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EU-ILO Project
“Towards safe, healthy and declared work in Ukraine”

Draft Law
“On Occupational Safety and Health of Workers”
of Ministry of Development of Economy, Trade and
Agriculture

**Contributions of the EU-ILO project in promoting its
better alignment with the main applicable International
and EU Labour Standards and best practices**

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PRELIMINARY NOTE - DISCLAIMER

The present technical advices and recommendations are provided within the scope of the EU-ILO Project “Towards safe, healthy and declared work in Ukraine”, under activities 1.1.1 and 1.1.2 (of Output 1.1) and activity 1.2.1 (of Output 1.2).

They are intended to promote a better alignment of the Ukrainian legislation with the international¹ and the European² labour standards on Occupational Safety and Health (OSH).

They should not therefore be seen as official comments of the ILO or as a replacement of the positions of the supervisory bodies of the ILO.

¹ Especially regarding the following International Labor Standards: Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); Occupational Safety and Health Convention, 1981 (No. 155); Protocol of 2002 to the Occupational Safety and Health Convention, 1981; and Occupational Health Services Convention, 1985 (No. 161).

² In particular, with the following EU Directives: Council Directive No. 89/391/EEC, of 12 June 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work (OSH Framework Directive); Council Directive No. 92/85/EEC, of 19 October 1992, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding; Council Directive No. 94/33/EC, of 22 June 1994, on the protection of young people at work, as amended by Directive No. 2007/30/EC, of 20 June 2007, of the European Parliament and of the Council; Council Directive No. 91/383/EEC, of 25 June 1991, supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship; Directive No. 2004/37/EC, of 29 April 2004, of the European Parliament and of the Council, on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, last amended by the Regulation (EU) 2019/1243, of 20 June 2019, of the European Parliament and of the Council; Directive No. 2000/54/EC, of 18 September 2000, of the European Parliament and of the Council, on the protection of workers from risks related to exposure to biological agents at work, last amended by the Commission Directive (EU) 2019/1833, of 24 October 2019, amending Annexes I, III, V and VI to Directive 2000/54/EC of the European Parliament and of the Council as regards purely technical adjustments; and Council Directive No. 98/24/EC, of 7 April 1998, on the protection of the health and safety of workers from the risks related to chemical agents at work, last amended by Directive No. 2014/27/EU, of 26 February 2014, of the European Parliament and of the Council.

LAW OF UKRAINE
“On Safety and Health at Work”

« COMMENT: The title “Occupational Safety and Health of Workers” should be substituted, in all text, by “Safety and Health at Work”. Reasons: 1) This law regulates not only the safety and health of the workers, but also of employers, trainees, interns, self-employed persons and other persons that might be affected by work activities; 2) The concern of this law is just with the safety and health AT WORK and not at any other activity that persons (employers, workers, etc.) might also be engaged on (e.g., leisure, school, family events, personal activities, sports, etc.)»

CHAPTER I. PURPOSE, SCOPE, DEFINITIONS AND LEGISLATION

Article 1. Purpose

1. This Law defines legal, organizational, economic and social basics for Safety and Health at Work in Ukraine, and regulates industrial relations in this field.

2. Its purposes are to ensure the safety, health and well-being of workers at work and to prevent the occurrence of occupational accidents and diseases.

3. This Law transposes to the internal juridical order of Ukraine the following European Union Directives:

- 1) Council Directive No. 89/391/EEC, of 12 June 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work;
- 2) Council Directive No. 92/85/EEC, of 19 October 1992, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding;
- 3) Council Directive No. 94/33/EC, of 22 June 1994, on the protection of young people at work, as amended by Directive No. 2007/30/EC, of 20 June 2007, of the European Parliament and of the Council;
- 4) Council Directive No. 91/383/EEC, of 25 June 1991, supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.

3. This Law also partially transposes to the Ukrainian internal juridical order the directives to protect the genetic heritage, containing minimum occupational safety and health requirements against chemical, physical and biological agents at work, including:

- 1) Directive No. 2004/37/EC, of 29 April 2004, of the European Parliament and of the Council, on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, last amended by the Regulation (EU) 2019/1243, of 20 June 2019, of the European Parliament and of the Council;
- 2) Directive No. 2000/54/EC, of 18 September 2000, of the European Parliament and of the Council, on the protection of workers from risks related to exposure to biological agents at work, last amended by the Commission Directive (EU) 2019/1833, of 24 October 2019, amending Annexes I, III, V and VI to Directive 2000/54/EC of the European Parliament and of the Council as regards purely technical adjustments;
- 3) Council Directive No. 98/24/EC, of 7 April 1998, on the protection of the health and safety of workers from the risks related to chemical agents at work, last amended by Directive No. 2014/27/EU, of 26 February 2014, of the European Parliament and of the Council.

4. This Law also further approximates national legislation on occupational safety and health to the International Labour Standards set by the International Labour Organization, in particular, to:

- 1) Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187);
- 2) Occupational Safety and Health Convention, 1981 (No. 155);
- 3) Protocol of 2002 to the Occupational Safety and Health Convention, 1981;
- 4) Occupational Health Services Convention, 1985 (No. 161).

Article 2. Scope

1. This Law shall apply to all workers and employers regardless of their form of ownership and activity.

2. This Law shall not apply to certain specific public service activities which peculiar characteristics inevitably conflict with it, such as military service, bodies of internal affairs, National Police, Court Guard Service, State Service of Special Communications and Information Protection of Ukraine, bodies and units of civil defense, State Penal Service of Ukraine, prosecution authorities, and other law-enforcement units established according to the legislation of Ukraine **«COMMENT: Article 2(2) of Directive 89/391/EEC».**

3. In the cases foreseen in the previous paragraph, the safety and health of the workers and of persons performing such peculiar activities in the aforesaid public services must be ensured, as far as possible, in the light of the objectives and principles set forward in this Law and shall be regulated by laws of Ukraine in the relevant field, decrees of the President of Ukraine, and regulatory legal acts of the Cabinet of Ministers of Ukraine and the executive authorities that supervise the concerned specific public services' activities. **«COMMENT: Article 2(2) of Directive 89/391/EEC».**

Article 3. Main terms and definitions

1. The terms herein shall have the following meanings:

1. worker - any natural person who, regardless of having a formal employment agreement, undertakes, by way of remuneration, to provide its intellectual or manual activity to another, under his direction, supervision, control and authority, as well persons undergoing training, internship or apprenticeship; self-employed workers who by legislation are considered economically dependent of the beneficiary of the activity; and persons who, on the basis of a court decision, perform work or provide services to some other person.
2. self-employed worker - the natural person who undertakes an activity on their own and for their own account.
3. young person or minor – a person under 18 years of age; **«COMMENTS: EU Directive 94/33/EC»**
4. children – a young person of less than 15 years of age who is still subject to compulsory full-time schooling; **«COMMENTS: EU Directive 94/33/EC»**
5. adolescent – a young person of at least 15 years of age who is no longer subject to compulsory full-time schooling; **«COMMENTS: EU Directive 94/33/EC»**
6. light work - all work which, on account of the inherent nature of the tasks which it involves and the particular conditions under which they are performed, is not likely to be harmful to the safety, health or development of children, and is not such as to be harmful to their attendance at school, their participation in vocational guidance or training programmes approved by the competent authority or their capacity to benefit from the instruction received; **«COMMENTS: EU Directive 94/33/EC»**
7. employer - any natural or legal person who has an employment relationship with the worker and has responsibility for the undertaking and/or establishment, as well as who hosts trainees, interns and apprentices; who benefits from the activity of an economically dependent self-employed worker; who benefits from the work provided

- by persons on the basis of a court decision; or, in the cases foreseen in this law, who has the responsibility for the premises where the work is being carried out.
8. Fixed-term worker – worker with an employment relationship governed by a fixed-duration contract of employment concluded directly with the employer, where the end of the contract is established by objective conditions such as reaching a specific date, completing a specific task or the occurrence of a specific event;
 9. Temporary worker – worker having an employment relationship with a temporary work agency, which is the employer and the worker, where the former is assigned to work for and under the control of an undertaking and/or establishment, the user entity, making use of her/his work or services.
 10. workers' representatives for the safety and health of workers – persons elected or to represent the interests of workers relating to the safety and health at work (hereinafter referred to as workers' representatives);
 11. prevention - the set of public policies and programmes, as well as all provisions or measures taken or planned in the licensing and at all the stages of the activity of an undertaking, establishment or service, aimed at preventing, eliminating or reducing the occupational risks to which workers may be potentially exposed to;
 12. occupational safety and health management system – an integrated system of policies, plans, programmes, technical resources, measures, practices and procedures aimed at improving the safety, health and well-being of workers at work, through the planning and implementation of activities of prevention, assessment, control, elimination and reduction of occupational risks, at all stages of a work process, including at the stages of planning and designing;
 13. occupational risk management – systematic and continuous process of monitor, control and review of occupational risks, including the identification of hazards, analysis, valuation and assessment of occupational risks, and implementation of the most appropriate preventive and protective measures to eliminate or reduce the occupational risks to an acceptable level;
 14. safe working conditions – a state of working conditions under which harmful or hazardous occupational factors are absent or their levels do not exceed maximum permissible values;
 15. pregnant worker – a pregnant worker who informs her employer of her condition through a proper confirming document;
 16. worker who has recently given birth – a female worker who has a child under 1 year of age born by her who informs her employer of her condition through a proper confirming document;
 17. worker who is breastfeeding – a female worker who is breastfeeding a child born by her who informs her employer of her condition through a proper confirming document;
 18. acute occupational poisoning (poisoning) – a disease (or death) that occurred after a single (during at most one work shift) exposure of a worker to harmful factors of physical, biological and chemical nature (including infectious, parasitic, and allergic diseases);
 19. labour inspector – a public official of the central executive authority that exercises the functions of labour inspection foreseen in the International Labour Organization Conventions Nos. 81 and 129, whose official duties in respect to Safety and Health at Work include, inter alia, the promotion, provision of information and technical advices and enforcement of the applicable legal provisions;
 20. personal protective equipment – equipment designed to be worn and used by the worker for the purpose of individual protection against one or more occupational risks likely to endanger life or health of the worker; **«COMMENT: Article 2(1) of Directive 89/656/EEC»**

21. safety and/or health signs - signs referring to a specific object, activity or situation and providing information or instructions about safety and/or health at work by means of a signboard, a colour, an illuminated sign or acoustic signal, a verbal communication or a hand signal, as the case may be; **«COMMENT: Article 2(a) of Directive 92/58/EEC»**
22. competence – a certified ability to use professional knowledge and skills to achieve planned results and complete tasks successfully;
23. national preventive safety and health culture - refers to a culture in which the right to a safe and healthy working conditions is respected at all levels, where government, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, and where the principle of prevention is accorded the highest priority;
24. occupational risk – the combination of the likelihood of occurrence of a hazardous event arising out of or in the course of work and the severity of the injury or damage to the health of the workers caused by this event;
25. occupational hazard – A property inherent to an object, activity, machine, mechanism, equipment, agent, situation or other material or environmental component of work, which have the potential to cause injury or damage to workers' health or life;
26. hazardous occupational factor – a working environment factor the worker's exposure to which can, under certain conditions, lead to an injury or some other, including sudden, deterioration of the worker's health or the worker's death;
27. working time - any period during which the worker is working, at the employer's disposal and carrying out his activity or duties; **«COMMENT: Article 2(1) of EU Directive 2003/88/EC»**
28. rest period - any period which is not working time; **«COMMENT: Article 2(2) of EU Directive 2003/88/EC»**
29. night time or night work - any period of not less than seven hours which must include, in any case, the period between midnight and 5.00;
30. night worker – a worker who, during night time, works at least three hours of their daily working time and no less than ¼ of their annual standard working time; **«COMMENT: Article 2(4) of EU Directive 2003/88/EC»** regulatory legal acts on Safety and Health at Work – regulatory legal acts of competent authorities setting out requirements concerning safe working conditions and health of workers;
31. occupational risks assessment – systematic and continuous process of examining all aspects related to work in order to identify occupational hazards and to estimate and evaluate, both qualitatively and quantitatively, the resulting risks to the safety and health of workers at work;
32. occupational accident or accident at work - an occurrence arising out of, or in the course of, work which results in fatal or non-fatal injury; **«COMMENT: Article 1(a) of ILO Protocol No. 155, of 2002»**
33. occupational disease – any disease contracted as a result of an exposure to risk factors arising from work activity; **«COMMENT: Article 1(b) of ILO Protocol No. 155, of 2002.»**
34. dangerous occurrence - a readily identifiable event as defined under national laws and regulations, with potential to cause an injury or disease to persons at work or to the public; **«COMMENT: Article 1(c) of ILO Protocol No. 155, of 2002»**
35. commuting accident - an accident resulting in death or personal injury occurring on the direct way between the place of work and: (i) the worker's principal or secondary residence; or (ii) the place where the worker usually takes a meal; or (iii) the place where the worker usually receives his or her remuneration. **«COMMENT: Article 1(d) of ILO Protocol No. 155, of 2002»**

36. material components of work – term that covers the workplace; work environment; tools; machinery; work equipment; materials; chemical, physical and biological substances and agents; and work processes;
37. work area or workstation – the location in the employer’s building, work process, work equipment or territory to which the worker his assigned to and within which s/he performs work activities;
38. workplace – the place intended to house workstations on the premises of the undertaking and/or establishment, any other place within the area of the undertaking and/or establishment to which the workers have access in the course of their employment, as well as the place where the worker is or from where or to where he must go in the course of his employment which is directly or indirectly under the control of the employer; **«COMMENT: Article 3(c) of ILO Convention 155»**
39. work equipment – any machine, apparatus, tool or installation used at work. The list of work equipment subject to mandatory technical inspections shall be set forth by the Cabinet of Ministers of Ukraine as submitted by the central executive authority that implements the state policy on safety and health of workers; **«COMMENT: Article 2(a) of Directive 2009/104/EC»**
40. wrking environment – a set of environmental factors that may affect workers’ health such as, but not limited to sanitary and occupational hygiene conditions, exposure of workers to hazardous chemical and biological substances and physical agents, ergonomics, work organization, work processes, work equipment, working time, psychosocial factors in the workplace and control systems designed to eliminate and/or reduce them;
41. workers’ health surveillance – examination of workers’ health condition, in order to evaluate their physical and mental fitness to the work, as well as its repercussions and the conditions within which it is performed on the health of workers.
42. technical inspection of work equipment – a complex of actions undertaken to determine quality of manufacture, assembly, repair, reconstruction and modernization, conditions and term of subsequent safe operation of equipment, to assess technical conditions of components, parts or their elements, and to check them for compliance with technical requirements;
43. working conditions – a set of working environment and work process factors that have an impact on the worker’s health and working capacity during performance of their employment duties (work);
44. high-risk working conditions – working conditions that feature a heightened degree of the occupational risk of breakdowns, fires, and other sudden events endangering life and health of workers;
45. harmful occupational factor – a working environment or work process factor the worker’s exposure to which can, under certain conditions (intensity, duration, etc.), cause an occupational disease, temporary or permanent decline of working capacity, higher incidence of somatic and infectious diseases, and lead to deterioration of health as a worker;
46. harmful working conditions – working conditions under which the level of exposure to one or more working environment factors is higher than permissible.

