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► **Guide on Labour Inspection and Social Security**

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Guide on Labour Inspection and social security

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Foreword

Social security is a human right that responds to the universal need for protection against certain life risks and social needs. Effective social security systems guarantee income security and health protection, thereby contributing to the prevention and reduction of poverty and inequality, and the promotion of social inclusion and human dignity.

In the field of social security, as in other matters, responsibility for ensuring the application of the law lies with the State. It is therefore common for national social security legislation to establish specific measures to ensure compliance with the legal obligations of the parties concerned, namely by establishing inspection systems to monitor compliance and enforcing the law, as required.

This study is intended to provide governments and other parties interested with a brief overview of the current approaches to the intervention of labour inspectorates in social security matters, including in relation to phenomena such as undeclared work or the wider informal economy.

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Preface

The conditions under which labour administration and inspection systems operate have changed dramatically over the last few decades, mainly owing to technological, economic and political developments and the effects of globalization. Some labour institutions have seen this as an opportunity to reinforce their role and further development. In other cases, the influence of these institutions has decreased. In this context, labour administration and inspection systems must find the means to redefine their organization and intervention strategies so that they can better respond to expectations raised by evolving labour markets in a globalized world and by the financial and economic crisis¹.

In recent years, ILO member States have increasingly called upon the Office to strengthen national labour inspection systems, in conformity with ILO Conventions and Recommendations, at a time of great economic and social upheaval.

The range of topics that labour inspectors cover during the course of their work may vary from one country to another, but generally includes the promotion of occupational safety and health; the protection of wages and social security entitlements; the promotion of fundamental labour rights such as freedom of association and non-discrimination; and the proper functioning of industrial relations and social dialogue.

This document sets out to explore the relationship between social protection systems and the role of labour inspection institutions, in the light of the trend towards integrated management of the social sector as a whole - including the institutions and services comprising national systems of social security.

Even if “social protection” is a human right, 73 per cent of the world’s population do not have access to an adequate level of it, which may be attributed in part to the low rate of compliance with the law. Labour inspection can help increase compliance, and consequently contribute towards expanding social protection to

¹ ILO: *Labour administration and labour inspection*. Report V, International Labour Conference, 100th Session (Geneva, 2011).

workers and the self-employed - namely by promoting the universal coverage of the working population, the sustainability of the social security system, and social protection models.

This document will focus on the complementary objectives of labour inspection and social security services, and the best practices to bring about and improve this complementarity. In the case of both the labour inspection services and the social protection institutions, the synergies of such cooperation have been more than amply demonstrated in all the countries where relevant measures have been implemented.

Abbreviations

CSR - Cooperate Social Responsibility

EII - Employment Injury Insurance

EU - European Union

ILC - International Labour Conference

ILO - International Labour Organization/Office, depending on the context

ISSA - International Social Security Association

OSH - Occupational safety and health

SDG - Sustainable Development Goals

MSEs - Micro- and Small-Enterprises

1. Introduction

1.1. The social protection system and social security schemes

Social security can truly be considered as one of the great achievements of the twentieth century. It has evolved from a system that provided minimum standards of well-being to people in dire circumstances into an instrument promoting economic development, social cohesion and democracy. Becoming an integral part of the State's core functions, it has given rise to the "welfare state" as the distinct model of social development, which, in turn, has engendered and sustained a general belief in the ability of all countries to meet the pervasive challenge of putting in place a social security system accessible to all.

It has been universally recognized that the right to social protection, which guarantees a secure, healthy and decent standard of living, is a fundamental human right. And the ILO has been at the vanguard of this movement. Over the years, it has produced a body of standards that now constitute international social security legislation, thereby providing a firm legal foundation for the human right to social security and bringing national social security systems under the rule of law.

The Preamble to the ILO Constitution, constituted in 1919, recognized the need to improve conditions of labour in respect of the prevention of unemployment, the protection of the worker against sickness, disease and injury arising out of his employment..., provision for old age and injury. The Constitution itself established a "permanent organization" to promote these goals.

In 1944, the Declaration of Philadelphia included the new concept of "social security" among the "fundamental principles" of the Organization's work-principles that were "a matter of concern to the whole civilized world". The ILO was called upon to further programmes to achieve, inter alia: the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care (Part III (f)). This was the first time in

history that the world community had declared its commitment to extending social security to all.

In 2001, the 89th Session of International Labour Conference held a general discussion on social security, with a view to determining the ILO's vision of social security in the twenty-first century². In the conclusions adopted by the Conference, social security was recognized as a basic human right and a fundamental means for creating social cohesion and strengthening social peace and social inclusion. Each country was called upon to determine a national strategy for working towards social security for all, closely linked to its employment and social policies. In order to be effective, initiatives to establish or extend social security required social dialogue and good governance.

In 2008, the Declaration on Social Justice for a Fair Globalization restated the ILO's mandate and objectives with a view to giving globalization a strong social dimension to achieve improved and fair outcomes for all. The Declaration organized the ILO's mandate around the four "inseparable, interrelated and mutually supportive" strategic objectives of employment, social protection, social dialogue and rights at work, thereby enhancing the coverage and effectiveness of social protection for all.

On 14 June 2012, the International Labour Conference unanimously adopted Social Protection Floors Recommendation, 2012 (No. 202). It provides guidance to member States in building comprehensive social security systems and extending social security coverage by prioritizing the establishment of national floors of social protection accessible to all in need.

1.2. International labour standards on the social protection and social security

Social security is a basic human right enshrined in major international instruments such as: the Universal Declaration of Human Rights (1948); the

² ILO: *Social Security: A new consensus*, International Labour Conference, 89th Session (Geneva, 2001).

international Covenant on Economic, Social and Cultural Rights (1966); the ILO Declaration of Philadelphia (1944); and the above-mentioned conclusions concerning social security adopted by the 89th Session of the International Labour Conference (2001).

Box 1.1 Social security as a human right: Extracts from the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights

Universal Declaration of Human Rights

Article 22:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 25:

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

International Covenant on Economic, Social and Cultural Rights

Article 9:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

ILO standards on social security provide for various types of social security coverage under different economic systems and stages of development. Social security conventions offer a wide range of options and flexibility clauses, which allow member States to attain the goal of universal coverage gradually. In this context it is vital that the coverage is meaningful and appropriate, and that it allows personal membership of a scheme. Strategies for social security coverage have three dimensions:

- Population coverage;
- Range of coverage, as regards the contingencies for which protection is provided; and
- The level of benefit, or the effectiveness of the system of protection.

It is therefore necessary to take into account not only the contingencies that are covered but also the method of organizing the social protection. There are major differences in the way that social security is provided in developing countries. They may take the form of:

- Social insurance (schemes financed by contributions that pool resources in separate funds for each branch of insurance),
- Social assistance (tax-financed, non-contributory benefits, provided only to the vulnerable population),
- Universal benefits (tax-financed benefits provided without being means-tested),
- Employer's liability provisions (statutory obligations imposed on employers to provide benefits to workers in prescribed circumstances, such as employment injury, sickness, maternity and termination of employment); and
- National Provident Funds (defined contribution schemes with individual accounts).

In a globalizing world, where people are increasingly exposed to global economic risks, there is a growing awareness that a broad-based national social protection policy can provide a strong buffer against many of the negative social effects of crises.

Box 1.2 International Labour Standards – Social Security

- **Social Security (Minimum Standards) Convention, 1952 (No. 102)**³ lays down minimum standards for the level of social security benefits and the conditions under which they are granted. It covers the nine principal branches of social security, namely medical care, sickness, unemployment, old-age, employment injury, family, maternity, invalidity and survivors' benefits. To ensure that it might be applied in all national circumstances, the Convention requires that only three of these branches be ratified by member States, which allows for the step-by-step extension of further social security coverage - thereby allowing countries to progressively attain all the objectives set out in the Convention. The level of minimum benefits may be determined with reference to the level of wages in the member State concerned. Temporary exceptions may also be envisaged for countries whose economy and medical facilities are insufficiently developed, which enables them to restrict the scope of the Convention and the coverage of the benefits granted.
- **Social Protection Floors Recommendation, 2012 (No. 202)**⁴. This instrument provides guidance on establishing or maintaining social security floors and on implementing them as part of strategies to extend higher levels of social security to as many people as possible, in accordance with the guidelines set out in the relevant ILO standards.
- **Equality of Treatment (Social Security) Convention, 1962 (No. 118)**⁵, and **Maintenance of Social Security Rights Convention, 1982 (No. 157)**⁶. These instruments provide for certain social security rights and benefits for migrant workers, who face the problem of losing entitlements to social security benefits which they enjoyed in their country of origin.

A later generation of Conventions expands the scope of protection provided by Convention No. 102. While offering a higher level of protection in terms of scope and level of benefits to be guaranteed, these instruments authorize certain exceptions that ensure flexibility.

³ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102

⁴ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R202

⁵ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C118

⁶ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C157

The benefits provided under Convention No. 102 and later Conventions are outlined below. This information does not include provisions on the duration and conditions of entitlement to benefits, derogations allowed under these instruments, or higher levels of benefits provided by relevant Recommendations.

