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EU-ILO Project

**ENHANCING THE LABOUR ADMINISTRATION CAPACITY TO IMPROVE
WORKING CONDITIONS AND TACKLE UNDECLARED WORK**

Ukrainian Labour Inspection Legal Framework

Analysis and Recommendations

Working paper for the
tripartite workshop

21 June 2018



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*Draft for discussion
at the tripartite seminar on 21 June 2018*

Ukrainian Labour Inspection Legal Framework Analysis and Recommendations

June, 2018

ABBREVIATIONS LIST

CAS	Committee on the Application of Standards
CEA	Central Executive Authority
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CMU	Cabinet of Ministers of Ukraine
EU	European Union
EU-OSHA	European Agency for Safety & Health at Work
ILC	International Labour Conference
ILO	International Labour Organization
MSP	Minister of Social Policy of Ukraine
OSH	Occupational Safety and Health
SLS	State Labour Service of Ukraine

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FOREWORD

In 2015, following the 2014 reform of the State Labour Inspectorate and its reorganization into the new State Labour Service (SLS), and pursuant to the request of the Ministry of Social Policy (MSP), the ILO has been engaged to provide technical assistance concerning the implementation of measures aimed at improving the effectiveness of the Ukrainian labour inspection service.

A first guidance document (“Guidance on the Statute of the State Labour Service of Ukraine”) was prepared by the ILO (2015a), in order to orientate the future assistance to the Ukrainian Government, which was subsequently discussed in a tripartite workshop in Kyiv, jointly organized by the ILO and the SLS. Moreover, and as a result of this workshop, constituents agreed on a Road Map for improving, reinvigorating and modernizing the labour inspection system in Ukraine, according to the ILO Conventions already ratified by the Ukraine.

The Ukrainian Government further requested ILO’s support to assess the structure of the SLS and to provide policy advice on how better to structure the service and to adapt the correspondent statutes and subsequent regulations to the model of a modern labour administration and inspection service, taking into account the international and European labour standards and best practices. Such assessment was conducted in mid-October 2015, using the ILO’s participatory labour administration-related methodology (which included interviews with the key governmental representatives on labour inspection as well as of the social partners) and its findings and recommendations were reflected in the ILO report, “Ukraine State Labour Service’s Brief Needs Assessment” (ILO, 2015b).

In this sequence, the current report, developed within the scope of the EU-ILO Project *“Enhancing the Labour Administration Capacity to Improve Working Conditions and Tackle uUndeclared Work”* builds on the findings of those previous reports, as well as on the succinct analysis of all pieces of legislation applicable to the SLS, and is aimed at selecting a list of priority legislation/regulations that needs revision and to provide a set of recommendations to the national constituents, to be adopted by the relevant authorities in order to improve the labour inspection system in Ukraine and ensure that it meets the International and European Labour Standards and best practices.

It is important to stress, however, that the recommendations put forward in this report are mainly intended to stimulate and encourage the development of a more solid and structured basis for future discussions, debates and activities between the national constituents within the framework of the technical assistance that is being provided within the aforesaid EU-ILO Project, and is in no way intended to act as a replacement for the comments of the supervisory bodies of the ILO, as it is not for the International Labour Office to express an opinion as to whether the legislation of the Ukraine is in conformity with the provisions of the ILO Conventions.

Project Manager
António J. R. Santos

EXECUTIVE SUMMARY

Throughout the present study, the main legislation that frameworks the activity of the State Labour Service (SLS) and labour inspection in Ukraine is examined in the light of International and European Labour Standards and best practices. It aims to provide a set of recommendations to the national constituents to be adopted by the relevant authorities in order to bring the Ukrainian legislation and practices on labour inspection closer to the aforesaid standards and best practices and, most especially, to improve the efficiency and effectiveness of the Ukrainian system of labour inspection.

The main areas examined within the scope of this work include the international and national labour inspection legal framework in Ukraine, the SLS mandate, functions, structure and organization, the Ukrainian labour inspectors' functions and powers, the *moratorium* on inspection activities and the current labour inspection decentralization process.

The main recommendations resulting from the analysis carried out, which should be considered and discussed by the Ukrainian national stakeholders, can be synthesized as follows:

1. To amend the “Regulations on the State Labour Service of Ukraine” (SLS Statute)¹, in order to improve its efficiency and effectiveness, mainly through: the adoption of a simpler, more horizontal and rational organizational structure and organization; a clearer definition of the labour inspection functions and legal competencies assigned to each of its specialized structural units; the specification (on the structure and organization of both its headquarters and territorial bodies) of the localization, composition and legal competencies of the SLS consultative bodies (e.g., SLS tripartite consultative and advisory board "Collegium" and the “Public Council”); the focus of SLS on its labour administration functions (including labour inspection) and the transfer, to the respective responsible ministries (e.g., Ministry of Energy and Coal Mining Industry; Ministry of Trade and Economic Development), of its current non-labour administration functions (e.g., regulatory and market surveillance functions on gas, mining and objects of technical regulations), whilst maintaining within the SLS the legal competencies regarding the promotion and monitoring of labour relations and OSH in these sectors and activities; and the transfer of the SLS current legal competencies for several activities and functions (e.g., training, medical examinations, workplace and equipment assessments, knowledge testing of managers and deputy managers of CEA and oblast state administrations) to the private sector, while maintaining the SLS its competencies for the definition of the applicable legal requirements, licensing procedures, supervision, inspection and control.
2. To amend the “Procedure for Investigating and Recording Occupational Accidents, Diseases and Emergencies”², in order to provide that: the legal competencies for carrying out official investigations and inquiries on work-related accidents and occupational diseases are exclusively assigned to labour inspectors (without prejudice to other public authorities' legal competencies and the participation of other individual or collective public or private entities, if and when requested by labour inspectors); and to eliminate the legal provision that foresees that if the SLS territorial body does not make

¹ Approved by the CMU Decree No. 96, of 11 February 2015, with the amendments introduced by the CMU decrees Nos. 1097, of 23 December 2015, 76, of 11 February 2016, 295, of 26 April 2017, and 630, of 18 August 2017.

² Approved by the CMU Resolution No. 1232, of 30 November 2011 and last amended by the CMU Resolution No. 294, of 26 April 2017.

a decision to undertake a special investigation of a work-related accident within 24 hours, the investigation shall be undertaken by the employer or the Fund.

3. To draft and approve a “Labour Inspection Statute”, which should define, *inter alia*, the functions, activities and powers of labour inspectors as foreseen in the ILO Conventions Nos. 81 and 129, as well as the labour inspection procedures.
4. To draft and approve a “Labour Inspector’s Career Statute”, which should legally create the special career position of labour inspector within the Ukrainian public administration, and foresee, *inter alia*, the access requirements, recruitment and selection processes, career path and advancements, inception and continuous training, disciplinary statute, etc.
5. Either to revoke or to fully exclude SLS from the scope of the Law No. 877-V, of 5 April 2007, “On Basic Principles of State Supervision (Control) in the Area of Economic Activities”³ and, concomitantly, to define the labour inspection procedure in the above mentioned “Labour Inspection Statute”.
6. To substitute the “Procedure for State Control of Compliance with Labour Legislation”⁴ by the aforesaid “Labour Inspection Statute”.
7. To refrain from imposing *moratoriums* on labour inspection activity (especially on labour inspection visits) and, in particular, to repeal the Law No. 1278-VIII, of 3 November 2016, “On Temporary Specifics of Implementation of the State Supervision (Control) Measures in the Area of Economic Activities”, or to exclude definitely SLS from its scope.
8. To replace the current decentralization process by one developed within the scope of the SLS central authority control and supervision powers, according to the ILO Conventions Nos. 81 and 129, on the basis of the organic and sustainable growth of the SLS territorial bodies.

³ Last amended by the Law No. 2042-VIII, of 18 May 2017.

⁴ Approved by the CMU Decree No. 295, of 26 April 2017, “On some issues regarding the application of the Article 259 of the Labour Code of Ukraine and Article 34 of the Law ‘On local bodies of self-government in Ukraine’”.

INTRODUCTION

This report was developed under the scope of Output 1.2 (“Recommendations to Improve National Legislation and Procedures Regarding Labour Inspection and the SLS are Proposed to National Constituents”) of the EU-ILO Project “Enhancing the Labour Administration Capacity to Improve Working Conditions and Tackle Undeclared Work”.

It is based on the analysis of the main pieces of legislation applicable to the Ukrainian system of labour inspection and takes into account international and European labour standards and best practices.

It is mainly focused on developing a set of recommendations to amend the national legal framework on labour inspection, in order to better have it approach to the above mentioned international and European labour standards and best practices and to improve its efficiency and effectiveness.

For convenience purposes, the legislation is aggregated and analyzed by sections, according to the nature of its subject.

Besides the present introductory section and the conclusions section, it is comprised of eight additional sections, each concerned with specific aspects of the system of labour inspection and respective legislation. The first section highlights the relevant role assigned to the labour inspection system by the international and European labour legal framework, pinpointing the reasons for its importance and its main characteristics and requirements. Section Two reviews the Ukrainian labour inspection system legal framework, including the international law in effect within its internal juridical order. The State Labour Service (SLS) mandate, functions, structure and organization are addressed in Section Three. In Section Four, the labour inspector’s functions are addressed. Section Five deals with the labour inspector’s powers, whereas Section Six is devoted to *moratoriums*. It follows the decentralization process, discussed in Section Seven, and the summary of the main recommendations, synthesized in the conclusions section.

1. THE KEY ROLE OF LABOUR INSPECTION

To enhance the living and working conditions of people and reduce the concerns regarding the occurrence and damaging consequences of work-related accidents and occupational diseases have been guiding the efforts of policy makers around the world, over the last 100 years, to improve working conditions at workplaces (Hämäläinen, Leena Saarela, & Takala, 2009). These efforts have since been embodied in several international and European labour standards and national laws on labour relations and occupational safety and health (OSH).

However, and despite the importance commonly given to such international and national labour standards, the truth seems to be that, without proper implementation and enforcement, they are pointless and will remain just pieces of paper (Anderson, 2007; ILO, 2007; Jensen, 2004; Richthofen, 2002; Suard, 2016). The latter seems particular true in view of the results of the Second European Survey of Enterprises on New and Emerging Risks (EU-OSHA, 2014). In fact, the survey findings indicate that the major reasons for addressing Occupational Safety and Health (OSH) in the European Union (EU) are the fulfillment of legal obligations (85% of the establishments) and avoiding fines from the labour inspectorates (78%), as noted by Suard (2016), Irastorza et al. (2016) and the European Parliament (2015).

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

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

In fact, and “*since its beginnings, the International Labour Organization (ILO) has made labour inspection one of its priorities. The question of labour inspection was one of the general principles (under Article 427, ninth point, of Part XIII) of the Treaty of Versailles which set up the ILO. It stipulates that ‘Each State should make provision for a system of inspection, in which women will take part, in order to ensure the enforcement of laws and regulations for the protection of the employed’*” (ILO, 2006b:2).

It is also important to recall, in this regard, as also noted the ILO (2006b:2), that “*under Article 10(2)(b) of the ILO Constitution (ILO, 1919), the International Labour Office shall assist governments in the improvement of labour inspection systems. At the very first International Labour Conference in 1919, a recommendation was adopted with a view to establishing a system that would ensure factories and workshops were inspected effectively and establishing a public service in all member states, which, in cooperation with the International Labour Office, would be responsible for protecting workers’ health*”.

Four years later, in 1923, a new international recommendation established the set of principles which remain the basis for the effective establishment and functioning of a labour inspection system that enormously influenced ILO Convention No. 81, which is considered, ever since its adoption in 1947, the universal reference instrument on labour inspection (ILO, 2006b:2).

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

Considering that the violation of OSH legal requirements often leads to accidents at work (Frick, 2011), labour inspection is understood as an important instrument to promote safer and healthier working conditions and, in this way, to prevent work-related accidents and occupational diseases (Alli, 2008; ILO, 1996, 2003, 2005, 2006c, 2007, 2011; Richthofen, 2002; Takala, 2005).

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

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

It is therefore generally accepted, and thus expected, that labour inspectorates, provided with the necessary resources and carrying out their duties effectively (monitoring and enforcing the labour legislation, giving information and technical advices, promoting awareness-raising campaigns and implementing occupational risks prevention policies), should be able to positively influence the working conditions of workers, improving their OSH conditions at the workplaces and, consequently, producing positive outcomes, in particular in terms of reducing the number of work-related accidents and occupational diseases (Anderson, 2007; Frick, 2011; ILO, 2007; Jensen, 2004; Levine, Toffel, & Johnson, 2012; Niskanen et al., 2014; Richthofen, 2002; Suard, 2016; Tösine & Wedege, 2013).

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

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

workplaces, to convince management that ‘safety pays’ and that ‘good health is good for business’.

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

1. Decreases in the number and incidence rates of fatal and non-fatal work-related accidents and occupational diseases;
2. Reductions in direct and indirect costs arising from those events, namely regarding:
 - a. Emergency services;
 - b. Rehabilitation services;
 - c. Disability, early retirement and other pensions;
 - d. Health care, hospital, and rehabilitation expenses;
 - e. Compensation costs;
 - f. Work-related accident and occupational disease insurance costs;
 - g. Opportunity costs, related to the loss of production, hence, revenues, due to the absence of the victims;
 - h. Increased training costs to train the workers that substitute the victims;
 - i. Impact of the victims absence and substitution in terms of economies of scale and experience;
 - j. Indirect costs related to damages to the image and reputation of the employers and the state related with the occurrence of such events;
 - k. Indirect costs associated to the impact of such events on the motivation and commitment of the workers.
3. Improvement of the work ability and capacity of the workforce;
4. Development of social security sustainability and revenues:
 - a. by ensuring the transition of those in the informal and undeclared economies (workers and employers) to the formal and declared ones, therefore raising the number of social security contributions and reducing the social security expenditures (e.g., with unemployment benefits and other benefits that were wrongly assigned to informal and undeclared workers and businesses);
 - b. through the increase of the work capacity of the workforce which, therefore, instead of receiving early benefits from the social security, will now contribute for a longer period;
 - c. by reducing the social security direct costs related to work-related accidents and occupational diseases (e.g., rehabilitation costs; early retirement pensions; disability and other pensions; etc.).
5. Enhancement of the public finance balance and reduction of tax rates, through:
 - a. The increase of tax revenues, due to the reduction of the informal economy and of the undeclared work;

- b. The decrease of state budget expenditures, through the reduction of the direct and indirect costs due to work-related accidents and occupational diseases (e.g., health care costs, emergency services expenditures; etc.);
 - c. The increase of business revenues, resulting from: the increase of sales due to access to new markets (e.g., European Common Market, Canada, etc.); the elimination of unfair competition and the improvement of the market environment; and the increase of productivity resulting from the improvement of working conditions and consequent reduction of work-related accidents and occupational diseases.
6. Business access to new and more competitive markets (e.g., European Common Market, Canada, etc.);
7. Expansion of revenues and net income of businesses, mainly through:
- a. The elimination of the unfair competition from the businesses that do not comply with labour relations and OSH regulations;
 - b. Increased competitive advantage, founded on a more motivated workforce, on a fairer market, and on the reduction of tax rates and social security contributions (allowed by the improvement of social security and public finances *equilibrium*);
 - c. The increase of productivity via the reduction of fixed and variable costs related to work-related accidents and occupational disease (e.g., compensation costs, insurance costs, training costs, loss of production opportunity costs, image and reputation indirect costs, opportunity costs in terms of economies of scale and experience, indirect costs related to the motivation and involvement of workers, etc.);
 - d. Increased revenues due to access to new markets (e.g., European Common Market, Canada, etc.); and
 - e. Increased net profits, due not only to increased revenues and reduction of costs, but also resulting from the reduction of income taxes (allowed by the improvement of public finance).

In this context, labour inspection assumes a paramount importance within the international and European Labour Standards, notably through the ILO Conventions No. 81, concerning labour inspection in industry and commerce (ILO, 1947), and No. 129, concerning labour inspection in agriculture (ILO, 1969).

They are mainly focused on the definition of a labour inspection system that should be implemented by ILO Constituents. In addition to placing labour inspection under the supervision and control of a central authority, they both define the main functions of the labour inspection system (ILO, 1947, 1969), as follows:

- a. To secure the enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work;
- b. To provide technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions; and
- c. To bring to the notice of competent authorities defects or abuses not specifically covered by existing legal provisions.