2. Other terms shall be used herein in the meanings provided in the Code of Labour Laws of Ukraine, the Law of Ukraine “On Compulsory State Social Insurance”, and the Law of Ukraine “On Basics of State Supervision (Control) in Economic Activities”.

Article 4. Legislation on Safety and Health at Work

1. The legislation of Ukraine on Safety and Health at Work shall be a component of the labour legislation.

2. The legislation of Ukraine on Safety and Health at Work shall be based on the Constitution of Ukraine, the Code of Labour Laws of Ukraine, and, in addition to them, shall consist of this Law, international treaties of Ukraine that Verkhovna Rada of Ukraine agreed to be bound, and other legislative acts, adopted pursuant thereto, which regulate the Safety and Health at Work.

3. If an international treaty of Ukraine that the Verkhovna Rada of Ukraine agreed to be bound establishes provisions other than envisaged in the legislation of Ukraine on Safety and Health at Work, the provisions of the international treaty shall prevail.

CHAPTER II. STATE POLICY AND SYSTEM FOR SAFETY AND HEALTH AT WORK

«COMMENT: To pave the way for the ratification of the ILO Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)»

Article 5. Purposes of the State policy on Safety and Health at Work

1. The purposes of the state policy on Safety and Health at Work shall be to prevent occupational injuries, diseases and deaths at work, advance worker's well-being and minimize, as far as practically possible, occupational risks.

2. Such policy shall promote the continuous improvement of the Safety and Health at Work and the development of a national preventive safety and health culture.

Article 6. General principles of the State policy on Safety and Health at Work

1. The state policy on Safety and Health at Work shall be formulated, implemented and regularly reviewed in consultation with the most representative organizations of employers and employees, shall be a component of the policy on employment relationship, and shall be based on, but not limited to, the following principles:

- 1) The worker is entitled to perform the work in conditions that respect his safety and health, ensured by the employer or, in the situations identified in the law, by the natural or legal person who manages the premises in which the activity is undertaken;
- 2) The prevention of occupational risks and the assurance of the safety, health and well-being of workers at work are accorded the highest priority;
- 3) The prevention of occupational risks must be based on a correct and constant risk assessment and be developed according to the principles, policies, standards and programmes that ensure, in particular:
 - i. The formulation and implementation of the National Strategy for Occupational Safety and Health;
 - ii. The definition of the technical conditions governing the design, manufacture, import, sale, assignment, installation, organization, use and processing of the material components of the work according to the nature and degree of the risks, as well as the obligations of the persons responsible for such;
 - iii. The definition of substances, agents or processes that should be prohibited, limited or subject to authorization or the supervision of the competent authority, as well as the definition of worker exposure limits to chemical, physical and biological agents and the technical standards for the sampling, measurement and evaluation of results;
 - iv. The promotion and monitoring of the health of the worker;

- v. The increase of the technical and scientific research applied in the field of occupational safety and health, with particular reference to the emergence of new risk factors;
- vi. Consideration of international best experience in the organization of work to improve working conditions and enhance occupational safety, based on international cooperation;
- vii. Social protection of workers and their compensation for damages arising from occupational accidents and diseases;
- viii. All-round involvement of representative organizations of trade unions and employers in the formulation and implementation of the policy on Safety and Health at Work, openness and transparency of the policy;
- ix. Education, training and information for promoting improvements in occupational safety and health;
- x. Communication and cooperation at the levels of the undertaking and at all other appropriate levels, including the national level;
- xi. Protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with this national policy
- xii. Raising the awareness of society in order to create a genuine national preventive safety and health culture;
- xiii. The efficiency and effectiveness of the public system of inspection of compliance with the law on occupational safety and health.

2. The development of the policies and programmes and the implementation of the measures referred to in the preceding sub-paragraph 3) must be supported by coordination of the means available, by evaluation of the results concerning the reduction of occupational risks and damage to the health of the worker and by the mobilization of the entities on which its implementation depends, namely the employers, workers and their representatives.

Article 7. National system for Safety and Health at Work

1. The national system for occupational safety and health aims at implementing the right to occupational safety and health, by safeguarding the consistency of measures and the effectiveness of the intervention of public, private or cooperative entities conducting, in that context, duties in the areas of regulation, licensing, certification, standardization, research, training, information, consultation and participation, technical services of prevention and health surveillance, and inspection.

2. The State must promote the development of a national network for the prevention of occupational risks in the action areas referred to in the preceding paragraph.

3. The State can also support and enter into agreements with private entities or cooperatives with technical capacity for carrying out actions in the field of occupational safety and health.

4. In the occupational safety and health field, cooperation between the State and the representative organizations of workers and employers must be developed and also at the employer, establishment or service level, between the employer and the representatives of workers and employers.

5. Notwithstanding an integrated and coherent vision, the ministry responsible for the labour area propose the definition of the policy for the promotion and inspection of occupational safety and health, developing the complementarities and interdependencies between the domains of occupational safety and health and the social security system, the national health service, the protection of the environment and the national quality system.

6. Public services responsible for licensing, certification or other authorization for the undertaking of an activity or the assigning of an asset to such undertaking should perform their duties in order to promote occupational safety and health.

7. Coordination of the implementation of the policy measures and the evaluation of results, in particular those relating to the inspection activity, is the responsibility of the competent bodies of the ministry responsible for the labour area.

8. The policy measures adopted and the evaluation of the results of those policies and of inspections undertaken in the occupational safety and health field, as well as the statistical information on occupational accidents and occupational diseases, must be annually published and adequately disclosed.

9. For the purposes of the preceding paragraph, the statistical information should allow the description of occupational accidents and diseases in order to contribute to epidemiological studies, enabling the adoption of appropriate criteria and methodologies to design nationwide and sector-specific prevention programmes and measures and the periodic control of results.

10. Within this National system for Safety and Health at Work, the State must ensure, *inter alia*:

- 1) The establishment of the minimum requirements concerning Safety and Health at Work;
- 2) The definition, where the nature and extent of hazard so require, of the conditions that regulate designing, construction, deployment, commissioning and reconstruction of production facilities as well as performance of certain works or operation of work equipment used at work;
- 3) The definition of the technical conditions governing the design, manufacture, import, sale, assignment, installation, organization, use and processing of the material components of the work according to the nature and degree of the risks, as well as the obligations of the persons responsible for such. The latter should take into account the relationships between the material components of work and the persons who carry out or supervise the work, and adaptation of machinery, equipment, working time, organization of work and work processes to the physical and mental capacities of the workers;
- 4) The definition of substances, agents or processes that should be prohibited, limited or subject to authorization or the supervision of the competent authority, as well as the definition of worker exposure limits to chemical, physical and biological agents and the technical standards for the sampling, measurement and evaluation of results;
- 5) The setup and functioning of a system for recording and notifying occupational accidents, occupational diseases, dangerous occurrences, commuting accidents and suspected cases of occupational diseases by the employer and other entities concerned in accordance with the International Labour Organization Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (No. 155), as well as for conducting their investigation in the cases provided for by law;
- 6) The scientific research and enhancement of knowledge on Safety and Health at Work, particularly on chemical, physical and biological agents likely to endanger workers' health;
- 7) The establishment of the requirements to, and state control of, training of specialists on Safety and Health at Work;
- 8) The establishment of the requirements to, and state control of, economic entities providing to employers external services in the field of Safety and Health at Work;
- 9) The regulations on the Safety and Health at Work management system and guidelines on risk management, which shall be defined by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work.
- 10)** The functioning of a system of labour inspection in accordance with the International Labour Organization Conventions Nos. 81 and 129, that ensures, among other functions, the provision of information and technical advice to employers, workers and their representative on the best way to comply with the legal provisions concerning the Safety and Health at Work, the control and enforcement of the compliance with

those legal provisions, and application of adequate sanctions for violation thereof;

COMMENTS: This is a function of labour inspection, addressed on the next point

- 11) The annual publication of information about the state policy measures implemented as well as of relevant data about occupational accidents and diseases.

Article 8. State administration bodies of the national system for Safety and Health at Work

1. State administration bodies in the field of Safety and Health at Work shall be:

- 1) the Cabinet of Ministers of Ukraine;
- 2) the central executive authority that ensures the formulation of the state policy on Safety and Health at Work;
- 3) the central executive authority that ensures the formulation of the state policy on health care;
- 4) the central executive authority that ensures the formulation of, and implements, the state policy on nuclear power use safety;
- 5) the central executive authority that implements the state policy on Safety and Health at Work;
- 6) other ministries and central executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, and local governments, according to their scope of regulation;
- 7) the Social Insurance Fund of Ukraine.

2. Powers of the above-mentioned bodies in the field of Safety and Health at Work shall be defined by this and other laws of Ukraine as well as by regulatory legal acts adopted pursuant thereto.

Article 9. Consultation and participation

1. The nationwide promotion and evaluation of the policy measures in the field of occupational safety and health should be carried out with the close collaboration, consultation and participation of the most representative organizations of employers and workers.

2. For the purposes of the preceding paragraph, the organizations of employers and workers with a seat on the National Tripartite Social and Economic Council must integrate the Advisory Board for the Promotion of Occupational Safety and Health that shall function under the central executive authority that implements the state policy on Safety and Health at Work.

Article 10. Education, training and information for Safety and Health at Work

1. In acquisition of secondary, vocational (vocational and technical), special pre-higher education, and higher education grades 1 and 2, the State shall promote learning of the fundamentals of Safety and Health at Work by means of including relevant requirements to the education recipient's compulsory competencies in education standards.

2. When formulating the standards of vocational (vocational and technical), special pre-higher education, and higher education grades 1 and 2, the central executive authorities, which are authorized by law to approve the education standards, shall ensure consultations with relevant representative organizations of employers and trade unions to agree upon the content of requirements to competencies in the field of Safety and Health at Work.

3. Education programmes shall contain relevant educational components on Safety and Health at Work defined, inter alia, with account of the education standards.

4. Educational institutions, scientific establishments, and other educational activity entities approving education programmes shall, when developing the education programmes, ensure consultations with relevant representative organizations of employers and trade unions to agree upon the content of their educational components on Safety and Health at Work.

5. When formulating occupational standards and/or qualification profiles, requirements to competencies in the field of Safety and Health at Work shall be defined.

6. The State promotes training and information initiatives aimed at employers and workers, as well as public information and explanation sessions in matters of occupational safety and health.

Article 11. Research on Safety and Health at Work

1. The State must ensure conditions that promote knowledge and research in the area of occupational safety and health.

2. The encouragement by the State of research in the area of occupational safety and health must be guided in particular by the following vectors:

- 1) Support for the creation of research and postgraduate training structures for specialists and researchers;
- 2) Collaboration between the various national structures concerned;
- 3) Dissemination of scientific and technical information that contributes to advancing the knowledge and progress of research;
- 4) Encouraging national participation in international programmes;
- 5) Encouraging the study of good practices in the field of organization and operational systems of prevention activities.

3. Fostering research, experimental development and demonstration must focus predominantly on the improvement of occupational risk prevention and protecting workers' health.

4. Scientific research on Safety and Health at Work shall be financed from the state budget appropriations provided for science and education.

5. The central executive authorities that ensure the formulation of the state policy on Safety and Health at Work and on health care shall approve and coordinate scientific research on Safety and Health at Work as well as submit their proposals for the draft state budget as regards the funds required to conduct the research.

6. Scientific research on Safety and Health at Work may be financed by any legal or natural persons or non-governmental organizations from any sources not forbidden by law.

Article 12. Standardization

1. The technical standards and specifications in the area of occupational safety and health relating, in particular, to the methodologies and procedures, sampling criteria, and the certification of products and equipment shall be approved under the Ukrainian Quality System.

2. The practical guidelines developed by the International Labour Organization (ILO), World Health Organization (WHO) and International Organization for Standardization (ISO), as well as the national technical standards and specifications referred to in the preceding paragraph, are indispensable references to be taken into account in procedures and measures adopted in compliance with legislation on occupational safety and health as well as in the production of goods and equipment.

Article 13. Licensing and operating permits

The legislation on licensing and operating permits shall contain the specifications appropriate to occupational risk prevention and health protection.

Article 14. Safety of machinery and work equipment

1. In the context of prevention and safety of equipment, all natural or legal persons that manufacture machinery, apparatus, tools, plant and other equipment for professional must perform the investigations and operations necessary so that, at the design stage and during manufacturing, as far as possible, any risks that such products may present to the safety or health of persons are

eliminated or reduced to a minimum and ensure, by appropriate certification, prior to market launch, compliance with applicable safety and health requirements.

2. All natural or legal persons that import, sell, rent, assign in any form or place in exhibition machines, appliances or tools for professional use must:

- 1) Carry out or commission the necessary checks and tests to ensure that the construction and state of such work equipment do not pose a risk to the safety and health of workers, provided such equipment is used correctly and as intended, except when such equipment is duly certified;
- 2) Take the necessary measures to ensure that instructions are attached to machinery, appliances, tools or facilities for professional use, in Ukrainian, and concerning the installation, use, preservation and repair, stating, in particular, how the workers responsible for carrying out these tasks shall proceed in order to prevent risks to their safety and health and that of other people.

3. All natural or legal persons that assemble, place, repair or adapt machines, apparatus, tools or facilities for professional use shall ensure, to the extent possible, that as a result of those operations, such equipment does not pose a risk to the health or safety of persons, provided that they are used correctly.

4. The machines, apparatus, tools or systems for professional use may only be supplied or made operational provided they contain the safety marking, the name and address of the manufacturer or the importer as well as other information that may allow them to be clearly identified and prevent the risks in their use.

5. In the case of fairs, demonstrations and exhibitions, when the machines, apparatus, tools and systems for professional use are without the normal safety protections, the safety precautions must be indicated in such a way as to be clearly visible, as well as the impossibility of acquiring the equipment in the manner presented.

6. The competent authorities shall periodically publish the specifications to be complied with in the area of occupational safety, in order to ensure prevention in the design and facilitate the relevant administrative procedures.

Article 15. Supervision and investigations

1. The central executive authority that exercises the functions of labour inspection, as foreseen in International Labour Organization Conventions Nos. 81 and 129, controls and enforces the compliance with the legislation concerning occupational safety and health and applies the corresponding penalties for the breach thereof, without prejudice to the specific duties of other entities.

2. The central executive authority that exercises the functions of labour inspection, referred to in the preceding paragraph, is also responsible for conducting investigations of fatal occupational accidents, occupational accidents resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work and of suspected cases of occupational diseases, according to the procedures defined in the legislation.