Medical care

- Convention No. 102 provides for preventive care, general practitioner care (including home visits), specialist care, essential pharmaceutical supplies as prescribed, pre-natal, confinement and post-natal care by medical practitioners or qualified midwives, and hospitalization where necessary.
- The Medical Care and Sickness Benefits Convention, 1969 (No. 130) provides the same benefits as Convention No. 102, plus dental care and medical rehabilitation.

Sickness benefit

- Convention No. 102 provides for periodical payments, corresponding to at least 45 per cent of the reference wage.
- Convention No. 130 provides for periodical payments, corresponding to at least 60 per cent of the reference wage. It also provides for funeral expenses in the event of the beneficiary's death.

Unemployment benefit

- Convention No. 102 provides for periodical payments, corresponding to at least 45 per cent of the reference wage.
- **The Employment Promotion and Protection of Unemployment Convention, 1988 (No. 168)** provides for periodical payments, corresponding to at least 50 per cent of the reference wage. Beyond the initial period, special rules of calculation may apply. Nevertheless, the total benefits to which the unemployed may be entitled must guarantee them healthy and reasonable living conditions in accordance with national standards.

Old-age benefit

- Convention No. 102 provides for periodical payments, corresponding to at least 40 per cent of the reference wage. The rates of relevant benefits must be revised following substantial changes in the general level of earnings and /or the cost of living.

- **The Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)**⁷ provides for periodical payments, corresponding to at least 45 per cent of the reference wage. As regards the revision of rates, the same conditions as Convention No. 102 apply.

Employment injury benefit

- Convention No. 102 provides for periodical payments corresponding to at least 50 per cent of the reference wage in the event of incapacity for work or invalidity. Benefits for widows and dependent children shall be granted as the result of the death of breadwinner, with periodical payments corresponding to at least 40 per cent of the reference wage. The possibility exists of converting periodical payments into lump sums under certain conditions. Except in the case of incapacity for work, there is an obligation to revise the rates of periodical payments following substantial changes in the cost of living.
- **The Employment Injury Benefits Convention, 1964 (No. 121)**⁸ provides for the same benefits as Convention No. 102, plus certain types of care at the place of work. It envisages periodical payments, corresponding to at least 60 per cent of the reference wage, in the event of incapacity for work or invalidity; if the breadwinner dies, periodical payments corresponding to at least 50 per cent of the reference wage are provided for the widow, the disabled and dependent widower, and dependent children. It also contains the obligation to prescribe a minimum amount for these payments, the possibility of converting payments into a lump sum under certain conditions, and supplementary benefits for disabled persons requiring the constant help of a third person.

Family benefit

- Convention No. 102 provides either periodical payments or the provision of food, clothing, housing, holidays or domestic help, or a combination of these.
- No new Convention exists on this topic.

Maternity benefit

- Convention No. 102 provides for: medical care including at least pre-natal, confinement and post-natal care, either by medical practitioners or by

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https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0:::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C128,/Document

⁸ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C121

qualified midwives and hospitalization where necessary; and periodical payments, corresponding to at least 45 per cent of the reference wage.

- **The Maternity Protection Convention, 2000 (No. 183)⁹** provides for: medical benefits including pre-natal, childbirth and post-natal care, as well as hospitalization care when necessary; cash benefits to ensure that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living. The cash benefits shall amount to at least two-thirds of previous earnings or a comparable amount.

Invalidity benefit

- Convention No. 102 provides for periodical payments, corresponding to at least 40 per cent of the reference wage. The rates of relevant benefits must be revised following substantial changes in the general level of earnings and/or in the cost of living.
- Convention No. 128 provides for periodical payments corresponding to at least 50 per cent of the reference wage; the rates of relevant benefits must be revised following substantial changes in the general level of earnings and/or in the cost of living.

Survivors' benefit

- Convention No. 102 stipulates periodical payments, corresponding to at least 40 per cent of the reference wage; the rates of relevant benefits must be revised following substantial changes in the general level of earnings and/or in the cost of living.
- Convention No. 128 provides for periodical payments corresponding to at least 45 per cent of the reference wage; the rates of relevant benefits must be revised following substantial changes in the general level of earnings and/or in the cost of living.

Sources: M. Humblet and R. Silva: *Standards for the XXIst century: Social security* (Geneva, ILO, 2002); and *ILO Technical Notes - The state of application of the provisions for social security of the international treaties on social rights (2016)*, available at: [https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/WCMS_497324/lang--en/index.htm](https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/WCMS_497324/lang-en/index.htm)

⁹ https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C183

1.3. Compliance and the role of labour inspectors

Despite the fact that social security is considered a human right, it is estimated that the majority of the world population lacks adequate social protection.

One of the reasons for this poor coverage is the low level of compliance with the existing regulatory framework of the social protection system. The mere fact that there is legislation does not automatically guarantee compliance. This is determined by a complex interplay of factors that are partly external to the government and partly a consequence of the actions of the regulatory authorities – as box 1.3 indicates.

Box 1.3 The eight causes of non-compliance from the point of view of the targets	
Failure to understand the law	Deterrence failure
Collapse of belief in law	Incapacitation of those regulated
Procedural injustice	Failure of persuasion
Costs of regulatory compliance	Failure of civil society

The adoption of a strategy to achieve compliance with the law involves including activities to promote and enforce requirements. Experience has shown that promotion alone - or enforcement alone - are not enough. Combining these two activities and finding the most effective mix or balance between them is a constant challenge for policy-makers around the world.

Social dialogue is vital in this respect. At the national level, there needs to be dialogue and negotiation between the representatives of governments, employers, workers and other stakeholders, with a view to agreeing upon ways to improve compliance.

The effective governance of social security schemes is another prerequisite to improve the coverage and effectiveness of social protection, which incorporates human, financial and information issues. This involves the collection and analysis of relevant data and information, and an efficient enforcement system to guarantee compliance and the sustainability of social protection. This requires well-resourced and well-trained public inspection services to promote law enforcement and to prevent contribution evasion, fraud and corruption - thereby consolidating efforts to promote a health and safety culture.

The general responsibility for an effective and efficient social security system lies with the State, whose role it is to create political commitment and to establish appropriate policy, legal and regulatory frameworks and supervisory mechanisms that guarantee adequate benefit levels, good governance and management. Only in this way can it protect the acquired rights of beneficiaries and other participants in the system.

The labour inspection services are an essential component of the labour administration system. They are responsible for labour law enforcement and effective compliance, ensuring fairness in the workplace and promoting economic development. They underline the relation between improved levels of compliance and the expansion of social protection to workers and the self-employed, namely by promoting the universal coverage of the working population, the sustainability of the social security system, and social protection models.

In essence, the institution of labour inspection has a twofold nature. On the one hand, it supervises the enforcement of legal provisions, particularly with regard

to workers' rights. This is not restricted to working and employment conditions. Labour inspectors also enforce legal provisions dealing with social services, migrant workers, vocational training, social security and other matters.

On the other hand, labour inspection provides information and advice, as well as training. This dual nature means that labour inspection systems play a key role in the world of work and should be able to effectively remedy a wide range of labour problems.

Supervising the application of the law requires the use of different instruments and administrative measures, which ensure efficient and rapid enforcement at all stages of inspection interventions. Such interventions include not only inspection visits, but also preventive, awareness-raising and educational activities and campaigns, as part of a holistic approach encompassing all the needs of enforcement. A wide range of means of action to enforce compliance is also available to inspectors: from penalty procedures to stoppage orders, labour inspections use different measures and actions to carry out their duties.

2. Social Security: labour inspection intervention

Labour inspection is not, in itself, a direct protective instrument; it is rather a method of ensuring the enforcement of protective legislation, of promoting improved labour conditions, and of investigating existing conditions for the information of the government.

According to Article 2(1) of the Labour Inspection Convention, 1947 (No. 81), conditions of work and the protection of workers while engaged in their work are the main area of competence of labour inspectorates in industrial and commercial workplaces.

The term “working conditions” refers to many different situations. It is therefore often necessary – when determining the exact scope of the labour inspectorate’s mandate - to consider a number of national texts that differ in nature and scope, together with a number of exclusions.

However, the phrase “protection of workers while engaged in their work”, as used in Convention No. 81, has to be understood in a broader manner in the context of subsequent Conventions and Recommendations. Indeed, it relates more specifically to social protection and to the fundamental rights of workers throughout their employment. It is clear from the preparatory documents pertaining to Convention No. 129 that the term was intended to cover areas such as the right to organize and engage in collective bargaining, conditions of termination of employment, and social security.

The range of the labour inspection’s regulatory oversight is therefore potentially vast and it varies significantly from one country to another, according to national objectives and legislation. The range of topics that labour inspectors may cover include:

- Promotion of occupational safety and health - including the prevention of accidents and diseases, and welfare facilities;
- Protection of income levels, including by checking wages/salaries records, overtime payments;

- Checking of records of working hours and overtime, holidays and rest periods, including sick and maternity leave;
- Promotion of fundamental labour rights (e.g. combating forced labour) and anti-discrimination measures;
- Accident investigation and work injury compensation;
- Employment matters (from illegal employment, work permits to employment promotion, including vocational training programmes);
- Social security contributions;
- Employment of women, children and young persons and other workers with special needs (e.g. physically challenged); and
- Social dialogue and industrial relations issues and monitoring of collective agreements.

