

PROJECT
TOWARDS SAFE, HEALTHY AND DECLARED WORK IN UKRAINE

Comments^{1, 2} to the draft Law of Ukraine
“On Occupational Safety and Health of Workers”
(the version submitted to the Cabinet of Ministers of Ukraine for consideration)

Final provisions, particularly the new version of Chapter XVIII “SUPERVISION (CONTROL) OF COMPLIANCE WITH THE LABOUR LEGISLATION”

It is advisable to delete this part from the draft Law because the suggested wording of the above-mentioned CLLU Chapter is not fully aligned with provisions of the ILO Conventions Nos. 81 and 129, does not consider observations of the ILO Committee of Experts on the Application of Conventions and Recommendations and, consequently, contravenes some articles of the EU-Ukraine Association Agreement, in particular:

Article 291(3) ... the Parties reaffirmed their commitment to effectively implement the fundamental and priority ILO Conventions that they have ratified... (ILO Conventions No. 81 and 129 are Priority Conventions)

Article 296(1). A Party shall not fail to effectively enforce its environmental and labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.

Article 11. Special conditions for performance of high-risk works

1. In cases where the nature and level of hazard of works performance of which is connected with an objectively higher risk of the impact of hazardous and harmful occupational factors on workers' health and life (high-risk works) so require, such works may only be performed if at least one of the following conditions exists:

1) a valid agreement for additional life and health insurance of workers performing high-risk works; **or**

¹ Prepared in November 2021 after the analysis of consideration by the authors of the [5th set of the technical recommendations](#) provided by the Project in July 2021

² These 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. Its content does not reflect the official opinion of the European Union

2) a valid authorization for performance of high-risk works obtained according to this Article.

An agreement for additional life and health insurance of workers performing high-risk works MUST NOT replace a valid authorization for performance of high-risk works.

The ILO Convention No. 155 provides for prohibition or limitation of such works depending on authorization or control by the competent authority, and does not foresee replacement of the authorization by additional insurance. According to the Convention, such works, due to their higher level of occupational risks, should be subjected to additional controls by the competent authority, in order to ensure the safety and health of workers in the performance of these particularly dangerous works.

Article 35. The employer's liability for violation of the legislation on safety and health of workers

...

4. Employers shall be held liable to a fine for violations of the provisions hereof in case of:

5) allowing the worker to perform high-risk works without an authorization **or** without additional insurance of the worker according hereto (Art. 11) – in the amount equal to the lump-sum benefit paid to the family of the victim in case of the latter's death due to an accident, as per the Law of Ukraine "On compulsory state social insurance), for every such worker;

The need to revise Article 11 entails the need to revise Article 35 para 4, subpara (5).

Article 11. Special conditions for performance of high-risk works

...

8. Within 10 working days from receipt of an application for an authorization and a positive expert examination opinion as to the employer's ability to ensure safe performance of the works applied for, the central executive authority that implements the state policy on safety and health of workers shall make its decision as regards issuance of, or justified refusal to issue, an authorization, specifying the grounds set forth in this Article.

If, within the time limit set by law, no authorization for performance of high-risk works is issued to an employer or no decision to refuse to issue it is made or sent, **the employer shall have the right, after 10 working days from the expiry of the time limit set for the issuance of, or refusal to issue, the authorization for performance of high-risk works, to perform the works applied for.**

The time limit of 10 working days for issuance of an authorization may be insufficient in view of the complex nature of some high-risk works. Besides, acquisition of the right to perform high-risk works, if no authorization was issued or denied during 10 working days, may result in non-applicability, in practice, of Article 11(b) of the ILO Convention No. 155. It would be more appropriate to foresee the longer period for taking the decision of granting or denying the permission

as well as the obligation for the central executive authority that implements the state policy on safety and health of workers to inform its decision regarding the permission to an employer within the prescribed period.

Article 16. Occupational risk management

5. Occupational risk management shall follow the methodology to be set out by the central executive authority that ensures the formulation of the state policy on safety and health of workers.

This provision is too prescriptive and not in line with the logic beneath the EU OSH legal framework which is focused on the results, rather than on the processes to achieve them. The choice of the methodology to perform risk assessment (there are dozens of methodologies already designed) should be left to the employer. A specific methodology should be developed/defined by the employer, in consultation with the workers and, where necessary, with the competent authorized persons for OSH, taking into account the specificities of the workplace and the existing risks. However, the central executive authority that ensures the formulation of the state policy on safety and health of workers could develop recommendation on risk assessment.

Article 35. The employer's liability for violation of the legislation on safety and health of workers

...

8. If the employer has paid 50 percent of the fine within 10 banking days from the day on which a resolution on imposition of a fine for violation of the legislation on safety and health of workers, as provided for by this Article, was served, the resolution shall be deemed as complied with.

A precondition of the right to benefit from the "discount" of 50% of the amount of the fine, besides paying it within 10 banking days, must also be elimination of the violation itself within the same period of time or initiation of the process of making corrections until the deadline prescribed by the labour inspector. It will be an additional incentive to eliminate violations and comply with legislation, especially in view of the fact that the rates of the fines provided are actually not considerable and deterring.