and Article

OSH draft Law provision's wording	Recommended wording	Rationale
		21 of ILO C129 “and to ensure that no additional restrictions are adopted”.³³ 5. Both ILO Conventions 81 and 129 were ratified by Ukraine and, as such, according to Article 9(1) of the Constitution of Ukraine, both Conventions “(...) shall be an integral part of the national legislation of Ukraine”.
During an inspection visit, the state labour inspector shall be required to produce their ID card to the visited entity or the official authorized thereby and to provide a copy of the referral for the inspection visit.	During an inspection visit, the state labour inspector shall be required to produce their ID card to the visited entity or the official authorized thereby and to provide, where the inspection visit was prior registered and the referral previously issued , a copy of the referral for the inspection visit.	Should be changed, in order to provide for situation where the inspection visit is carried out without being previously registered and without being issued the mentioned referral, as already addressed, through the recommendations provided to the rewording of the two (related) first and second parts of this Article (above).
If the event of absence of, or the visited entity's failure to provide, any documents the keeping of which is provided for by the labour legislation, the visited entity shall be served a written demand specifying the time limit for restoration and/or provision of the documents. The inspection visit time limit shall be extended for the period required to comply with such a demand, which shall not be counted in the maximum inspection visit time limit.	If the event of absence of, or the visited entity's failure to provide any documents the keeping of which is provided for by the labour legislation, and without prejudice to respective sanction, the visited entity shall be served a written demand specifying the time limit for restoration and/or provision of the required documents. In the case described in the previous part, it is for the state labour inspector to decide to continue or to suspend the inspection visit until receiving the necessary documents.	Should be change, and complemented by the suggested additional part, in order to ensure that, in this situation: • The visited entity is liable for not complying with their obligation and, therefore, might be subjected to the imposition of a fine; • The labour inspector is the one that should decide either to proceed or to suspend the inspection visit, depending on the relevance of the missing document, the opportunity and the importance of continuing the inspection visit and the nature of the situation and seriousness of the infringements detected.
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³³ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
Article 267. Drawing up documents based on outcomes of an inspection visit or desk inspection		
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An order shall be the labour inspector's binding time-bound written demand requiring the visited entity to remedy the violations of labour legislation requirements found during an inspection visit.	Should be complemented by the insertion of the following additional part. It is for the labour inspector to decide to take measures for holding liable the employer or the visited entity for the violations described in the report and/or in the order mentioned in the previous part, regardless of whether the violations detected were eliminated or not.	The new additional part should be inserted here, as recommended, in order to: 1. Better align with the International Labour Standards, in particular with Article 17(2) of ILO Convention 81 and Article 22(2) of ILO Convention 129, according to which "It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings". 2. Take into account that ILO CEACR considered that Act No. 877, Ministerial Decree No. 295 and Ministerial Decree No. 823 provided for several restrictions on the powers of labour inspectors, including on <i>"the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning"</i>. As such, CEACR strongly urged the Government <i>"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"</i>, in particular

OSH draft Law provision's wording	Recommended wording	Rationale
		with Article 17 of ILO C81 and Article 22 of ILO C129 <i>"and to ensure that no additional restrictions are adopted"</i>.³⁴ 3. Take into account that both ILO Conventions 81 and 129 were ratified by Ukraine and, as such, according to Article 9(1) of the Constitution of Ukraine, both Conventions <i>"(...) shall be an integral part of the national legislation of Ukraine"</i>.
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The order may be appealed against to the head or deputy head of the respective SLS territorial body within five working days from the date of its receipt.	Should be complemented by the insertion of the following additional part. Regarding the cases foreseen in paragraphs 1) and 2) of part 2 of Article 32 of the Law "On Occupational Safety and Health of Workers" and in sub-paragraphs i. and ii. of paragraph 11) of part 9 of Article 261 of this Law, concerning the notification of the employer to take safety and health preventive and protective measures within a reasonable time limit and/or to immediate stop works, in order to secure the safety and health of workers, the employers' reservations, complaints, or resources to the court, shall not have suspensive effect.	The additional part needs to be inserted here, in order to ensure: 1. That the necessary safety and health measures, as well as the precautionary measures [foreseen in paragraphs 1) and 2) of part 2 of Article 32 of the ME draft Law "On Occupational Safety and Health of Workers" and also recommended as new sub-paragraphs i. and ii. of paragraph 11) of part 9 of Article 261 of this draft Law] are effectively and timely implemented, in order to achieve their purpose of securing the safety, health and life of the workers; 2. A better alignment with International Labour Standards and best practices, in particular, with Article 13 of ILO C81 and Article 18 of ILO C129. In fact, if an order to immediately suspend works (issued in the case of very serious and imminent danger to the life and