They also outline the main powers of labour inspectors, understood as being essential to the effective discharge of their primary duties (ILO, 1947, 1969, 2006c):

1. To enter freely and without previous notice at any hour of the day or night in any workplace;
2. To carry out any examination, test or enquiry which may be considered necessary;
3. To take steps with a view to remedying defects observed at workplaces;
4. To require alterations to workplaces, to be carried out immediately or within a specified time frame; and
5. To take immediate measures, with executory force, in the event of imminent danger to the health or safety of the workers.

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

Furthermore, they address the importance of the labour inspectors being public servants, independent from changes of government and from improper external influences, recruited solely on the basis of their qualifications and provided with the necessary (initial and continuous) training and resources (e.g. financial, facilities, equipment, means of transportation), as well as the need for ensuring that labour inspectorates are provided with the adequate number of labour inspectors (ILO, 1947, 1969, 2006b).

Finally, they impose to labour inspectors the duty of professional secrecy and a particularly demanding incompatibilities regime.

It is also worth mentioning, as also noted by ILO (2006b:2), that “*in the majority of international labour Conventions on working conditions and the protection of workers adopted subsequently, there are provisions for the establishment of labour inspection or at least the appointment of authorities who will be responsible for ensuring the supervision of the application of relevant legislation*”. These are the cases, for example, of the ILO Convention No. 155, concerning occupational safety and health and the working environment (Article 9), ILO Convention No. 176, concerning safety and health in mines (Articles 5, 7 and 16), ILO Convention No. 184, concerning safety and health in agriculture (Article 5) and ILO Convention No. 187, concerning the promotional framework for occupational safety and health (Article 4) (ILO, 1981, 1995, 2001, 2006a).

The paramount importance of labour inspection in the international and European arenas is also evidenced, *inter alia*:

1. In Article 4 of the European Council Directive No. 89/391/EEC, of 12 June 1989, concerning the introduction of measures to encourage improvements in the safety and health of workers at work (European Council, 1989), which foresees the obligations of the states for ensuring the legal subjection of employers, workers and workers' representatives to the legal provisions necessary to implement its provisions and for ensuring adequate controls and supervision;

2. In the European Parliament Resolution No. 2013/2112(INI), of 14 January 2014, on effective labour inspections as a strategy to improve working conditions in Europe (European Parliament, 2014);
3. In the EU Strategic Framework on Health and Safety at Work 2014-2020 (European Commission, 2014; European Parliament, 2015) which sets, as one of the EU OSH key objectives, the improvement of the enforcement of OSH legislation by Member States;
4. In several international treaties and agreements, notably in Article 13.5(1) of the Canada - Ukraine Free Trade Agreement, signed on 11 July 2016, which foresees that each party will promote compliance with and effectively enforce its labour law, mainly through establishing and maintaining an effective labour inspection regime (including by developing responsible bodies and appointing and training inspectors) and monitoring compliance and investigating suspected violations (including through on-site inspections).

2. UKRAINIAN LABOUR INSPECTION LEGAL FRAMEWORK

2.1. International Law

The ILO Conventions ratified by Ukraine, as well as the international treaties approved by the Verkhovna Rada (Ukrainian Parliament) as being binding, apply in the Ukrainian internal juridical order.

In fact, and according to Article 9(1) of the Constitution of Ukraine, the international treaties in force, consented to be binding by the Verkhovna Rada (Parliament) of Ukraine, shall be an integral part of the national legislation of Ukraine. Moreover, and according to Article 3(2) of Law No. 2694-XII, of 14 October 1992, “On Labour Protection”, if an international treaty that the Verkhovna Rada agreed to be bound to establishes provisions other than those envisaged in Ukraine’s legislation on labour protection, the provisions of the international treaty shall apply.

At this moment, Ukraine has already ratified seventy-one ILO Conventions, including the eight Fundamental Conventions, the four Governance Conventions (Priority) and fifty-nine of the 177 Technical Conventions.

Among the ILO Conventions ratified by Ukraine, it is important to highlight the ones most closely related to labour inspection, in particular, the Labour Inspection Convention No. 81 (ILO, 1947), the Labour Inspection (Agriculture) Convention No.129 (ILO, 1969) and the Labour Administration Convention No. 150 (ILO, 1978a), as well as some ILO Conventions on OSH that address labour inspection, such as the Occupational Safety and Health Convention No. 155 (ILO, 1981), the Safety and Health in Mines Convention No. 176 (ILO, 1995) and the Safety and Health Agriculture Convention No. 184 (ILO, 2001).

Besides the provisions of the ILO Conventions ratified by Ukraine, the provisions of the international treaties and agreements signed by Ukraine and approved by the Verkhovna Rada also apply in the Ukrainian internal juridical order.

This is the case, for example, of the EU - Ukraine Association Agreement (EU & Ukraine, 2014), signed on 21 March 2014 (political section) and on 27 June 2014 (economic section), which entered into force on 1 September 2017 and foresees that, *inter alia*:

- “(...) *the Parties shall strengthen their dialogue and cooperation on promoting a decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and non-discrimination*” (Article 419);
- “*Ukraine shall ensure gradual approximation to EU law, standards and practices in the area of employment, social policy and equal opportunities, as set out in Annex XL to this Agreement*” (Article 424).

The same applies to the provisions of the Canada - Ukraine Free Trade Agreement (Canada & Ukraine, 2016), signed on 11 July 2016, which entered into force in 1 August 2017 and provides that, for example, the parties should promote compliance with and effectively enforce its labour law, namely through:

- “*establishing and maintaining an effective labour inspection regime, including by developing responsible bodies and appointing and training inspectors*” [Article 13.5(1)(a)];
- “*monitoring compliance and investigating suspected violations, including through on-site inspections*” [Article 13.5(1)(b)].

2.2. National Legal Framework

The Ukrainian legal framework concerning labour inspection comprises, besides the Constitution of Ukraine and the legislation concerning the state supervision and control, several other Verkhovna Rada laws and decrees and resolutions of the Cabinet of Ministers of Ukraine (CMU) on labour relations, OSH, employment and compulsory social insurance where labour inspection issues are also addressed, as well as some legal acts of the Ministry of Social Policy and orders of the State Labour Service of Ukraine (SLS).

The Constitution of Ukraine, which came into effect by Law No. 254/96, on 28 June 1996, guarantees its citizens the generality of the rights commonly enshrined in the constitutional acts of modern nations, namely: to life and health; honour and dignity; integrity and security; to work, including the possibility to earn a living by labour that is freely chosen or to which is freely agreed; to proper, safe, and healthy working conditions and remuneration not less than the minimum wage as determined by law; to timely payment for work performed; to maximum duration of work time, minimum duration of rest and to days off and holidays; to weekly rest days and paid annual leave; to shorter working days for certain professions and industries, as well as reduced hours of night work; to protection from unlawful dismissal; to social protection; to health care, medical aid, and medical insurance; the prohibition of forced labour; to freedom of association into political parties and public organizations; to take part in trade unions with the purpose of protecting their labour and socio-economical rights and interests; to strike (cf. Articles 36 and 43 to 45).

Besides the above mentioned international and constitutional provisions, the Ukrainian labour inspection system is regulated by other general, specific, and subordinated national legislative acts, notably by the “Regulations on the State Labour Service of Ukraine”⁵, which defines the tasks and the functions of the SLS, its structure, legal competencies and powers.

The labour inspection system in Ukraine is also regulated by:

1. The Law No. 877-V, of 5 April 2007, “On Basic Principles of State Supervision (Control) in the Area of Economic Activities”⁶, especially in what concerns the procedures for carrying out and registering state supervision (control) activities and the powers of the “officials” of the bodies of state supervision (control);
2. The “Procedure for State Control of Compliance with Labour Legislation”, approved by the CMU Decree No. 295, of 26 April 2017, which establishes the procedures of state control over the compliance of labour legislation by the employers, through inspection visits and desk inspections, carried out by the labour inspectors of the SLS (and its territorial bodies) and of the executive bodies of city councils of the cities of regional

⁵ Approved by the Decree of the Cabinet of Ministers No. 96, of 11 February 2015, with the amendments made by the CMU decrees No. 1097, of 23 December 2015; No. 76, of 11 February 2016; No. 295, of 26 April 2017 and No. 630, of 18 August 2017.

⁶ Last amended by the Law No. 2042-VIII, of 18 May 2017.

importance, villages, small towns, city councils of amalgamated communities (only in relation to the wages arrears, minimum wage and undeclared work);

3. The “Procedure for State Supervision over Compliance with Labour Legislation”, approved by the CMU Decree No. 295, of 26 April 2017, which defines the key tasks and procedure of the state supervision to be carried out by the SLS (and its territorial bodies) over compliance with labour legislation, in order to detect violations and shortcomings of the executive authorities of city councils in cities of oblast significance, village, settlement and city councils of amalgamated communities, and central executive authorities; to develop proposals to improve efficiency of exercise of the control powers; to ensure the exercise of the control powers; and to take measures to initiate holding officials liable for breach of laws during the exercise of the control powers.

Labour inspection activity in Ukraine is also becoming commonly regulated by legal acts that impose *moratoriums* on the exercise of inspection activities by state inspection services, including the SLS. Examples of such legal acts include, *inter alia*: Law of the State Budget for 2014; Law No. 76-VIII, of 28 December 2014, “On Amending and Invalidating Some Legislative Acts”; Law No. 1278-VIII, of 3 November 2016, “On Temporary Specifics of Implementation of the State Supervision (Control) Measures in the Area of Economic Activities”; Law No. 2246-VIII, of 7 December 2017, “On the State Budget of Ukraine for 2018”; and CMU Decree No. 1104, of 18 December 2017, “On Approval of the List of Bodies of the State Supervision (Control) which are out of the Scope of Application of the Law No. 1278-VIII, of 3 November 2016, ‘On Temporary Specifics of Implementation of the State Supervision (Control) Measures in the Area of Economic Activities’”.

Moreover, legal provisions enshrined in several other legal acts regulate some additional aspects (e.g., powers for state supervision and control, power to impose fines, other legal competencies) of the labour inspection functions entrusted to the SLS in its different fields of competence (labour relations; labour protection; pension security; employment; advertising of job vacancies; social protection, employment and job-placement of persons with disabilities; state compulsory social insurance; unemployment insurance; etc.), in particular:

- Articles 259, 260 and 265 of the Ukrainian Labour Code⁷, which assigns to the SLS the legal competencies to control and enforce compliance with the labour relations and labour protection legislation and specifies the liability for their violation;
- Articles 31, 33, 38 and 39 of the Law No. 2694-XII, of 14 October 1992, “On Labour Protection”⁸, that entrust additional legal competencies to the SLS in the field of labour protection, assigns to SLS the powers for state supervision over compliance with laws and other regulatory acts on labour protection and entrusts the SLS “officials” with some powers, rights and responsibilities which are typically awarded only to labour inspectors;
- Article 13 of the Law No. 1788-XII, of 5 November 1991, “On Pension Security”⁹, which allocates to the SLS the legal competence to control the correct application of the lists for preferential pension security and quality of workplaces attestation and for the development of proposals for the improvement of those lists;

⁷ Approved by the Law No. 322-VIII, of 10 December 1971, and last amended by the Law No. 2249-VIII, of 19 December 2017, amending several legal acts of Ukraine.

⁸ Last amended by the Law No. 2249-VIII, of 19 December 2017, “On amending some legislative acts of Ukraine to simplify the business environment (deregulation)”.

⁹ Last amended by Law No. 2325-VIII, of 13 March 2018.

- Articles 52 and 53 of the Law No. 5067-VI, of 5 July 2012, “On Employment of the Population”¹⁰, which assign to the SLS the powers for state supervision and control over compliance with legislation on employment and for imposing the respective fines;
- Article 26 of the Law No. 270/96-BP, of 3 July 1996, “On Advertising (of Job Vacancies)”¹¹, which entrusts to SLS the state supervision and control powers over its compliance;
- Article 19 of the Law No. 875, of 21 March 1991, “On Principles of the Social Protection of Persons with Disabilities”¹², that defines the legal competence of the SLS for the state supervision (control) over compliance with legislation on employment and job-placement of persons with disabilities in relation to registration of people with disabilities in the Fund of Social Protection; reporting on employment and job-placement of persons with disabilities; filling the quota for job-placement of persons with disabilities; and calculation and payment of administrative sanctions and late payment charges for non-compliance with the requirements;
- Article 54 of the Law No. 1105-XIV, of 23 September 1999, "On the State Compulsory Social Insurance", which assigns to the SLS the powers to control compliance of the legislation on social security by the insurers and the Fund and to freely conduct inspections on the administrative premises of the executive bodies of the Fund in relation to entitlement, calculation and payment of benefits, compensation, provision of social services and other types of material support as foreseen by this law, with purpose of ensuring respect of the rights and guarantees of insured persons, as well as to have access during inspections to information, documents and materials and receive copies or extracts from documents necessary to fulfill its duties;
- Article 14 of the Law No. 1533-III, of 2 March 2000, “On the State Compulsory Insurance Against Unemployment”¹³, which assigns to the SLS, with the purpose of ensuring respect to the rights and guarantees of the insured persons, the legal competencies to exercise state supervision and enforcement of the compliance with the law and other legal documents regulating relations in the area of unemployment insurance, including the right to conduct inspections (related to entitlement, calculation and payment of benefits, provision of social services and other types of material support) on the premises of the executive office of the Fund and to access necessary information, documents and materials, as well as to receive from the Fund the copies and extracts from the documents necessary to fulfil its duties. The SLS officials, on the other hand, are empowered to take measures in accordance with the legislation in cases of violations of the rights of the insured persons.

The labour inspection activity is also regulated in what concerns specifically the investigation and enquiry on work-related accidents and occupational diseases by the “Procedure for Investigating and Recording of Occupational Accidents, Diseases and Emergencies”¹⁴.

In addition, Ukrainian labour inspection is also regulated by several internal orders, issued by the head of the SLS in accordance with the “Regulations on the State Labour Service of Ukraine”, approved by the CMU Decree No. 96, of 11 February 2015. These are the cases, for example, of the SLS Order No. 76, of 22 June 2017, “On Approval of the Regulation for

¹⁰Last amended by Law No. 2249-VIII, of 19 December 2017.

¹¹Last amended by Law No. 2210-VIII, of 16 November 2017.

¹²Last amended by the Law No. 2249-VIII, of 19 December 2017.

¹³Last amended by Law No. 2249-VIII, of 19 December 2017.

¹⁴Approved by the Resolution of the CMU No. 1232, of 30 November 2011, and last amended by the Resolution of CMU No. 294, of 26 April 2017.

Notifying Registration of the Inspection Visits and Decisions of the Labour Inspector Related to the Inspection Visit to the Employer”, following Paragraph 2 of Item 4 of the “Regulation of the State Control Over Compliance with Labour Legislation”, approved by the CMU Decree No. 295, of 26 April 2017; Regulation of the Department of Labour of the SLS; Job Instruction (e.g., of the senior specialists of the labour relations division of the department of labour; of the senior specialists of supervision in metallurgy, machine building and energy; of the senior specialists of organizational support and planning of the office of inspection of the SLS), etc.

3. STATE LABOUR SERVICE MANDATE AND ORGANIZATIONAL STRUCTURE

In Ukraine, the State Labour Service (SLS) serves as the central authority for labour inspection issues.

It was established in 2014 as the Central Executive Authority (CEA), directed and coordinated by the Cabinet of Ministers of Ukraine (CMU), through the Minister of Social Policy of Ukraine (MSP) and headed by the Chief State Labour Inspector assisted by two deputies (appointed and dismissed by the CMU, based on proposals of the Commission on the Senior Civil Service issues).

3.1. State Labour Service Mandate and Functions

The SLS resulted from the merger of the State Labour Inspection of Ukraine, the State Service of Mining Supervision and Industrial Safety of Ukraine, and part of the State Sanitary and Epidemiological Service of Ukraine (realization of the State policy on labour hygiene).