As a result of this wide range of areas of competence, labour inspectorates in many countries are not only assigned with the task of enforcing regulations regarding working and employment conditions and occupational safety and health (OSH), but also of imposing social security regulations and supervising the legality of employment and prosecuting violations - including undeclared work and the informal economy as a whole.

2.1. Organization of the social security inspection function

Departments responsible for inspection may be self-sufficient, incorporating the full range of areas of specialization, or they may operate through two or three administrative entities¹⁰.

¹⁰ In countries as diverse as Bulgaria, Hungary, Indonesia, the Philippines and Viet Nam, the coordination structure takes the form of an “integrated inspection concept” involving joint planning and actions towards a common goal shared by the various units responsible for labour-related inspections. There are also other arrangements such as those in Belgium, where coordination takes place between three different inspectorates (social legislation, welfare and social security), together with the regional employment services in selected areas of shared competency (for example, undeclared work) with a view to sharing information and data on a systematic basis.

Collaboration with social security institutions and bodies is crucial in order to compile and compare data - and hence to design better targeted operations. Some countries carry out joint inspections or actions.

Some countries with specific social security inspectorates use special administrative procedures, which provide automatic affiliation and expeditious means of enforcement.

Although an ideal labour inspection system does not exist, any system strives for proper coordination mechanisms in order to achieve effectiveness and efficiency.

In general, social security institutions are monitored in various degrees by government departments. It is also not uncommon that more than one government department carries out supervision.

Coordination within the labour administration system and the different inspection services is necessary, as is cooperation between the public or private stakeholders directly or indirectly responsible for the enforcement of labour standards. There should also be close cooperation among agencies and institutions such as the tax authorities, the police force or the judiciary. Consultation with the social partners is also critical for the adequate functioning of the labour inspection system.

In any case, all countries with a public system of social security have a service rendering the function of Social Security inspection, irrespective if this enforcement function is organically undertaken by means of an integrated Labour Inspection service, by a specific social security Inspection or by other administrative arrangements.

In countries where branches of social security are administered by independent institutions of a semi-private or private nature, the State is still generally responsible for their proper administration - and it has the right and the duty to supervise them. The management of social security schemes in such countries is often based on the functional separation between the body responsible for the administration of the schemes and the control body that supervises the social security system.

In federal States, a central federal institution usually carries out the general supervision and control to ensure the uniform application of the schemes.

There are two main mechanisms to control compliance with social security legislation:

a) Labour inspection services: In a number of countries, the labour inspectorate is entrusted with the enforcement of social security legislation, since the social security institutions do not have their own inspectors;¹¹

b) The social security system itself: In another group of countries, inspection is within the realm of the social security system itself.¹²

A specific system operates in Spain, where no difference is made between social security and labour inspectors since the control over the enforcement of legislation on social security has been integrated into one single independent institution responsible for all employment related issues: the Labour and Social Security Inspectorate (ITSS).

2.2. Administrative collaboration and data sharing

The respective objectives of social security and labour inspection services are complementary.

The magnitude of the losses sustained by public finance as a result of social fraud and undeclared work has led many countries to look for new solutions in the form of a global approach. This approach consists of establishing a close collaboration between social security institutions and other public services entrusted with supervision and enforcement powers, such as the tax authorities, the labour inspectorate, the police, customs and immigration services. These measures are in line with the general responsibility of the State for the proper administration

¹¹ Argentina, El Salvador, Fiji, Hungary, Lao People's Democratic Republic, Lesotho, Montenegro, Mozambique, Spain and Sri Lanka.

¹² Angola, France, Finland, Germany, Greece, India, Malaysia, Morocco, Namibia, Nicaragua, Philippines, Poland, United Republic of Tanzania, Tunisia and the United States.

of the institutions and services under Article 72 of the Social Security (Minimum Standards) Convention, 1952 (No. 102).¹³

There is a clear trend in many European countries and in North America towards integrating social security contributions with tax collection. This model has the advantage of achieving economies of scale, i.e. contributions are collected with fewer costs, and it achieves better results in the collection of contributions.

In other countries,¹⁴ the collection of contributions has been centralized in a specific social security institution, which has been set up to collect and administer these contributions. Since one social security institution collects and pays the benefits, it is called a full service social insurance institution.

In addition to setting up central data banks, a number of countries have taken further measures to facilitate the exchange of data between different institutions that are involved in the administration of social security in order to combat fraud more effectively. In general, it involves collaboration between the social security institutions and the tax authorities.

A unified system for the exchange of data between public institutions offers considerable potential for the improvement of governance and the formulation of more effective public policies in all the fields concerned. The exchange of data between the fiscal services and social security institutions should serve to improve the administration of the social security system and to develop a policy to combat social fraud, undeclared work and the evasion of social security contributions.

The benefits of bringing social security and labour inspection together under the authority of a single government entity are becoming increasingly evident. Although it is often a legal obligation for the employer, worker or responsible medical practitioner to report accidents at work or cases of occupational disease to the labour inspectorate, it is often, in practice, the social security services that

¹³ See ILO Convention No. 102 at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247

¹⁴ Algeria, Azerbaijan, Belarus, Brazil, Czech Republic, Egypt, France, Ghana, Israel, Japan, Kuwait, Lithuania, Madagascar, Mexico, Namibia, Poland, Saudi Arabia, Spain, Thailand, Tunisia, Uganda and Zimbabwe

are the first, and sometimes the only, recipients of such notifications. It is therefore desirable that provisions be put in place to ensure that any relevant information on cases and conditions defined by legislation be communicated as systematically as possible to the labour inspectorate – thus ensuring it has the data it requires to identify high-risk establishments and activities and determine means of prevention with a view to eliminating risk factors.

Inspection services should be required to inform the social security and social insurance services of situations posing a threat to workers' safety and health which they have encountered during inspection visits. Raising insurance premiums for employers who are particularly negligent or persistent in disregarding inspectors' injunctions could reinforce the labour inspectorate's safety and health role. The economic advantages of such cooperation, for both the enterprise and the insurance institutions, have been demonstrated in all the countries where relevant measures have been implemented.

In high-income countries, the relations between the State and the individual - between the social security institution and the persons protected - are increasingly taking place in a "digital office" rather than in a traditional office space, and the "rules of the game" are different. This "electronic space", however, should not escape the sphere of the State's general responsibility for the proper administration of the institutions and services concerned.

2.3. Enforcement of the employers' legal obligations

2.3.1. Inspection of social security legislation

The role of social security inspection consists of preventing, investigating, sanctioning and adopting remedy measures in the event of employers violating social security regulations – including undeclared work.

Where the enforcement of social security regulation is entrusted to the labour inspection services, labour inspectors should be vested with the faculties or powers set out in Labour Inspection Convention, 1947 (No. 81).¹⁵

Especially relevant for the intervention in the domain of social security are the provisions contained in Article 12:

1. Labour inspectors provided with proper credentials shall be empowered:
 - (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
 - (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and
 - (c) 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:
 - (i) 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;
 - (ii) 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;
 - (iii) to enforce the posting of notices required by the legal provisions;
 - (iv) 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.

2. 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.

In general, inspectors have a wide arsenal of competencies, which are specific to each country and each system. In a number of countries, in addition to the right

¹⁵ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081

to inspect the premises of the enterprises and audit the accounts, inspectors have the right to impose administrative sanctions; the right to initiate legal proceedings; and the right to register undeclared employees with social security institutions.

Controlling compliance with social security is carried out by the usual means used by labour inspectors: on-site inspection visits and the auditing of employers' documents, which remain an important tool to detect undeclared work and social security fraud.

In order to be effective, penalties for the violation of social security law should be sufficiently dissuasive to make offenders aware of the consequences of non-compliance.

Legal proceedings are initiated when administrative procedures have not resulted in compliance with the law in the case of payment of arrears - or when, pursuant to an audit or on-site inspection of enterprises, irregularities have been identified. If the enforcement of social security is the responsibility of the social security institutions, the latter may initiate civil proceedings. Proceedings may also be initiated with civil courts or with specific social security courts. Failure to comply with social security law, under specific circumstances that are proper to each national situation, is fairly often considered a criminal offence.

2.3.2. Coverage of social security schemes

The two-dimensional strategy for the extension of social security, as defined in the Resolution and Conclusions of labour administration and labour inspection (2011) ¹⁶ and further strengthened by the Social Protection Floors Recommendation, 2012 (No. 202), comprises the following elements:

- Establishing and maintaining social protection floors as a fundamental element of national social security systems (*horizontal dimension*); and

¹⁶ For the full text of the Resolution and Conclusions see:
https://www.ilo.org/labadmin/info/WCMS_167749/lang--en/index.htm

- Pursuing strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards (*vertical dimension*).

Despite the importance of and advantages inherent in social security schemes, more than half of the world's population are not covered by any other kind of social insurance. Social security extension strategies should support the growth of formal employment and the reduction of informality, and be complemented whenever appropriate by active labour market policies.