³⁴ *Vide* [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#) and [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), both on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
		health of workers) could be appealed against with suspensive effect, by the time that such appeal was decided, it would not serve any purpose because, by that time, workers would most probably be already dead or seriously injured...
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Article 268. Liability for violations of the labour legislation		
Visited entities shall be held liable through imposition of a fine in the following cases:	Without prejudice to civil and criminal liability, where applicable, visited entities, their owners, administrators and legal representatives shall be held liable through imposition of a fine in the following cases:	Should be changed, in order to align with international best practices and dissuade non-compliance.
67)	6)	To renumber the paragraph.
7) violation of requirements of the labour legislation other than those provided by paragraphs 1-6 of this part,	7) violation of requirements of the labour legislation other than those provided by paragraphs 1-6 of this part and other than those provided in Article 35 of the Law of Ukraine “On Occupational Safety and Health of Workers”,	To avoid that all the violations foreseen in Article 35 of the Law of Ukraine “On Occupational Safety and Health of Workers” (which is also considered as a component of “labour legislation”, pursuant to Article 3(1) of the draft Law “On Occupational Safety and Health of Workers”) might be sanctioned with a fine in the amount of a minimum wage (as provided for in this paragraph). In addition, the infringements that are foreseen on this residual provision should be kept to a minimum, as the amount of the fine should

OSH draft Law provision's wording	Recommended wording	Rationale
		penalize differently the different nature and level of seriousness of the violations.
- in the amount of a minimum wage;	This provision should be reworded, by maintaining, at its end (as it had in its previous version), the expression “for every such violation”, in order to improve clarity, specifying that it applies to each and every violation, as follows: “- in the amount of a minimum wage <u>for every such violation</u>,” Moreover, this residual provision, foreseeing a fine in the amount of <u>a minimum wage</u> for the violation of requirements of the labour legislation other than those provided by paragraphs 1-6 of this part is inconsistent with the equivalent provision of Article 35(4)(16) of the law “On Occupational Safety and Health of Workers”, which foresees a fine in the amount of a <u>half minimum wage</u> for other infringements of that law not specifically specified in the preceding paragraphs. As such, this provision should be changed to ensure consistency with Article 35(4)(16) of the law “On Occupational Safety and Health of Workers”. In addition, the different violations and corresponding sanctions should be, as much as possible, specified in specific legal provisions and not grouped into this residual provision: the most serious violations should be individualized and its sanctioning should be foreseen in a specific legal provisions. As such, this Article 268, should specially foresee more specific and individualized infringements and corresponding sanctions for the most serious and important violations. Furthermore: 1. The amount of the fines should also be based on the size of the employers/visited entities; 2. The amount of the fine should also include the financial gain of the employer/visited entity with the commitment of the infraction, in order to avoid that committing the violation and paying the fine is more advantageous than complying with the legal provisions, thus dissuading non-compliance; 3. It should also be introduced non-monetary accessory sanctions, more directed to the vital interests of the employers.	
8) repeated (within one year from the day when the violation was found) commission of the violation provided by paragraph 7 of this part.	8) in case an offender repeats the practice of a similar violation foreseen in labour legislation (within one year from the day the previous	This provision should be changed, as recommended, in order to:

OSH draft Law provision's wording	Recommended wording	Rationale
- in the amount of three minimum wages.	violation was found), the amount of the respective fine shall be the double of the amount provided for in the law.	• Avoid the repetition of infractions, by sanctioning repeated infringements in a way more likely to dissuade their repetition in the future; • Align this provision with the equivalent provision foreseen in paragraph 6 of Article 35 of Section VII of the ME Draft Law of Ukraine "On Occupational Safety and Health of Workers".
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Article 269. Procedure for holding liable for violation of the labour legislation		
If the visited entity pays 50 percent of the fine within 10 banking days from the day on which a resolution on imposition of a fine was served, the resolution shall be deemed complied with.	If the visited entity pays 50 percent of the fine and proves the elimination of the violations that justified its imposition within 10 banking days from the day on which a resolution on imposition of a fine was served, the resolution shall be deemed complied with.	To make sure that the offender, in order to benefit from paying just half of the fine and in order for the resolutions being deemed as complied with, in addition to the payment of half the fine, has also to ensure and prove, within the same time period, that s/he eliminated the violations that justified the imposition of the fine.
Article 270. Providing the visited entity, its staff and other persons with information on the most effective means of complying with the labour legislation, technical information and recommendations	Article 270. Provision of technical information and advice	Should be changed, because: 1. The labour inspection function of providing technical advices and information has, as main recipients, employers and workers; 2. The technical information and advice may (and should) be provided through several means (other than inspection visits), including regular mail, electronic mail, website, phone, face-to-face meetings in labour inspection premises, through social media, etc., and not only through inspection visits and not just to inspected entities.

OSH draft Law provision's wording	Recommended wording	Rationale
Upon the visited entity's written application, state labour inspectors may analyze the status of compliance with the labour legislation and provide recommendations on its application.	Upon a request from a worker, employer or other relevant entity, considering the labour inspection legal competencies, or of their representative organizations, labour inspectors may analyze the status of compliance with the labour legislation and provide recommendations on its application.	Should be changed, as recommended, in order to better align with Articles 5 of ILO C81 and Articles 12(1) and 13 of ILO C129. The provision should also be amended because: • It should be deleted the term "visited entity", as the mentioned analysis and recommendations may not necessarily imply carrying out an inspection visit (they may be provided by phone, email, fax, internet, face-to-face meeting in labour inspection premises, etc.); • The word "written" should be deleted, because the request (as well as the provision of technical information and advice) may be verbal (e.g., during an inspection visit).
When carrying out an inspection visit, state labour inspectors may, given the visited entity's consent, analyze information about the extent of integration of the gender-based approaches which provide preconditions for ensuring equal rights and opportunities of women and men in the organization of activities of an enterprise, institution or organization, according to the form set forth by the specially designated central executive authority on ensuring equal rights and opportunities of women and men, based on results of which they shall provide recommendations as regards ensuring equal rights and opportunities and women and men.	This provision should be deleted, as recommended, because the equality and non-discrimination between women and men in terms of employment and occupation already falls into the remit of labour legislation and, as such, labour inspectors have already the legal competencies for promoting controlling and enforcing the concerned legal provisions, and to provide technical information and advice on these issues. As such, and in addition, they do not need the consent of the employer to verify their compliance with those legal provisions.	
In order to prevent violations of the labour legislation, the state labour inspectorate shall ensure the conduct of regular awareness-raising campaigns on the most effective means of complying with the labour legislation provisions,	In order to promote compliance with labour legislation, the state labour inspectorate may conduct regular information actions or awareness-raising campaigns on the most effective means of complying with the labour	Should be changed, for clarity, and also because: • Awareness-raising campaigns are mainly aimed to sensitize the target audience, from the outset, regarding the importance of the concerned legal provisions and to provide