It has a very comprehensive mandate, as foreseen in its Statute¹⁵, which includes:

1. Implementation of state policy and exercise state supervision (control) of:
 - a. Industrial safety;
 - b. Labour protection;
 - c. Occupational health;
 - d. State mining supervision;
 - e. Handling of industrial explosive materials;
 - f. Labour and employment;
 - g. General compulsory state social insurance.
2. Integral management of labour protection and industrial safety on the state level;
3. Control of the performance of state labour protection management functions by the ministries, other central executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, and local self-governance bodies
4. State regulation and control, according to law, in the field of activities connected with extra hazardous facilities;
5. Organization and state supervision (control) in the field of the natural gas market functioning;
6. Provision to employers and workers with information and explanations on the most efficient ways of observing legislation and preventing any possible breaches.

Moreover, the Statute assigns to the SLS fifty-five additional activities and legal competencies, including, for example:

¹⁵Cf. “Regulations on the State Labour Service of Ukraine”, approved by the CMU Decree No. 96, of 11 February 2015 (with the amendments made by the CMU decrees No. 1097, of 23 December 2015; No. 76, of 11 February 2016; No. 295, of 26 April 2017 and No. 630, of 18 August 2017).

1. Coordination and control of the performance of state labour protection management functions of ministries, other central executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, local self-governance bodies, enterprises, institutions and organization and other economic entities in the area of labour protection and industrial safety;
2. Development of proposals on state policy on the above fields and on the improvement of the corresponding legal acts (legislative acts, acts of the President of Ukraine, acts of the CMU and ministerial regulatory legal acts) and its submission to the Minister;
3. State supervision over observance of legislation on labour and on employment by the executive bodies of the city councils of major cities, village and city councils of the amalgamated communities and central bodies of executive power.
4. State supervision (control) over:
 - a. Labour legislation;
 - b. Correct use of the lists related to the old-age pension on preferential terms;
 - c. Quality of the attestation of workplaces by working conditions;
 - d. Legislation on the employment and job placement of persons with disabilities;
 - e. Observance by the funds of the general compulsory state social insurance of the legislation on the general compulsory state social insurance;
 - f. The activities of the Social Insurance Fund of Ukraine;
 - g. Occupational health;
 - h. Labour protection legislation observance;
 - i. State mining and mining relations;
 - j. Conditions of special authorizations for subsoil use;
 - k. Extra hazardous facilities and potentially hazardous facilities;
5. Supervision in the market over the objects of technical regulations, and participation in the development of the rules and procedures of market supervision over the objects of technical regulations and other regulatory legal acts in this field;
6. Control over the compliance with:
 - a. The requirements of legislation on employment;
 - b. Timely and unbiased investigation of occupational accidents, their documentation and recording, and implementation of measures aimed at eliminating accident causes;
 - c. The requirements of advertising legislation, concerning advertisements for job openings (employment).
9. Dosimetry of workplaces and staff exposure control;
10. Organization and performance of state technical expert examinations of mining works' safety, testing and technical examination of machines, mechanisms and equipment, expert assessment of the state of labour protection and industrial production safety;
11. Managing state scientific studies and research work in the field of industrial safety, labour protection, occupational health, state mining supervision, and handling of industrial explosive material;

12. Issuance of licenses for production of industrial explosive materials, permits to conduct blasting works and to manufacture means of their mechanization and certificates for procurement and storage of industrial explosive materials;
13. Register large-capacity and other process vehicles not subject to operation on general-purpose streets and road networks;
14. Maintaining records of lifting installations (cargo cranes and machines, elevators, escalators, ropeways, lifts, funiculars, etc.), steam and water-heating boilers, pressure vessels, steam and hot-water pipelines, attractions of oil and gas sector facilities and other facilities;
15. Involvement in state expert examinations (verifications) of process, engineering and technical documentation for adoption of new technologies and manufacture of means of production, collective and personal protective equipment for their compliance with regulatory acts on labour protection;
16. Involvement in commissions for investigation of occupational accidents;
17. Involvement in the organization of medical examinations of workers performing heavy work, work in hazardous and dangerous working conditions or work for which there is need of professional selection and in yearly compulsory medical examinations of workers aged under 21;
18. Participation in state expert examinations of investment programs and construction projects according to legislative requirements;
19. Provides employers and workers with information and consultation on the most efficient ways of compliance with the legislation and of prevention of violations;
20. Ensures the conduct of social dialogue in its administration and territorial bodies on the implementation of social policy concerning labour relations, labour remuneration, labour protection, occupational health and social protection, conclusion of collective agreements, and provision of conditions for labour activities of workers and for the work of trade union organizations in accordance with the Ukrainian legislation;
21. Organizes information and publishing activities on matters falling within its competence.

In addition, more detailed functions and tasks assigned to the SLS can also be found in several other legal acts and in several SLS internal regulations.

SLS internal regulations include, for example, the SLS Order No. 76, of 22 June 2017, “On Approval of the Regulation for Notifying Registration of the Inspection Visits and Decisions of the Labour Inspector Related to the Inspection Visit to the Employer”; Regulation of the Department of Labour of the SLS; Job Instruction; etc.

Examples of the above mentioned additional legal acts include, *inter alia*: the Law No. 2694-XII, of 14 October 1992, “On Labour Protection”, especially in what concerns the labour inspection functions foreseen in Articles 33 and 39; the Law No. 877-V, of 5 April 2007, “On Basic Principles of State Supervision (Control) in the Area of Economic Activities”; and the CMU Decree No. 295, of 26 April 2017, “On Some Issues Regarding the Application of the Article 259 of the Labour Code of Ukraine and Article 34 of the Law ‘On Local Bodies of Self-Government in Ukraine’”.

Another example is the Order of the State Committee for Labour Protection Supervision No. 15, of 26 January 2005, approving the “Model Regulations on the procedure for training and

knowledge testing on labour protection”¹⁶, which assigns the knowledge testing of managers and deputy managers of the CEA and oblast state administrations to a commission established by SLS order and headed by the SLS Head and empowers the SLS to exercise state supervision (control) over the organization of training and knowledge testing on labour protection).

It is also worth mentioning, in this regard, the “Procedure for Investigating and Recording Occupational Accidents, Diseases and Emergencies”¹⁷, which specifies the procedures for investigation and recording of occupational accidents, diseases and emergencies occurred to workers at enterprises, institutions and organizations of whatever form of ownership, or in their branches, representative offices or other stand-alone units and empowers the SLS to conduct such occupational accidents and diseases investigations and inquiries.

Regarding the latter, however, it is recommended the amendment of such procedure, in order to provide that:

1. The legal competencies to carry out official investigations and inquiries on the occurrence of work-related accidents and occupational diseases are assigned exclusively to labour inspectors (which have the necessary qualifications, training, professional status and powers to ensure an independent and qualified investigation), rather than to an inquiry “Commission”, without the prejudice of:
 - a. The legal competencies of other public authorities in particular circumstances (e.g., when it occurs within army or police activities; where there is a crime involved; involving an airplane crash; etc.);
 - b. The participation of other individual or collective (public or private) entities, at the request of the labour inspectors, if they find it necessary and appropriate (e.g., employers, workers, workers’ representatives for OSH, employers’ and workers’ representative associations, laboratories, research centres, experts, professional associations, etc);
 - c. The obligation of the employers to notify its occurrence and to carry out their own investigation on such occurrences, through their OSH services, and to report the results of such investigation;
2. The provision which foresees that “*if the SLS territorial body does not make a decision to undertake a special investigation of an work-related accident within twenty-four hours, the investigation shall be undertaken by the employer or the Fund*”, should be eliminated. In fact, such provision is likely to generate a conflict of interests and put into question the independence of investigation results.. Indeed, and considering that both the employer and the Fund are obviously two interested parties on the results and conclusions arising from the investigation of occupational accidents and diseases, whereas, in the case of the employer, it can even be held liable for their occurrence (depending on their causes and circumstances), the official investigations and inquiries on the occurrence of work-related accidents and occupational diseases should not be entrusted, in any circumstance, to the interested parties.

As we have seen above, the mandate and functions entrusted to the SLS are much broader and ambitious than the primary functions of the labour inspection system foreseen in the ILO

¹⁶Last amended by the MSP Order No. 140, of 30 January 2017.

¹⁷Approved by the CMU Resolution No. 1232, of 30 November 2011, and last amended by the CMU Resolution No. 294, of 26 April 2017.

Conventions No. 81 and 129: to enforce the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors; to provide technical information and advice to employers and workers about the most effective means of complying with the legal provisions; and to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

In fact, they include not only other labour administration functions (e.g., social security, employment, social dialogue and collective bargaining, gas market supervision, mining supervision) but also other competencies concerning the coordination of the work of ministries, other central executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, local self-governance bodies, enterprises, institutions and organization and other economic entities in its field of competencies, market regulation and surveillance and, most especially, a supervisory role regarding the performance of other state entities (e.g., funds of the general compulsory state social insurance, Social Insurance Fund of Ukraine), as well as over the observance of the legislation on labour and on employment by the executive bodies of the city councils of major cities, village and city councils of the amalgamated communities and central bodies of executive power.

It is therefore important to consider the concerns of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) regarding the ability of labour inspectors to carry out their primary duties. In fact, and if, on one hand, the labour inspection instruments do not rule out the possibility of labour inspectors being assigned other promotional tasks by legislation or national practice (in addition to those inherent to their primary duties), on the other hand, it should be taken into account that their primary duties are complex and require time, resources, training and considerable freedom of action and movement (CEACR, 2006).

This is why, according to CEACR (2006), both ILO Conventions Nos. 81 and 129 on labour inspection contain identical provisions stipulating that any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers (Article 3, paragraph 2, of Convention No. 81 and Article 6, paragraph 3, of Convention No. 129).

This concern, moreover, underlies the recent request of the CAS (2017) to the Government of Ukraine “*to ensure that other functions entrusted to labour inspectors do not interfere with their primary duties and impact negatively on the quality of labour inspections*”.

3.2. State Labour Service Structure and Organization

The mandate and functions assigned to the SLS are very broad and ambitious, including a wide range of functions of not only labour administration typical functions (including labour inspection, employment, social security, etc.), but also coordination and supervisory functions of other central and local government entities, as well as several market regulation and surveillance functions.

In this context, a clearer and simpler organizational structure, based on a simultaneously functional and geographical departmentalization (in order to account for the decentralized services), would be more appropriate, as already stressed in previous ILO reports (ILO, 2015a, 2015b).

Moreover, and considering the organic nature of the SLS Statute, it is advisable to amend and complement it accordingly.

As such, in order to better elucidate its activities, legal competencies and internal organization and, at the same time, to improve its internal functioning and efficiency, taking into account its functions, it is recommended that the SLS Statute clearly specifies the following:

1. The location of the SLS, within the structure of the MSP, highlighting and clarifying the way the mentioned coordination and supervisory role could be accomplished.
2. The internal SLS structure and organization, including:
 - a. The departmental and hierarchical organization of its headquarters services, the legal competencies of each headquarter department, its internal structure and leadership, as well as the lines of vertical and horizontal communication between departments;
 - b. The internal structure and organization of its territorial bodies, including their different departments internal structures, leadership, legal competencies and geographical areas of jurisdiction and the lines for vertical and horizontal communication flows between their departments and between the latter and the headquarters;
 - c. If the decentralization process is to continue in the current terms, which we do not recommend (for the reasons discussed ahead, in Section 7), the internal structure and organization of the labour inspection functions within the executive bodies of the city councils of major cities, village and city councils of the amalgamated communities and central bodies of executive power, their different departments internal structures, leadership, legal competencies and geographical areas of jurisdiction and the lines for vertical and horizontal communication flows between their departments and between the latter and the SLS headquarters and territorial bodies.
3. The location (on the structure and organization of both its headquarters and territorial bodies), composition and legal competencies of two important consultative and advisory organs, in particular:
 - a. The SLS tripartite consultative and advisory Board (“Collegium”), created in 2015, which regulations were approved by the SLS Order No. 121, of 15 October 2015. It is important to highlight, in this regard, that Article 5 of the ILO Convention No. 150, concerning labour administration: role, functions and organization (ILO, 1978a) provides that arrangements shall be made in order to secure the inclusion, within the labour administration system, consultation, co-operation and negotiation between the public authorities and most representative organizations of employers and workers, or, where appropriate, employers' and workers' representatives.
 - b. The “Public Council”, foreseen in the CMU Resolution No. 996, of 3 November 2010, “On securing public participation in the State policy formulation and implementation” and on Article 14 of the Law “On Central Executive Authorities”.

The ILO, however, does not support a specific type of structure or departmentalization model. It recognizes that labour administration systems should be structured in accordance to the

social and economic specificities and needs of their context. CEACR (1997:Par.150) recalls, in this respect, the system of labour administration should be cohesive and effective, ILO Convention No. 150 (ILO, 1978a) and does not impose any particular form or administrative structure on member states.

Notwithstanding the latter, the effectiveness of a system of labour administration heavily depends not only on the scope of the main functions it covers, but also on the level of organization and coordination among its components, among internal units and departments, between central and local entities, and among specialized agencies carrying out specific tasks of labour administration (ILO, 2015b). In this regard, ILO Recommendation No. 158, concerning labour administration: role, functions and organization, notes that “*the system of labour administration should normally comprise specialized units to deal with each of the major programmes of labour administration the management of which is entrusted to it by national laws or regulations*” (ILO, 1978b:Par.25).

Moreover, and in order to improve the efficiency and effectiveness of the SLS in the discharge of its labour administration functions, including labour inspection functions, labour administration functions should be organized around logical and separate structural specialized units¹⁸, whereas each functional area should be organized as to improve the focus and accountability regarding each function and, at the same time, the overall cohesion and effectiveness of its organizational structure.

As such, the statute of the SLS should therefore provide for the legal existence of a specialized and centralized structural unit exclusively devoted to labour inspection and to the exercise of labour inspection functions. The latter, moreover, should then be subdivided into as many specialized subunits as necessary (e.g., labour relations division, OSH division, compulsory social insurance division, communication & information division and inspection activity coordination & support division, for example, as a hypothetical first level of subunits; generic inspection section, undeclared work section, child labour section, wages section and permits & authorizations section, as a second hypothetical level of subunits for the subunit labour relations; and so on), in order to organize the discharge of labour inspection duties, according to their respective nature, enabling a clearer and more focused allocation of the necessary resources and a more transparent control and assessment of its performance. The SLS statute should also define the labour inspection functions and legal competencies assigned to each of these specialized structural units, along with the respective resources.

Furthermore, an overly complex structure may prevent the SLS from achieving its goals and from ensuring a more adequate alignment with the International and European labour standards and best practices on OSH, labour relations and labour inspection, especially considering the scarcity of SLS resources (e.g., financial, human, material)¹⁹.

¹⁸According to paragraph 25(2) of the ILO Recommendation No. 158, this structural specialized units could refer to: *formulation of standards relating to working conditions and terms of employment; labour inspection; labour relations; employment, manpower planning and human resources development; international labour affairs; and, as appropriate, social security, minimum wage legislation and questions relating to specific categories of workers* (ILO, 1978b).

¹⁹The concerns regarding the SLS insufficiency of human, financial and material resources were already discussed in a previous ILO report (ILO, 2015b). More recently, the issue of the material means and human resources of the SLS to achieve an adequate coverage of workplaces by labour inspection was addressed by CEACR, on its observation on the conclusions of the CAS on the application of Conventions Nos 81 and 129 by Ukraine, as well as on its Report III (Part A) to the 107th Session of the International Labour Conference, (CEACR, 2017b, 2018). In those occasion, CEACR noted that increasing the number of labour inspectors and material resources (including transport facilities, registers and appropriate software) is essential for enhancing the number and quality of inspections and requested that the Ukrainian Government to provide information on the measures taken to improve the budgetary situation of the SLS, and to improve the material means and human resources of the services throughout its structure.