Even today, the prevalence of the informal economy in many parts of the world, as well as the pervasive trends towards higher levels of precarious and informal employment, not only affect the current living standards and working conditions of the population but also prevent households and economic units in the informal economy from increasing their productivity, reducing their vulnerabilities and finding a route out of poverty.

A coherent national strategy to facilitate transitions to formality needs to recognize that the costs of working informally are high for businesses, workers and the community. Ensuring the employment injury protection of vulnerable groups such as informal workers would greatly contribute to the employment injury coverage of all workers by social protection systems/floors - and would help achieve the indicator of Sustainable Development Goal (SDG) target 1.3.

Migrant workers are particularly vulnerable to discrimination. They account for an important segment of the informal economy in all regions and are concentrated in low-skilled jobs, particularly in agriculture, construction, small manufacturing, domestic work and other services. These activities are often temporary, seasonal and casual work, frequently subcontracted, and are often inadequately covered by labour regulations and inspection. Migrant workers are thus likely to be excluded from social security coverage including employment injury insurance (EII), due to restrictive legislation and a lack of enforcement.

2.3.3. Compulsory affiliation

As a rule, the registration of employers and their employees with social security institutions is a legal obligation and the responsibility of employers - who have

the duty to register themselves as such and to register their workers with social security institutions¹⁷.

In many countries the employer is obliged to report new employees to social security before they start to work. In some countries, this should be done immediately at the beginning of the employment relationship.

These registrations are more than an administrative formality since: a) the affiliation sets up the social security relationship between the employer, worker and the social security institutions; b) this reporting duty stems from the existence of the labour employment relationship. Sometimes - when a written contract is not needed - the registration with social security institutions is the only means to prove the existence of such a relationship.

This close connection between the employment and social security relationship explains why it is convenient to entrust a single administrative enforcement authority with supervising the compliance of both labour and social security legislation.

When employers fail to register with the social security records system, the situation is totally opaque, since their workers cannot affiliate with any organization, as they “do not exist”. These economic units¹⁸ are out of the government’s radar.

But even registered employers may ignore their duty to enable their workers to be affiliated to a social security organization. The consequences for the employees are exactly the same as in the case of non-registered employers – there is no formal recognition of their employment relationship. However, the government is in a better position to detect these economic units.

In this chapter we shall deal with both these infringements together – the failure to register as an employer and the failure to enable employees to affiliate to a

¹⁷ The affiliation obligation also extends to the self-employed.

¹⁸ In this paper we refer to an employer as *a person, company or organization that employs people* (Cambridge Dictionary definition). Economic units are defined in the *ILO Guide on the Harmonization of Labour Inspection Statistics* (Geneva, 2016): *Economic units are: All physical places where production activities are carried out (whether formal or informal) producing goods and/or services to be sold in the market or goods for own use (workplaces, factories, agricultural undertakings or holdings, premises, establishments, enterprises, households, companies, etc.).* See: http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/governance/labadmin-osh/WCMS_506961/lang--en/index.htm

social security system. The nature of the infringements is similar and the consequences for non-declared workers identical: not being covered by social security despite being in an employment relationship, and therefore not entitled to certain social benefits (pensions, invalidity compensation, unemployment compensation, retirement payment, even health care).

2.3.3.1. Labour inspection and the informal economy

The informal economy consists of those economic activities, units, enterprises and workers (both professionals and non-professionals) who engage in commercial activities outside the realm of the *formally* established mechanisms for the conduct of such activities and are therefore not regulated or protected by the State. It includes all forms of unregistered or unincorporated small-scale productive, vending, financial and service activities, and is also comprised of all forms of employment without secure contracts, worker benefits or social protection - both inside and outside informal enterprises.

According to article 1(2) of the ILO Recommendation Concerning the Transition from the Informal to the Formal Economy, 2015 (No. 204),¹⁹ the term “informal economy” refers to *all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements.*

The informal economy comprises more than half of the global labour force and more than 90 per cent of micro- and small enterprises (MSEs) worldwide. Informality is an important characteristic of labour markets throughout the world, with millions of economic units operating - and hundreds of millions of workers pursuing their livelihoods - in the informal sector.

It is estimated that more than half of the world’s workforce is trapped in the informal economy, which is characterized by the denial of rights at work, the absence of sufficient opportunities for quality employment, inadequate social

¹⁹For the full text of Recommendation No. 204 see: https://www.ilo.org/ilc/ILCSessions/104/texts-adopted/WCMS_377774/lang--en/index.htm

protection, a lack of social dialogue and low productivity, all of which constitute a significant obstacle to the development of sustainable enterprises.

In countries where the informal economy is prevalent (normally low- and middle-income countries), the labour inspection services entrusted with enforcing social security regulations have to take into account that informality may fall outside the scope of regulations or be tolerated, and that most businesses, in particular small and micro-enterprises, are informal.

Rather than purely ascertaining whether employers observe their duties vis-à-vis the social security institutions - in particular by registering themselves and their workers - and reacting by applying the legal remedies established in the applicable legislation, the role of labour inspectors should take stock of many other considerations. On many occasions the informal economy consists of activities that are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which implies that - although they are operating within the formal reach of the law, the law is not applied or enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs.

It is for this reason that the objectives of Recommendation No. 204 are to provide guidance to member States to:

- a) facilitate the transition of workers and economic units from the informal to the formal economy, while respecting workers' fundamental rights and ensuring opportunities for income security, livelihoods and entrepreneurship;
- b) promote the creation, preservation and sustainability of enterprises and decent jobs in the formal economy and the coherence of macroeconomic, employment, social protection and other social policies; and
- c) prevent the informalization of formal economy jobs.

The Recommendation calls for the adoption of measures to extend decent work, fundamental principles and rights at work, and the prevention of occupational hazards to all informal workers. To achieve this, member States must have an adequate system of labour inspection and extend its coverage to all workplaces, including these in the informal economy.

The intervention of labour inspection in the informal economy serves two main goals: to assist the transition process from the informal to the formal economy, and to extend protection to workers not formally covered by the legislation.

For this purpose, inspectors need to:

- Understand the mechanisms for transition from the informal to the formal economy;
- Select informal sectors for targeted intervention contingent upon criteria such as feasibility, impact or sustainability of the intervention;
- Understand the informal economy and its *raison d'être*;
- Identify clearly what is (and what is not) the role of labour inspectors;
- Know the role of other institutions (identification, joint action and follow-up);
- Identify all relevant stakeholders; and
- Understand the mechanisms as solutions provided by the law.

In accordance with Recommendation No. 204, the ILO has produced a guide on labour inspection intervention in the informal economy. This guide consists of a participatory method, which proposes a new approach to the intervention of the labour administration and inspection services in the informal economy.²⁰

Labour inspection interventions usually take place in the context of the traditional model of labour relations, with its clearly defined components (employer, employee and work contract) and workplaces that are easily accessible. This approach in the informal economy can only have a minimal impact as, by definition, it falls outside the typical pattern of labour relations. The guide sets out to fill that gap by proposing an intervention methodology adapted to the informal economy.

The guide is the result of a pragmatic approach, and it sets out to:

²⁰ILO: *Guide on labour inspection intervention in the informal economy. A participatory method* (Geneva, 2018), available at: http://www.ilo.org/labadmin/info/pubs/WCMS_626573/lang--en/index.htm

- Make concrete and gradual improvements with respect to working conditions in specific sectors or activities, occupational safety and health, and the organization of work (and production units);
- Support the promotion of fundamental principles and rights at work;
- Encourage the formalization of the informal economy and broaden social security coverage.

The participatory method described in the guide specifically takes into account the needs of the various informal economy actors and the problems encountered by the labour inspectorate.

Close collaboration between the labour inspectorate and the various institutional and informal economy actors is crucial to:

- Understanding better the challenges faced by informal economy actors;
- Ensuring compliance with fundamental rights and effective social protection;
- Setting priorities for intervention.

When the labour inspectorate intervenes in the informal economy, it is generally faced, *inter alia*, with the following problems:

- Accessing informal economic units on account of their geographical location, the fact that they are in private homes, their unsanitary facilities, the damage caused by flooding, or their proximity to sewers or unsafe conditions, etc.;
- Tailoring visits to the size of the economic units;
- Explaining the labour inspector's mission, thereby modifying the existing perception which confuses it with that of the tax inspector;
- Assessing the employment relationship, which is often neither formalized in writing nor defined as such, in an economy which often makes use of apprentices, family labour, and casual or independent workers;
- Adapting traditional inspection tools to the specific features of labour inspection visits within the informal economy;
- Making labour legislation, fundamental principles and rights at work, and occupational safety and health measures, known to informal economy actors;

- Addressing attitudes that are complicit with and tolerate the informal economy, and other difficulties such as the wide range of languages that make communication difficult, etc.; and
- Combating stereotypical ideas.

The labour inspectorate must start by identifying the various actors who might become its allies. In so doing, it must undertake preparatory work in the field, consisting of an exchange of information with the informal economy workers and employers, in order to become familiar with their needs. It is equally important to work in collaboration with other public authorities and civil society. The involvement of these actors will make the subsequent action plan achievable, operational, and adapted to fit the specific situation in question.