3. For the purposes indicated in the preceding paragraphs, the central executive authority that exercises the functions of labour inspection shall be notified by the employers, law enforcement authorities, emergency services, health care facilities and other private and public authorities, of any fatal occupational accident, occupational accident resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work and of any suspected case of occupational disease that they were aware of, according to the procedures defined in the legislation. **«COMMENT: To pave the way for the ratification of the ILO Protocol of 2002, to the Occupational Safety and Health Convention, 1981»**

4. Workers and workers' representatives may:

- 1) Submit their comments and observations to the central executive authority that exercises the functions of labour inspection or any other competent authority, on the occasion of an inspection visit.
- 2) Request the intervention of the central executive authority that exercises the functions of labour inspection whenever they consider that the measures taken and the means employed by the employer are insufficient or inadequate to ensure the safety and health at work.

CHAPTER III. RIGHTS AND OBLIGATIONS OF EMPLOYERS AND WORKERS

Article 16. Employers' rights

1. To demand that workers, as far as possible, and in accordance with the training and instructions provided by the employer:
 - 1) Take care of their own safety and health and that of other persons affected by their acts or omissions at work;
 - 2) Know and comply with requirements of the regulatory legal acts on Safety and Health at Work, the rules of using and operating work equipment as intended, and the rules of using collective and personal protective equipment.
2. To control workers' performance of their employment duties and compliance with rules, regulations and instructions on Safety and Health at Work, including with the use of technical means, if is required by Safety and Health at Work, with compulsory notification of workers prior to commencing the use of such means. When exercising such control, no actions demeaning or degrading, or infringing rights of, workers shall be allowed;
3. To demand that workers undergo health examinations, pursuant to Articles 34 to 37;
4. To demand that workers undergo training on Safety and Health at Work, which shall be provided during working hours and be counted as working time; **«COMMENT: Article 13 of Directive (EU) 2019/1152»**
5. To engage expert organizations to carry out audit of the Safety and Health at Work management system, workplace appraisal in terms of working conditions, development and efficiency assessment of risk elimination measures, and technical inspections of work equipment.

Article 17. Employers' general obligations

1. To ensure, continuously and permanently, the safety and health of workers in every aspect related to work, taking, and continuously adjusting to changing circumstances, the necessary preventive and protective measures to secure the safety and health of workers, with strict observance of the following General Principles of Prevention:
 - 1) To avoid risks;
 - 2) To plan prevention as a coherent system that integrates the technical developments, the organization of work, working conditions, social relations and the influence of environmental factors;
 - 3) To identify the hazards and assess the foreseeable risks in all activities of the undertaking, establishment or service, including in the design or construction of facilities, locations and work processes, and also in the selection of work equipment, substances and products, with a view to eliminating the risks or, when this is not feasible, to reduce their effects;
 - 4) To integrate the assessment of risks to the safety and health of workers in the set of activities of the undertaking, establishment or service and to adopt the appropriate preventive and protective measures;

- 5) To combat risks at the source, in order to eliminate or reduce exposure and increase protection levels;
- 6) To ensure, in the workplace, that exposure to chemical, physical and biological agents and to psychosocial risk factors are not a risk to the safety and health of workers;
- 7) To adapt work to the worker, especially as regards the design of workplaces, the choice of work equipment, and working and production methods, with a view to, *inter alia*, mitigate monotonous and repetitive work and reduce psychosocial risks;
- 8) To adapt to technical progress, as well as to the new forms of work organization, by continuously monitoring and applying technological achievements and scientific discoveries to workplace design, work equipment, substances used or produced, work organization and work processes, in order to improve the safety and health of workers at work;
- 9) To replace the dangerous by the non-dangerous or the less dangerous;
- 10) To prioritize collective protection measures in relation to individual protection measures;
- 11) To prepare and disseminate understandable instructions appropriate to the activity developed by the worker.

2. To implement and manage, in accordance with the general principles of prevention referred to in the previous paragraph, an occupational safety and health management system, aimed at improving the safety, health and well-being of workers at work, which must include, *inter alia*:

- 1) An occupational safety and health policy for the undertaking and/or establishment;
- 2) The formulation and implementation of a plan and programmes for the promotion of workers' safety and health and the prevention of occupational risks;
- 3) Defined and implemented procedures, practices and activities to promote the safety and health of workers and to prevent occupational risks;
- 4) The availability of the necessary technical resources and the organization of the occupational safety and health service of the undertaking and/or establishment;
- 5) The implementation and management of an occupational risks management system.

3. The implementation and management of the occupational risks management system referred to in the sub-paragraph 5) of the previous paragraph comprises, *inter alia*, the following obligations:

- 1) To assess all occupational risks to which workers are, or may be exposed to – which includes the identification of all occupational hazards and potential exposed workers, as well as the estimation and valuation of all occupational risks to the safety and health of workers resulting from those hazards, in respect to both the undertaking and/or establishment in general and each type of workstation and/or job, including, in particular, in the choice of work equipment, chemical substances or preparations used, and the fitting-out of workplaces;
- 2) To control occupational risks – which involves:
 - i. To formulate, implement and systematically review a plan and programmes for the promotion of workers' safety and health and the prevention of occupational risks, referred to in the sub-paragraph 2) of the previous paragraph.
 - ii. To implement the most appropriate preventive and protective measures to eliminate or to reduce occupational risks to acceptable levels and integrate them into all the activities of the undertaking and/or establishment at all hierarchical levels;
 - iii. To ensure the consultation and participation of the workers in the decisions concerning their occupational safety and health at work;
 - iv. To provide workers with appropriate training and information on occupational safety and health;

- v. To ensure the organization and functioning of an occupational safety and health service;
 - vi. To ensure the surveillance of workers' health;
 - vii. To provide the necessary collective and personal protective equipment.
- 3) To continuously reassess occupational risks and adjust the most adequate control measures to changing circumstances and technical progress.

4. Without prejudice to other obligations of the employer, the implemented prevention measures must be preceded and correspond to the result of the assessment of the risks associated with the various stages of the production process, including the preparatory activities, maintenance and repair, in order to ensure the safety and health of workers.

5. Be in possession of the reports of the assessment of the risks to the safety and health at work, including those facing groups of workers exposed to particular risks;

6. Whenever the work is performed at the same workplace by workers of different employers, the employers shall cooperate with each other in the matters of Safety and Health at Work, coordinating their actions to prevent and protect the workers against hazardous and harmful occupational factors and occupational risks, and inform each other and their workers and/or workers' representatives about those hazardous and harmful occupational factors and occupational risks, as well as about the preventive and protective measures that should be adopted;

7. In the implementation of the safety and health preventive and protective measures, the employer must organize and ensure the functioning of an appropriate occupational safety and health service, internal or external to the undertaking, establishment or service, mobilizing the necessary resources, particularly in the fields of prevention techniques, training, information, health surveillance, as well as the provision of the appropriate collective and personal protection equipment that may need to be used.

8. When organizing the means of prevention, the employer must take into account not only the worker but also third parties likely to be exposed to the risks of carrying out the work, whether on the premises or off-premises.

9. The employer must establish measures that must be adopted in the field of first aid, fire-fighting, evacuation of workers and serious and imminent danger, including the identification of the workers responsible for their implementation, as well as to ensure the necessary contacts with the competent external entities who perform those operations and the ones of medical emergency.

10. The employer must record, notify the central executive authority that exercises the functions of labour inspection, and investigate any fatal occupational accident, occupational accident resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work, and of suspected case of occupational disease. **«COMMENT: To pave the way for the ratification of ILO Protocol of 2002, to the Occupational Safety and Health Convention, 1981»**

11. The employer must inform workers and their representatives about:

- 1) The occupational risks to which they are or maybe exposed to and the preventive and protective measures taken by the employer to eliminate or minimize them;
- 2) The measures to be taken regarding first aid, fire-fighting, evacuation of workers and situations of serious and imminent danger and the workers designated to implement them.

12. The employer must adopt measures and give instructions to enable workers in the event of a serious and imminent danger that cannot be technically avoided, to cease their activity or move away immediately from the place of work, and not resuming work while this danger persists, except in exceptional cases and provided that adequate protection is guaranteed.

13. Whenever a worker is assigned a task, his/her knowledge and skills in occupational safety and health should be considered and the employer must provide the necessary information and training for the development of the activity in safe and healthy conditions.

14. The employers must ensure that each worker receives appropriate training on occupational safety and health, in particular in the form of information and instructions specific to his workstation or job.

15. Where it is necessary to access areas of high-risk, or perform high-risk works, the employer must allow access, or the performance of such high-risk works, only to workers with adequate skills, training and/or instructions on Safety and Health at Work necessary to access those areas, or to perform those works, and only during the minimum time necessary to access or accomplish them.

16. The employer must ensure the surveillance of the health of each worker, in order to evaluate her/his physical and mental fitness for the work, as well as the repercussion of the work and the conditions within which the work is performed on her/his health.

17. The employer shall ensure that workers' health exams take place, as far as possible, during working hours and is counted as working time, and shall comply with the recommendations that result from the health examinations and testes carried out.

18. When organizing work and planning the prevention of occupational risks, assessing occupational risks and implementing preventive and protective measures, employer shall take into consideration the health situation of the workers, as well as particularly sensitive risk groups, such as workers under 18 years of age, workers with disabilities, pregnant workers, workers who have recently given birth and workers who are breastfeeding, which must be protected against the dangers which specifically affect them.

19. To consult workers and/or their representatives and allow them to take part in the discussions on all questions relating to safety and health at work, including allowing them to make proposals and to have a balanced participation on such discussions and decisions;

20. To maintain work equipment in proper conditions, and carry out technical inspections of work equipment according to the procedure defined by the Cabinet of Ministers of Ukraine;

21. To carry out workplace appraisals in terms of working conditions, according to legislative requirements;

22. Employers have the obligation to obtain the competent authorization documents in the cases provided for by law;

23. Employers must transfer their responsibility for the compensation of damages arising from occupational accidents and diseases to an entity legally authorized to make such insurances, according to the applicable legislation;

24. The provisions of law or collective agreements on occupational safety and health established to be applied in the undertaking, establishment or service must also be observed by the employer himself.

25. For the purposes of this article, and safeguarding the due adaptations, an independent worker is deemed equivalent to an employer.

26. The employer bears all the costs of the organization and operation of the occupational safety and health service and other systems of prevention, including health surveillance examinations, risks assessments, information, training, consultation, provision of collective and personal protective equipment and regarding all necessary actions within the framework of the promotion of occupational safety and health, without imposing any financial charges on workers.

27. Where, pursuant to paragraph 6 of this article, employer contracts competent external services or persons to ensure the functioning of the occupational safety and health service, this shall

not discharge her/him from her/his responsibilities for ensuring the safety and health of workers in every aspect related to the work.

28. The workers' obligations in the field of safety and health at work, or their failure to comply with them, shall not affect the principle of the responsibility of the employer.

29. The obligations of the employer listed in this article are without prejudice of other employer's obligations provided for in this law and other legislation and include also the obligations resulting from the workers' rights defined hereby.

30. Without prejudice of the applicable administrative offense liability, the employer whose conduct, by action or omission, may have contributed or caused a dangerous situation is liable for civil and criminal liability.

Article 18 . Concurrent or successive activities in the same workplace

1. When several undertakings, establishments or services conduct at the same time activities with their workers in the same workplace, the respective employers should, taking into account the nature of the activities each one conducts, cooperate to ensure the safety and health of the workers.

2. The following entities shall, notwithstanding the responsibility of each employer for the safety and health of its own workers, ensure the safety and health in relation to all the workers referred to in the preceding paragraph:

- 1) The undertaking in the premises of which other workers provide work under
 - i. A contract to provide services; or
 - ii. An employment relationship with an employer awarded with a contract to provide services.
- 2) The undertaking awarding a contract for works or a service, who shall:
 - i. Guarantee the coordination of other employers through the organization of the activities of occupational safety and health;
 - ii. Ensure that the successive exercise of activities by third parties on its premises or with the equipment used does not pose a risk to the safety and health of its workers or those employed by the service providers.

Article 19. Workers' rights

1. Every worker shall have the right:

- 1) To safe and healthy working conditions, provided by the employer;
- 2) Not to support any financial costs related to safety and health at work measures;
- 3) Information about the occupational risks to which they are or may be exposed, as well as about the preventive and protective measures taken by the employer to ensure his/her safety and health at work;
- 4) To be consulted and take part, directly and/or via workers' representatives, in the employer's decision-making regarding to his/her safety and health at work;
- 5) To appropriate training concerning his/her safety and health, appropriate to the nature of their work and the risks to which s/he is or may be exposed to, and which should be provided during working hours and counted as working time;
- 6) To adequate health examination and tests, in order to evaluate her/his physical and mental fitness for the work, as well as the repercussion of the work and the conditions within which the work is performed on her/his health;
- 7) Not to be placed at any disadvantage and be protected against any harmful and unjustified consequences if:
 - i. Designated to perform activities related to the prevention of and protection against occupational risks for the undertaking and/or establishment, or to

- implement the measures for first aid, fire-fighting and evacuation of workers, and be allowed adequate time to perform such activities;
 - ii. In the event of serious, imminent and unavoidable danger, s/he leave her/his workstation and/or a dangerous area;
 - iii. The worker have taken the appropriate steps, in the light of her/his knowledge and the technical means her/his disposal, to avoid the consequences of a serious and imminent danger to her/his own safety and/or that of other persons when the immediate superior responsible could not be contacted;
 - 8) To refuse to work in case of a serious and imminent danger to her/his life and health;
 - 9) To be protected against undue retaliatory or disciplinary measures, for having reported an occupational accident, occupational disease, dangerous occurrence, commuting accident or suspected case of occupational disease;
 - 10) In case of a workers' representatives:
 - a. To be granted with adequate time off work, without loss of pay, and provided with the necessary means; and
 - b. To ask employer to take appropriate measures and to submit proposals to that end and to mitigate hazards for workers and/or to remove sources of danger.
 - 11) To be protected against the dangers which specifically affect her/him;
 - 12) To submit complaints to central executive authority that exercises the functions of labour inspection concerning employer's failure to provide adequate safe and healthy working conditions or if they consider that the measures taken and the means employed by the employer are inadequate or insufficient for the purposes of ensuring the safety and health at work, as well as to submit her/his comments during the inspection visits of the central executive authority that exercises the functions of labour inspection.
 - 13) To obtain redress, according to law, for any damage arising from an occupational accident or occupational disease.

2. The rights listed in the present article are without prejudice of other rights provided for in this law and other legislation, and include also other workers' rights resulting from employers' obligations defined hereby.

Article 20. Workers' obligations

1. It shall be the responsibility of each worker to take care as far as possible of their own safety and health and that of other persons likely be affected by the worker's acts or omissions at work, in accordance with their training and the instructions given by their employer.