In addition, the need for a more clear demarcation of responsibilities and legal competencies between the state bodies currently responsible for labour administration, market regulation and regulatory and supervisory functions²⁰ and the improvement of the SLS efficiency and effectiveness, also seem to require the simplification, rationalization, horizontalization and harmonization of the SLS current structure and, most especially, the focus of its activities on its core and most important labour administration functions (including labour inspection), mainly through:

- Transfer of the current SLS regulatory and market surveillance functions on the gas market and on state mining supervision (which are not labour administration functions) to the competent authorities of the Ministry of Energy and Coal Mining Industry, whilst maintaining the SLS's legal competencies on labour relations and on OSH in these sectors of activity;
- Assignment of the current SLS regulatory and market surveillance functions over the objects of technical regulations (which are not labour administration functions) to the competent authorities of the Ministry of Trade and Economic Development, although maintaining the SLS's legal competencies on OSH, regarding the minimum safety and health requirements of the use of such objects of technical regulations;
- Transfer of the current SLS legal competencies for issuance of licences or permits for industrial or business initiation, alteration or renovation (except regarding businesses directly linked to labour administration functions, such as OSH external services providers, OSH professionals, OSH training institutions, employment agencies, etc.) to the competent authorities of the Ministry of Trade and Economic Development, retaining the SLS's legal competence for issuing a binding opinion regarding such business licensing in order to ensure their compliance with the applicable OSH regulations;
- Transfer of the SLS current responsibilities for the performance of some OSH activities and functions (e.g., training, medical examinations, workplace and equipment assessments, knowledge testing of managers and deputy managers of CEA and oblast state administrations) to the private sector, while maintaining, within the SLS, its fundamental authority and supervisory role over the definition of the legal requirements and the licensing procedures of such service providers, as well as regarding the inspection and control over the performance and quality of such activities and functions and over the compliance with the law by the employers and by the (external service providers) that they have subcontracted.

The above is of paramount importance, especially in view of: the broad mandate of the SLS (which not only contributes to the dispersion of the human and financial resources and efforts among several competing labour administration functions as it also does not allow to strategically focus in a fewer number of them, including labour inspection); the convenience of clearly defining, in the SLS statute, which SLS functions are specific labour inspection functions (and, of these, which should be exclusively performed by labour inspectors); the SLS needs to ensure the coordination of its territorial bodies; and, most especially, the urgency of coping with the current decentralization process, as we will see ahead in more detail.

²⁰With a particular emphasis on the elimination of overlapping legal powers and on the definition of their coordination and cooperation mechanisms.

4. LABOUR INSPECTORS' FUNCTIONS

Ukrainian legislation on the SLS and labour inspection reviewed within the scope of this study does not provide for the legal definition and specification of which labour administration functions are labour inspection functions, nor does it assign any specific labour inspection functions to labour inspectors.

In spite of serving as the central authority for labour inspection issues in Ukraine, the SLS is also in charge of carrying out other labour administration tasks which are not covered by ILO Conventions Nos. 81 and 129, being also responsible for other functions which are not even labour administration functions foreseen in the ILO Convention No. 150.²¹ As such, and considering the organic nature of the SLS statute, it is advisable that it clearly specifies which SLS labour administration functions are assigned to labour inspection.

Moreover, as the Ukrainian legislation on labour inspection tends to assign labour administration functions (including those of labour inspection) to the SLS, without specifying who is responsible in the SLS for carrying them out; it is therefore not clear whether these functions are entrusted to labour inspectors or to other civil servants employed by the SLS, as already mentioned in previous reports (ILO, 2015b).

As already noted, the labour inspection conventions do not exclude the possibility of labour inspectors being assigned other promotional tasks by legislation or national practice, in addition to those inherent in their primary duties. Nevertheless, it should be stressed that their primary duties are complex and require time, resources, training and considerable freedom of action and movement. As such, it should be clearly defined which functions are entrusted to labour inspectors, being clear that any further duties entrusted to labour inspectors must not be such as to interfere with the discharge of their primary duties with the necessary authority and impartiality, and which tasks are assigned to other civil servants employed by the SLS (ILO, 2015b).

In this regard, as already mentioned, the CEACR (2006) emphasizes that any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary for inspectors to have in their relations with employers and workers (Article 3, Paragraph 2, of Convention No. 81 and Article 6, Paragraph 3, of Convention No. 129). More recently, and taking into account the discussion of the Ukraine Individual Case on the application of the Conventions Nos. 81 and 129 at the Committee on the Application of Standards, the CAS (2017) *“called upon the Government of Ukraine to ensure that other functions entrusted to labour inspectors do not interfere with their primary duties and impact negatively on the quality of labour inspections”*.

In addition, the reviewed legislation also entrusts labour inspection functions only to “SLS officials” or to “state supervision (control) bodies officials”, and not specifically to labour inspectors²².

²¹ As we have already seen, the SLS is entrusted with a wide range of legal competencies, including the areas of product safety and market surveillance, supervision of technical equipment and products placed on the market. Moreover, several purely administrative tasks (e.g., issuance of work permits or approval of internal regulations of establishments and enterprises, issuance of permits to market hot water heaters and other hazardous equipment, and issuance of the compulsory licenses for the use of radioactive substances) were also assigned to it.

²² The only exception being the “Procedure for State Control of Compliance with Labour Legislation”, approved by the CMU Decree No. 295, of 26 April 2017, which specifies that *“State control over the compliance of labour legislation shall be implemented through the inspection visits and desk inspections by the labour inspectors”*.

Law No. 877-V, of 5 April 2007, for example, when defining the procedures for the carrying out and registration of state supervision (control) activities by state supervision (control) bodies, only refers to the powers of the “officials” of the bodies of state supervision (control) and not specifically to labour inspectors. Law No. 2694-XII, of 14 October 1992, “On Labour Protection”, on the other hand, when entrusting additional legal competencies and powers for state supervision over compliance with laws and other regulatory acts on labour protection, entrusts the SLS “officials”, instead of SLS labour inspectors, with specific powers, rights and responsibilities which are typically awarded only to labour inspectors. Moreover, the Law No. 1533-III, of 2 March 2000, "On the State Compulsory Insurance Against Unemployment", also empowers the SLS officials, not specifically the SLS labour inspectors, to take the measures in accordance with the legislation in cases of violations of the rights of the insured persons.

In this respect, it should be highlighted that administrative, general and other non-inspection staff are those that, in most jurisdictions, are referred to as "officials”.

“Labour inspectors”, on the other hand, are a distinct professional category of public servants who, in view of the specific challenges they face in the exercise of their complex duties and functions (including attempts of obstruction, undue influence and corruption) and in order to ensure their knowledge, authority and independence from undue external influences:

1. Have the required qualifications and necessary training for the exercise of the labour inspection functions (Articles 7 of Convention No. 81 and Article 9 of Convention No.129);
2. Enjoy adequate status and conditions of service (i.e. wages, allowances and career prospects) so as to ensure them stability of employment and independence of changes of government and of improper external influences (Article 6 of Convention No. 81 and Article 8 of Convention No.129);
3. Have the necessary and adequate powers of inspection and control (Articles 12,13 and 17 of Convention No. 81 and Articles 16, 18, 22 and 23 of Convention No. 129); and
4. Are bound to certain special obligations and incompatibilities regime (Article 15 of Convention No. 81 and Article 20 of Convention No. 129).

It shall therefore be ensured in law and practice that only labour inspectors shall have the right to carry out inspection visits, and that this function is not entrusted to other staff that do not fulfill the abovementioned requirements foreseen in the ILO Conventions Nos. 81 and 129 on labour inspection (ILO, 1947, 1969).

As such, it should be defined in the SLS Statute (or, ideally, in a special and specific “Labour Inspection Statute”, that should be drafted and approved - see below), which of the SLS labour inspection functions should be carried out only by labour inspectors, taking into consideration the special requirements (e.g., qualifications, training), professional status, conditions of service (i.e. wages, allowances and career prospects), powers, obligations and responsibilities legally and conventionally assigned to the labour inspectors.

The above mentioned “Labour Inspection Statute”, which draft and approval is highly recommended, should address, among other aspects, the following:

1. Object
2. Definition and scope of the labour inspection system;
3. Principles of the labour inspection system;
4. Collaboration with other entities;
5. Labour inspection legal competencies and activities and the indication of the ones that should be exclusively performed by labour inspectors;
6. Inspection procedures (inspection action; standard operating procedures; modalities of inspection action; forms of the inspection actions; inspection visits; registration of inspection visits; information actions; penalty actions; conclusion of the inspection procedure; inspection process; communication and notification of inspection actions; etc.);
7. Labour inspector's powers;
8. Human resources (professional status, directors with inspection powers, obligations, code of conduct, incompatibilities and impediments, permanent availability, duty to remain for a certain period after recruitment, training, civil liability insurance, support in legal proceedings, etc.)

In addition to the aforesaid "Labour Inspection Statute", the draft and approval of a "Labour Inspector's Career Statute" (or provided for it in the human resource section of the above labour inspection Statute) should also be considered, which should provide for the legal establishment of a labour inspector's career and foresee, *inter alia*:

1. Establishment and description of the labour inspector career;
2. Definition of the different professional categories, activities, job profiles, functions and respective salary and additional working conditions;
3. Requirements and regulations concerning advancement and promotions;
4. Definitions of the requirements for attainment of a labour inspection career, in particular, concerning the specification of the selection and recruitment procedures for access to the mandatory internship which successful completion is a pre-requisite for having a labour inspector career (requirements, selection procedures, regulations of the internship functioning and description of the theoretical and practical phases of the internship, subjects of the initial theoretical and practical training, criteria and methodologies for evaluating and assessing the trainees, etc.);
5. Continuous training of labour inspectors;
6. Geographical mobility;
7. Functional mobility;
8. Performance assessment;
9. Powers;
10. Obligations and disciplinary statute.

Within the scope of the aforesaid "Labour Inspector's Career Statute", the need to improve SLS's efficiency, effectiveness and the benefits of potential synergies, while minimizing the context costs for businesses, the reformulation of the current different types of labour inspectors should be also considered, taking especially into account the already mentioned

SLS shortcomings in terms of human, financial and material resources (CEACR, 2017b, 2018; ILO, 2015b).

Currently, Ukrainian labour inspection is composed of three different types of labour inspectors, each one assigned to a specialized field of activity:

1. State labour inspectors - mainly focused on issues related to employment, compulsory state social insurance; etc;
2. State labour protection inspectors - concentrated mainly on labour protection issues such as permits for performance high-risk work and for the use of high-risk machines, mechanisms and equipment; safe working conditions at workplaces; vocational and advanced training; benefits and compensations for work with heavy and harmful working conditions; labour protection services; labour protection financing; etc; and
3. State occupational health inspectors - focused on measures to prevent occupational diseases; prophylactic measures aimed at prevention and protection of workers' health; compulsory medical examination; collective and personal protective equipment; etc.

Considering the lack of labour inspectors, the difficulties in their recruitment and the benefits that can arise from ensuring a more holistic and integrated approach to labour inspection activities, the possibility of merging these three types of specialized labour inspectors into just one general type should be considered. The latter, in turn, would concentrate the competencies of the current three types, without prejudice to the constitution, whenever appropriate, of more specialized teams to deal with special phenomena or more complex areas (e.g., undeclared work, biological risks, chemical risks, ionizing radiation risks, etc.).²³

This would require, however, a common core training encompassing all the OSH and labour relations subjects and regulations within their competencies, as well as the harmonization of their inspection gesture and procedures. Overall, this could contribute to:

1. Bridging the current gap in the number and skills of labour inspectors;
2. Increase of the level of coverage on Ukrainian territory by labour inspectors;
3. Improvement of the efficiency and effectiveness of the system of labour inspection;
4. Adoption of a more holistic and integrated approach of labour inspection;
5. Benefits from synergies arising from their integration;
6. Improvement of know-how, knowledge and best practices transfer between labour inspectors;
7. Improvement of the level of harmonization of inspection gesture and procedures, as well as of its predictability;
8. Minimization of the number, time and resources required for carrying out different inspection visits (as each one of the “new” labour inspectors would be able to conduct inspection visits in all the three areas at a workplace on one visit, instead of the current need for doing three distinct visits to achieve the same result); and
9. Reduction of the contextual costs and disruptive impacts of labour inspection visits to the economic agents.

²³As it happens, for example, with the labour inspectors of some EU countries (e.g., France, Italy, Latvia, Poland, Portugal, Romania and Spain).

5. LABOUR INSPECTORS' POWERS

The main problem of the system of labour inspection in Ukraine, however, is the lack of powers entrusted to Ukrainian labour inspectors, which prevents them from effectively discharging their functions and, hence, from improving labour, OSH and business conditions in Ukraine.

In order to ensure that labour inspectors, when carrying out their activities and exercising their competencies, are able to effectively fulfill their mission of improving working conditions, the ILO Conventions Nos. 81 and 129 on labour inspection²⁴ (ILO, 1947, 1969), entrust labour inspectors with the needed powers.

In particular, Article 12 of the ILO Convention No. 81 and Article 16 of the ILO Convention No. 129 foresee that labour inspectors, provided with proper credentials, shall be empowered (ILO, 1947, 1969):

1. *“to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;*
2. *to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and*
3. *to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular:*
 - a. *to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions;*
 - b. *to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them;*
 - c. *to enforce the posting of notices required by the legal provisions;*
 - d. *to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose”.*

Moreover, Article 12 of the ILO Convention No. 81 and Article 16 of the ILO Convention No. 129 also foresee that, *“on the occasion of an inspection visit, inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties”.*

Notwithstanding the above, and in spite of Article 9(1) of the Constitution of Ukraine²⁵ and Article 3(2) of the Law No. 2694-XII, of 14 October 1992, “On Labour Protection”²⁶, the Law No. 877-V, of 5 April 2007, “On Basic Principles of State Supervision (Control) in the

²⁴Both ratified by the Ukraine, in 8 September 2004, through the Laws Nos. 1985-IV and 1986-IV, respectively.

²⁵Article 9(1) of the Constitution of Ukraine foresees that the international treaties in force, consented by the Verkhovna Rada to be binding, shall be an integral part of the national legislation of Ukraine.

²⁶Article 3(2) of the Law No. 2694-XII, of 14 October 1992, foresees that in case an international treaty that the Verkhovna Rada agreed to be bound establishes provisions other than those envisaged in Ukraine’s legislation on labour protection, the provisions of the international treaty shall apply.

Area of Economic Activities” (last amended by the Law No. 2042-VIII, of 18 May 2017) and the “Procedure for State Control of Compliance with Labour Legislation”, approved by the CMU Decree No. 295, of 26 April 2017, impose severe restrictions on the activities and powers of the Ukrainian labour inspectors.

Indeed, and as CEACR (2017a, 2017b, 2018) noted with concern, *“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)”*.

“In this context, the Committee also notes that the FPU indicates that in July 2017, Parliament passed, on its first reading, Bill No. 6489 on amendments to certain laws concerning the prevention of excessive pressure on businesses due to state supervision of compliance with labour and employment legislation, which makes the conduct of unscheduled inspection visits an administrative offence” (CEACR, 2017a, 2017b, 2018).

As such, and in order to ensure that no such restrictions are applied, CEACR (2017a, 2017b, 2018) *“urges 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. The Committee also reminds the Government that it can continue to avail itself of ILO technical assistance for this purpose”*.

In fact the Law No. 877-V, of 5 April 2007, “On Basic Principles of State Supervision (Control) in the Area of Economic Activities”²⁷, imposes severe restrictions and limitations on the activities and powers of the labour inspectors, which hinders their effectiveness in the discharge of their duties.

For example, in accordance with this Law No. 877-V, of 5 April 2007:

1. State supervision (control) is exercised at the place of business operations of an economic entity or its standalone units, or in the state supervision (control) body’s office in cases provided for by law (Article 4(1)).
2. If a business entity is included, at the same time, in the plans of several bodies of state supervision (control), the planned measures shall be carried out by the bodies of state supervision (control) in an integrated manner and at the same time by all bodies (Article 4(2));
3. Planned and unplanned measures shall be carried out during working hours of a business entity established by its internal regulations (Article 4(3));

²⁷This Law defines the legal and organizational foundations, basic principles, and the procedure of state supervision (control) in economic activities, powers of state supervision (control) bodies and of their officials, and the rights, duties and responsibilities of economic entities in the course of state supervision (control).