OSH draft Law provision's wording	Recommended wording	Rationale
protecting and restoring the workers' labour rights.	legislation provisions and how to better protect and restore workers' labour rights.	information on how to better comply with them. It is a more "positive" way of describing its object. Of course that, in doing the above, awareness-raising campaigns help preventing violations of the labour legislation; • This activity may also include information actions, with a more focused subject and more targeted audience.
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The state labour inspector shall themselves make a decision on the need to visit a visited entity , workers, other persons to inform them and provide recommendations on the most effective means of complying with the labour legislation, and to monitor the status of compliance therewith, including as regards formalization of employment relationship and in terms of ensuring equal rights and opportunities of women and men.	The labour inspector shall themselves make a decision on the need to visit an employer, workers or other entity to provide technical information and advice on the most effective means of complying with the labour legislation, and to monitor the status of compliance therewith, including as regards formalization or employment relationships and in terms of ensuring equal rights and opportunities of women and men.	Should be changed for clarity, eliminating the pleonasm ("to visit a visited entity") and highlighting that labour legislation is focused on the relations between employers and workers.
2. The Law of Ukraine "On the Basics of State Supervision (Control) in Economic Activities" (Vidomosti Verkhovnoi Rady Ukrainy, 2007, No. 29, p. 389, as subsequently amended), Article 2:		
1)		
2) add the eleventh part as follows:	<u>These two provisions should be deleted, because the system of labour inspection should be taken out of the scope of the Law of Ukraine 877 "On the Basics of State Supervision (Control) in Economic Activities" (Vidomosti Verkhovnoi Rady Ukrainy, 2007, No. 29, p. 389, as subsequently amended), for the following reasons:</u> 1. The Law of Ukraine 877 <u>is, in itself, incompatible with the specific nature, requirements and specificities of the system of labour inspection</u>, as the Law 877 is focused on regulating the	
"The central executive authority that implements the state policy on the state supervision (control) of compliance with the labour legislation shall be require to ensure, subject to the particularities defined by the Code of Labour Laws of Ukraine and international treaties, compliance with the requirements set		

OSH draft Law provision's wording	Recommended wording	Rationale
forth in Article 1, Article 3, the first, fourth, sixth-eighth, the second subparagraph of the tenth part, the thirteenth and fourteenth of Article 4, Article 4¹, the first, sixth and tenth parts of Article 7, Article 9, the first-eighth, tenth-eleventh, and twenty-first-twenty-fourth subparagraphs of the first part of Article 10, Articles 13-18, the first part of Article 19, 20 and 21 of this Law.”.	relations between some state authorities of supervision and control and the business entities (controlled entities), during state activities of supervision/control, whereas: a. <u>The object of labour inspection is much more wider</u>, as it includes, besides “business entities”: “business entities” representative organizations; workers and their representative organizations; “entities” that are not registered as “business entities” but that “do business” in the informal economy (and their respective workers); employers that are not “business entities” (e.g., public administration entities, non-governmental organizations, civil associations, not-for profit organizations) along with their representative organizations, their workers and their workers’ representative organizations; and other public and private organizations within the remit of the labour inspection mandate (e.g., OSH service providers and their representative organizations, training and research institutions and their representative organizations, Academia) regardless of being, or not, “business entities”; b. <u>The functions of the system of labour inspection go much beyond the supervision and control of the compliance</u> with labour legislation and also include, <i>inter alia</i>, the provision of technical information and advice to employers, workers and their representative organizations on the most effective ways of complying with that legislation (including through carrying out information actions and awareness-raising campaigns); and the promotion of the improvement of labour legislation, by notifying the competent authority about defects or abuses not specifically covered by existing legal provisions and by submitting proposals for its improvement. 2. The <u>Law 877 contains several provisions that are contradictory with the ILO C81 and C129</u> [which were <u>both ratified by Ukraine and, as such, “shall be an integral part of the national legislation of Ukraine”</u>, as established by Article 9(1) of the Constitution of Ukraine], as noted the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). Indeed, <u>CEACR noted with concern, in this respect, that: “the Act No. 877 of 1 January 2017 concerning the fundamental principles of state supervision and monitoring of economic activity (which applies to a number of inspection bodies, including the labour inspection services), and Ministerial Decree No. 295 of 26 April 2017 on the procedure for state control and state supervision of compliance with labour legislation (applying section 259 of the Labour Code and section 34 of the law on self-governing bodies) provide for several restrictions on the powers of labour inspectors, including with regard to the free initiative of labour inspectors to undertake</u>	