2. To this end, workers must, in particular, in accordance with their training and the instructions given by their employer:

- 1) Comply with the instructions and orders given by the employer;
- 2) Undergo training on Safety and Health at Work according to the requirements set forth by law and the employer;
- 3) Undergo health examinations, pursuant to Articles 34 to 37;
- 4) Make correct use of machinery, work equipment, apparatus, tools, dangerous substances, transport equipment and other means of production;
- 5) Make correct use of the personal protective equipment supplied to them and, after use, return it to its proper place;
- 6) Refrain from disconnecting, changing or removing arbitrarily safety devices fitted to machinery, work equipment, apparatus, tools, workplaces, workstations, and buildings, and use such safety devices correctly;

- 7) Immediately inform the employer and/or authorized entities for Safety and Health at Work of any work situation they have reasonable grounds for considering represents or may represent a serious and immediate danger to safety and health of workers and of any shortcomings in the protection arrangements;
- 8) Cooperate with the employer and/or authorized entities for Safety and Health at Work, for as long as may be necessary to enable any tasks or requirements imposed by the competent authorities to protect the safety and health of workers at work to be carried out;
- 9) Cooperate, within their field of activity, with the employer and/or authorized entities for Safety and Health at Work, for as long as may be necessary to enable the employer to ensure that the working environment and working conditions are safe and pose no risk to safety and health of workers at work;

3. The above worker's obligations are without prejudice of other obligations provided for in legislation or other obligations foreseen in rules, regulations and instructions intended to ensure Safety and Health at Work established by the employer in accordance with the legislation.

CHAPTER IV. TRAINING AND INFORMATION OF WORKERS

Article 21. Training of workers

1. The employer shall ensure that each worker receives appropriate training on Safety and Health at Work, in particular in the form of information and instructions specific to her/his workstation or job, as well as regarding the occupational risks to which s/he is or might be exposed and the preventive and protective measures to be taken, at least:

- 1) Upon admission of the worker;
- 2) In the event of a transfer or a change of job, resulting in changes in any material component of work;
- 3) In the event of the introduction of new work equipment or a change in equipment;
- 4) In the event of the introduction of any new technology.

2. The training mentioned in the preceding paragraph shall be:

- 1) Adapted to changing circumstances and shall take into account new or changed occupational risks;
- 2) Repeated periodically if necessary.

3. The employer shall also ensure that:

- 1) Workers from outside undertakings and/or establishments engaged in work in his undertaking and/or establishment have in fact received appropriate instructions regarding safety and health risks during their activities in his undertaking and/or establishment, as well as about the preventive and protective measures to be taken;
- 2) Workers' representatives are provided with appropriate and permanent training for the exercise of their functions.
- 3) Notwithstanding the provisions of paragraph 1, the employer must train in sufficient number, given the size of the undertaking and/or establishment, and their occupational risks, the workers responsible for implementing measures for first aid, fire-fighting and evacuation of workers, as well as provide them with suitable material.

4. Without prejudice of the provisions of the preceding paragraphs, and regarding the workers that ensure the functioning of the occupational safety and health service in the undertaking and/or establishment, the employer must guarantee that:

- 1) When the adopted modality is internal service, as foreseen in Articles 39 to 41:
 - i. The occupational safety experts performing safety activities in the undertaking and/or establishment are duly certified for the exercise of their functions, according to paragraph 1 of Article 33;

- ii. The occupational physicians performing health activities in the undertaking and/or establishment are duly certified for the exercise of their functions, according to paragraph 2 of Article 34;
 - iii. Where appropriate, the occupational nurses performing health activities in the undertaking and/or establishment have the relevant training and experience, as provided for in paragraph 3 of Article 34.
- 2) When the adopted modality is activities developed by the employer or by designated employee, foreseen in Articles 39 and 43, the employer or the designated employee, as the case may be, have the adequate training foreseen in paragraph 6 of Article 44, as provided for in paragraph 1 of Article 43;
 - 3) When the adopted modality is external service, as foreseen in Articles 39 and 44:
 - i. The contracted service provider or service providers are duly authorized or licensed to provide these services, according to the procedure foreseen in paragraph 11 of Article 44;
 - ii. The occupational safety experts performing safety activities in the undertaking and/or establishment are duly certified for the exercise of their functions, according to paragraph 1 of Article 33;
 - iii. The occupational physicians performing health activities in the undertaking and/or establishment are duly certified for the exercise of their functions, according to paragraph 2 of Article 34;
 - iv. Where appropriate, the occupational nurses performing health activities in the undertaking and/or establishment have the relevant training and experience, as provided for in paragraph 3 of Article 34.
 - v. The employer representative, designated pursuant paragraph 5 of Article 44, have the adequate training, provided for in paragraph 6 of Article 44.
 4. The training on occupational safety and health shall be provided by the employers to their workers at the employer's expense, during working hours and be counted as working time.
 5. If a worker lacks the necessary training to perform her/his work in safe and healthy conditions s/he shall have the right to refuse to perform such work while such training is missing, provided that s/he notifies the employer of such need and the employer fails to provide it.
 6. The activity of providing certified training on occupational safety of workers is subject to a permit issued by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work.
 7. The employer or the respective representative associations, as well as the collective representation structures of workers, may request the assistance of the competent public bodies when they lack the means and necessary conditions to undertake the training.
 8. The procedures and requirements for application, issuance, refusal or withdrawn of the permits mentioned in the preceding shall be set forth by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work.

Article 22. Provision of information to workers

1. The worker, as well as workers' representatives in the undertaking, establishment or service, must have updated information at their disposal about:
 - 1) The occupational safety and health risks, as well as the prevention and protection measures and how to apply them, whether in relation to the activity developed or in relation to the undertaking, establishment or service;
 - 2) The measures and the instructions to adopt in the event of serious and imminent danger;
 - 3) The first aid, fire-fighting, evacuation of workers and emergency measures, as well as the workers or services in charge of their implementation;

2. Without prejudice to adequate training, the information referred to in the preceding paragraph must always be made available to the worker in the following cases:

- 1) Admission of the worker;
- 2) Change of workplace or duties;
- 3) Introduction of new work equipment or modification of existing ones;
- 4) Adoption of a new technology;
- 5) Activities involving workers from several undertakings.

3. The employer shall inform the workers with specific duties in the field of occupational safety and health on the following matters:

- 1) The assessment of the occupational safety and health risks, including those relating to groups of workers subject to special risks;
- 2) Safety and health measures implemented or to be implemented;
- 3) The collective and personal protective equipment that must be used;
- 4) The annual list of fatal occupational accidents, occupational accidents resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work, and of occupational diseases;
- 5) Technical information that has to be registered and to collective, not individualised, medical data of workers, as well as to the technical information derived from inspection visits carried out by the central executive authority that exercises the functions of labour inspection.

4. The employer must inform the external service and their qualified technicians performing activities of occupational safety and health in the undertaking and/or establishment about the factors that are suspected or known to affect the safety and health of workers, as well as about:

- 1) The assessment of the occupational safety and health risks, including those relating to groups of workers subject to special risks;
- 2) The appointment of workers responsible for implementing the measures for first aid, fire-fighting, evacuation of workers and emergency.

5. The undertaking in whose facilities a service is provided must inform the respective employers and workers of the matters identified in the preceding paragraph.

6. The employer must also notify the occupational safety and health service mentioned in paragraph 4 and workers with specific duties in the field of occupational safety and health of the admission of minors, workers with disabilities or chronic illness, fixed-term workers and temporary workers, as well as about pregnant workers, workers that have recently given birth or are breastfeeding.

CHAPTER V. CONSULTATION AND PARTICIPATION OF WORKERS

Article 23. Consultation and participation of workers

1. Employers shall consult workers and/or workers' representatives and allow them to submit proposals and take part, in a balanced way, in discussions on all questions related to Safety and Health at Work.

2. The employer, with a view to ensure the consultation of workers and obtain their opinion, on occupational safety and health shall consult in writing the workers' representatives or, in their absence, the workers themselves, in advance and in good time and, at least once a year, with regard to:

- 1) Any measure that may substantially affect the safety and health of workers at work;
- 2) The assessment the risks to the safety and health of workers at work, including those relating to groups of workers subject to special risks;

- 3) The safety and health preventive and protective measures that need to be implemented both in relation to the activity carried out and in relation to the undertaking, establishment or service and how to apply them, before they are implemented or as soon as possible, in the event of their urgent application;
- 4) The planning and organization of the training of workers and workers' representatives in the field of safety and health at work;
- 5) The appointment of the representative of the employer accompanying the activity of the occupational safety and health services;
- 6) The designation and dismissal of workers performing specific functions in the fields of safety and health of workers;
- 7) The designation of the workers responsible for implementing the measures for first aid, fire-fighting and evacuation of workers;
- 8) The organization and functioning of the occupational safety and health service of the undertaking, establishment or service, as well as the use of external services or persons and qualified technicians to ensure the performance of all or part of the safety and health activities;
- 9) The collective and personal protective equipment that it is necessary to use;
- 10) The annual list of fatal occupational accidents, occupational accidents resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work, and of occupational diseases;
- 11) The reports of occupational accidents and occupational diseases referred to in the previous sub-paragraph.

3. Workers' representatives shall have the right to approach the employer with suggestions as regards taking appropriate measures and to submit proposals to the employer to that end to mitigate hazards and/or remove sources of danger.

4. The employer shall allow workers' representatives adequate time off work, without loss of pay, and provide them with the necessary means for the exercise of their rights and responsibilities concerning Safety and Health at Work.

5. Workers and/or workers' representatives shall have the right to submit to competent authorities complaints concerning the employer's failure to provide safe and healthy working conditions, or if they consider that the measures taken and the means employed by the employer are inadequate or insufficient for the purposes of ensuring the safety and health at work.

6. Workers and workers' representatives shall have the right to submit their comments during inspection visits of the competent authorities.

7. The employer may establish commissions on Safety and Health at Work to define and take measures to improve working conditions and resolve controversial issues on Safety and Health at Work.

8. If the commissions mentioned in the previous paragraph is established, it shall be composed, on a parity basis, by workers' representatives and the occupational safety and health service of the undertaking and/or establishment.

9. The employer shall have no right to place workers or workers' representatives at any disadvantage or to exert pressure on them because of their exercise of the activities, functions and rights provided for in this this Article.

Article 24. Workers' representatives for occupational safety and health

1. No worker of the undertaking and/or establishment can be harmed in his/her rights to elect and be elected, namely due to age or function.

2. Workers' representatives for occupational safety and health are elected by direct and secret ballot of workers, according to the principle of proportional representation.

3. The workers or the trade union that has workers represented in the undertaking and/or establishment promote the election of workers' representatives for occupational safety and health.

4. In the event the election is organised by the workers, the notice of elections must be signed by at least 100 or 20% of the workers of the undertaking and/or establishment.

5. Only eligible lists submitted by the trade union organisations that have workers represented in undertaking and/or establishment or lists that are subscribed by at least 20% of the workers of the undertaking may be voted on, and no worker may subscribe to or be part of more than one list.

3. Each list must indicate a number of candidates equal to the actual number of electable posts and also an equal number of substitute candidates.

4. Unless otherwise provided for in the applicable collective agreement, the workers' representatives may not exceed:

- 1) Undertakings and/or establishments with less than 60 workers — one representative;
- 2) Undertakings and/or establishments with 61 to 150 workers - two representatives;
- 3) Undertakings and/or establishments with 151 to 300 workers - three representatives;
- 4) Undertakings and/or establishments with 301 to 500 workers - four representatives;
- 5) Undertakings and/or establishments with 501 to 1000 workers - five representatives;
- 6) Undertakings and/or establishments with 1001 to 1500 workers - six representatives;
- 7) Undertakings and/or establishments with more than 1500 workers - seven representatives.

5. The term of office of the representatives is three years.

6. The replacement of the representatives shall only be permitted in the case of resignation or definitive impediment, and their substitution shall be done by the effective and alternate candidates in the order indicated in the respective list.

7. Workers' representatives have a credit of five hours per month for the performance of their duties.

8. The procedure for the election of the workers' representatives for occupational safety and health shall be set forth by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work.

Article 25. Training of workers' representatives

1. Workers' representatives for occupational safety and health must be ensured permanent training for the exercise of their duties, pursuant to the following paragraphs.

2. The employer must provide conditions for the workers' representatives for occupational safety and health to be trained, granting them paid leave if necessary, or unpaid leave if another entity pays the specific allowance.

3. The employer or the respective representative associations, as well as the collective representation structures of workers, may request the assistance of the competent public bodies when they lack the means and necessary conditions to undertake the training.

Article 26. Occupational safety and health committees

1. For the purposes of this law, occupational safety and health committees of parity composition can be created by collective agreements.

2. The occupational safety and health committee created pursuant to the preceding paragraph is composed of the workers' representatives for occupational safety and health, with respect for the principle of proportionality.

Article 27. Support to workers' representatives

1. The management bodies of the employer should make the appropriate facilities available to workers' representatives for occupational safety and health, as well as the material and technical means necessary for the performance of their duties.

2. The workers' representatives for occupational safety and health also have the right to distribute information on occupational safety and health, as well as to post it in an appropriate location that is intended for this purpose.

Article 28. Meetings with the management bodies of the undertaking and/or establishment

1. The workers' representatives for occupational safety and health have the right to meet with the Board of Directors of the employer, at least once a month, to discuss and analyse issues related to occupational safety and health.

2. The minutes of the meeting referred to in the preceding paragraph are drawn up and must be signed by all those in attendance.

3. The duration of the meeting referred to in paragraph 1 shall not count for the credit of hours provided for in paragraph 7 of article 24.

CHAPTER VI. ORGANIZATION OF THE OCCUPATIONAL SAFETY AND HEALTH SERVICE

Section I. Purposes, activities and organization

Article 29. General provision

Without prejudice to other employers' obligations, employers must establish, organize and ensure the proper functioning of an occupational safety and health service in the undertaking and/or establishment in the modalities foreseen in this chapter, through one or more structural units, in accordance with the provisions laid down in this chapter.

Article 30. Purposes of the occupational safety and health service

1. The activity of the occupational safety and health service aims:
 - 1) To ensure working conditions that safeguard the safety and physical and mental health of workers;
 - 2) To develop the technical conditions which ensure the application of the preventive measures established in article 17;
 - 3) To ensure the information, training and consultation of workers and workers' representatives on occupational safety and health.