Creating a network of partners with whom to collaborate is not incompatible with - but rather complementary to - the principles of impartiality and independent labour inspection decision-making.

Collaboration with the social partners, as well as with institutional and community representatives (the very essence of a participatory methodology), should take place throughout the entire process of the labour inspector's intervention in the informal economy, which consists of four stages: preparing the intervention; developing an action plan; implementing the action plan; monitoring and assessing the intervention.

2.3.3.2. Labour inspection and undeclared work

By contrast to the section above, informality in developed countries is often equivalent to non-compliant practices and an attempt to circumvent social protection systems. Failure to comply with registering and affiliating duties is considered unacceptable and qualified as undeclared work. Industrialized countries therefore report to the ILO on the extension of the phenomenon of economic activities carried out beyond any state control.

These activities concern registered businesses, which do not declare all of part of their employees, as well as unregistered businesses operating completely outside the control of social security, failing to pay taxes and employing unregistered workers.

Undeclared work is often characterized by the complexity of the methods used to escape the enforcement of social security mechanisms. These may include, for example, having recourse to subcontractors who employ undeclared migrant workers working below the minimum wage and who do not pay social security contributions.

The concept of undeclared work is defined in different ways and generally used synonymously with other terminology such as illegal work, irregular work, illegal employment, black labour etc., even though the content is fundamentally different.

Moreover, the definition varies significantly among countries. While some countries describe undeclared work as a sub-category of illegal work, others have no official definition at all.

In the European Union undeclared work is defined as *any paid activities that are lawful as regards their nature, but not declared to public authorities, taking into account differences in the regulatory systems of the Member States.*²¹

Bogus self-employment is included in the above definition. Bogus self-employment occurs when a person is declared as self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations.

The three key reasons not to declare the employment relationship are: a) to avoid payment of income, value-added or other taxes; b) to avoid payment of social security contributions; and c) to avoid having to meet certain legal labour standards, such as minimum wages, maximum hours, safety standards, etc.

A sub-category of undeclared work is the so-called under-declared work: where formal employers pursue the illegal practice of reducing their tax and social security payments, and therefore labour costs, by paying their formal employees

²¹ European Commission: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Stepping up the fight against undeclared work (Brussels, 24 October 2007).

two salaries - an official declared salary and an additional undeclared ('envelope') wage which is hidden from the authorities for tax and social security purposes.²²

Undeclared work may come in different forms:

- The most common type is work carried out in a formal undertaking, partially or fully undeclared. Partially undeclared work is sometimes also called "under-declared work", "envelope wages" or "cash-in-hand";
- Another type is undeclared "own-account" or self-employed work, where self-employed persons provide services either to a formal enterprise or to other clients, such as households;
- Undeclared work occurs in all kind of economic sectors, both within countries and across borders.

The main responsibility for tackling undeclared work lies with the national authorities. The fight against undeclared work relies mostly on three types of enforcement bodies:

- Labour inspectorates addressing abusive behaviour regarding working conditions and/or health and safety norms;
- Social security inspectorates fighting fraud in the area of social insurance contributions;
- Tax authorities dealing with tax evasion.

In some countries, the social partners are also involved – along with the labour inspection services - in the fight against undeclared work. This also applies to the customs authorities, migration bodies, the police, and the Public Prosecutor's Office. In many countries, where inspections of clandestine work or illegal employment are carried out through a partnership between the labour inspectorate and other public administration bodies, such as the internal and border police, customs, social insurance bodies and tax services, each authority acts in pursuit of its own objectives.

²² European Commission: *Employment, social affairs and inclusion: Glossary*, available at: http://ec.europa.eu/social/main.jsp?catId=1323&langId=en#chapter_U

A fair number of industrialized countries have introduced various measures to step up their efforts in the fight against undeclared work, given its negative consequences. Most of them are in the area of deterrence measures to influence people's behaviour – such as stricter sanctions or a focus on more effective inspections. In addition, countries use preventive measures, including tax incentives, amnesties and awareness raising, to decrease the incidence of undeclared work and facilitate compliance with existing rules.

Labour inspectors do not regularly determine whether there is an employment relationship or not because this is normally the task of national judicial systems. Rather than merely stating that there is relationship, the task of labour inspectors - in most systems - is to recognize, assess and gather evidence on the actual situation existing at the workplace. For that, labour inspectorates should be able to rely upon enough statutory prerogatives and remedies in order to apply them to real situations. In most systems, labour inspectorates deliver notices, reports and other administrative remedies to foster more adequate conduct within the enterprise. Labour inspectors' administrative acts consist of making an official analysis of a specific relationship in order to verify if real and concrete independent work is being carried out or if there is a disguised relationship in need of protection.

The labour inspection intervention represents a government's official statement about a certain and determined workplace. It is also the bridge between the reality of the facts that occur within the workplace and the letter of the law. Labour inspection observations and reports are very useful when describing what the inspector witnessed and perceived at the workplace; a detailed description of the circumstances and facts the inspector has seen is therefore essential for the correct assessment and framing of the employment relationship.²³

As established in the Employment Relationship Recommendation, 2006 (No. 198)²⁴, the reality of the facts should prompt the analysis to be carried out and

²³ R. Bignami, G. Casale and M. Fasani: *Labour regulation and employment relationship*, Working Document No. 28, LAB/ADMIN (Geneva, ILO, 2013) available at:

http://www.ilo.org/labadmin/info/pubs/WCMS_217603/lang--en/index.htm

²⁴ See: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R198

the inspection itself. Although documents such as a written contract or job agreement are necessary for an inspection and may be required as proof of the existence of an employment agreement for most of the labour relationship systems, the facts observed in the workplace play a definitive role in determining the employment relationship, rather than what is written on a piece of paper.

The precondition for a sound intervention of labour inspectors in this domain is to rely upon an adequate legal framework in line with international labour standards on labour inspection, which provides the means to determine the existence of an employment relationship.

Box 2.1 Presumption of a labour contract in Portugal

In Portugal, there is a legal presumption of the existence of a labour contract when two or more of the following indicators established by law (Article 12 of the Labour Code, approved by Act No. 7/2009 of 12 February 2009) are identified: when the activity is conducted in a place owned or determined by the beneficiary; when the work equipment and tools are the property of the latter; when the hours of work are determined by the beneficiary; when there is a payment of an equal amount on a periodical basis as counterpart of the work rendered; or when the work provider has a management position in the organizational structure of the beneficiary of the activity.

Recommendation No. 198 encourages member States to allow a broad range of means to determine the existence of an employment relationship and to clearly define the conditions applied - for example, subordination or dependence.

It is advisable to define in laws and regulations - or by other means - specific indicators of the existence of an employment relationship. Those indicators might include:

- The fact that the work is carried out according to instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit

of another person; is carried out personally by the worker; is conducted within specific working hours or at a workplace specified; is agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability; or involves the provision of tools, materials and machinery by the party requesting the work.

- Periodic payment of remuneration to the worker: the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker.

Undeclared work may have a transnational dimension, especially in those regions with free-trade arrangements or even deeper integration agreements that grant, among other freedoms, free movement of workers.

A good example of cross-border cooperation in this domain is the European Platform tackling undeclared work²⁵, which enhances cooperation between EU Member States (box 2.2).

The main objective of the Platform is to improve the Member States' capacities to tackle undeclared work in its various forms, including bogus self-employment, and to drive change at national level in order to promote better working conditions and the emergence of formal employment.

The Platform provides a forum at EU level where the different actors involved can exchange information and good practices, develop knowledge and evidence, learn from each other and together, and engage in closer cross-border cooperation and joint activities.

²⁵European Commission: *European Platform tackling undeclared work*, see: <http://ec.europa.eu/social/main.jsp?catId=1299&langId=en>

Box 2.2 The European Platform tackling undeclared work enhances cooperation between EU countries. It brings together relevant authorities and actors involved in fighting undeclared work, to tackle this issue more effectively and efficiently, while fully respecting national competences and procedures.

The Platform

- helps EU countries to better deal with undeclared work in its various forms
- drives change at national level
- promotes better working conditions and formal employment
- aims to increase awareness of issues related to undeclared work

This **EU-level forum** allows different actors, including **social partners** and **enforcement authorities**, such as labour inspectorates, tax and social security authorities, to

- exchange information and good practices
- learn from each other and together
- develop knowledge and evidence
- engage in closer cross-border cooperation and joint activities

2.4. Collection of social security contributions

The role of labour inspection in this domain consists of combating the cases of non-payment of social security contributions, and the undue application and obtaining of bonuses or reductions in corporate contributions to social security.

The obvious consequence of not paying social security contributions is weak social security coverage on account of a lack of financial resources.

Apart from the employers in the informal sector, there are others who, although formally registered, do not comply fully with their obligations to pay social security contributions. These employers may withhold contributions or contribute less than the amounts due, or keep or use the contributions paid by their employees for other purposes. They may also deduct contributions from their employees' wages, which should in fact be paid by the employer.