OSH draft Law provision's wording	Recommended wording	Rationale
		<u>inspections without prior notice (section 5 of Decree No. 295 and section 5(4) of Act No. 877), the frequency of labour inspections (section 5(1) of Act No. 877), and the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning (sections 27 and 28 of Decree No. 295)</u>³⁵. In this context, and in order to ensure that no such restrictions are applied, the Committee <u>urged the Government “to take the necessary measures so that Act No. 877 of 1 January 2017 and Ministerial Decree No. 295 of 26 April 2017 are brought into conformity with 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 and to ensure that no additional restrictions are adopted”</u>³⁶. The Committee also reminded the Government that “it can continue to avail itself of ILO technical assistance for this purpose”³⁷. More recently, in 2019, the <u>Committee remind that “Act No. 877 of 2007 on Fundamental Principles of State Supervision and Monitoring of Economic Activity (Act No. 877) and Ministerial Decree No. 295 on the procedure for state control and state supervision of compliance with labour legislation of 2017 (Decree No. 295), provide for several restrictions on the powers of labour inspectors. These include restrictions with regard to: (i) the free initiative of labour inspectors to undertake inspections without prior notice (section 5 of Decree No. 295 and section 5(4) of Act No. 877); (ii) the frequency of labour inspections (section 5(1) of Act No. 877); and (iii) the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning (sections 27 and 28 of Decree No. 295). The Committee also noted, with deep concern, that the adoption of Ministerial Decree No. 823, of 21 August 2019, on the Procedure for State Control of Compliance with Labour Legislation “also provides for similar restrictions on the powers of labour inspectors, including with regard to the free initiative of labour inspectors to undertake inspections without prior notice (section 8), the maximum duration of labour inspections (section 10), and limits on the inspectors’ ability to impose liability and sanctions if corrective action is taken by the violating entity within a specified time limit (sections 27 and 28)”, and strongly urged the 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 12(1)(a) and (b), 16 and 17 of Convention No. 81 and Articles</u>

³⁵ Vide [Observation \(CEACR\) - adopted 2017, published 107th ILC session \(2018\)](#), on the application of ILO C81 and C129 by Ukraine.

³⁶ *Ibidem*.

³⁷ *Ibidem*.

OSH draft Law provision's wording	Recommended wording	Rationale
	<u>16(1)(a) and (b), 21 and 22 of Convention No. 129, and to ensure that no additional restrictions are adopted</u>.³⁸ 3. The assessment of the previous point, moreover, is consistent to that of the Government of Ukraine, as laid down in the section “Problems to be resolved” of the “Concept of the labour protection management system reform in Ukraine”, adopted by the by the Order of the Cabinet of Ministers of Ukraine (CMU) No. 989-p, of 12 December 2018, in which <u>the Government of Ukraine considered that “the provisions of the Law of Ukraine “On the Basics of State Supervision (Control) in Economic Activities” limit the labour inspectors’ powers as defined by the Conventions Nos. 81 and 129, due to which realization of some principles enshrined in these Conventions is hindered and efficiency of inspection activities to ensure the application of legal provisions is reduced”</u>. 4. The preceding assessment is also <u>consistent with the conclusions and technical recommendations contained in several analysis and studies</u> carried out by the EU-ILO Project “Enhancing the Labour Administration Capacity to Improve Working Conditions and Tackle Undeclared Work”, regarding the legal framework of labour Inspection in Ukraine, in particular: “Ukrainian Labour Inspection Legal Framework - Analysis and Recommendations”; “White Paper on EU Directives and Reform of OSH and Labour Relations’ Legislation” (in Part III - Labour Inspection System); “Brief notes on the main aspects of the alignment between Ukrainian national legislation and selected EU directives” (in point 3 of Chapter I - General Considerations); and National Occupational Safety and Health Profile of Ukraine (Sections 3.2.1, 12.3 and 13.3). <u>In addition, the above provisions of this draft Law should also be deleted, because they refer to provisions of the Law of Ukraine 877 “On the Basics of State Supervision (Control) in Economic Activities”, which are contradictory with the provisions of the ILO C81 and C129, for the reasons better explained below:</u> 5. The following mentioned Articles of the Law 877 are contradictory with Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129, impose restrictions to the free initiative of labour inspectors to undertake inspections without prior notice and do not take into account situations where the inspection visit is carried out without prior notice [as provided for in Article 12(1)(a) of ILO C81 and Article 16(1)(a) of ILO C129], either because labour inspectors consider that such a	

³⁸ Vide [Observation \(CEACR\) - adopted 2019, published 109th ILC session \(2021\)](#), on the application of ILO C81 and C129 by Ukraine.