Article 31. Main activities of the occupational safety and health service

1. The employer must ensure that the occupational safety and health service, is able, through its structural units, to perform the following main activities and tasks:

- 1) To plan prevention, integrating at all levels and for all the undertaking activities, the risks assessment and the respective preventive measures;
- 2) To ensure the surveillance of the factors in the working environment and working practices which may affect workers' health;
- 3) To carry out the risks assessment, drawing up the respective reports;
- 4) To prepare the occupational risk prevention plan, as well as detailed plans of prevention and protection required by specific legislation;

- 5) To provide advice on planning and organizing work, including on the design of workplaces, on the choice, maintenance and condition of machinery and work equipment and on substances used at work;
- 6) To participate in the development of programmes for the improvement of working practices as well as testing and evaluation of health aspects of new work equipment;
- 7) To promote the adaptation of work to the worker;
- 8) To participate in drawing up the internal emergency plan, including specific plans for fire-fighting, evacuation of premises and first aid;
- 9) To organize first aid and emergency treatment
- 10) To coordinate the measures to adopt in the event of serious and imminent danger;
- 11) To collaborate in the design of sites, methods and organization of work, as well as in the selection and maintenance of work equipment;
- 12) To supervise the supply, validity and the conservation of collective and personal protective equipment, as well as the installation and maintenance of safety signaling;
- 13) To survey workers' health in relation to work, carrying out health monitoring tests, preparing the reports and the files, as well as organizing and maintaining updated clinical records and other information relating to the workers;
- 14) To develop activities to promote the health of workers;
- 15) To monitor the working conditions of workers in more vulnerable situations;
- 16) To conceive and develop the information programme for the promotion of occupational safety and health, promoting the integration of preventive measures in information and communication systems of the undertaking;
- 17) To conceive and develop the training programme for the promotion of occupational safety and health and to collaborate in providing training and education in the fields of occupational safety, health, hygiene and ergonomics;
- 18) To prepare and submit to employer proposals on occupational safety and health measures, and take necessary steps to improve efficiency of the occupational risk prevention policy;
- 19) To provide advice on occupational safety, health, hygiene, ergonomics and regarding collective and personal protective equipment;
- 20) To support the information activities and consult with workers' representatives for occupational safety and health or, in their absence, with the workers themselves.
- 21) To ensure or monitor the implementation of preventive measures, promoting their efficiency and operability;
- 22) To coordinate or monitor internal audits and inspections;
- 23) To organize the elements required for compulsory notifications;
- 24) To draw up the obligatory reports in the event of occupational accidents or occupational diseases;
- 25) To analyze the causes of occupational accidents and occupational diseases, preparing the relevant reports;
- 26) To contribute to measures of vocational rehabilitation;
- 27) To collect and organize statistical elements relating to occupational safety and health.

2. The occupational safety and health service must keep the following data up to date, for the purposes of consultation:

- 1) Results of occupational risk assessments;
- 2) List and reports of fatal occupational accidents, occupational accidents resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work, as well as of occupational diseases;

- 3) List of situations of sick leave and the number of days absent from work, to be posted by the personnel service and, in the case of occupational diseases, the ratio of reported diseases;
- 4) List of measures, proposals or recommendations made by the occupational safety and health service.

3. In relation to the exercise of the activities and tasks mentioned above, the workers designated to integrate the structural units of the occupational safety and health service and the external services or persons contracted for that purpose shall enjoy full professional independence from employers, workers, and their representatives.

4. When the activities referred to in this article involve the adoption of measures for which implementation depends essentially of other workers of the undertaking and/or establishment, the occupational safety and health service must inform them about this and cooperate in their implementation.

5. The employer must respect the legislation governing personal data protection.

6. The employer must keep the documentation relating to the implementation of the activities referred to in this Article at the disposal of the competent inspection entities for five years.

Article 32. Organization of the occupational safety and health service

1. In order to establish, organize and ensure the proper functioning of an occupational safety and health service, through one or more structural units, the employer has to implement one or more of the modalities for its organization, according to the provisions of the following sections II and III of this chapter.

2. Regardless of the modality adopted, and in order to ensure that the occupational safety and health service is able to deal with the organization and implementation of preventive and protective measures, taking into account the size of the undertaking and/or establishment and/or the hazards to which the workers are exposed and their distribution throughout the entire undertaking and/or establishment, the employer must ensure that:

- 1) The workers designated for the structural units of the occupational safety and health service must have the necessary capabilities and the necessary means;
- 2) The external services or persons contracted for the structural units of the occupational safety and health service must have the necessary aptitudes and the necessary personal and professional means; and
- 3) The workers designated and the external services or persons contracted for the structural units of the occupational safety and health service are sufficient in number.

Section II. Functioning of the occupational safety and health service

Article 33. Occupational safety service

1. The technical activities relating to occupational safety are performed by occupational safety experts, certified according to the legislation governing the access to and performance of the profession of occupational safety experts, set forth by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work.

2. The professionals referred to in the preceding paragraph perform their activities with technical autonomy.

3. The activity of the safety services must be carried out regularly at the establishment for as long as necessary.

4. The assignment of occupational safety experts to the occupational safety activities, per undertaking, is established as follows:

- 1) In an industrial undertaking with up to 50 workers, one occupational safety expert; in an industrial undertaking with over 50 workers, two occupational safety experts for every 1500 workers or a fraction thereof.
 - 2) In all other establishments with up to 50 workers, one occupational safety expert; and in all other establishments with over 50 workers, two occupational safety experts for every 3000 workers or a fraction thereof.
5. The central executive authority that ensures the implementation of the state policy on Safety and Health at Work may determine a wider duration of the safety service in an establishment within which, regardless of the number of workers, the nature or severity of occupational risks, as well as the occupational accidents incidence rates, justifies a wider duration.
6. The employer must provide the occupational safety service with the technical information on the equipment and the composition of the products used.
7. Occupational safety service should be informed about all changes of the material components of the work and consulted, in advance, about all situations with possible repercussions on workers' safety.
8. The information referred to in the preceding paragraphs is bound by the obligation of professional confidentiality, without prejudice to the information pertinent to the protection of safety and health that should be communicated to the workers involved, where this is necessary, and to the workers' representatives for occupational safety and health.

Article 34. Occupational health service

1. The technical activities relating to occupational health are performed by and occupational physician.
2. For the purposes of this law, an occupational physician is considered to be:
 - 1) A medical doctor with a specialty in occupational medicine recognised by law;
 - 2) An occupational physician shall also be considered to be a medical doctor who is recognized as technically suitability for the performance of his duties, in accordance with the law;
 - 3) In the case of proven shortage of medical doctors qualified in accordance with the preceding paragraphs, the central executive authority that ensures the formulation of the state policy on health care may authorise other graduates in medicine to pursue this respective role who, within four years after such authorization must submit proof of obtaining the specialization in occupational medicine, otherwise they shall be forbidden to continue exercising such functions.
3. In an undertaking with more than 250 workers, the occupational physician must be assisted by an occupational nurse with relevant training and experience.
4. The activities to be performed by the nurse are regulated by special legislation.
5. The occupational physician must provide his activity during the number of hours necessary to perform the routine or emergency medical acts, and other activities that s/he must coordinate.
6. The occupational physician must know the material components of work with influence on workers' health.
7. The occupational physician shall develop her/his activity in the establishment as follows:
 - 1) In an industrial establishment or in an establishment of another nature but with high-risk work or activities as defined in Article 45 of this law, at least one hour per month for every group of 10 workers or fraction thereof;
 - 2) In all other establishments, at least one hour per month for every group of 20 workers or fraction thereof.
8. The occupational physician is prohibited to undertake the health surveillance of a number of workers that is equivalent to more than 150 hours of work per month;
9. The occupational physician is responsible for the workers' health surveillance;

10. The occupational physician shall have access to technical information about the equipment and the composition of the products used and about all changes of the material components of the work, which is bound by the obligation of professional confidentiality, without prejudice to the information pertinent to the protection of the safety and health that should be communicated to the workers involved, where this is necessary, and to the workers' representatives for occupational safety and health.

Article 35. Health exams

1. The employer must ensure that adequate health exams to each worker are carried out in order to evaluate the physical and mental fitness of the worker for the activity, as well as the repercussion of the work and the conditions by which it is performed on the health of the workers.

2. The employer shall ensure that workers' health exams take place, as far as possible, during working hours and is counted as working time, and shall comply with the recommendations that result from the health examinations and testes carried out.

3. The health surveillance consultations should be carried out by an occupational physician meeting the requirements set out in paragraph 2 of Article 34.

4. Without prejudice to other provisions of this law or of special legislation, foreseeing the conduction of specific or more frequent health exams, the employer shall ensure that the following health exams are carried out:

- 1) Admission exams - before the admission of a worker or, if the recruitment is urgent, within the following 15 days;
- 2) Periodic exams – annually, for workers under 21 years of age and workers aged over 50 years; and every 2 years for all other workers;
- 3) Sporadic exams - when there are substantial material changes to the material components of work that may have harmful repercussions on workers' health, as well as in the case of return to work after an absence exceeding 30 days for reason of illness or accident.

5. The occupational physician, in view of the state of health of the worker and the results of the prevention of occupational risks in the undertaking and/or establishment, may increase or reduce the periodicity of the health exams provided for in the preceding paragraph.

6. The occupational physician must take into account the result of other health exams that the worker has been submitted and that are still up-to-date, and should establish the necessary cooperation with the attending physician.

7. The admission exam provided for in sub-paragraph 1) of paragraph 4 may be waived in the following cases:

- 1) Where there is a transfer of ownership of the employment relationship, as long as the worker remains in the same workplace and there are no substantial changes in the material components of work that can have harmful repercussions on the health of the worker;
- 2) In which the worker is hired, for a period not exceeding 45 days, for identical work, is exposed to the same occupational risks and no incapacity is known since the last medical examination made during the previous two years, and the occupational physician is aware of the content of the clinical records of that examination.

8. Where necessary to ensure the safety and health of workers and that of other persons that can be affected by her/his actions and omissions in case of intoxication related to the consumption of alcohol, drugs, medication or any other intoxicating agent that can reduce their attention and/or the speed of reaction, workers must undergo a health exam to ensure that they are fit to perform their work if, and only if, all of the following conditions apply:

- 1) Duly justified by the nature of the work;
- 2) The worker is informed by the employer, in a written document signed by the employer, upon admission, that he might have to undergo such health exam, if requested by the employer, by a labour inspector, by the occupational safety and health service, by occupational physician, by the workers' representatives, and/or by the concerned worker, or if randomly selected to undergo it;
- 3) The procedure for the selection of the workers and carry out the health exams was submitted to workers and/or workers' representatives for consultation, approved by the occupational physician, referred to in paragraphs 1 and 2 of Article 34, and submitted to and approved by the central executive authority that ensures the implementation of the state policy on Safety and Health at Work;
- 4) The health exam was consented and performed by an occupational physician assigned to the occupational safety and health service of the undertaking and/or establishment;
- 5) The result of the health exam is noted in the clinic records of the worker, which are subjected to professional confidentiality, pursuant Article 36.
- 6) The occupational physician fills out the corresponding fitness certificate, pursuant Article 37 and, once signed by the worker, remit a copy to the person in charge of the management of the human resources of the undertaking, to the occupational safety and health service of the undertaking and/or establishment and, in the case foreseen in sub-paragraph 2) of paragraph 9, to the entity that, pursuant that provision, requested the health exam.
- 7) The health exam is conducted, as far as possible, during working hours and, in any case, counted as working time and its costs are supported by the employer.

9. The criteria, per selection process, for the choosing of the workers of the undertaking and/or establishment engaged in the work mentioned in the sub-paragraph 1) of the previous paragraph whose safety and health and that of other persons that can be affected by her/his actions and omissions in case of intoxication related to the consumption of alcohol, drugs, medication or any other intoxicating agent who have to be submitted to the health exam foreseen in the previous paragraph and under the strict observance of all the conditions provided thereof are:

- 1) The workers are randomly chosen among the totality of the workers mentioned above that have not yet been submitted to the test in the last 2 months, in a number corresponding to, at least, 10% of the latter, with a minimum of 3 workers;
- 2) The worker is directed selected and/or requested to undergo the health exam by the employer, by a labour inspector, by the occupational safety and health service, by occupational physician, by the workers' representatives, and/or by the concerned worker herself/himself.

10. In the case foreseen in the sub-paragraph 2) of the previous paragraph, the health exam can only be carried out if, in addition to the verification of all the conditions provided for in the paragraph 8 of this Article, all of the following conditions also apply:

- 1) The behavior of the worker in any moment of or during a period of time not exceeding one month prior to the date of the health exam strongly suggests her/his intoxication related to the consumption of alcohol, drugs, medication or any other intoxicating agent;
- 2) The entity that selects or requests the health exam of the concerned work duly justifies such selection or request in writing to the employer and to the occupational physician;
- 3) The occupational physician gives his consent.

Article 36. Clinical records

1. The clinical observations relating to health are noted in the clinical record of the worker.
2. The clinical record is subject to professional confidentiality, and it may only be provided to health authorities and doctors assigned to the central executive authority that ensures the implementation of the state policy on Safety and Health at Work.
3. For the purposes of the preceding paragraphs, the clinical record must not contain any data on the race, nationality, ethnic origin or information about personal habits of the worker, except when the latter are related to specific diseases or other health data.
4. The occupational physician responsible for the health monitoring shall deliver to the worker who is leaving the employer, a copy of her/his medical records.
5. In the case of cessation of activity, the clinical records of workers must be sent to the central executive authority that ensures the implementation of the state policy on Safety and Health at Work.

Article 37. Fitness certificate

1. In relation to the result of the admission, periodic or sporadic health exams, the occupational physician shall, immediately following the examination carried out, fill out a fitness certificate and remit a copy to the person in charge of the management of the human resources of the undertaking.
2. If the result of the health exams show that the worker is unfit for the task or work, the occupational physician must indicate, where appropriate, other functions that the worker can perform.
3. The fitness certificate cannot contain information covered by professional confidentiality.
4. The worker must be informed of the content of the fitness certificate, and it must contain his/her signature with the date it was made aware of its content.
5. Whenever the repercussions of the work and the conditions under which the same is provided are harmful to workers' health, the occupational physician shall communicate such fact to the occupational safety and health service of the undertaking and/or establishment and, if the worker's state of health so justifies, request her/his follow-up by the attending physician of the local health care center of the national health service or by any other doctor indicated by the worker.
6. The standard fitness certificate form is set forth by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work.

Article 38. First aid, fire-fighting, evacuation of workers and situations of serious and imminent danger

1. The employer has to ensure that the undertaking and/or establishment, whatever modality of occupational safety and health service is implemented, must have an internal structure that ensures the activities first aid, fire-fighting, emergency and evacuation of workers, referred to in paragraph 9 of Article 17, as well as, where applicable, to rescue workers in accident situations.
2. For that purpose the employer shall:
 - 1) Take the necessary measures for first aid, fire-fighting and evacuation of workers, adapted to the nature of the activities and the size of the undertaking and/or establishment and taking into account other persons that might be present;
 - 2) Arrange any necessary contacts with external services, as regards first aid, emergency medical care, rescue work and firefighting, in particular with services providing medical (emergency) aid and protecting the population against emergencies.
 - 3) Where necessary, engage the services providing medical (emergency) aid, protecting the population against emergencies, and working in the field of elimination of emergency consequences, rescue works, fire-fighting, fire and technogenic safety, and interact and exchange information with them.