According to Paragraph 18 of the Income Security Recommendation, 1944 (No. 67)²⁶, the employer should be made responsible for collecting contributions in respect of all employees employed by him, and should be entitled to deduct the sums due by them from their remuneration at the time when it is paid. A similar provision is found in Paragraph 80 of the Medical Care Recommendation, 1944 (No. 69),²⁷ which states that: contributions in respect of employed persons may appropriately be collected by their employers. The collection of social security contributions is fundamental to the effective operation of the social security schemes and therefore falls under the general responsibility of the State for the proper management of the system.

Normally it is the employer's responsibility to deduct social insurance contributions from the wages paid²⁸. The obligation to deduct the contributions is usually linked with the responsibility to calculate the amount of the contributions due and to pay it to the social security institutions.

Contributions from the employees' wages are generally deducted on a monthly basis. Employers are often required to pay contributions on the same day that wages are paid - or soon afterwards.

In certain countries, employers not only have the responsibility of calculating contributions but also of actually paying out sickness and maternity benefits in place of the social security institutions concerned.

²⁶ See: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312405

²⁷ See: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R069

²⁸ This is the case, among other countries, in *Albania, Bulgaria, Ethiopia, Finland, Germany, Republic of Korea, Mongolia, Namibia, Norway, Panama, Philippines, Poland, Portugal, Suriname and Uganda.*

In the event of non-payment of contributions within the fixed time limit, it is not unusual to charge interest on the overdue payments. Other countries levy additional fines for the delayed payment of contributions due. The collection of contributions should not be a major problem because it can be arranged through direct debit of the employers' accounts. There is a danger that contributions might only be paid when companies go bankrupt, and that social security institutions receive little or no further payments - or have to give up existing claims.

According to Paragraph 19 of Recommendation No. 67: "In order to facilitate the efficient administration of benefits, arrangements should be made for the keeping of records of contributions, for ready means of verifying the presence of the contingencies which give rise to benefits... "

Recovering outstanding contributions is a key function of the social security services.

The employers' failure to pay contributions does not necessarily automatically trigger enforcement procedures to collect the outstanding payments. It is not uncommon that steps have first to be taken to try and find a settlement with the employer to facilitate payment of the arrears in full. Only if these attempts do not bear fruit is the matter referred to the courts for legal redress.

Administrative procedures initiated by social security institutions to collect outstanding contributions usually have an executive title and do not require a court order to be enforced.

In recent years there has been an increase in the introduction of new methods adopting deterrent measures, which impose sanctions that affect the company's economic interests. Public investment via public contracts account for a high proportion of formal economic activity in both developed and developing countries, and in a number of countries legislation requires the obligation of contracting enterprises to comply with social security obligations. The duration of the exclusion of public tenders may be imposed for a certain period of time.

2.5. Labour inspection's role with respect to social security – vis-à-vis workers: intervention on social fraud committed by recipients of work-related benefits

Some employees in the formal sector may also occasionally abuse social security through what is considered fraudulent means to obtain benefits through misrepresentation. For example, they may submit forged documents, make false declarations or abuse the system by not informing a change in status.

Social security fraud can also be the result of an arrangement between the employer and the worker. In fact, collusion between the employer and the employee in benefit frauds is more prevalent than fraud committed only by the beneficiary.

There are a variety of situations that may be considered social fraud or abuse against social security.

Fraud may consist of persons making false statements when applying for social security benefits, or hiding facts that affect benefit. For example: a beneficiary of unemployment benefit may fail to report that they are working; a person may not notify a beneficiary's death and continue to receive the pension; or a person may indicate that they do not have any income, when in fact they make money from an undeclared source.

Nowadays one of the main priorities of the social security inspection services is to combat cases of dummy corporations or shell companies set up with the only aim of gaining access to social benefits for their fictitious workers.

Combating social security fraud has taken on a new and potentially unsettling dimension in countries where people are encouraged to report suspected abuse of social security, as in the United Kingdom and the United States for example.²⁹

²⁹ In the United Kingdom, there is a free hotline, where anyone can call anonymously to denounce persons who are suspected of abusing benefits: the *National Fraud Benefit Hotline (NBFH)*. A similar system exists in the United States, where anyone can fill out an online document with the details of persons suspected of fraud. However, the system may be misused for private purposes, lead to abuses, and generate accusations of false wrongdoings.

In most countries, benefits received unduly have to be reimbursed. In some countries, the undue receipt of benefits under certain conditions, mostly related to the gravity of the offence, is considered a criminal offence.

A number of countries have launched on-line mailboxes for reporting work-related fraud anonymously. The move is clearly aimed at detecting those companies that hire under the table workers, or issue part time contracts and then force their workers to work eight hours or more – as well as those people who are collecting unemployment benefits and doing “black labour”. There is a danger of baseless allegations fuelled by quarrels between neighbours, competitors or by disgruntled employees, but on balance the authorities feel this measure helps to prevent social fraud.³⁰

³⁰ *In Spain an online mailbox was created in August 2013 to receive anonymous reports about undeclared work or shadow economy situations: up to December 2016, it had registered 195,912 communications and led to 31,631 inspections, of which 23,750 were finalized.* See: Ministry of Employment and Social Security, Spain: Buzón del fraude, Inspección de Trabajo y Seguridad Social, available at: <http://www.empleo.gob.es/buzonfraude/>

3. Interaction between social security, occupational safety and health and labour inspection

Providing protection in the event of employment injury is an important social protection principle and policy. Employment injury insurance (EII) schemes, particularly when delivered in the form of social insurance, are usually part of a broader social security benefits system – which provides support to the unemployed, and those who are suffering ill health, in poverty, or are retired and dependent upon a pension for their income.

There is, of course, a direct correlation between the number of occupational accidents and illnesses and the costs of running an EII. It is therefore advisable that there is a very close relationship between OSH practices and initiatives and the operation of EII schemes.

As the oldest branch of social security in many countries, a modern EII scheme has three main functions: prevention, rehabilitation and compensation, as defined by the Employment Injury Benefits Convention, 1964 (No.121).

The benefits of EII's prevention and its close link with OSH measures have been proven by the International Social Security Association (ISSA) international study on the costs and benefits of investments in OSH, which demonstrates a global return on prevention of 1:2.2 or 120 per cent³¹. For social security institutions, involvement in prevention activities means addressing occupational hazards proactively, before providing benefits for treatment, rehabilitation, early retirement or invalidity - i.e. following the principle that “prevention is better than rehabilitation” and “rehabilitation is better than compensation”.

As already mentioned, labour inspection may, inter alia, cover the protection of workers' rights to access to social security and safety and health at work. Given its limited resources and the daunting task of enforcing laws, labour inspection has to take a preventive and strategic approach in addressing this whole issue.

³¹ International Social Security Association (ISSA): *ISSA guidelines on prevention of occupational risks* (Geneva, 2017).

In this regard, labour inspectorates and social security institutions, including EII schemes, have many things in common. It is therefore crucial for labour inspectorates and social security institutions and bodies to work together in compiling and comparing data, thereby promoting compliance and designing better targeted operations.

3.1. Occupational accidents and work-related diseases: social security and linked occupational safety and health responsibilities

Despite the fact that many preventive and protective measures have been taken at all levels to control occupational accidents and work-related diseases, in 2014 there was an estimated 2.78 million fatalities compared to 2.33 million estimated in 2011. For fatal occupational accidents, there were 380,500 deaths, an increase of 8% compared to 2010. Fatal work-related diseases had been a concern since 1998 and were at least five times higher than fatalities due to occupational accidents. In 2015, there were 2.4 million deaths due to fatal work-related diseases, an increase of 0.4 million compared to 2011³².

However, only a fraction of the above-mentioned work-related diseases were, in reality, diagnosed as an occupational disease, in the legal sense of the term (*a disease contracted as a result of an exposure over a period of time to risk factors arising from work activity*³³). Indeed, it is not easy - and considerably more difficult than in the case of accidents - to prove that a disease is caused by conditions at and not outside work.

³² Workplace Safety and Health Institute: *Estimates of occupational accidents and work-related illnesses* (Singapore, 2017), available at: <http://www.icohweb.org/site/images/news/pdf/Report%20Global%20Estimates%20of%20Occupational%20Accidents%20and%20Work-related%20Illnesses%202017%20rev1.pdf>

³³ *Resolution concerning statistics of occupational injuries (resulting from occupational accidents)*, adopted by the Sixteenth International Conference of Labour Statisticians (October 1998), available at: https://www.ilo.org/global/statistics-and-databases/standards-and-guidelines/resolutions-adopted-by-international-conferences-of-labour-statisticians/WCMS_087528/lang--en/index.htm

Employers are responsible for securing the OSH of their workers and for providing fair, equitable and effective compensation to workers - and, in the event of their death, to their dependent survivors. This is intended to make good any loss of income as a consequence of employment-related accidents or diseases, and to facilitate injured workers' access to the necessary health care as well as physical and vocational rehabilitation services.

Where such mechanisms are not in place, the only hope of redress for persons injured at work or for their survivors, lies in action against the employer in the ordinary courts. Lawsuits of this type are generally lengthy, expensive and stressful for victims, and are therefore rarely efficient in providing effective compensation to injured workers and the family or other dependants of deceased workers.