OSH draft Law provision's wording	Recommended wording	Rationale
	notification may be prejudicial to the performance of their duties, or in situations where the inspection visit is carried out by initiative of a labour inspector immediately following a complaint or an information received, or following its own observation, and there is no time to register the inspection and/or to obtain its referral prior to carrying it out, or the prior performance of such registration and/or the prior issuance of such referral could be prejudicial to the performance of their duties: • Article 7(1) - that foresees that before “the planned or unplanned measure, the body of state supervision (control) shall issue an order (resolution, decree), which shall include the name of the business entity to be inspected, and the subject of inspection”]; • Article 10(4) - that foresees that the business entity shall have the right to “receive a copy of the certificate (request) on the planned or unplanned measure”]; • Article 10(5) - which provides that the business entity have the right to “prevent the officials (...)” form “carrying out the state supervision” if: i. Article 10(7) - they “fail to provide copies of documents required under this Law” (including the inspection visit referral/order); ii. Article 10(8) - “the business entity has not received a notice about carrying out of the planned measure of state supervision”; iii. Article 10(9) - they “failed to make an entry on carrying out of a measure of the state supervision (control) in the register of state supervision (control)”; iv. Article 10(11) - they “carry out another unplanned measure of state supervision (control) for the same fact (facts) that was (were) the reason for the unplanned measure that has been conducted “; v. Article 10(12) - “the body of state supervision (control) has not approved or published on its official website a standard report, which provides a list of questions depending on the degree of risk”; vi. Article 10(13) - they “have not provided a copy of the concurrence of the central executive body, which ensures public policy on state supervision (control) in the area of economic activities or a relevant state collegial body to carry out an unplanned measure of state supervision (control)”; • Article 10(21) - which provides that the business entity have the right to “demand suspension of execution of a measure of state supervision (control)” if, as foreseen in Article 10(24), the officials, during carrying out unplanned measures of state supervision (control), verify “issues other than those whose verification was the basis for the original measure”.	

OSH draft Law provision's wording	Recommended wording	Rationale
	6. <u>The following Articles of the Law 877, to which the draft Law provision refers to, are contradictory with Article 16 of ILO C81 and Article 21 of ILO C129</u>, according to which “workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions”. They do not take into account that the duration, frequency and scope of the inspection visits or a desk inspection depend on a series of variables including, but not limited to: means, resources and number of labour inspectors involved; number and complexity of the legal provisions to be controlled and enforced; number and geographical dispersion of concerned workers, workplaces, agents (physical, biological or chemical), work equipment and tools; layout of the workplaces; number, nature, complexity and geographical dispersion of the occupational risks to which workers are or might be exposed to (noise, mechanical vibrations, chemical or biological agents, ionizing or non-ionizing radiations, explosive atmospheres, magnetic fields, musculoskeletal disorders risk factors, etc.); number and complexity of unexpected situations verified during a given inspection visit or desk inspection (e.g., violations of other legal provisions, unforeseen occupational risks, etc.), willingness of the employer, workers and other inspected entities to cooperate; etc. As such, duration, frequency and scope of inspection visits, regardless of having been previously registered or not, shall be left to labour inspectors, which should have right to extend its grounds, duration and frequency to control and enforce other legal provisions on the basis of the situations they verify during the inspection visit, as well as to conduct inspection visits as frequently and as thoroughly as necessary to ensure the effective application of the relevant legal provisions. The mentioned Articles of the Law 877 that are contradictory with Article 16 of ILO C81 and Article 21 of ILO C129 are the following: • Article 10(5) - which provides that the business entity have the right to “prevent the officials (...)” from “carrying out the state supervision” if: i. Article 10(6) - “the state supervision (control) is carried out with breach of the statutory requirements on frequency of such measures”; ii. Article 10(10) - “the duration of the planned activity of state supervision (control) or the total duration of measures during the year exceeds the maximum duration set by Part 5, Article 5 of this Law, or the duration of unplanned activities of state supervision (control) exceeds the maximum duration set by Part 4, Article 6 of this law”; iii. Article 10(11) - “the body of state supervision (control) carries out another unplanned measure of state supervision (control) for the same fact (facts) that was (were) the reason for the unplanned measure that has been conducted by state supervision (control)”;	