4. Production (manufacture) or sale of production, performance of work, or delivery of services by economic entities may be stopped completely or partially solely through a court decision. Moreover, and after suspension, the business entities shall be authorized to proceed with the production (manufacturing) or sale of goods, or provision of work or services, after notifying the body of state supervision (control) which initiated the suspension about the elimination of all violations established by the court (Article 4(5));
5. The bodies of state supervision (control) and business entities shall have the right to record the process of carrying out the planned or unplanned measure or each separate activity using audio and video equipment, without prejudice to the carrying out of the measure (Article 4(8));
6. Failure to comply with the state supervision (control) body's orders, instructions or other executive documents entails the application of penalties to the economic entities according to law (Article 4(9));
7. During the measures of state supervision (control), inspectors shall not be allowed to seize from business entities originals of their financial, business, accounting and other documents, computers and their parts, except as provided by criminal procedural legislation (Article 4(10));
8. Any planned or unplanned measure on a legal entity shall be carried out in the presence of a senior manager or a person to be authorized by the senior manager. Any planned or unplanned measure on an individual - entrepreneur shall be carried out in his presence or in the presence of his authorized person (Article 4(11));
9. In carrying out measures of state supervision (control), the officials of the bodies of state supervision (control) shall be required to use only standardized forms of documents (Article 4(15)). Currently, when conducting state supervision (control) measures in OSH, SLS labour inspectors use a unified form of the Statement on Inspection Activity of an economic entity (production facility), which was approved by the Order of the Ministry of Emergencies of Ukraine No. 826, of 11 August 2011, registered with the Ministry of Justice under No. 1531/20269, on 27 December 2011;
10. The planned measures shall be carried out in accordance with the annual plans to be approved by the body of state supervision (control) no later than December 1 of the year preceding the planned one. No amendments to the annual plans of state supervision (control) shall be permitted. During the planned period, carrying out of more than one planned measure of state supervision (control), on one business entity by the same body of state supervision (control) shall not be allowed (Article 5(1));
11. The central executive body that implements state regulatory policy in the area of economic activities (SRS) shall develop the methodology for development of criteria to assess the risk of implementing economic activity, to determine the frequency of state supervision (control) activities and develop the methodology for standardized report forms to be prepared based on the results of the planned (unplanned) measures of state supervision (control). According to such methodology, all business entities subject to supervision (control) shall fall into one of three risk levels: high, medium or low. Depending on the level of risk, the body of state supervision (control) shall compile a list of issues for the implementation of planned activities to be approved by order of the subject body. The planned measures of state supervision (control) shall be carried by the body of state supervision (control) over business entities, depending on their risk level, as follows: high level of risk - no more than once every two years; medium level of risk - no more than once every three years; and minor level of risk - no more than once every five years (Article 5(2));

12. State supervision (control) bodies shall carry out scheduled activities of the state supervision (control) subject to prior written notification of the economic entity concerned, no later than ten days before the date of inspection (Article 5(4));
13. The duration of the planned measure may not exceed: ten working days; and in the cases of micro/small businesses - five working days. No extension of the planned measure duration shall be allowed. The total duration of all the planned measures carried out by the bodies of state supervision (control) in a calendar year on the specific business entity (planned comprehensive measure) shall not exceed: thirty days; and, on micro/small business - fifteen working days (Article 5(5));
14. The grounds for carrying out unscheduled state supervision (control) activities or measures shall be defined by law; carrying out of unplanned measures on other grounds than those provided for in Article 6 shall be prohibited (Article 6(2));
15. The duration of the unplanned measure shall not exceed: ten working days; or two working days, for small businesses (Articles 6(4)).
16. To implement the planned or unplanned measure, the body of state supervision (control) shall issue an order. On the basis of that order, a certificate (request) for the measure of state supervision (control) shall be issued, to be signed by the head of the body of state supervision (control) or his deputy. The certificate (request) shall be valid only for the measure duration specified therein. Before starting the measure, officials of the body of SS shall present to the head of a business entity/individual or authorized person the certificate (request) and the legal identification of the officials of the body of state supervision (control) and provide the business entity a copy of certificate. The official of the body of state supervision (control) who has no certificate for the measure and the official identification shall not be entitled to carry out the state supervision (control) of the business entity. The business entity shall be entitled to prevent officials of the body of state supervision (control) from implementing the measures if they fail to present the certificate and the legal identification of the officials (Articles 7(1) to 7(5));
17. If a business entity implements in full and in due time the instruction, order, resolution, other administrative documents to eliminate violations revealed during the measure of state supervision (control), no financial and administrative penalties or measures of response shall be applied to the business entity or its officials (Article 7(11));
18. Business entities have the right to prevent officials of state supervision (control) from carrying out state supervision (control) in the following cases (Article 10):
 - a. The state supervision (control) is carried out with breach of the statutory requirements on frequency of such measures;
 - b. The official of the body of state supervision (control) fails to provide copies of the certificate or of the officials identification, or if those documents do not meet the requirements;
 - c. Absence of prior notice to the business entity about the carrying out of the planned measure of state supervision (control), according to the above mentioned procedure;
 - d. Failure to make an entry on the carrying out of a measure of the state supervision (control) in the register of state supervision (control) (if available);

- e. If the duration of the planned activity of state supervision (control) or the total duration of measures during the year exceeds the maximum duration above mentioned;
 - f. If the duration of unplanned activities of state supervision (control) exceeds the maximum duration above mentioned;
 - g. If 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 had been conducted by state supervision (control);
 - h. If 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;
 - i. If officials, when required, fail to provide a copy of the agreement 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);
19. Moreover, business entities have the right to demand suspension of execution of a measure of state supervision (control), in the following cases (Article 10):
- a. If the official of state supervision (control) is in breach of the maximum duration of the measure defined as defined above;
 - b. If the officials of state supervision (control) use illegal forms of reports;
 - c. When officials, during the carrying out unplanned measures of state supervision (control), verify or control issues other than those whose verification was the basis for the original measure.
22. If the classification criteria of business entities according to risk levels or the regularity of the planned measures or the list of issues to be checked, have not been approved, those business entities shall be considered business entities with minor risk level and shall be subject to SS not more than once every five years (Article 22(3)).

On the other hand, the “Procedure for State Control of Compliance with Labour Legislation”²⁸ also impose some relevant restrictions on the activities and powers of labour inspectors which hamper the effective discharge of their duties.

In fact, this p foresees, in particular, that:

1. The inspection visits can only be made on the grounds of:
 - a. An employee’s complaint about labor legislation violation in his/her regard;
 - b. Complaints of individuals about violations of labor relations formalization in their regard;
 - c. A decision of the head of a control authority on the conduction of the inspection visit in order to detect unregistered labour relations, which is taken on the basis of the analysis of the information gathered from the preceding and next sources.

²⁸The “Procedure for State Control of Compliance with Labour Legislation”, approved by the CMU Decree No. 295, of 26 April 2017, establishes the procedure of state control over the compliance of labour legislation (on issues of timely and full remuneration, adherence of minimum guarantees in remuneration and formalization of labour relations) by the employers and employment agencies, through inspection visits and desk inspections, carried out by the labour inspectors of the SLS (and its territorial bodies) and of the executive bodies of city councils of the cities of regional importance, villages, small towns, city councils of amalgamated communities.

- d. A court decision or an information on infringement of labour legislation communicated by law-enforcement bodies;
- e. Information on infringement of labour legislation communicated by officials of other bodies executing state supervision and control;
- f. Information of:
 - i. State Statistics Service and its territorial bodies (on wages arrears);
 - ii. State Fiscal Service and its territorial bodies concerning: discrepancy of the number of employees and the volume of production (works performed, services provided) with the average indicators for the relevant type of economic activity; facts of labour law violation detected in terms of carrying out the control powers; facts of carrying out the economic activity without state registration defined by law; and employers who have arrears in payment of the contribution to compulsory state social insurance, in an amount exceeding the minimum insurance contribution for each employee;
 - iii. Pension Fund of Ukraine and its territorial bodies concerning: employers who pay less than the minimum wage; employers who do not communicate the admission of employees; employers whose number of part-time workers increased by 20% or more during the month; employees who perform work for the same employer for more than one year on the basis of civil contract; employers who have missing data on the payroll accounting in the reporting month; employers whose civil contracted workers represent 30% or more of the total number of workers; and employers who have twenty or more employees and which dismissed 10% or more during the month.
 - iv. Trade union bodies, concerning the violations of the rights of employees who are members of the trade union, detected during the public control on labour law compliance. Appeals of physical persons, which are the subject of violation of the rules for the registration of labour relations, employees and employers, can be submitted through the authorized representative.
2. The representatives of trade union organizations and their associations represented at the subject of visit may be engaged in inspections (upon agreement by manager of a subject of visit or another authorized representative) as well as representatives of employers' organizations.
3. Inspection visit or decision of the labour inspector about carrying out the inspection visit to the employer shall be registered by the SLS or its territorial body prior to conduction the inspection visit.
4. The labour inspector notifies the object of inspection visit or person authorized by it about conducting the inspection visit. In cases of inspection visits to detect undeclared labour relations, the labour inspector notifies the object of inspection or person authorized by it only if he/she considers that this notification cannot prejudice the inspection visit.
5. If any violation of labor legislation is found and recorded in the deed of inspection visit or act of desk inspection, upon review of the reservations of the object of visit (when they arrive), the labour inspector shall review the inspection visit materials, or act of desk inspection, and based on its results shall make an instruction and/or shall take action to hold the official guilty of the subject violations accountable in accordance with the law.

6. If the instruction requirements are complied with in the due time, no action to hold the object of visit or its officials accountable shall be taken.

As such, Articles 4 to 7, 10 and 22 of the Law No. 877-V, of 5 April 2007, “On the Basic Principles of State supervision (Control) in Economic Activities” and Articles 5 to 8, 27 and 28 of the “Procedure for State Control of Compliance with Labour Legislation”²⁹, impose severe restrictions and limitations on the activities and powers of the labour inspectors and, in doing so, compromise the effectiveness of the Ukrainian system of labour inspection.

Ukrainian labour inspectors therefore lack several of the basic powers foreseen in the ILO Conventions Nos. 81 and 129, which they need to effectively discharge their duties. In particular, and according to the aforesaid laws, Ukrainian labour inspectors cannot:

1. Perform inspection visits without previously meeting its requirements (e.g., issuance or the respective order, having the correspondent certificate and register the inspection visit on the system) or which scope goes beyond such documents, as well as conduct unscheduled inspection whose grounds are not legally foreseen as justifying an unscheduled inspection visit;
2. Perform inspection visits to any workplace without prior notice, which compromise the effectiveness of their action;
3. Conduct inspection visits at any time of day or night, but just during “business hours”, (even when the workers’ working time is apart from “business hours”);
4. Perform inspection visits when the employer or his representative is not present;
5. Make inspection visits with the frequency and depth which they understand as necessary and adjust the scope, frequency and deepness of the visits to the situations found at the workplace and to the need for further follow-up visits, in order to ensure sustainable compliance;
6. Impose sanctions regarding observed infractions when the employers meet the demands of a notification to take measures, thus hampering the deterrence effect of their intervention;
7. Monitor, promote and enforce compliance in employers which are not registered and which are often the ones that typically show higher levels of non-compliance (not only regarding undeclared work but also concerning OSH and labour relations regulations);
8. Suspend work, even in the event of imminent danger to the health or safety of the workers.

In addition, Article 7 of the “Procedure for State Control of Compliance with Labour Legislation”³⁰ foresees that, upon agreement by manager of a subject of visit or another authorized representative, representatives of trade union organizations and their associations (represented at the subject of visit), along with the representatives of employers’ organizations, may be engaged in inspections visits.

It is important to stress, however, and as mentioned earlier, that inspection visits should only be conducted by labour inspectors whose special qualifications, training, professional status, work conditions and powers ensure their independence and impartiality. This is without prejudice of the labour inspector’s obligation to inform and to cooperate with the employer,

²⁹ Approved by the CMU Decree No. 295, of 26 April 2017.

³⁰ *Ibidem*.

workers and their representatives (either before, during or after the inspection visits, as they understood more suitable, taking into account the objectives of the inspection visit) or to the labour inspector's specific request to the employer, workers or their representatives to participate in (all or part of) a specific inspection visit.

The major concern being to secure the independence and impartiality of the labour inspectors (Article 6 of Convention No. 81 and Article 8 of Convention No.129) and the exercise of their powers of inspection and control, including their power to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions (and the protection of the privacy and confidentiality of such procedures), their free initiative to undertake an inspection in any workplace liable to inspection and the decision to adopt measures to protect workers or to initiate legal proceedings (Articles 12, 13 and 17 of Convention No. 81 and Articles 16, 18, 22 and 23 of Convention No. 129).

On the other hand, the provisions imposing that the performance of inspection visits are restricted:

- to some grounds and reasons enumerated in the law,
- to some situations in which there is a complaint (indicating the existence of possible violations),
- to several prior requirements (e.g., having the corresponding inspection order and certificate authorizing it and defining its scope, registration in the system),
- to the scope foreseen in the order/certificate,
- to its maximum duration (foreseen in the law),
- to the maximum annual duration of the inspection visits (foreseen in the law);
- to facts that were not previously object of a prior inspection visit,

constitute important obstacles to the discharge of the duties of the labour inspectors and, in particular, to the regular performance of preventive and proactive labour inspection visits (as opposed to the reactive ones - based on complaints), as well as follow-up inspection visits, which tend to represent a large part of the labour inspectorate's work in achieving effective control and sufficient coverage of workplaces.

They also limit the principle of the labour inspector's free initiative and impose severe restrictions on their powers to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection, to inspect workplaces as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, and to be held liable to prompt legal proceedings, without previous warning, persons who violate or neglect to observe legal provisions enforceable by labour inspectors, foreseen in Articles 12(1), 16 and 17 of the ILO Convention No. 81 and Article 16(1), 21 and 22 of the ILO Convention No. 129.

It is worth mentioning, in this regard, that CEACR (2006) considered³¹ that *"the different restrictions placed in law or in practice on inspectors' right of entry into workplaces can only*

³¹Regarding the establishment of restrictions to the performance of inspection visits, such as the imposition of a maximum number of inspection visits that can be carried out during a predefined period of time or of a *moratorium* on inspection visits during a certain period of time, with reference to the cases of *Vietnam* (whose inspectors are prohibited from visiting

stand in the way of achieving the objectives of labour inspection as set out in the instruments. Accordingly, the Committee regrets to note that such restrictions are not in conformity with the Conventions and urges the governments of the countries concerned to take the necessary steps to eliminate them in law and in practice”.

The restriction imposing that inspection visits can only take place during “business hours” limits the effectiveness and deterrence effect of inspection visits and the powers of the labour inspectors foreseen in Article 12(1) (a) and (b) of ILO Convention No. 81 and Article 16(1) (a) and (b) of the ILO Convention No. 129. It also hinders the discharge of the duties of labour inspectors of controlling and enforcing legal provisions, especially the ones relating to working time and undeclared work, whose violations tend to occur, precisely, outside of “business hours” (e.g., before or after the normal hours of operation of a business, and during weekends and holidays).

The same applies to the restriction stating that the inspection visits can only be carried out when the employer or his representative are present. This constitutes a very serious obstacle to the discharge of the labour inspector’s duties, hampering the performance of inspection visits when they are absent. It might constitute an encouragement, moreover, for the employer and his representative to be absent with the sole purpose of avoiding being subjected to inspection visits.

Furthermore, while prior notification of inspection visits may in certain cases be warranted in practice (especially if the nature of the activity impedes access, such as in airports, ports, military facilities, etc.), the requirement in law to have such prior notification seems to be, in most cases, contrary to the principle of inspection visits without prior notice and a restriction to the powers provided for in Article 12(1) of Convention 81 and Article 16(1) of Convention No. 129, as noted in ILO (2015a). In fact, and also observed by CEACR (2006), *“the fact that the instruments provide that inspectors should be authorized to enter workplaces without previous notice does not mean that, where deemed useful or necessary by the inspector, the employer or his or her representative cannot be informed of the time and purpose of the inspection. The practice of combining unannounced visits with scheduled visits has the advantage of ensuring that employers and workers are constantly aware that an inspection may occur at any time.*

In addition, and regarding the provisions that restrict the labour inspector’s power to impose sanctions in relation to detected infractions when the employer corrects them, thus weakening the deterrent effect of the sanctioning system, it is important to recall that Article 17 of Convention No. 81 and Article 22 of Convention No. 129 provide that persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning. In this regard, and acknowledging that some violations may be the result of failure to understand the terms or scope of the applicable laws or regulations, CEACR (2006) considers that *“the labour inspector must always have the discretion to choose not to impose penalties as a means of enforcing legal provisions. To this end, Article 17, paragraph 2, of Convention No. 81 and Article 22, paragraph 2, of Convention No. 129 provide that it shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings. This discretion implies that inspection staff have the necessary capacity for judgement to be able to distinguish between serious or repeated wilful non-compliance, culpable negligence or flagrant ill will, which call for a penalty, and an involuntary or minor violation, which may*

the same workplace more than once in a year) and the *Democratic Republic of the Congo* (where inspections were banned by the central authority in 1994 and were only resumed in 1997).

lead to a mere warning". In this connection, and as already highlighted by the ILO (2015a), CEACR further considered, on several occasions, that sanctions remain an important element for effective labour law compliance, whereas the possibility for labour inspectors to impose sanctions, where appropriate to deter future violations and ensure sustainable compliance, constitutes an important component of any preventive strategy.