Non-adversarial schemes - such as workmen's compensation schemes - were thus introduced in a number of countries at an early stage, with a view to ensuring the timely provision of benefits to injured workers and their dependants. But experience has shown that even where such an obligation exists in law, the outcomes of these schemes are often sub-optimal. The need to submit an insurance claim, involving the need to obtain relevant information and undergo rigorous medical assessments, can cause serious delays in obtaining treatment and benefits. In addition, an employer may be reluctant to make a claim for fear of other legal implications.

Sometimes, employers may not continue their business, and the private insurer does not want to provide benefits for a long time. Benefits may also be in the form of a lump sum or - even in the case of periodic payments - paid for a definite period without indexation. In recognition of these drawbacks, many countries have replaced employer liability provisions with social insurance, which in effect extends the no-fault principle to share the costs of employment injury among employers.

Recent large-scale industrial accidents such as the Rana Plaza building collapse in Bangladesh in April 2013 have revealed that many workers are not properly covered in the event of employment injury (see box 3.1). Although the ILO facilitates ad hoc compensation arrangements to ensure that the minimum rights of affected workers are met, there is an attempt to seek long-term

solutions by either establishing a proper EII scheme or improving the design and the administration of an existing scheme to effectively enforce legal coverage.

Box 3.1 From employers' liability to EII schemes

A lesson learned from the Rana Plaza disaster, Bangladesh

On 24 April 2013, the collapse of the Rana Plaza building in Dhaka, Bangladesh, which housed five garment factories, killed at least 1,134 people and injured more than 2,500.

Given the hazardous working conditions and the high risk of exposure to employment injury in the garments sector, the provision of adequate benefits is of critical importance in compensating injured workers for the loss of earnings they are likely to suffer, and to ensure that they have access to the medical and associated care required by their condition. Access to some form of financial compensation or support for dependent family members who lose their breadwinner can also make the difference between life in dire poverty, where children and older people are forced to work to survive, and life at or just above subsistence level.

At that time, the only form of financial protection available to workers and their dependants was set out in the Labour Code, which requires employers, when liable, to provide specified payments to injured workers or their dependents.

To learn a lesson from the Rana Plaza accident and its compensation process, the Government signed a Letter of Intent with the ILO and the Government of Germany to explore a possibility to establish a national employment injury protection and rehabilitation scheme in line with ILO Employment Injury Benefits Convention, 1964 (No. 121).

This shift in approach to social insurance has been reflected in the ILO Employment Injury Benefits Convention, 1964 (No. 121). Convention No. 121 requires that: each Member shall, under prescribed conditions, take measures to prevent industrial accidents and occupational diseases (Article 26(1)(a)); each Member shall accept general responsibility for the due provision of the benefits provided in compliance with this Convention and shall take all measures required for this purpose (Article 25); each Member shall, under prescribed conditions, provide rehabilitation services which are designed

to prepare a disabled person wherever possible for the resumption of his previous activity, or, if this is not possible, the most suitable alternative gainful activity, having regard to his aptitudes and capacity (Article 26(1)(b); and take measures to further the placement of disabled persons (Article 26 (1) (c).

Many national EII schemes have followed the requirements of the Convention with the functions of prevention, rehabilitation and compensation. However, these objectives can only be achieved effectively if there is a high level of policy integration between employment injury schemes and policies relating to labour markets, labour inspection and OSH.

Because of the difficulty in proving a disease to be occupational in origin, most countries have produced lists of prescribed occupational diseases. The ILO Governing Body approved a revised *ILO List of Occupational Diseases*³⁴ in 2010, which replaced the preceding one contained in the Annex of the List of Occupational Diseases Recommendation, 2002 (No. 194).

3.2. Incentives linked to occupational safety and health performance

Both financial incentives (linked to employer contribution levels – the “bonus-malus” and experience rating systems) and non-financial incentives (certificates, prize competitions, quality marks etc.) may be used. These incentives are designed to recognize companies’ outstanding OSH practices and improvements (reduction in accident numbers, for example). The winning of an award in recognition of an employer’s efforts to improve OSH management may be particularly important to a company’s’ image with regard to cooperate social responsibility (CSR).

Financial incentives have a direct link to EII schemes - and the role that labour inspectorates play - to reduce and prevent work-related accidents and diseases. A rating system considering the past performance of employers in respect of occupational injuries and diseases can be used as an incentive to prevent such

³⁴ See : https://www.ilo.org/safework/info/publications/WCMS_125137/lang--en/index.htm

injuries and encourage employers to facilitate the return to work of injured workers.

Under this system, the contribution rates are fixed or adjusted according to the accident experience of the individual establishment, or on the basis of the accident prevention measures taken by the establishment.

This system is usually based on a schedule or classification of industries by risk, which specifies a “normal” or “average” rate of contribution for each class (differential contribution rates). The contribution rate for an individual enterprise is set within certain limits of deviation from the industrial average according to the accident experience of the individual establishment and/or according to the safety measures taken or general safety conditions prevailing in the establishment (experience contribution rates).

A differential contribution rate based on the risks inherent in sectors applies in many European countries. Generally speaking, sectors such as mining, construction, transport and agriculture may be “higher risk” than other industries in most countries, and employers in these sectors may have to pay correspondingly higher contributions.

Elsewhere, practice again varies. Uniform rates apply, for example, in India, Malaysia, the Philippines and Viet Nam. But differential contribution rates apply in China, Indonesia, and Thailand.

In China, according to OSH risk levels, different sectors are classified into three categories: the low-risk sectors, mainly including the service industries; the middle-risk sectors, focusing on the manufacturing industries; and the high-risk sectors such as the petrochemical, mining and metallurgical industries. The average contribution rate is around 1 per cent of employees’ payroll. A contribution rate of each category mentioned above may be set, ranging from 0.5 to 2 per cent, following a “pay-as-you-go” funding principle through consultations among the EII, OSH and financial departments of each pooling region of EII schemes.

Experience-rating systems are good mechanisms for providing employers with the right incentives to ensure better prevention and rehabilitation. Nonetheless,

sophisticated administrative structures, proper inspections and good data management are required.

Box 3.2 In Germany, where the employment injury system is operated primarily on a sectoral basis by nine agencies, namely, the Berufsgenossenschaften (BGs), which are under the control of the social partners, the use of financial incentives or penalties has been in place for many years. It means that BGs have the legal powers to set contribution rates for individual enterprises on the basis of the quantity and severity of accidents. Good OSH practices, even in industries with high-risk levels, can be rewarded and poor practices penalized.

Experience-rating systems may be applied to all establishments covered under the insurance scheme - or only to establishments that exceed a certain size. They are mainly applied to small establishments when the rating is set in line with the prevention measures taken, or according to safety conditions in the individual establishments. When they are set according to accident experience, the application is usually limited to establishments over a certain size, e.g., establishments with over 100 employees, where chance variations play a smaller role.

As a standard insurance industry practice, private insurance companies may charge higher premiums to individual employers with poor past claims records or reduce premiums for employers with good records. Good practice, for example, decreasing accident numbers/severity and demonstrable improvements in OSH management systems can be rewarded by reduced contributions. Conversely poor practice, such as rising accident numbers and severity, can be penalized by increasing contributions (this is frequently known as the “bonus-malus” system).

The administration of a system based on merit or experience rating requires very elaborate and smooth-working machinery. Establishments must be classified on a one-to-one basis - and all records and statistics must be kept individually. Furthermore, there is a need for highly qualified and specialized personnel to assess the various factors for determining the contribution rate for each establishment. In this respect, the work of the labour inspectorate, when

examining safety and health conditions in enterprises, often plays a decisive role in determining whether a specific company should receive a reward or a penalty.

3.3. Labour inspection interventions linked to employment injury and occupational safety and health

Providing protection in the event of employment injury is an important social protection principle and policy. It has taken a long time to accumulate international good practices, which have been documented in the ILO Employment Injury Benefits Convention, 1964 (No. 121) and other relevant Conventions. Meanwhile it has become generally acceptable, and a principle among those working in EIIs, OSH and labour inspection, that occupational accidents and diseases are preventable. The labour inspection services are responsible for checking workplace safety, as well as for coordinating the whole range of measures to help prevent accidents at work, occupational injuries and diseases.

An integrated framework - comprising comprehensive OSH measures, strong inspection services and enforcement measures, as well as adequate cash and health-care benefits in the event of employment injuries, accompanied by appropriate rehabilitation services - remains the best way of ensuring that all men and women workers and their family dependants are effectively protected against the risks of employment injury.

3.3.1. Prevention of accidents and diseases

Possibly inspired by the model introduced by the United Kingdom in the 1970s and recent international labour standards on OSH, many countries have updated or developed their integrated OSH regulatory frameworks. These have evolved from merely prescriptive protection measures to more preventive measures, with a clear definition of the legal duties and responsibilities of governments, employers and workers.

Sound systems designed to prevent occupational hazards and make workplaces healthy and safe reduce costs for enterprises while providing workers with decent working conditions. At the same time, well-conceived national OSH

policies and programmes have the potential to alleviate national state budgets, release resources to extend the coverage of social protection floors, and improve the benefits provided to all those in need.