OSH draft Law provision's wording	Recommended wording	Rationale
	• Article 10(21) - which provides that the business entity have the right to “demand suspension of execution of a measure of state supervision (control)” if: i. Article 10(22) - “the official of state supervision (control) is in breach of the maximum duration of the measure defined by this law”; ii. Article 10(24) - the officials, during carrying out unplanned measures of state supervision (control), verify “issues other than those whose verification was the basis for the original measure”. 7. The following referred Articles of the Law 877 are contradictory with Article 12(2) of ILO C81 and Article 16(3) of ILO C129, according to which “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”, as it should be left to labour inspectors to decide who they should involve in the inspection visits and when: • Article 10(14) - which provides that the business entity have the right “to be present during the carrying out of measures of state supervision (control), to engage third parties during the implementation of such measures”; • Article 10(20) - “to demand from officials of state supervision (control) to make an entry” on the “log of measures of state supervision (control)” about such measure”, “before their start”; • Article 14(1) - which imposed that “Sampling of products shall be made by officials of the body of state supervision (control) <u>in the presence</u> of the head of a business entity - legal entity, its separate subdivision or authorized person (an individual - entrepreneur or his authorized representative)”; • Article 14(2)(2) - that foresees that “The entity shall have the right to be present during all actions by officials of the body of state supervision (control) during sampling of products and petition over those actions, to be recorded in the sampling report”; • Article 20(2) - which provides that “business entities shall be entitled to engage third parties to protect their rights and interests during the implementation of measures of state supervision (control, during the implementation of measures of state supervision (control)”, who “shall be entitled” “to be present during the carrying out of measures of state supervision (control)” and “to review the documents and materials related to state supervision (control)”. 8. The following Articles of the Law 877, referred to in the above provision of this draft Law, are contradictory with Article 12(1)(c)(iv) of ILO C81 and Article 16(1)(c)(iii) of ILO C129, which provides that “labour inspectors (...) shall be empowered to take or remove for purposes of analysis samples of products, materials and substances used or handled, subject to the employer	

OSH draft Law provision's wording	Recommended wording	Rationale
	or his representative being notified of any products, materials or substances taken or removed for such purposes": Articles 13(1), 14(1), 14(2) and 14(2)(2). In fact, and according to Article 12(1)(c)(iv) of ILO C81 and Article 16(1)c)(iii) of ILO C129, the taking and removal of samples by labour inspectors shall only be subjected to the notification of the employer or its representative, and should not be therefore subjected to neither a "written justified resolution of the head of the body of state supervision (control) or his deputy" [as foreseen in Article 13(1) of the Law 877] nor to the prior submission of a "resolution on collecting product samples and explain the sampling procedure to the business entity" [as foreseen in Article 14(2) of the Law 877] and not to the mandatory presence "of the head of a business entity - legal entity, its separate subdivision or authorized person (an individual - entrepreneur or his authorized representative" [as foreseen in Article 14(1) of the Law 877] and not to the business entity "right to be present during all actions by officials of the body of state supervision (control) during sampling of products and petition over those actions" [as foreseen in Article 14(2)(2) of the Law 877]. 9. <u>The first part of Article 19 of the Law 877, referred to in the above provision of this draft Law, regarding the "consultation support of business entities" are contradictory with Article 3(1)(b) of ILO C81 and Article 6(1)(b) of ILO C129,</u> mainly because the labour inspection main function of providing "technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions" foreseen in these provisions of ILO Conventions 81 and 129: • Are not aimed at business entities at general, but only regarding the ones within the remit of labour inspection (i.e., workers, employers and their representatives); • Does not concern information on "requirements for performance of the appropriate business activities", but only the ones enforceable by labour inspectors (i.e., regarding labour legislation); • Are not restricted to the provision of "written" information, but may also include verbal technical information, recommendations and advice provided, for example, in the course of inspection visits; • Does not impose any time limit (and notably not one of 15 calendar days) for the provision of the requested information, which may be insufficient, depending on the volume, type and complexity of the information required and eventual need for additional documentation or even the performance of one or more inspection visits, especially when (as in this case) the information provided can exempt the recipient of responsibilities if the recipient follows the provided technical information and advice.	