The reasons, however, more commonly put forward to justify the limitation of powers of labour inspectors have been twofold: labour inspectors' high level of corruption; and the need for helping businesses to grow and eliminate barriers to their development.

Regrettably, both arguments do not seem to hold up under further examination.

First, it is widely acknowledged that corruption, unfortunately, is not confined to inspection activities, being also present in several other state legislative, judicial and executive bodies.

Furthermore, there are several other alternative measures that can be taken in order to minimize and prevent its occurrence in labour inspection (or at any other state organization) instead of taking the legal powers that labour inspectors (or other state officials) need to effectively discharge their duties, *inter alia*:

1. To review the requirements for access to the career of labour inspectors and the procedures and methodologies for the selection of applicants, in order to avoid the recruitment of persons who do not meet the integrity and honesty requirements to serve as public officials;
2. To include, both in the inception training and in the continuous training of labour inspectors, subjects related to professional conduct, ethics, behaviour, and communication skills (as is done, for example, with Portuguese and Spanish labour inspectorates);
3. To develop a performance assessment system for labour inspectors which accounts not only for the quantitative results of their activities (e.g., number of inspection visits, number and type of legal procedures adopted, number of persons informed, etc.) but, most especially, for the qualitative part of their performance, in terms of the measurement of the extent to which they have contributed to the improvement of the workplaces that they have inspected (e.g., number of follow-up visits, number of infractions detected on the first visit that the employer corrected, etc.);
4. To develop a labour inspectors' code of conduct on the basis of the IALI "Global Code of Integrity for Labour Inspection" (IALI, 2008);
5. To develop a labour inspector activity guide (or labour inspection manual), in order to provide guidance to labour inspectors regarding appropriate conduct and behaviour that they should adopt in situations that can occur during different types of inspection visits and inspection activities, as modelled on the Portuguese labour inspectorate's "Inspection Activity Guidelines of the ACT" (ACT, 2015), which are available online;
6. To review the remuneration policy for labour inspectors, in order to ensure them decent working conditions and, in particular, their independence from improper external influences, as foreseen in ILO Conventions Nos. 81 and 129, also contributing to an improvement in the perception of attractiveness of their professional career which, in turn, will also facilitate the recruitment of new labour inspectors;
7. To assess, with the involvement of workers and managers of all business units of the labour inspectorate, the risks of corruption and related offenses and to draw up a plan

which should include, among other aspects: the clear identification of the risks of corruption; their main areas of concern; the situations that may generate conflicts of interest and incompatibilities; and adequate mechanisms and measures to ensure their prevention and management³².

8. To prosecute and to convict offenders, whether disciplinary or criminally, applying the corresponding disciplinary and criminal penalties to the full extent of the law.

Moreover, providing labour inspectors with the power they need to be effective, as foreseen in the ILO Conventions Nos. 81 and 129, will allow them to fulfil their mission of improving work conditions.

As a consequence of the latter, the working conditions (and, hence, the living conditions) in Ukraine are likely to improve and, consequently, internal demand and investment will also likely increase.

In addition, the approximation of Ukraine's laws and practices to the International and European Labour Standards and best practices, especially concerning labour inspection (entrusting labour inspectors with the powers foreseen in the ILO Conventions 81 and 129), fostering the implementation of Articles 13.3 to 13.5 of the Canada-Ukraine Free Trade Agreement, as well as the Articles 420 and 424 of the EU-Ukraine Association Agreement, is also likely to accelerate Ukraine's access to both the Canadian and European markets.

As such, in a relatively undeveloped market economy as the Ukrainian, which heavily depends on internal demand, the decision to assign labour inspectors the powers they need to be effective is likely to have a very positive impact on business.

In fact, it will probably induce an increase in consumption (due to an increase in internal demand) and, therefore, prompting an increase in prices (along with business margins), an increase of production and investment, eventually leading to the creation of more businesses and, consequently, to a reduction of unemployment and emigration flow, and to a reduction in social security expenditures along with an increase of its revenues and, hence, to the possibility of a reduction in the social security contribution rate (or of the public debt) which, in turn, will encourage further developments in businesses, in an auto-induced positive cycle...

Secondly, the argument that labour inspectors are an obstacle to business growth does not hold up under serious scrutiny.

Indeed, when labour inspectors are provided with the necessary resources and powers, and carry out their duties effectively, they are able to improve the labour and OSH conditions at workplaces, reducing the number of work-related accidents and occupational diseases, thus providing positive outcomes to workers, employers, the state, and to the population in general, as also noted by Anderson (2007), Frick (Frick, 2011), ILO (2007), Jensen (2004) Levine (Levine et al., 2012), Niskanen (2014), Richthofen (2002), Suard (Suard, 2016) and Tösine & Wedege (2013). By improving working conditions at the workplace, an effective

³²This is done, for example, by the Portuguese Labour Inspectorate. See, in this regard, the "ACT Risk Management Plan for Corruption and Related Offenses" (ACT, 2017). This ACT Plan results from the Recommendation No. 1/2009, of 1 July, and Recommendation No. 5/2012, of 7 November, of the Portuguese Council for the Prevention of Corruption (created by the Decree-law No. 54/2008, of 4 September), which foresees that the heads of the entities, whatever their nature, that manages public money or public assets, must draw up plans for the management of risks of corruption and related offenses, including their identification in each area or department and must also put into place mechanisms for monitoring and managing conflicts of interest.

labour inspection presents considerable benefits and sound advantages, not only at the human level, but also at the social, economic and financial levels, not only for workers, but also for employers, the state, and society in general, contributing, in particular, to:

1. A reduction in the number and incidence rates of fatal and non-fatal work-related accidents and occupational diseases;
2. A reduction of the direct and indirect costs³³, arising from those events;
3. Greater access of businesses to new and more attractive markets (e.g., European Common Market, Canadian market, etc.);
4. The improvement of the work ability and labour capacity of the workforce;
5. The improvement of social security sustainability and revenues:
 - a. By ensuring the transition of those in the informal and undeclared economies (workers and employers) to the formal and declared ones, therefore raising the amount of social security contributions and reducing social security expenditures (e.g., with unemployment benefits and other benefits that were wrongly assigned to informal and undeclared workers and businesses);
 - b. Through the increase of the work capacity of the workforce which, therefore, instead of receiving early benefits from social security, will now contribute for a longer period; and
 - c. By reducing social security direct costs related to work-related accidents and occupational diseases (e.g., rehabilitation costs; early retirement pensions; disability and other pensions; funeral expenses; etc.).
6. The public finance balance and to the reduction of tax rates, through:
 - a. The increase of tax revenues, due to a reduction of the informal economy and undeclared work;
 - b. The decrease of state budget expenditures, through the reduction of the direct and indirect costs due to work-related accidents and occupational diseases (e.g., health care costs, emergency services expenditures; etc.);
 - c. The increase of business revenues, resulting from: an increase in sales due to access to new markets (e.g., European Common Market, Canada, etc.); the elimination of unfair competition and the improvement of the market environment; and the increase of productivity, resulting from improved working conditions and a consequent reduction of work-related accidents and occupational diseases.
7. The improvement of revenue and net income of businesses, mainly through:
 - a. The elimination of unfair competition from businesses that do not comply with labour relations and OSH regulations;
 - b. Increased competitive advantage due to a more motivated workforce, a fairer market, and the reduction of tax rates and social security contribution rates (allowed by the improvement of social security and public finances *equilibrium*);

³³Namely in terms of: emergency services; rehabilitation services; disability, early retirement and other pensions; health care and hospital and rehabilitation services expenses; compensation costs; work-related accidents and occupational diseases insurance costs; opportunity costs, related to the loss of production, hence, revenues, due to the absence of the victims; increased training costs to train workers that substitute victims; impact of the victims absence and substitution in terms of economies of scale and experience; indirect costs related to the damages to the image and reputation of the employers and of the state, related with the occurrence of such events; and indirect costs associated to the impact of such events on the motivation and commitment of the workers.

- c. The increase of productivity via the reduction of fixed and variable costs related to work-related accidents and occupational disease (e.g., compensation costs, insurance costs, training costs, loss of production opportunity costs, image and reputation indirect costs, opportunity costs in terms of economies of scale and experience, indirect costs related to the motivation and involvement of workers, etc.);
- d. Increased revenues due to access to new markets (e.g., European Common Market, Canada, etc.); and
- e. Increased net profits, due not only to increased revenues and reduction of costs, but also resulting from the reduction of income tax rates (allowed by the improvement of public finances).

In addition, in the recent Ukrainian National Report on Enabling Environments for Sustainable Enterprises (EASE), the representatives of businesses concluded that weak control over the compliance with the law and unfair competition were two of the seven major obstacles to the development of an more enabling environment for the sustainable growth of enterprises in the country (ILO, 2017).

Moreover, and as meritorious as the efforts towards the creation of a more favourable environment for business growth (mainly through the eliminations of context costs and of administrative, bureaucratic and financial burdens over businesses) may be, that requires, instead of the removal of labour inspectors' powers, its reinforcement.

That can be seen in the EU struggle for the simplification of business licensing procedures and for the reduction of the administrative, regulatory, financial and bureaucratic burdens to economic agents in order to create a more favourable business environment and to better adapt its requirements to the specific characteristics and needs of micro enterprises and SME and facilitate its compliance by these economic agents.

These efforts of simplifying the business environment, while maintaining the same level of protection, were envisaged by the European Parliament and Council Directive No. 2006/123/EC, of 12 December 2006, on services in the internal market, by the Action Program for Reducing Administrative Burdens in the EU (European Commission, 2012) and, more recently, by the Strategic Framework on Health and Safety at Work 2014-2020 (European Commission, 2014).

They are aimed at promoting economic development, facilitating the statement of activities and boosting job creation by reducing context costs associated with regulatory, legal, administrative and bureaucratic burdens on citizens and businesses, notably through:

1. The simplification and dematerialization of administrative procedures;
2. The modernization of the public administration's relationship with citizens and businesses; and, most especially,
3. The elimination of licenses, permits and previous constraints to access and to exercise of certain activities, replacing them with declarative obligations *a priori*, followed by systematic inspection and supervisory actions *a posteriori*, supported by effective accountability mechanisms of the promoters, which, in turn, requires the downstream strengthening of the inspection role.

Therefore, by entrusting labour inspectors with the power they need to effectively discharge their duties, as foreseen in the ILO Conventions No. 81 and 129, Ukraine would be not only contributing to the improvement of the working and living conditions of Ukrainians and to the development of a more favourable business environment, but also to the further alignment and implementation of the following:

1. Article 9 of the ILO Convention N.º 155, that foresees that the enforcement of OSH regulations should be ensured by an adequate and appropriate system of inspection and that there shall be provided adequate penalties for their violations;
2. Article 4 of the European Directive No. 89/391/EEC, which foresees the obligations of the states for ensuring the legal subjection of employers, workers and workers' representatives to the legal provisions necessary to implement its provisions and for ensuring adequate controls and supervision;
3. European Parliament Resolution No. 2013/2112(INI), of 14 January 2014, on effective labour inspections as a strategy to improve working conditions in Europe (European Parliament, 2014);
4. EU Strategic Framework on Health and Safety at Work 2014-2020 (European Commission, 2014; European Parliament, 2015), which sets as one of the EU OSH key objectives the improvement of the enforcement of OSH legislation by member states;
5. Articles 420, 424 and Annex XL to Chapter 21 of the EU-Ukraine Association Agreement (EU & Ukraine, 2014);
6. Articles 13.3 to 13.5 of the Canada–Ukraine Free Trade Agreement (Canada & Ukraine, 2016);
7. Article 9(1) of the Constitution of Ukraine, which provides that *“the international treaties in force, consented by the Verkhovna Rada of Ukraine as binding, shall be an integral part of the national legislation of Ukraine”*;
8. Article 3(2) of the Law No. 2694-XII, of 14 October 1992, on labour protection, which foresees that *“if an international treaty that the Verkhovna Rada of Ukraine agreed to be bound to establishes provisions other than envisaged in Ukraine’s legislation on labour protection, the provisions of the international treaty shall apply”*.

As we have already seen above, effective labour inspection plays a fundamental role in the improvement of the working and living conditions of the people, as well as in the development of a more favourable, fair and competitive business environment.

In this context, considering that as important as having good and properly aligned labour relations and OSH regulations is to ensure that they are effectively enforced and applied on the ground, through an effective labour inspection system, and in order to improve the working and living conditions in Ukraine, to develop a more attractive business environment, to foster alignment of Ukrainian labour relations and OSH legislation with the International and European Labour Standards and best practices and to promote the implementation of the commitments assumed by Ukraine within the EU-Ukraine Association Agreement and the Canada-Ukraine Free Trade Agreement, the following recommendations should be considered:

1. Either revoke or fully exclude SLS from the scope of the Law No. 877-V, of 5 April 2007, “On Basic Principles of State Supervision (Control) in the Area of Economic Activities”³⁴;
2. To substitute the “Procedure for State Control of Compliance with Labour Legislation”³⁵ by the proposed “Labour Inspection Statute” (cf. section 4), within which the functions, activities and powers of the labour inspectors, as well the inspection procedures, should be precisely defined;
3. Ensure that Ukrainian labour inspectors are entrusted, in law and in practice, with all the necessary power to discharge their duties (namely with the ones foreseen in the ILO Conventions Nos. 81 and 129) and, in particular, with the power to:
 - a. Perform inspection visits to any workplace of any employer without prior notice;
 - b. Conduct inspection visits at any time of day or night;
 - c. Carry out inspection visits even when the employer (or the employer representative) is not present at the workplace;
 - d. Conduct inspection visits with subjection to no pre-requirements or restriction concerning its grounds;
 - e. Perform inspection visits within all the scope of their legal competences (labour relations and/or OSH subjects), and adapt its scope, extension and depth do the circumstances found at the workplace;
 - f. Make inspection visits with the frequency and depth which they understand as necessary to ensure compliance with labour relations and OSH regulations;
 - g. Impose fines regarding detected infractions foreseen in law whenever they feel that this is the most adequate procedure to ensure compliance and deter non-compliance.
 - h. Monitor, promote and enforce compliance in employers which are not registered, as well as regarding employers and workers which, in spite of having an employment relationship, does not have a formal or written labour contract;
 - f. Suspend work in the event of imminent danger to the health or safety of the workers.

³⁴Last amended by the Law No. 2042-VIII, of 18 May 2017.

³⁵Approved by the CMU Decree No. 295, of 26 April 2017, “On some issues regarding the application of the Article 259 of the Labour Code of Ukraine and Article 34 of the Law ‘on local bodies of self-government in Ukraine’”

6. MORATORIUMS

As mentioned earlier, labour inspection activity in Ukraine is becoming commonly regulated by the legal acts which impose *moratoriums* on the exercise of inspection activities by state inspection services, including the SLS. These *moratoriums* prevent labour inspectors from discharging their duties and, therefore, hamper the effectiveness of the labour inspection system in Ukraine.

For example, Section 31 of the Law of the State Budget for 2014 imposed a *moratorium* on inspection visits, according to which inspectors are not allowed to carry out inspection visits unless they are authorized by the CMU or requested by business entities.