Under this new and more systemic approach, based on the new OSH methods of risk management and prevention (emphasized in the ILO Promotional Framework of Occupational Safety and Health Convention, 2006 (No. 187))³⁵, inspectors are increasingly directly involved in workplace risk prevention strategy, seeking to further develop and implement basic hazard mitigation systems and participating in, or advising on, risk assessment. The inspector is playing a proactive, anticipatory role, operating directly within the workplace.

Prevention in the context of labour protection implies a determined effort to help workers and employers avoid or eliminate the risk of accidents and diseases. The idea behind this is that initially eliminating poor working conditions or minimizing risks is more beneficial than systematically having to resort to sanctions because such conditions exist. In preventing these categories of risk, labour inspection services avoid or reduce human, social or economic losses for the individual, the enterprise or society as a whole. In practical terms, the preventive role of the inspection services involves an increasing emphasis on proactive activities (carrying out planned inspection visits for such purposes as education, assessing plans for new buildings, plant, equipment and processes, etc.).

However, the gap between the legal provisions and reality exists in many countries. Labour inspectorates - including those involved in OSH inspection - therefore need to launch enforcement or compliance campaigns together with all the stakeholders to improve compliance with national legislation.

³⁵ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187

EII institutions also play a crucial role in a number of countries, including Canada, France, Germany, the Republic of Korea and Switzerland, by providing their own supervision services to their members' employers, often in addition to those organized by the State. It has generally been found preferable to focus more on an informal advisory and consultative role. One of the key tasks of EII supervision

Box 3.3 SOCSO's risk prevention approach in Malaysia

Guided by the National Occupational Safety and Health Master Plan (2016-2020), *OSH Transformation – Preventive Culture*, the SOCSO's risk prevention approach includes the following key components:

- Networking and inter-agency collaboration: SOCSO collaborated with NGOs, businesses and government agencies in joint programmes aimed at accident prevention. For example, there were over 600 collaboration programmes per year between SOCSO and NGOs.
- Awareness and education: promotional campaigns were conducted with multi-stakeholders, which produced campaign materials, including posters, videos and pamphlets.
- Audit and guidelines: the Commuting Safety Management System was established, and Guidelines for Good Practice for Management of Commuting Accidents were developed, etc.
- Research and development: allocated research grants were awarded for local academic institutions to conduct research on accidents trend analysis, and control and prevention measures.
- A greater emphasis on commuting accidents: Due to the increasing number of these accidents, RM 5 million were allocated per year – this was increased to RM 7 million in 2014 to conduct, among others:
 - Awareness / Education Programmes
 - Commuting Accident Outreach Programme for Employers and Employees
 - Safe Motorcycle Riding Program (SMRP) and Defensive Driving Program (DDP)
 - Applied Research Grants
 - Establishing Commuting Safety Management System/ Road Safety Element in OSH Management System

staff is to educate and train employers to better understand and implement OSH regulations in practical ways, especially in SMEs, which may not have dedicated OSH staff. In Malaysia, a comprehensive risk prevention approach has been adopted by the Social Security Organisation (SOCSO) to contribute to the reduction of occupational accidents and diseases in the country (box 3.3).

3.3.2. Investigation of working accidents and diseases

Proactive preventive action is complemented by reactive activities, mainly consisting of investigation after accidents have occurred or in reaction to complaints.

Article 14 of the Labour Inspection Convention, 1947 (No. 81) stipulates that the labour inspectorate shall be notified of industrial accidents and cases of occupational diseases in such cases and in such manner as may be prescribed by national laws or regulations. In this regard, the competent authority or authorities shall establish and apply procedures for the notification of occupational accidents and diseases, by employers and, when appropriate, insurance institutions and others directly concerned, and prepare annual statistics on occupational accidents and diseases (Article 11 (c) of the Occupational Safety and Health Convention, 1981 (No.155))³⁶.

Detailed requirements and procedures for recording and notification of occupational accidents and diseases may be found in the Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (No.155)³⁷.

The investigation of occupational accidents and diseases demands the development of systems for the collection, recording and notification of data concerning those occupational accidents and diseases. In the process of collecting data, it is vital to be consistent in compiling statistics at the national level with a view to improving comparability. The competent authority should determine the relevant concepts and terminology in consultation with the most

³⁶ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155

³⁷ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P155

representative organizations of employers and workers, and these should be consistent with international agreements and recommendations.

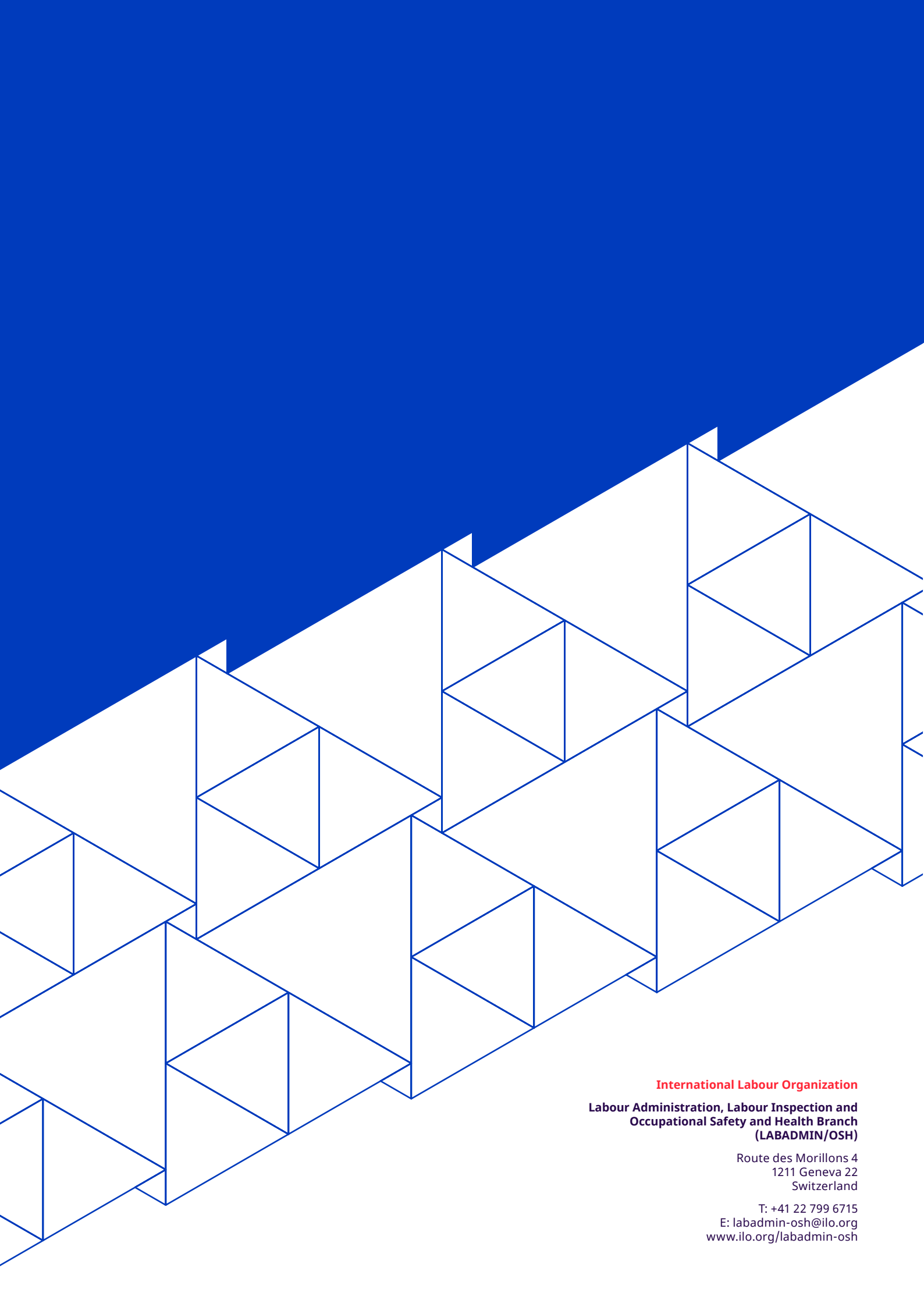
In analysing occupational accidents, the attribution of the responsibility for the accident should not be the main concern, even if it is also an important part of the investigation in many countries (box 3.4).

Box 3.4 In Spain, according to the Social Security Act (section 123), labour inspectors can propose a surcharge in the social security compensation in the event of an occupational accident or disease, if, as a result of the investigation, it is proven that the employer did not comply with safety regulations in the workplace.

This increase (“surcharge”) amounts to 30 to 50 per cent, depending on the case. This is an administrative sanction imposed on the employer, but the victim of the accident receives it. The surcharge is decided by the social security administration. This contingency is not insurable and is graduated according to the seriousness of the infringement of the rule of care; it operates in a similar way to a punitive damages system.

The investigation process after a work-related incident is also extremely valuable in terms of preventive work. The lessons drawn from the causes of occupational accidents and diseases may help identify better practices and procedures to be implemented in the future, with a view to preventing their recurrence.

Given the technical nature of OSH inspection and investigations of industrial accidents and cases of occupational diseases, each Member (of the ILO) shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are associated in the work of inspection, in such manner as may be deemed most appropriate under national conditions, for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers (Article 9 of Convention No. 81).



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