OSH draft Law provision's wording	Recommended wording	Rationale
	As an alternative solution (although not so highly recommended as the technical advice already provided above - of <u>taking out the system of labour inspection altogether, and from the outset, under the scope of the Law of Ukraine 877 "On the Basics of State Supervision (Control) in Economic Activities"</u> -, especially considering the arguments already expended in the point 1 above) is to better reword the proposed two provision, as follows: "2) add the eleventh part as follows:" "The central executive authority that implements the state policy on the state supervision (control) of compliance with the labour legislation shall be require to ensure, subject to the particularities defined by the Code of Labour Laws of Ukraine and international treaties, compliance with the requirements set forth in Article 1, Article 3, the first, fourth, and sixth-eighth parts, the second subparagraph of the tenth part, and the thirteenth and fourteenth parts of Article 4, Article 4¹, the first, sixth and tenth parts of Article 7, Article 9, the first, second, fifteen to nineteen eighth, tenth-eleventh, and twenty-first twenty-fourth and twenty-third subparagraphs of the first part of Article 10, second and third parts of Article 13, third to sixth parts of Article 14, Articles 13-15 to 18, the first part of Article 19, 20 and Article 21 of this Law."	
3. The Law of Ukraine "On the National Police" (Vidomosti Verkhovnoi Rady Ukrainy, 2015, No. 40-41, p. 379, as subsequently amended), add paragraph 31 to the first part of Article 23 as follows:		
31)		
Police officers shall be involved in inspection visits based on a motivated notice by the central executive authority that implements the state policy on state supervision (control) of compliance with the labour legislation or its territorial bodies, which shall be sent to the head of the territorial police body in the area where the inspection visit is to be carried out. It shall only be allowed to refuse police involvement in inspection visits on grounds such as insufficient	Police officers shall be involved in inspection visits based on a motivated notice by the central executive authority that implements the state policy on state supervision (control) of compliance with the labour legislation or its territorial bodies, which shall be sent to the head of the territorial police body in the area where the inspection visit is to be carried out or, in case of an unforeseen, unexpected or urgent need, by phone, email or text message this request may	Should be changed, as recommended, in order to ensure that such assistance may be required / obtained urgently in unexpected cases, during inspection visits, because usually labour inspectors cannot foresee, before the inspection visit, if they will need assistance during it. In order to be effective, the procedure for requesting and obtaining assistance, has to compatible with what really happens in the field and foresee the possibility of requesting it (by

OSH draft Law provision's wording	Recommended wording	Rationale
substantiation of the circumstances that caused the need to involve police officers, involvement of police personnel in termination of a group violation of public (social) security and order or mass events, and for elimination of consequences of accidents and other emergencies.”.	be done directly by the concerned labour inspector to any police officer, without prejudice to the need for further formal substantiation of the request after the assistance has been provided or the inspection visit has been concluded. It shall only be allowed to refuse police involvement in inspection visits on grounds such as insufficient substantiation of the circumstances that caused the need to involve police officers, involvement of police personnel in termination of a group violation of public (social) security and order or mass events, and for elimination of consequences of accidents and other emergencies.”.	phone, email, message texting, etc.) and obtaining it, during the course of an inspection visit, and not only before, without prejudice of further formalities to be taken care of after the inspection visit, in order to better substantiate the request. Otherwise, labour inspectors will not be able to have assistance in case of unexpected, unforeseen or urgent need, because they did not requested (and substantiated) it before the inspection visit. As such, the establishment of such a procedure to request the assistance of law-enforcement bodies, have to take into account the above and be flexible enough to allow the request and the provision of assistance in unforeseen, unexpected and urgent cases . Otherwise, it will not work, in practice, or labour inspectors will always request assistance, even when they do not have reasons to believe that they will need it, because they know that, if they do not request it in advance, they will not be able to request and obtain it during the inspection visit if they needed it.
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