In January 2015, another *moratorium*, banning the performance of inspections (scheduled and unscheduled) by controlling bodies to all economic entities (enterprises, institutions, organizations and individual entrepreneurs), was introduced through Paragraph 8 of the “Transitional Provisions” section of the Law No. 76-VIII, of 28 December 2014, “On Amending and Invalidating Some Legislative Acts”.

In November 2016, Law No. 1278-VIII, of 3 November 2016, “On Temporary Specifics of Implementation of the State Supervision (Control) Measures in the Area of Economic Activities” was approved, establishing another *moratorium* on state supervision (control) activities until 31 December 2017.

In December 2017, Law No. 2246-VIII, of 7 December 2017, “On the State Budget of Ukraine for 2018” was approved, which reestablished the *moratorium* on state supervision (control) activities until 31 December 2018. The SLS and the executive bodies of the major city councils and or village, city councils of the local communities would be subsequently excluded from the scope of application of this law from 23 February 2018 until at least 31 December 2018, after the publication, in 23 February 2018, of the CMU Decree No. 1104, of 18 December 2017, “On Approval of the List of Bodies of the State Supervision (Control) which are out of the Scope of Application of the Law No. 1278-VIII, of 3 November 2016, on Temporary Specifics of Implementation of the State Supervision (Control) Measures in the Area of Economic Activities”.

As it happens with the limitation of the powers of the labour inspectors, this practice of banning inspection activity, *a fortiori*, by preventing labour inspectors from performing inspections activities is inhibiting labour inspectors from discharging their duties and, consequently, hindering the effectiveness of the Ukrainian system of labour inspection.

It is worth recalling that CEACR (2006), in an analogous situation (the imposition of a *moratorium* on inspection in the *Democratic Republic of the Congo*), considered that “*the different restrictions placed in law or in practice on inspectors’ right of entry into workplaces (...) are not in conformity with the Conventions and urges the governments of the countries concerned to take the necessary steps to eliminate them in law and in practice*”.

More recently, CEACR (2017b, 2018) noted with deep concern the introduction of a *moratorium* on labour inspections in Ukraine in 2015. It is also acknowledged that the high turnover of the SLS staff and the move of many qualified SLS personnel to the private sector were a consequence of the *moratorium* introduced on labour inspections, besides the lack of proper working and career conditions (CEACR, 2017a). As such, and following the discussion, in 2017, at the Committee on the Application of Standards of the Individual Case

of Ukraine on the application of the Conventions Nos. 81 and 129, the CAS (2017) called upon the Government of Ukraine to refrain from imposing such *moratoriums* on labour inspection in the future.

As such, and in order to promote the effectiveness of labour inspectors in the fulfilment of their mission of promoting the improvement of the working conditions in Ukraine, and, concomitantly, to the improvement of the business environment and to foster the further alignment and implementation of the aforesaid international agreements and the above mentioned International and European Labour Standards and best practices on OSH and labour inspection, Ukraine should therefore refrain from imposing *moratoriums* on labour inspection activity and, in particular, on labour inspection visits.

Moreover, the Law No. 1278-VIII, of 3 November 2016, “On Temporary Specifics of Implementation of the State Supervision (Control) Measures in the Area of Economic Activities” should be repealed or, at least, the SLS should be definitely excluded from its scope.

7. DECENTRALIZATION PROCESS

The Government of Ukraine recently started a process of decentralization of some labour inspection functions regarding specific labour relations issues (e.g., undeclared work, salaries in arrears, minimum wages) through the delegation of the powers of executive authorities to local self-government bodies (e.g., executive bodies of city councils of the cities of regional importance, villages, small towns, city councils of amalgamated communities).

CMU Decree No. 295, of 26 April 2017, “On some issues regarding the application of Article 259 of the Labour Code of Ukraine and Article 34 of the Law ‘On Local Bodies of Self-Government in Ukraine’”, approved different, yet related procedures:

1. The “Procedure for State Control of Compliance with Labour Legislation”, which establishes the procedure of state control over the compliance of labour legislation (on issues of timely and full remuneration, adherence of minimum guarantees in remuneration and formalization of labour relations) by the employers and employment agencies, through inspection visits and desk inspections, carried out by the labour inspectors of the SLS (and its territorial bodies) and of the executive bodies of city councils of the cities of regional importance, villages, small towns, city councils of amalgamated communities; and
2. The “Procedure for State Supervision over Compliance with Labour Legislation”, which defines the key tasks and procedure of the state supervision to be carried out by the SLS (and its territorial bodies) over compliance with labour legislation, in order to detect violations and shortcomings of the executive authorities of city councils in cities of oblast significance, village, settlement and city councils of amalgamated communities, and central executive authorities, in order to develop proposals to improve efficiency of exercise of the control powers, to ensure the exercise of the control powers and to take measures to initiate holding officials liable for breach of laws during the exercise of the control powers.

According to the aforesaid legal act:

- Local government authorities come under the supervision of the SLS with respect to labour inspection functions (in terms of the guidance, information and training on labour inspection, which will be provided by the SLS to the local authorities);
- Labour inspections carried out by the local authorities will be conducted pursuant to the annual work plan of the SLS;
- The SLS may revoke the appointment of labour inspectors of the local authorities if they systematically fail to duly perform their functions.

This ongoing decentralization process already accounts for, as of this moment, approximately 354 employees of the local self-government bodies having received from the SLS their labour inspector’s credentials.

It is important to highlight, however, that the selection and recruitment criteria applied for their recruitment is defined separately by each local self-government body (rather than by the SLS, as central authority) and that the applicants were awarded with a labour inspector’s ID card, issued by the SLS, without having any kind of prior initial inception training on labour

issues (e.g., labour relations, OSH and labour inspection) and related legislation and without any prior knowledge assessment on these specific subjects³⁶.

On the other hand, and regarding the continuous training of the labour inspectors of the local self-government bodies subsequent to their appointment, there is no structured strategy or program to ensure it. To this date, this training has been given by SLS labour inspectors on a sporadic and unstructured basis and only at the request of interested local self-government bodies. These training sessions, moreover, are no more than a couple of days of very basic training, in the form of seminar. When compared to some continuous training best practices, the latter appears to be quite inappropriate and ineffective, with clearly insufficient duration and with a very limited level of coverage.

Moreover, and besides not having been recruited by the SLS nor subjected to any initial inception training prior to their appointment, these newly recruited labour inspectors do not have civil servant status and their working conditions (especially in terms of salary) differ from one local self-government body to another and also from the working conditions of the SLS labour inspectors. The latter situation, moreover, can even lead to a reduction (“cannibalization”) of SLS labour inspectors, should the local self-governments pay more to labour inspectors than SLS.

Furthermore, as the establishment of labour inspection services by the local self-government bodies is not mandatory, there are several Oblast local self-government bodies that did not adhere to the current decentralization process which, moreover, will induce an unequal coverage of the territory and, consequently, increased difficulty in ensuring the coherence and consistency in the application of national legislation and policies and uniform nationwide compliance throughout Ukrainian territory.

In addition, the most cited reasons to justify the political decision to decentralize labour inspection to the local self-government bodies are two-fold: (1) to reduce the level of corruption in labour inspection; and (2) to reduce public expenditure. Notwithstanding, neither of these arguments seem to merit consideration.

As for the first reason, it does not hold up under further examination. First and foremost, due to reasons explained previously (see Section 5).

Moreover, because in spite of the expectation, within the policy community, that decentralization prevents corruption, previous research on this relationship has been inconclusive, varying widely and providing inconclusive, insignificant and context-dependent results (Alfano, Baraldi, & Cantabene, 2014; Kajsa Karlström, 2015).

Nevertheless, recent research has been supportive of the idea that decentralization in expenditures may be problematic, unless accompanied by a decentralization in revenue generation (Fisman & Gatti, 1999), while others defend that the level of corruption is positively correlated with the degree of decentralization and decentralization increases corruption significantly (Asthana, 2012; Fan, Lin, & Treisman, 2009; Gerring & Thacker, 2004; Treisman, 2000), or suggest that the level of democracy moderates the relationship

³⁶It is important to stress, in this regard, that, in several EU countries (e.g., France, Portugal and Spain), access to a labour inspector career depends on approval in a very comprehensive and rather demanding and long inception training period (usually around one year), during which the applicants have theoretical (including role play situations) and practical training in all major labour subjects and respective national and international legal frameworks (e.g., labour relations, labour inspection and OSH). During each phase of the course, the applicant’s knowledge is assessed with several evaluation methods. If the applicant fails in those assessments, he cannot have access to a labour inspection career.

between decentralization and corruption (i.e., fiscal decentralization and administrative decentralization are associated with lower corruption levels in democracies and with higher corruption in authoritarian countries), whilst indicating that political decentralization is an ineffective tool for curbing corruption (Kajsa Karlström, 2015).

As for the second argument, the reduction of the public expenditure, it also does not seem to stand up to scrutiny.

Indeed, the decentralization model that is being applied will not only fail to reduce public expenditure but, instead, and most likely, will increase it and, in addition, it is also likely to have a negative and profoundly disruptive impact on the effectiveness of the Ukrainian system of labour inspection, mainly due to the following reasons:

1. Either the central Government (through the SLS or the MSP) will transfer to local self-government bodies the necessary financial resources to ensure the functioning of the labour inspection services, or they have to be transferred by the competent regional or local government authorities. Either way, the local self-government bodies' labour inspection services expenditures will be supported by Ukrainian tax-payers.
2. The decentralization model that is being applied will most probably increase the costs of the labour inspection system mainly due to:
 - a. The additional costs resulting from the need to ensure the supervision of the activities performed by the labour inspectors of the local self-government;
 - b. The absence of synergies, economies of experience and economies of scale that could otherwise result from the sharing of transversal, horizontal and general functions³⁷.
3. The decentralization model that is being applied will most likely undermine the effectiveness of the Ukrainian system of labour inspection, due to the inexistence, in law and practice, of a central body or authority that ensures, in particular, the following:
 - a. The balanced coverage of the entire territory of Ukraine by local self-government bodies' labour inspection services, taking into account their local labour market specific needs and socio-economic context;
 - b. The overall coherence and consistency in the application of the national legislation and policies and the assurance of uniform nationwide compliance throughout the Ukrainian territory;
 - c. The planning, monitoring, control and supervision of the labour inspection system, especially in what concerns the formulation and implementation of a nationwide strategy and plan, including the definitions of the labour inspection strategic priorities and activities, respective objectives, indicators and targets;
 - d. The coordination and cooperation between the decentralized services of labour inspection and of the latter with the SLS headquarters and territorial bodies;
 - e. The homogeneity of the procedures and of inspection gesture across the entire system;
 - f. The definition of inspection procedures to be followed by labour inspectors and the supervision of its application;

³⁷Such as: human resources management; procurement; IT systems; financial; training; international relations; auditing and juridical affairs; communication; etc.

- g. The collection, treatment, analysis and publication of labour inspection and OSH statistics;
- h. The quality and homogeneity of human resources policies and procedures across the entire system of labour inspection (including the labour inspectors of the local self-government bodies), namely in what relates to selection and recruitment, remuneration, training, qualifications development, performance assessment and career development and progression.

This decentralization process thus raises some serious concerns, in law and practice, regarding the assurance that, in line with the ILO Conventions Nos. 81 and 129, the labour inspectors of these local self-government bodies:

1. Have the status of civil servants, in order to assure them stability of employment and their independence from changes of government and of improper external influences;
2. Are recruited solely on the basis of their qualifications for the performance of their duties;
3. Are subjected, before initiating their duties and subsequently, to adequate training for the performance of their duties;
4. Have adequate working conditions.

In this regard, CEACR (2018) highlighted the importance of ensuring that this process is *“carried out in conformity with the provisions of the Conventions, including Articles 4, 6, 7 and 11 of Convention No. 81 and Articles 7, 8, 9 and 15 of Convention No. 129”*.

It must also be noted, that the CEACR had already observed some difficulties in other countries that have engaged in the decentralization of their labour inspection services, especially in relation to the Articles 2, 4, 6, 7, 10 and 11 of the ILO Convention No. 81, in particular:

1. The limited scope of the areas under their control, as in some countries the control of OSH conditions was neglected (Articles 2(1) and 3(1) of Convention No. 81 and Article 6(1) OF Convention No. 129).
2. Lack of uniformity of inspection throughout the territory, due to the absence of central inspection plans and the determination of priorities for inspection (Article 4 of Convention No. 81 and Article 7 of Convention No. 129). In this connection, and regarding the application of the ILO Convention No. 81 by Ecuador, CEACR (2015b) recalled *“the importance of placing the labour inspection system under the supervision and control of a central authority for the development and implementation of a standard labour inspection policy throughout the country, and for the consistent application of labour legislation”*.
3. Failure to assign a civil servant status and adequate conditions of service to the staff entrusted with labour inspection duties, as to guarantee their independence and impartiality (Article 6 of Convention No. 81 and Article 8 of Convention No. 129). In this regard, it is important to note the Report GB.321//INS/12/2 of the Committee set up to examine the representation alleging non-observance by Peru of the Labour Inspection Convention, 1947 (No. 81), made under article 24 of the ILO Constitution by the Autonomous Workers’ Confederation of Peru (CATP). The Committee noted the allegations of CATP, according to which the decentralization of the labour inspectorate

(under which the Regional Labour and Employment Promotion Directorates ceased to be part of the organizational and administrative structure of the Ministry of Labour and Employment Promotion and were transferred to the respective regional governments) “could widen the existing variations in the status and conditions of service of labour inspectors, who, although they perform the same duties, are subject to three different recruitment schemes and thus do not all have the same level of pay or stability of employment”³⁸ (ILO, 2014).

4. Recruitment of labour inspectors of the decentralized labour inspection services was not solely on the basis of their qualifications for the performance of their duties and their lack of adequate qualifications, capacities and training for the effective discharge of their functions (Article 7 of Convention No. 81 and Article 9 of Convention No. 129).
5. Allocation of insufficient budgetary resources to enable the effective performance of labour inspection duties (Articles 10 and 11 of Convention No. 81 and Articles 14 and 15 of Convention No. 129). It is worth mentioning, in this respect, CEACR (2015a) comments on its Direct Request regarding the supervision and control of the labour inspection system by a central authority in Kazakhstan, according to which “*the Committee also considered that, in order to comply with the requirements of the Convention, the decentralization of labour inspection should be accompanied by the obligation placed on decentralized regional or local administrative authorities, to introduce a system for its functioning and to assign sufficient budgetary resources to it*”.

As for the status of the personnel employed by regional or local authorities to discharge the functions of enforcement of labour and OSH regulations, it is important to stress that they should meet the minimum requirements set out in ILO Convention 81, in particular in its Article 6, which requires that the inspection staff be composed of “*public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.*”

In this respect the CEACR considers that the responsibilities involved in labour inspection require that those recruited as labour inspectors should have the qualifications and the personal qualities needed for the performance of their duties and in accordance with suitable procedures³⁹. Their conditions of service and status, on the other hand, should ensure that they are able to perform their duties in accordance with the legislation regarding their powers and responsibilities and without any improper external influence. In addition to the qualifications, inspectors must be adequately trained (cf. Article 7(3) of ILO Convention No. 81 and Article 9(3) of ILO Convention No. 129) and be in possession of appropriate professional or academic qualifications.

³⁸Besides “undermining and dismantling the system of labour inspection (...) and removing the central authority’s control, cooperation and coordination of the system of labour inspection (...)”, the CATP’s complaint also identified the following additional alleged problems, arising from the decentralization of the labour inspection system: (a) a shortage of human resources to perform the functions transferred; (b) a shortage of logistical resources (computers, furniture and office equipment); (c) inadequate infrastructure to carry out the activities sometimes leading to office space being insufficient to receive all clients; (d) frequent rotation of regional directors, which makes it difficult to implement plans and programmes and, owing to a lack of institutional memory, delays decision-making; (e) frequent rotation of regional office staff, which requires rescheduling of training and technical assistance activities; (f) lack of a database of staff selected and recruited which could be used to monitor their performance and the training and technical assistance that they receive; (g) lack of a coordinated monitoring and evaluation system; (h) the regional governments’ lack of interest in supporting the requests of the local labour inspection services for budgetary resources for the recruitment of staff and acquisition of the logistical resources and infrastructure necessary for their proper functioning; and (i) failure of the regional governments to furnish the local labour inspection services with the necessary resources to train staff in the performance of inspection duties

³⁹Article 7, paragraph 1, of Convention No. 81, and Article 9, paragraph 1, of Convention No. 129, stipulate that labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties and subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations.