- 4) Designate the workers required to implement the measures for first aid, fire-fighting and the evacuation of workers, which number, training and provided equipment shall be adequate, taking account of the size and/or specific hazards of the undertaking and/or establishment;
- 5) Employer must ensure that designated workers undergo appropriate training and advanced training, according to the procedure set forth by law, and are provided with appropriate instruction.
- 6) As soon as possible, inform all workers who are, or may be, exposed to serious and imminent danger of the risk involved of the steps to be taken as regards their protection;
- 7) Take action and give instructions to enable workers, in the event of serious, imminent and unavoidable danger, to stop work and to leave the workplace, and proceed to a place of safety;
- 8) To refrain from asking workers to resume performance of their employment duties where there is still a situation of serious and imminent danger likely to affect workers or other persons, save in properly and duly substantiated situations, related to preventing the escalation of a breakdown or danger and to save the life of workers and/or third persons;
- 9) Organize and implement, during emergencies, the measures provided for in the plan of localization and elimination of hazard consequences;
- 10) Take the necessary measures to ensure first aid, fire-fighting and to rescue and evacuate workers;

4. Workers who, in the event of serious, imminent and unavoidable danger, leave their workplaces and/or a dangerous area shall not be placed at any disadvantage because of their action and must be protected against any harmful and unjustified consequences.

5. The employer shall ensure that all workers are able and have the right to take the appropriate steps, in the light of their knowledge and the technical means at their disposal, to avoid the consequences of a serious and imminent danger to their safety and health and/or of that of other persons, when workers cannot contact the immediate supervisor responsible for taking the relevant response measures.

6. In the case foreseen in the previous paragraph, workers shall not be liable for such actions, unless they acted carelessly or there was negligence on their part.

Section III. Modalities of organization of the occupational safety and health service

Article 39. Modalities

1. The organization of the occupational safety and health service may adopt one of the following modalities:

- 1) Internal service;
- 2) Activities developed by the employer or by designated employee;
- 3) External service;

2. Without prejudice to the provisions of paragraph 3 of article 41, the organization of the occupational safety and health service must adopt the modality of internal service.

3. The use of the modalities of activities developed by the employer or by designated employee or external service is permitted, in accordance with, respectively, Articles 43 and 44, to ensure the development of those activities in full or in part and also the use of qualified technicians in sufficient number to ensure the development of those activities only where there are no sufficient resources in the undertaking or establishment to develop integrated activities of the occupational safety and health service by an internal service or by the employer himself or through a designated employee.

4. The employer may adopt different modalities of organization in each establishment.
5. The safety activities can be organized separately from the health activities, applying, for each one of them, the provisions of the preceding paragraph.
6. The occupational safety and health service organized in any of the modalities referred to in paragraph 1 must have the sufficient means to enable them to carry out the main occupational safety and health activities.
7. The occupational safety and health service organized in the modalities referred to in subparagraphs 1) and 3) of paragraph 1 of this Article must be composed by:
 - 1) The sufficient number of occupational safety experts, within the meaning of paragraph 1 of Article 33, to meet the requirements established in paragraphs 3 to 5 of Article 33, in the case of occupational safety services;
 - 2) The sufficient number of occupational physicians, within the meaning of paragraph 2 of Article 34 and nurses with relevant experience, to meet the requirements established in paragraphs 3 and 5 to 8 of Article 34, in the case of occupational health services;
8. The use of the modality of external service does not discharge the employer from the specific responsibility in the field of safety and health at work which the law assigns to her/him

Article 40. Requirements of the internal service

1. The organisation of the occupational safety and health service in the modality of internal service must meet the following requirements:
 - 1) Adequate and equipped facilities for the exercise of the activity;
 - 2) Equipment and tools to evaluate occupational safety and health conditions and personal protective equipment to be used by the occupational safety experts, occupational physicians and nurses, as the case may be.
 - 3) Technical quality of the procedures, in particular to assess safety and health conditions and for planning the activities;
 - 4) Capacity and competency to exercise the main activities of the occupational safety and health service provided for in article 31, without prejudice to the use of subcontracting only for the execution of other highly complex or infrequent tasks.
2. In relation to human resources, the organisation of the occupational safety and health service in the modality of internal service must meet the requirements set forth in Articles 33 and 34 of this law.

Article 41. Internal service

1. The internal occupational safety and health service is established by the employer and covers only the workers for whose safety and health the employer is responsible.
2. Without prejudice to their technical autonomy, the occupational safety experts providing the internal service referred to in the preceding paragraph engage in that activity within the framework of an employment relationship with the employer.
3. Except in the cases where exemption is obtained under article 42, the employer must establish an internal service covering the following:
 - 1) The establishment that have at least 300 workers;
 - 2) The group of establishments distanced up to 50 km from the one that occupies the largest number of workers and who, with this, have at least 300 workers;
 - 3) The establishment or group of establishments that carry out high-risk work or activities, in accordance with the provisions of Article 45, to which at least 30 workers are exposed.

Article 42. Internal service waiver

1. The employer may, upon request to and authorization of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work, obtain exemption from organizing the occupational safety and health service in the modality of internal service regarding a establishment covered by sub-paragraph 1) or 2) of paragraph 3 of article 41, in which:

- 1) High-risk work or activities are not performed;
- 2) The incidence and severity rates of occupational accidents presented over the last two years does not exceed the average of the respective sector of economic activity;
- 3) There are no records of occupational diseases contracted at the undertaking or to which the working conditions at the undertaking have directly and decisively contributed;
- 4) The employer has not been punished for very serious offences relating to the infringement of occupational safety and health legislation in the same establishment over the last two years;
- 5) The analysis of the risk assessment reports submitted by the applicant or through inspection, where needed, show that the occupational exposure limit values to substances or risk factors have been respected.

2. The procedures for the application to and issuance, refusal or withdrawn of the permit for the waiver of the modality of internal service foreseen in this article are set forth by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work.

Article 43. Activities developed by the employer or by designated employee

1. In the undertaking, establishment or group of establishments distanced up to 50 km from the largest one that employs a maximum of nine workers and with non-high risk activity the occupational safety activities can be carried out directly by the employer if he/she has adequate training, as defined in paragraph 6 of Article 44, and usually remains on the establishments.

2. In the situations referred to in the preceding paragraph, the employer may designate one or more workers to perform all or some of the activities of occupational safety as long as they have adequate training, as defined in paragraph 6 of Article 44, and have the time and necessary means.

3. The workers designated pursuant to paragraph 2 may not be placed at any disadvantage for performing the activities mentioned.

4. The implementation of this modality of occupational safety and health service requires prior authorisation of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work.

5. In the case of refusal or withdrawn of the authorization for the implementation of this modality of occupational safety and health service, the employer must adopt another modality of organising the occupational safety and health service, within a period of 90 days.

6. The procedure for the application to and issuance, refusal or withdrawn of the permit for the implementation of this modality of organizing of the occupational safety and health service is set forth by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work.

Article 44. External service

1. External service is that which is developed by an entity which, by contract with the employer, performs occupational safety and health activities in the undertaking and/or establishment.

2. The external service may comprise one of the following types:

- 1) Associative — provided by not for profit associations with legal personality, with the statutory purpose of providing occupational safety and health services;
- 2) Cooperative — provided by cooperatives with the statutory purpose of providing occupational safety and health services;
- 3) Private — provided by:

- i. Companies with the corporate purpose encompasses the provision of occupational safety and health services; or
 - ii. By a natural person holding the qualifications legally required to exercise the activities of, as the case may be, occupational safety expert, occupational physician or occupational nurse, according to, respectively, paragraph 1 of Article 33, paragraph 2 of Article 34 and paragraph 3 of Article 34.
- 4) Agreements - provided by any entity of the central, regional or local government, public institution or institution integrated in the National Health Service.
3. The contract between the employer and the external service provider shall be concluded in writing.
4. If the undertaking or establishment adopts the modality of external service to organize the occupational safety and health service, the employer shall inform the external service provider of the factors known to affect, or suspected of affecting, the safety and health of the workers and provide her/him with information on:
 - 1) The safety and health risks and preventive and protective measures and activities in respect of both the undertaking and/or establishment in general and each type of workstation and/or job;
 - 2) The measures taken for first aid, fire-fighting, evacuation of workers and for situations of serious and imminent danger, including the designated workers to implement such measures.
5. In the case foreseen in the previous paragraph, the employer shall designate in each establishment or group of establishments up to 50 km from that with the greatest number of workers and to a maximum of 300 workers, one worker with adequate training, in accordance with the provisions of the following paragraph, to represent her/him and to accompany and assist the implementation of prevention activities.
6. For the purposes of the preceding paragraph, adequate training means:
 - 1) The one that enables the acquisition of basic skills in the area of safety, health, ergonomics, environment and organization of work, and which is communicated to and agreed upon by the central executive authority that ensures the implementation of the state policy on Safety and Health at Work;
 - 2) Certified training entity or equivalent, according to the legislation governing the access to and performance of the profession of occupational safety experts, set forth by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work;
 - 3) Training entity specifically certified for this effect, according to the procedure set forth by the central executive authority that ensures the implementation of the state policy on Safety and Health at Work.
7. If the employer adopts the modality of external service, to organize the occupational safety and health service, this shall not discharge her/him from her/his responsibilities for ensuring the safety and health of workers in every aspect related to the work nor release the employer from the liability for violations of the legislation on Safety and Health at Work or for any damage to the health or life of workers caused by such violations.
8. The provision of external services of occupational safety and health to undertakings and/or establishments requires a permit.
9. The permit referred to in the preceding paragraph may be granted for activities in one or both of the areas of safety and health, for all or certain sectors of activity, as well as for certain high-risk works or activities.
10. The permit shall be issued by the central executive authority that ensures the implementation of the state policy on Safety and Health at Work, upon request of the applicant and depending on its fulfilment of the applicable legal requirements, including:

- 1) The number and qualifications of its occupational safety experts, within the meaning of paragraph 1 of Article 33, occupational physician, within the meaning of paragraph 2 of Article 34 and nurses with relevant experience;
- 2) Facilities;
- 3) Equipment and utensils;
- 4) Technical quality of procedures;
- 5) Capacity and competency to exercise the main activities of the occupational safety and health service provided for in article 31, including, where appropriate, in the case of high-risk works or activities foreseen in Article 45.

11. The procedures for the application to and issuance, refusal or withdrawn of the permit for provision of external services of occupational safety and health are set forth by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work.

CHAPTER VII. HIGH-RISK WORK OR ACTIVITIES

Article 45. High-risk work or activities

1. The following works and activities are deemed to be of high-risk for the purposes of this law:

- 1) Work on construction sites, excavation, earth moving, tunnels, with risks of falls from height or burial, demolitions and work on railway lines and roads without traffic interruption;
- 2) Extractive industries;
- 3) Hyperbaric work;
- 4) Activities that involve the use or storage of hazardous chemical products likely to cause major accidents;
- 5) Manufacturing, transport and use of explosives and pyrotechnics;
- 6) Activities of the steel and shipbuilding industries;
- 7) Activities involving contact with medium and high voltage electrical currents;
- 8) Production and transport of compressed, liquefied or dissolved gases or their significant use;
- 9) Activities involving exposure to ionizing radiation;
- 10) Activities involving the exposure to carcinogens or mutagenic agents, or to agents toxic for reproduction;
- 11) Activities entailing exposure to biological agents of groups 3 or 4 of the Community Classification of Biological Agents, as provided for in Article 2(2), Article 18 and Annex III of the Directive No. 2000/54/EC, of the European Parliament and of the Council, of 18 September 2000, on the protection of workers from risks related to exposure to biological agents at work;
- 12) Works that involve the exposure to silica.

2. The list of high-risk work or activities defined in the previous paragraph shall be continuously updated by the Cabinet of Ministers of Ukraine according to the circumstances and, in particular when the statistics relating to occupational accidents and/or the proposals of the central executive authority that ensures the formulation of the state policy on occupational safety and health so justify.

Article 46. Special conditions for performance of high-risk works and activities

1. In cases where the performance of certain works or activities expose workers to objectively high risks to their safety, health and life, such as the ones listed in the preceding Article, or others to be defined by the Cabinet of Ministers of Ukraine pursuant to paragraph 2 of the previous Article, works may only be performed subject to an authorization.

2. An authorization for performance of high-risk works shall be issued to the employer by the central executive authority that ensures the implementation of the state policy on Safety and Health at Work, based on an expert organization's positive opinion as to the employer's capacity of ensuring safe performance of the works applied for.

3. The authorizations shall be issued free of any charge and shall remain in force without time limit, except in the cases foreseen in paragraph 6.

4. The procedure for issuing, refusing to issue, and revoking the authorizations for performance of high-risk works shall be set forth by the Cabinet of Ministers of Ukraine.

5. The central executive authority that implements the state policy on occupational safety and health shall make a decision to refuse to issue an authorization if:

- 1) The employer fails to submit necessary documents and/or the documents were drawn up contrary to prescribed requirements;
- 2) Inaccurate information is provided;
- 3) The expert organization's opinion provided as regards the employer's capacity of ensuring safe performance of the work type applied for was drawn up more than 6 months prior to the application submission date;
- 4) Within the two years prior to the request of the authorization occurred a breakdown, explosion, fire, fatal occupational accident, occupational accident resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work, due to the performance of the high-risk works for which the authorization is requested;
- 5) If the employer has been convicted for the practice of infringement to this law, in connection with the performance of high-risk works, within the two years prior to the request of the authorization;
- 6) It believes that the employer has no capacity to perform the concerned works in conditions that ensure the safety and health of workers.

6. An authorization shall be revoked according to the requirements of the Law of Ukraine "On the Authorization System in Economic Activities", as well as if the following grounds are present:

- 1) The employer or a person authorized thereby files an application to have the authorization revoked;
- 2) The employer's legal personality is terminated (legal person dissolution (merger, takeover, division, conversion or liquidation) or termination of entrepreneurial activities by an individual entrepreneur);
- 3) Occurrence of a breakdown, explosion, fire, fatal occupational accident, occupational accident resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work, if an investigation or an inspection visit found that the event occurred due to the performance of the high-risk works for which the authorization was issued;
- 4) If the employer has been convicted for the practice of infringement to this law, in connection with the performance of the concerned high-risk works or activities;
- 5) If a labour inspector of the central executive authority that ensures the implementation of the state policy on occupational safety and health, following an inspection visit, concludes that the employer does not perform the concerned high-risk works or activities in conditions that ensure the safety and health of the workers.

7. In case of activities within the territory of the exclusive (maritime) economic zone of Ukraine and on the continental shelf based on a product-sharing agreement concluded according to the Law of Ukraine "On the Product-Sharing Agreements", all the authorizations provided for in this Article shall be issued to an investor according to the procedure set forth by the Cabinet of Ministers of Ukraine.

CHAPTER VIII. PROTECTION OF GENETIC HERITAGE

«COMMENT: To partially transpose Directive No. 2004/37/EC, Directive No. 2000/54/EC and Directive No. 98/24/EC»

Article 47. Risks to genetic heritage

1. The chemical, physical and biological agents or other factors that may cause heritable genetic effects, non-heritable adverse effects in progeny or that affect the male or female reproductive functions and abilities are likely to entail risks for the genetic heritage.

2. The following include, *inter alia*:

- 1) Substances and mixtures that meet the classification criteria under Regulation (EC) No. 1272/2008, of 16 December 2008, of the European Parliament and of the Council, on classification, labelling and packaging of substances and mixtures, in a or in several of the following hazard classes and categories with one or more of the following hazard statement:
 - i. Carcinogenicity, categories 1A, 1B or 2 (H350, H350i, H351);
 - ii. Reproductive toxicity, categories 1A, 1B, or 2 or the supplementary category for effects on or through lactation (H360, H360D, H360FD, H360Fd, H360Df, H361, H361d, H361fd, H362);
 - iii. Mutagenicity in germ cells, categories 1A, 1B or 2 (H340, H341);
 - iv. Toxicity for specific target-organs after single exposure, category 1 or 2 (H370, H371).
- 2) Ionizing radiation and high temperatures;
- 3) Brucella bacteria, syphilis, the bacillus of tuberculosis and virus of rubella (rubivirus), herpes simplex types 1 and 2, mumps, human immunodeficiency syndrome (AIDS) and toxoplasma.

3. In activities in which workers may be exposed to agents likely to entail risks for genetic heritage, this law, in so far as it is more favourable to the safety and health of workers, takes precedence over the applicability of measures of prevention and protection provided for in specific legislation.

Article 48. Assessment of risks likely to have harmful effects on genetic heritage

1. The employer must verify the existence of agents or factors that may have harmful effects on genetic heritage and assess the corresponding risks.

2. Risk assessment must take into account all available information, in particular:

- 1) The collection of information on the agents or factors;
- 2) The study of jobs to determine actual exposure conditions, in particular the nature of the work, the characteristics of the agents or factors, periods of exposure and interaction with other risks;
- 3) The recommendations of the competent bodies in the occupational safety and health field.

3. Risk assessment must be made at least on a quarterly basis, as well as when there is a change in the working conditions likely to affect workers' exposure, when the results of health monitoring so justify or there is development of scientific research in this area.

4. Risk assessment should identify the workers exposed and those who, being particularly sensitive, may need special protection measures.

Article 49. Specific information duties

1. Without prejudice to the other employers' obligations in the field of information and consultation, the employer must provide updated information to workers and their representatives for occupational safety and health on:

- 1) The hazardous substances and mixtures, work equipment and materials or raw materials present in workplaces that may pose danger of aggression to genetic heritage;
- 2) The results of the risk assessment;
- 3) The identification of exposed workers.

2. The information referred to in the preceding paragraph shall be placed at the disposal of the occupational physician.

3. The employer must transmit the information referred to in sub-paragraphs 1) and 2) of paragraph 1 to the self-employed and to undertakings on the same premises that develop activities simultaneously with their workers, in any capacity.

Article 50. Health surveillance

1. Without prejudice to the other employers' obligations on occupational health, the employer must ensure the appropriate surveillance of the health of workers in respect of which the result of the assessment reveals risks for genetic heritage, through health examinations.

2. The first health exam shall be carried out before the first exposure.

3. The health surveillance referred to in the preceding paragraphs must allow the application of the most recent knowledge of occupational medicine, be based on the conditions or circumstances in which each worker has been or may be subject to exposure to agents or risk factors and include at least the following:

- 1) Record of clinical and professional history of each worker;
- 2) Personal interview with the worker;
- 3) Individual assessment of their state of health;
- 4) Biological surveillance whenever necessary;
- 5) Screening of early and reversible effects.

4. Health exams are conducted based on the knowledge that the exposure to agents or risk factors for genetic heritage can cause the following diseases:

- 1) Changes in sexual behaviour;
- 2) Reduced fertility, namely in several aspects of spermatogenesis and ovogenesis;
- 3) Adverse results in hormonal activity;
- 4) Modifications of other functions that depend on the integrity of the reproductive system.

Article 51. Result of health surveillance

1. As a result of health surveillance, the occupational physician:

- 1) Informs the worker of the result;
- 2) Gives indications about the possible need to continue monitoring health, even after exposure;
- 3) Communicate to the employer the results of health surveillance with interest to risk prevention, without prejudice to the obligation of professional secrecy to which s/he is bound to.

2. The employer, having regard to that referred to in sub-paragraph 3) of the preceding paragraph:

- 1) Repeats the risk assessment;
- 2) On the basis of the opinion of the occupational physician, adopts any individual measures of protection or prevention and, if necessary, gives the worker another compatible task where there is no risk of exposure;

- 3) Promotes prolonged surveillance of the worker's health;
 - 4) Ensures that any worker who has been exposed to agents or risk factors to the genetic heritage has a health exam, including, if necessary, additional exams.
3. The worker has access, on request, to the health record that concerns him/herself, and may request the revision of this result.

Article 52. Record, archive and preservation of documents

1. Notwithstanding the general obligations of the occupational safety and health service in respect to data records and preservation of documents, the employer must organize and maintain updated the files about the following, notably via electronic means:

- 1) The criteria, procedures and results of the risk assessment;
- 2) The identification of exposed workers with the nature and, if possible, the agent and the degree of exposure of each worker;
- 3) The results of the health surveillance of each worker with reference to the respective job or function;
- 4) The records of occupational accidents or incidents;
- 5) Identification of the occupational physician responsible for the health surveillance.

2. The records referred to in sub-paragraph 3) of the preceding paragraph must appear on individual clinical records of each worker, placed under the responsibility of the occupational physician.

3. The records and files referred to in the preceding paragraphs shall be kept for at least 40 years after the end of the exposure of the workers they refer to.

4. If the employer discontinues its activity, the records and files should be transferred to the central executive authority that ensures the implementation of the state policy on Safety and Health at Work which shall ensure their confidentiality.

5. All processing of personal data referred to in paragraph 1 shall comply with the governing law on personal data protection.

CHAPTER IX. PROHIBITED OR CONDITIONED ACTIVITIES IN GENERAL

Article 53. Prohibited or conditioned activities

It is prohibited or restricted to engage workers in activities involving exposure to chemical, physical and biological agents or other factors of a psychosocial nature which may cause heritable genetic effects, non-heritable adverse effects in progeny or affect male or female reproductive functions and abilities, likely to involve a risk to the genetic heritage referred to in this Law or in specific legislation, according to their indications.

Article 54. Use of prohibited agents

1. The use of prohibited agents is only permitted:

- 1) For the exclusive purposes of scientific research;
- 2) In activities aimed at their elimination.

2. In the situation provided for in the preceding paragraph, the exposure of workers to the agents in question must be avoided, in particular by ensuring that it is carried out for the minimum time possible and that it takes place in a single closed system, from which the agents may be removed to the extent necessary for the control of the process or the maintenance of the system.

3. In the case referred to in paragraph 1, the employer must notify in advance the following information to the central executive authority that ensures the implementation of the state policy on Safety and Health at Work:

- 1) The agent and respective quantity used annually;
- 2) Activities, reactions or processes involved;
- 3) Number of workers exposed;

- 4) Technical and organisational measures taken to prevent the exposure of workers.
4. The notification provided for in the previous paragraph shall be done at least 15 days in advance, and, in the case of sub-paragraph 2 of the preceding paragraph, that advance notice may be less if duly substantiated.
5. The central executive authority that ensures the implementation of the state policy on Safety and Health at Work referred to in paragraph 3 conveys the information received to the central executive authorities that ensures the implementation of the state policy on health and on social policy, and confirms the reception of the communication with the necessary information, indicating, where appropriate, the complementary measures for the protection of workers that the employer must implement.
6. The employer shall provide the documents referred to in this Article to the supervising entities that request such.

CHAPTER X. OCCUPATIONAL SAFETY AND HEALTH OF PREGNANT WORKERS AND WORKERS WHO HAVE RECENTLY GIVEN BIRTH OR ARE BREASTFEEDING

«COMMENT: To transpose EU Directive 92/85/EEC»

Article 55. General provisions

Pregnant workers, workers who have recently given birth, and workers who are breastfeeding shall not be obliged to perform the work or be exposed at work to physical, biological or chemical agents, processes or working conditions causing harm to their health or posing a considerable risk to their health and/or that of a child of such workers.

Article 56. Risk assessment and information

1. For all activities liable to involve a specific risk of exposure of pregnant workers, workers who have recently given birth, and workers who are breastfeeding to the agents, processes or working conditions referred to in the previous Article, the employer shall assess the nature, degree and duration of exposure, in the undertaking and/or establishment concerned of such workers, either directly or through the occupational safety and health service referred to in Articles 29 to 44, in order to:

- 1) To assess any risks to the safety or health and any possible effect on the pregnancies or breastfeeding of such workers and on the safety and health of their unborn child or children, as the case may be;
- 2) To decide what measures should be taken.

2. Without prejudice to other obligations of the employer as regards informing workers in the field of occupational safety and health provided for in this and other legislation, the employer, following the risk assessment foreseen in the previous paragraph, must inform the concerned pregnant worker, worker who have recently given birth or are breastfeeding, workers likely to be in that situation in the undertaking and/or establishment and/or their representatives about the results of the assessment referred to in paragraph 1 and of all measures to be taken concerning health and safety at work.

Article 57. Occupational safety and health measures

1. Without prejudice to other obligations of the employer provided for in this law and in other legislation on occupational safety and health, if the results of the risks assessment referred to in the preceding Article reveal a risk to the safety or health or an effect on the pregnancy or breastfeeding of a pregnant workers or a worker who have recently given birth or are breastfeeding, the employer

shall take the necessary measures to ensure that, by temporarily adjusting the working conditions and/or the working hours of the worker concerned, the exposure of that worker to such risks is avoided.

2. If the adjustment of the working conditions and/or working hours of the concerned worker is not technically and/or objectively feasible, or cannot reasonably be required on duly substantiated grounds, the employer shall take the necessary measures to move the worker concerned to another job.

3. If moving the concerned worker to another job is not technically and/or objectively feasible or cannot reasonably be required on duly substantiated grounds, the worker concerned shall be granted leave with pay for the whole of the period necessary to protect the safety or health of the concerned worker.

4. The provisions of this Article shall apply, with the necessary adaptations, to the case where a worker pursuing an activity which is forbidden pursuant to Articles 58 and 59 becomes pregnant or starts breastfeeding and informs the employer thereof.

Article 58. Prohibited activities for pregnant workers

1. It is prohibited for the pregnant worker to be engaged in activities where she is or may be exposed to the following physical agents:

- 1) Ionizing radiation;
- 2) High pressure atmospheres, including hyperbaric chambers or scuba diving.

2. It is prohibited for a pregnant worker to perform any activity in which she may be in contact with vectors of transmission of toxoplasma and rubella virus, unless there is evidence that the pregnant worker has antibodies or immunity to these agents and is sufficiently protected.

3. It is prohibited for the pregnant worker to be engaged in activities where she may be in contact with the following chemical agents:

- 1) Substances and mixtures that meet the classification criteria under Regulation (EC) No. 1272/2008, of 16 December 2008, of the European Parliament and of the Council, on classification, labelling and packaging of substances and mixtures, in a or in several of the following hazard classes and categories with one or more of the following hazard statement:
 - i. Mutagenicity in germ cells, categories 1A, 1B or 2 (H340, H341);
 - ii. Reproductive toxicity, categories 1A, 1B, or 2 or the supplementary category for effects on or through lactation (H360, H360D, H360FD, H360Fd, H360Df, H361, H361d, H361fd, H362);
 - iii. Toxicity for specific target-organs after single exposure, category 1 or 2 (H370, H371).
- 2) Lead and its compounds, in so far as these agents can be absorbed by the human body.

3. It is prohibited for the pregnant worker work in underground mines.

Article 59. Prohibited activities for workers who are breastfeeding

1. Breastfeeding workers are prohibited from conducting any activity that involves exposure to the following physical agents and chemicals:

- 1) Ionizing radiation;
- 3) Substances and mixtures that meet the classification criteria under Regulation (EC) No. 1272/2008, of 16 December 2008, of the European Parliament and of the Council, on classification, labelling and packaging of substances and mixtures, in a or in several of the following hazard classes and categories with one or more of the following hazard statement:

- i. Reproductive toxicity, categories 1A, 1B, or 2 or the supplementary category for effects on or through lactation (H360, H360D, H360FD, H360Fd, H360Df, H361, H361d, H361fd, H362);
 - ii. Toxicity for specific target-organs after single exposure, category 1 or 2 (H370, H371).
 - 4) Lead and its compounds, in so far as these agents can be absorbed by the human body.
2. It is prohibited for the breastfeeding worker to work in underground mines.

Article 60. Conditioned activities to pregnant workers, workers who have recently given birth or are breastfeeding

1. Activities involving exposure to physical agents liable to cause fetal injuries or the detachment of the placenta are conditioned to the pregnant worker, namely:

- 1) Shocks, mechanical vibration or movement;
- 2) Manual handling of loads where there is a particular risk of back injury or whose weight exceeds 10 kg;
- 3) Noise;
- 4) Non-ionizing radiation;
- 5) Extreme temperatures, cold or hot;
- 6) Movements and postures, movements inside or outside of the establishment, mental and physical fatigue and other physical efforts connected with the activity performed.

2. All activities entailing exposure to biological agents of groups 2, 3 or 4 of the Community Classification of Biological Agents, as provided for in Article 2(2), Article 18 and Annex III of the Directive No. 2000/54/EC, of the European Parliament and of the Council, of 18 September 2000, on the protection of workers from risks related to exposure to biological agents at work, are conditioned to the pregnant workers, workers who have recently given birth or are breastfeeding.

3. It is conditioned to pregnant workers, workers who have recently given birth or are breastfeeding the activities in which there are or may exist the risk of exposure to:

- 1) Substances and mixtures that meet the classification criteria under Regulation (EC) No. 1272/2008, of 16 December 2008, of the European Parliament and of the Council, on classification, labelling and packaging of substances and mixtures, in a or in several of the following hazard classes and categories with one or more of the following hazard statement:
 - i. Mutagenicity in germ cells, categories 1A, 1B or 2 (H340, H341);
 - ii. Carcinogenicity, categories 1A, 1B or 2 (H350, H350i, H351);
 - iii. Reproductive toxicity, categories 1A, 1B, or 2 or the supplementary category for effects on or through lactation (H360, H360D, H360FD, H360Fd, H360Df, H361, H361d, H361fd, H362);
 - iv. Toxicity for specific target-organs after single exposure, category 1 or 2 (H370, H371).
- 2) Auramine;
- 3) Mercury and its derivatives;
- 4) Antimitotic drugs;
- 5) Carbon monoxide;
- 6) Hazardous chemical agents of cutaneous penetration;
- 7) Substances or mixtures released in the industrial processes referred to in the following paragraph.