Moreover, and considering that Ukrainian local self-government bodies are not under the authority of the SLS, this decentralization process also poses some specific challenges regarding the ability of the SLS to act as a central body or authority that properly controls and supervises the labour inspection, as provided for in the ILO Conventions Nos. 81 and 129 and, in particular, to:

1. Determine to the local self-government bodies the establishment of labour inspection services (especially when they do not want to do so, or when they do not have the necessary human, financial or material resources), considering that the local self-government bodies are independent and not under the authority of the central government (and, consequently not legally bound to the decisions of the MSP and of the SLS);
2. Exercise, in relation to the labour inspectors of the local self-government bodies, the authority, direction and disciplinary powers, which are typically legally reserved to the employers, with whom the workers have a relationship of juridical subordination;
3. Make available the needed resources (e.g., financial, human and material) to exercise the competencies of controlling the performance of the labour inspectors of the local self-governments;
4. Provide adequate budgetary resources to local authorities;
5. Establish and apply a single policy throughout the territory;
6. Formulate and implement a nationwide strategy and plan regarding labour inspection strategic priorities and activities;
7. Ensure the coherence and consistency in the application of the legislation and policies with a view to ensuring a uniform nationwide compliance across all territory;
8. Define the inspection procedures to be followed by the labour inspectors and to effectively enforce its application;
9. Ensure the effective coordination and cooperation between the decentralized services of labour inspection and between the latter and the SLS headquarters and territorial services;
10. Guarantee the homogeneity of the labour inspection procedures and gesture;
11. Warrant the quality and homogeneity of the human resources policies and procedures⁴⁰;
12. Ensure the synergies and efficiency of the labour inspection system, in terms of horizontal functions⁴¹;
13. Assure the efficiency and effectiveness of the system of labour inspection;
14. Secure the collection, treatment, analysis and publication of labour inspection and OSH statistics.

This decentralization process is therefore very complex and poses several specific risks and challenges, thus requiring it to be carried out carefully and in accordance with the provisions of the ILO Conventions Nos. 81 and 129, on labour inspection, ratified by Ukraine.

⁴⁰Mainly regarding: recruitment, remuneration, training, qualifications development, performance assessment and career progression.

⁴¹For example: human resources management, procurement, IT systems, financial, training, international relations, auditing and juridical affairs, communication, etc.

In fact, according to Article 4 of the ILO Convention No. 81 and Article 7 of the ILO Convention No. 129, labour inspection shall be placed under the supervision and control of a central authority. The ILO Recommendation No. 20, concerning the General Principles for the Organization of Systems of Inspection to Secure the Enforcement of the Laws and Regulations for the Protection of the Workers (ILO, 1923) had already suggested that the labour inspectorate should be placed under the direct and exclusive control of a central state authority, and that it should be entirely independent of local authorities (CEACR, 2006).

Furthermore, the Committee pointed out that labour inspection has a crucial role as one of the main functions of the labour administration system and should operate and be organized as a system within the public administration in order to fulfil its objectives. In this regard, the labour inspectorate must be a system under the supervision and control of a central authority, in cooperation with other public or private institutions and in collaboration with employers and workers and their representative organizations (Articles 1, 4, 5, 6 and 8 of Convention No. 81, and Articles 3, 7, 8, 10, 12 and 13 of Convention No. 129). Putting the labour inspectorate under a central authority facilitates the establishment and application of a single policy throughout the territory covered (as the central authority ensures coherence and consistency in the application of the national legislation and policies and ensures a uniform nationwide compliance throughout national territory) and makes it possible to use available resources in a more rational and efficient way by, for example, eliminating duplication of efforts (CEACR, 2006, 2014).

In addition, *“the initiative of one country to decentralize the labour inspectorate without also making it an obligation for the decentralized regional or local authorities to institute a system to allow it to function and to provide adequate budgetary resources, is contrary to the terms of the Convention”*, as also noted CEACR (2006).

More recently, and regarding specifically the Ukraine decentralization process, CEACR (2018) recalled that *“should certain labour inspection responsibilities be attributed to different departments, the competent authority must take steps to ensure adequate budgetary resources and to encourage cooperation between these different departments”* and stressed the *“importance of ensuring that organizational changes are carried out in conformity with the provisions of the Conventions, including Articles 4, 6, 7 and 11 of Convention No. 81 and Articles 7, 8, 9 and 15 of Convention No. 129”*.

In this context, CEACR (2018) requested the Ukrainian Government to provide detailed information on *“the allocation of adequate budgetary resources to enable the effective performance of labour inspection duties (Article 11 of Convention No. 81 and Article 15 of Convention No. 129) (...)”* and *“on how the supervision by the SLS of the local authorities is ensured on a regular basis”*, as well as *“to indicate how it is ensured that the ‘authorized officials’ working as labour inspectors under the supervision of the SLS and the local authorities have the status and conditions of service guaranteeing their independence from any undue external influence (Article 6 of Convention No. 81 and Article 8 of Convention No. 129)”*.

Moreover, CEACR (2018) requested the Ukrainian Government *“to indicate how it is ensured that ‘authorized officials’ working as labour inspectors have the adequate qualifications and training for the effective performance of inspection duties (Article 7 of Convention No. 81 and Article 9 of Convention No. 129)”* and *“to ensure that other functions entrusted to labour inspectors do not interfere with their primary duties and impact negatively on the quality of labour inspections”*. The latter, incidentally, had already been

requested of the Ukrainian Government, in the report following the discussion at the Committee on the Application of Standards of the Ukraine Individual Case on the application of the Conventions Nos. 81 and 129 (CAS, 2017).

Taking into account the context described above, it is recommended that the Ukrainian authorities consider the following:

1. Cancel the current decentralization process and replace it with a different one, developed within the scope of the SLS central authority control and supervision powers, on the basis of the organic and sustainable growth of the current territorial bodies of the SLS, in accordance with the local labour market specific needs and socio-economic context; and
2. Repeal the “Procedure for State Control of Compliance with Labour Legislation” and the “Procedure for State Supervision over Compliance with Labour Legislation”, both approved by the CMU Decree No. 295, of 26 April 2017;⁴² and
3. Draft and approve of the “Labour Inspection Statute” and the “Labour Inspector’s Career Statute” proposed in section 4, in order to legally define, *inter alia*:
 - a. The functions and powers of the labour inspectors;
 - b. The inspection procedure: inspection action; procedure harmonization; modalities of inspection action; forms of the inspection actions; inspection visits; registration of inspection visits; information action; penalty action; conclusion of the inspection procedure; inspection process; communication and notification of inspection actions; etc.
 - c. The human resources status, obligations and disciplinary statute: professional status; directors with inspection powers; obligations; code of conduct: continuous training; geographical mobility; functional mobility; incompatibilities and impediments; permanent availability; duty to remain for a certain period after recruitment; civil liability insurance; support in legal proceedings; etc.
 - d. The labour inspector career: professional categories, activities, functions and respective salary (and additional working conditions); requirements and regulations concerning performance assessment, advancement and promotions; requirements for the access to the labour inspection career, including the specification of the selection and recruitment procedures for access to the mandatory internship which successful completion is a pre-requisite for the access to the labour inspector career (requirements, selection procedures, regulations of the internship functioning and description of the theoretical and practical phases of the internship, subjects of the initial theoretical and practical training, criteria and methodologies for evaluating and assessing the trainees, etc.).

⁴²In this case, not only because it would allow addressing the problems arising specifically from the current decentralization problem, but also because it would also allow the lack of powers entrusted to the Ukrainian labour inspectors to be addressed (as discussed in section 5).

CONCLUSIONS

Throughout the previous sections we have examined, in the light of the international and European labour Standards and best practices, the main legislation that frameworks and regulates the activity of labour inspection in the Ukraine.

We have also put forward several recommendations intended to bring Ukrainian legislation and practices on labour inspection closer to the aforesaid standards and best practices and, most especially, in order to improve the efficiency and effectiveness of the Ukrainian system of labour inspection.

This section is therefore devoted to structuring and summarizing the substance of the recommendations advanced in the previous sections.

In this context, and regarding the SLS mandate, functions, structure and organizations, the main recommendations that should be considered by the Ukrainian authorities include, *inter alia*, the following:

1. To amend the “Regulations on the State Labour Service of Ukraine”, approved by the CMU Decree No. 96, of 11 February 2015 (SLS Statute)⁴³, in order to provide for the following:
 - a. Adoption of a simpler, more horizontal and rational organizational structure and organization, based on a simultaneously functional and geographical departmentalization, which takes into account:
 - i. Its division into logical functional units⁴⁴ and definition of their internal structure, functions and legal competencies;
 - ii. Its decentralized services, along with the definition of their internal structure, functions and legal competencies and geographical areas of jurisdiction;
 - iii. The transfer of the SLS current legal competencies for non-labour administration functions (e.g., regulatory and market surveillance functions of the gas market and state mining supervision; over objects of technical regulations; issuance of licences or permits for industrial or business initiation, alteration or renovation) to the respective responsible ministries (e.g., Ministry of Energy and Coal Mining Industry; Ministry of Trade and Economic Development), whilst maintaining within the SLS the legal competencies for labour relations and OSH in these sectors, and the reinforcement of its focus and resources on labour administration and labour inspection functions;
 - iv. The transfer of current SLS legal competencies for several activities and functions (e.g., training, medical examinations, workplace and equipment assessments, knowledge testing of managers and deputy managers of CEA and oblast state administrations) to the private sector, while maintaining SLS competencies for the definition of the applicable legal requirements, licensing procedures, supervision, inspection and control;

⁴³With the amendments introduced by the CMU decrees Nos. 1097, of 23 December 2015; 76, of 11 February 2016; 295, of 26 April 2017; and 630, of 18 August 2017.

⁴⁴Including one unit specifically focused on labour inspection issues (which, moreover, should be further subdivided into subunits, according to the nature of the functions assigned to labour inspection).

- v. The location (of the structure and organization of both its headquarters and territorial bodies), composition and legal competencies of:
 - The SLS tripartite consultative and advisory Board ("Collegium");
 - The "Public Council".
 - vi. The location of the SLS, within the structure of the MSP;
 - b. Clearly define the labour inspection functions and the legal competencies assigned to each of its specialized structural units.
2. To amend the "Procedure for Investigating and Recording Occupational Accidents, Diseases and Emergencies"⁴⁵, in order to provide:
- a. That the legal competencies for carrying out official investigations and inquiries on work-related accidents and occupational diseases are exclusively assigned to labour inspectors, without the prejudice of other public authorities' competencies and the participation of other individual or collective (public or private) entities, if and when requested by labour inspectors;
 - b. For the elimination of the legal provision that foresees that *if the SLS territorial body did not make a decision to undertake a special investigation of a work-related accident within twenty-four hours, the investigation shall be undertaken by the employer or the Fund*".

As for the labour inspectors' functions and powers, as well as regarding the inspection activity itself, the following legislative measures should be considered:

- 1. To draft and approve a "Labour Inspection Statute", which should address, *inter alia*:
 - a. The definition and scope of the labour inspection system and its principles;
 - b. The terms of the collaboration with other entities;
 - c. The definition of the labour inspection legal competencies and activities and the specification of the ones that should be exclusively performed by labour inspectors⁴⁶, in particular:
 - i. To carry out inspection visits (without prejudice to the participation of other persons, when required by labour inspectors);
 - ii. To carry out official work-related accidents and occupational disease investigations and inquiries (without prejudice of the legal competencies of other public authorities or to the participation of other persons, when required by labour inspectors).
 - d. The definition of the labour inspection procedure (inspection action; procedure harmonization; modalities of inspection action; forms of the inspection actions; inspection visits; registration of inspection visits; information action; penalty action; conclusion of the inspection procedure; inspection process; communication and notification of inspection actions; etc.);
 - e. The legal provision of labour inspectors' powers, which should include, at least, the ones foreseen in the ILO Conventions Nos. 81 and 129 on labour inspection;

⁴⁵ Approved by the CMU Resolution No. 1232, of 30 November 2011 and last amended by the CMU Resolution No. 294, of 26 April 2017.

⁴⁶ Taking into account the special requirements (e.g., qualifications, training), professional status, conditions of service (i.e. wages, allowances and career prospects), powers, obligations and responsibilities legally and conventionally assigned to labour inspectors.

- f. Human resources section (professional status, directors with inspection powers, obligations, code of conduct, incompatibilities and impediments, permanent availability, duty to remain for a certain period after recruitment, training, civil liability insurance, support in legal proceedings, etc.).
2. To draft and approve a “Labour Inspector’s Career Statute”, which should legally create the special career of labour inspector within the Ukrainian public administration, and foresee, *inter alia*:
 - a. The establishment and description of the special career of labour inspector.
 - b. The definition of the different professional categories of labour inspector, their activities, functions, respective salaries and additional working conditions. It should be advisable to consider, in this regard, the merger of the current three types of specialized labour inspectors (state labour inspectors, state labour protection inspectors and state occupational health inspectors) into just one general type⁴⁷.
 - c. The requirements and regulations for:
 - i. The access to the labour inspection career concerning, in particular regarding the specification of the selection and recruitment procedures for access to the mandatory internship, upon which successful completion is a pre-requisite for access to the labour inspector career (requirements, selection procedures, regulations of the internship functioning and description of the theoretical and practical phases of the internship, subjects of the initial theoretical and practical training, criteria and methodologies for evaluating and assessing the trainees, etc.);
 - ii. The advancement within categories and promotion.
 - d. Continuous training of labour inspectors and their performance assessment procedures.
 - e. Geographical and functional mobility.
 - f. Powers, obligations and disciplinary statute.
3. Either to revoke or to fully exclude the SLS from the scope of the Law No. 877-V, of 5 April 2007, “On Basic Principles of State Supervision (Control) in the Area of Economic Activities”⁴⁸ and, concomitantly, to define the labour inspection procedure in the proposed “Labour Inspection Statute”, which draft and approval was already suggested (cf. see Point 1 above and also Section 4).
4. To substitute the “Procedure for State Control of Compliance with Labour Legislation”⁴⁹ by the proposed “Labour Inspection Statute” (cf. section 4), within which the functions, activities and powers of the labour inspectors, along with the inspection procedures, should be defined in precise terms;
5. To refrain from imposing *moratoriums* on labour inspection activity (especially to labour inspection visits) and, in particular, to repeal the Law No. 1278-VIII, of 3 November 2016, “On Temporary Specifics of Implementation of the State Supervision

⁴⁷This new and general type of labour inspector would concentrate the competencies of the current three types (without prejudice of the constitution of more specialized teams, to deal with special phenomena or more complex areas (e.g., undeclared work, biological risks, chemical risks, ionizing radiation risks, etc.). This is what is done, for example, in France, Italy, Latvia, Poland, Portugal, Romania and Spain.

⁴⁸Last amended by the Law No. 2042-VIII, of 18 May 2017.

⁴⁹Approved by the CMU Decree No. 295, of 26 April 2017, “On some issues regarding the application of the Article 259 of the Labour Code of Ukraine and Article 34 of the Law ‘on local bodies of self-government in Ukraine’”

(Control) Measures in the Area of Economic Activities” or, at least, definitely to exclude the SLS from its scope.

Finally, concerning the current decentralization process, it is recommended that Ukrainian authorities consider the following suggestions:

1. To cancel the current decentralization process and replace it by a different one, developed within the scope of SLS central authority control and supervision powers, on the basis of the organic and sustainable growth of the its territorial bodies;
2. To repeal the “Procedure for State Supervision over Compliance with Labour Legislation”, as well as the “Procedure for State Control of Compliance with Labour Legislation”⁵⁰. The supervision of the performance of the decentralized services of labour inspection, within the proposed decentralization method, would rest with the SLS⁵¹. On the other hand, the inspection procedure, along with labour inspectors’ activities and powers, would be defined in the already proposed “Labour Inspection Statute”.

⁵⁰Both approved by the CMU Decree No. 295, of 26 April 2017.

⁵¹Which has authority and supervisory and control powers over its territorial bodies and also direction and disciplinary powers over their respective officials, including labour inspectors.

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