4. The activities in workplaces where the following industrial processes are taking place or may take place are conditioned to pregnant workers, workers who have recently given birth or are breastfeeding:

- 1) Manufacture of auramine;

- 2) Work likely to give rise to exposure to polycyclic aromatic hydrocarbons present in particular in soot, tar, in pitch, in the waste gases or dust in mining;
- 3) Work likely to cause exposure to dusts, fumes and sprays produced during calcination and the electro-refining of nickel;
- 4) Strong acid process during the manufacture of isopropyl alcohol;
- 5) Work likely to cause exposure to hardwood dust.

Article 61. Night work

1. The employer have to take the necessary measures to ensure that pregnant workers and workers who have recently given birth or are breastfeeding are not obliged to perform night work during their pregnancy and for a period following childbirth which shall be determined by central executive authority that ensures the formulation of the state policy on Safety and Health at Work, subject to the submission to the employer of a proper confirming medical document stating that this is necessary for the safety or health of the worker concerned.

2. For the purposes mentioned on the preceding paragraph, the employer must:

- 1) Transfer the concerned worker to daytime work; or
- 2) Where such a transfer is not technically and/or objectively feasible, cannot reasonably be required on duly substantiated grounds, grant a paid leave from work to the concerned workers or the extension of the maternity leave, in conditions and according to the procedure to be defined by the central executive authorities that ensure the formulation of the state policy on Safety and Health at Work and on social policy.

Article 62. Time off for ante-natal examinations

1. The employer must ensure that pregnant workers and workers who have recently given birth or are breastfeeding are entitled to the necessary time off, without loss of pay, in order to attend ante-natal examinations, whenever such examinations have proven to take place during working hours.

2. For the purposes of the preceding paragraph, the referred workers have to provide employer with proper document confirming that the mentioned ante-natal examinations, can only take place during working hours.

Article 63. Prohibition of dismissal

1. The employer is prohibited to dismiss pregnant workers and workers who have recently given birth or are breastfeeding during the period from the beginning of their pregnancy to the end of their maternity leave, save in exceptional cases not connected with their condition which are permitted under national legislation, where applicable, provided that the central executive authority that ensures the implementation of the state policy on Safety and Health at Work has given its consent.

2. In the case mentioned in the previous paragraph, the employer must cite duly substantiated grounds for the dismissal in writing.

Article 64. Protection and defense rights

1. The Cabinet of Ministers of Ukraine shall take the necessary legislative measures in order to protect and defend the rights of pregnant workers and workers who have recently given birth or are breastfeeding.

2. The legislative measures mentioned in the previous paragraph shall be aimed at:

- 1) Protecting pregnant workers and workers who have recently given birth or are breastfeeding from the consequences of a dismissal which is unlawful by virtue of the paragraph 1 of the preceding Article;
- 2) Enabling pregnant workers and workers who have recently given birth or are breastfeeding who should themselves wronged by failure to comply with the

obligations arising from Articles 47 to 63 to pursue their claims by judicial process and/or by recourse to other competent authorities.

- 3) Ensuring the employment rights of pregnant workers and workers who have recently given birth or are breastfeeding in the cases referred to in Articles 57 to 61, including the maintenance of a payment and/or entitlement to an adequate allowance.

CHAPTER XI. WORK OF MINORS

«COMMENT: To transpose EU Directive 94/33/EC»

Article 65. General principles relating to work of minors

1. The employer shall provide minors with working conditions appropriate to their age and development and to protect safety, health, physical, psychological and moral development, education and training, in particular by preventing any risk resulting from their lack of experience or unconsciousness of existing or potential risks;

2. The employer shall, in particular, assess occupational risks before the minor initiates work or before any major change in working conditions, focusing in particular on:

- 1) Equipment and organization of the workplace and workstation;
- 2) Nature, degree and duration of exposure to physical, biological and chemical agents;
- 3) Choice, adaptation and use of work equipment, including agents, machinery and appliances and their use;
- 4) Adaptation of work organisation, work processes or their execution;
- 5) Degree of knowledge of the minor with regard to the execution of work, risks to safety and health and prevention measures.

3. The employer shall inform the minor and his/her legal representatives of the occupational risks to which s/he is or may be exposed to and of the measures taken to prevent those risks.

Article 66. Admission of a minor

1. Only the minor who has completed the minimum age of admission, has completed compulsory schooling and has adequate physical and mental skills to the job may be admitted to work.

2. The minimum age of admission to work is 16 years.

3. A minor under the age of 16 who has completed compulsory schooling may provide light work consisting of simple and defined tasks which, by their nature, by the physical or mental efforts required or the specific conditions in which they are carried out, are not likely to harm him with regard to physical integrity, safety and health, school attendance, participation in orientation or training programs, ability to benefit from the instruction given, or their physical, psychological, moral, intellectual and cultural development.

4. In a family business, a minor under the age of 16 must work under the supervision and direction of a member of her/his household that has, at least, 18 years of age.

5. The employer shall communicate to the central executive authority that ensures the implementation of the state policy on Safety and Health at Work, in particular by electronic means, through communication in a model approved by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work, the admission of a minor made under paragraph 3, in the following eight days.

6. A minor under the age of 16 who has completed compulsory schooling but does not have a professional qualification, or a minor with at least 16 years of age but which has not completed compulsory schooling, is not enrolled and attends secondary education or does not have a professional qualification, can only be admitted to work provided that s/he attends a form of education or training that provides, as appropriate, compulsory schooling, professional qualification, or both.

7. The provisions of the preceding paragraph shall not apply to minors who only work during school holidays.

8. In the situation referred to in paragraph 6, the minor shall enjoy dispensing from work for school attendance of classes, if so required by school hours, without loss of rights or pay and which counts as an effective performance of work, with the following duration, depending on the normal weekly work period:

- 1) Six hours per week, for a weekly work period of twenty hours or more and less than thirty hours;
- 2) Eight hours per week for a weekly work period of thirty hours or more and less than thirty-four hours;
- 3) Ten hours per week for a weekly work period of thirty-four hours or more and less than thirty-eight hours;
- 4) Twelve hours per week for a weekly work period of thirty-eight hours or more.

9. The employer shall communicate to the central executive authority that ensures the implementation of the state policy on Safety and Health at Work, in particular by electronic means, through communication in a model approved by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work, the admission of a minor made in accordance with paragraphs 6 and 7, in the following eight days.

Article 67. Protection of the safety and health of minors

1. Without prejudice to the obligations established in other special legal provisions, the employer must subject the minor to health examinations, namely:

- 1) Admission health exam that certifies the adequacy of his physical and psychic capacity to the exercise of the functions, to be carried out before the beginning of the work, or in the 15 days after the admission if it is urgent and with the consent of the legal representatives of the minor;
- 2) Annual health exam, so that the exercise of professional activity does not result in damage to your minor's health and to minor's physical and psychological development.

2. The employer must ensure that minor are protected from any specific risks to their safety, health and development which are a consequence of their lack of experience, of absence of awareness of existing or potential risks or of the fact that minors have not yet fully matured;

3. Work that, due to its nature or the conditions in which it is provided, is harmful to the physical, psychological and moral development of minors is prohibited or conditioned;

4. The normal working time for minors cannot exceed eight hours each day and forty hours each week;

5. Collective agreements should reduce, whenever possible, the maximum limits of the normal working period for minors;

6. In the case of light work carried out by a minor under the age of 16, the normal period of work may not exceed seven hours each day and thirty-five hours each week;

7. The minor worker cannot do overtime;

8. The provision of the preceding paragraph is not applicable if the provision of overtime by a minor aged 16 years or over is indispensable to prevent or repair serious damage to the undertaking and/or establishment, due to an abnormal and unpredictable fact or the exceptional circumstance even if predictable, whose consequences could not be avoided, as long as there is no other worker available and for a period not exceeding five working days;

9. In the situation referred to in the preceding paragraph, the minor is entitled to an equivalent period of compensatory rest, to be enjoyed within the following three weeks;

10. Work of a minor under the age of 16 between 20:00 hours of a day and 7:00 hours of the following day is prohibited;

11. The minor aged 16 years or older may not provide work between 22 hours of one day and 7 hours of the following day, without prejudice to the following paragraphs;

12. Minors aged 16 years or older can provide night work:

- 1) In activity provided for in a collective agreement, except in the period from 0:00 to 5:00 hours;
- 2) That it is justified for objective reasons, in an activity of a cultural, artistic, sport or advertising nature, provided that the minors aged 16 years or older have an equivalent period of compensatory rest on the next day or as closest as possible.

13. In the case of the preceding paragraph, the provision of night work by a minor shall be supervised by an adult, if necessary for the protection of his safety or health;

14. Paragraphs 11 and 12 shall not apply if the provision of night work occurs in the circumstances referred to in paragraph 8, in which case is due the equivalent period of compensatory rest provided for in paragraph 9;

15. The daily working period of minor should be interrupted by an interval of duration between one and two hours, so as not to provide more than four hours of consecutive work if the minor is under the age of 16, or four hours and thirty minutes if the minor is aged 16 years or over;

16. Collective agreements may establish a duration of the rest interval of more than two hours, as well as the frequency and duration of other rest intervals during the daily working time or, in the case of minors aged 16 years or older, a reduction of the rest interval up to thirty minutes;

17. The minor is entitled to daily rest between working periods of two successive days, with a minimum duration of fourteen consecutive hours if s/he is under 16 years of age, or twelve consecutive hours if s/he is 16 years of age or older;

18. For minors aged 16 years or over, the daily rest provided for in the preceding paragraph may be reduced by collective agreement if justified by objective reasons, provided that it does not affect their safety or health and the reduction is compensated within the following three days, in the agriculture, tourism, hospitality or catering sector, in a navy vessel of commerce, hospital or other health establishment or in activity characterised by fractional working periods throughout the day;

19. Paragraph 17 does not apply to minors aged 16 years or over who are working for a normal duration of not more than 20 hours per week, or occasional work for a period of not more than one month:

- 1) In domestic service carried out in a household;
- 2) In a family business, provided that it is not harmful or dangerous to the minor.
- 2) 19. Paragraph 17 does not apply to minors aged 16 years or over who are working for a normal duration of not more than 20 hours per week, or occasional work for a period of not more than one month:

20. The weekly rest of the minor lasts two consecutive days, if possible, in each period of seven days, unless there are technical or work organisation reasons, to be defined by collective agreement, justifying that the weekly rest of a minor aged 16 years or over lasts for thirty-six consecutive hours;

21. The weekly rest of a minor aged 16 years or over may be one day in the situation referred to in paragraphs 18 or 19, provided that the reduction is justified by objective reason and, in the first case, is established in a collective agreement, and, in any case, adequate rest shall be ensured;

22. If the minor works for several employers, the weekly rests must be coincident and the sum of working periods should not exceed the maximum limits of the normal working period, provided for in paragraphs 4 to 6.

23. For the purposes of the preceding paragraph, the minor or, if the minor is under the age of 16, his/her legal representatives, shall inform in writing:

- 1) Prior to admission, the new employer, on the existence of another job and the duration of work and the corresponding weekly rests;
- 2) Upon admission or where the working conditions in question change, the other employers, on the duration of work and the corresponding weekly rest.

24. The employer who, being informed in accordance with the preceding paragraph, concludes an employment contract with the minor or changes the duration of work or weekly rest is responsible for complying with paragraph 22.

25. The participation of a minor in a show or other activity of a cultural, artistic or advertising nature is regulated in specific legislation, to be set forth by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work.

Article 68. Prohibition of work by children and minors

1. It is forbidden the work by children.

2. Without prejudice to the preceding paragraph and to the paragraph 3 of the previous Article, it is prohibited the employment of minors for work:

- 1) Which is objectively beyond their physical or psychological capacity;
- 2) Involving harmful exposure to agents which are toxic, carcinogenic, cause heritable genetic damage, or harm to the unborn child or which in any other way chronically affect human health;
- 3) Involving harmful exposure to radiation;
- 4) Involving the risk of accidents which it may be assumed cannot be recognized or avoided by minors owing to their insufficient attention to safety or lack of experience or training; or
- 5) In which there is a risk to health from extreme cold or heat, or from noise or vibration.

Article 69. Activities, agents, processes and working conditions prohibited to minors

1. Without prejudice to paragraph 3 of Article 67 and paragraphs 1 and 2 of the previous Article, it is forbidden the exposure of minors to the following activities, agents, processes and working conditions:

- 1) Manufacture of auramine;
- 2) Industrial slaughter of animals;
- 3) Activities where there is a risk of exposure to the following physical agents:
 - i. Ionizing radiation;
 - ii. High pressure atmospheres, including hyperbaric chambers and scuba diving;
 - iii. Contact with high voltage electricity.
- 4) Activities where there is a risk of exposure to biological agents of groups 3 or 4 of the Community Classification of Biological Agents, as provided for in Article 2(2), Article 18 and Annex III of the Directive No. 2000/54/EC, of the European Parliament and of the Council, of 18 September 2000, on the protection of workers from risks related to exposure to biological agents at work;
- 5) Activities where there is a risk of exposure to the following chemical agents:
 - i. Asbestos;
 - ii. Lead and its compounds, in so far they are likely to be absorbed by the human body;
 - iii. Chlorpromazine;
 - iv. Toluene and xylene;
 - v. Polycyclic aromatic hydrocarbons present in soot, tar or coal pitch;
 - vi. Dusts, fumes and sprays produced during calcination and the electro-refining of nickel.
- 6) Activities where there is a risk of exposure to substances and mixtures that meet the classification criteria under Regulation (EC) No. 1272/2008, of 16 December 2008, of the European Parliament and of the Council, on classification, labelling and packaging of substances and mixtures, in a or in several of the following hazard classes and categories with one or more of the following hazard statement:

- i. Acute toxicity, category 1, 2 or 3 (H300, H310, H330, H301, H311, H331);;
 - ii. Skin corrosion, category 1A, 1B or 1C (H314);
 - iii. Flammable gas, category 1 or 2 (H220, H221);
 - iv. Flammable aerosols, category 1 (H222);
 - v. Flammable liquid, category 1 or 2 (H224, H225);
 - vi. Explosives, category “unstable explosive” or explosives of divisions 1.1, 1.2, 1.3, 1.4 and 1.5 (H200, H201, H202, H203, H204, H205);
 - vii. Self-reactive substances and mixtures, type A, B, C or D (H240, H241, H242);
 - viii. Organic peroxides, type A or B (H240, H241);
 - ix. Toxicity for specific target-organs after single exposure, category 1 or 2 (H370, H371).
 - x. Toxicity for specific target-organs after repeated exposure, category 1 or 2 (H372, H373);
 - xi. Respiratory sensitisation, category 1, subcategory 1A or 1B (H334);
 - xii. Skin sensitisation category 1 subcategory 1A or 1B (H317);
 - xiii. Carcinogenicity, category 1A, 1B or 2 (H350, H350i, H351);
 - xiv. Mutagenicity in germ cells, category 1A, 1B or 2 (H340, H341);
 - xv. Reproductive toxicity, category 1A or 1B (H360, H360F, H360FD, H360Fd, H360D, H360Df).
- 7) Activities where there is a risk of exposure to the following processes:
- i. Strong acid process during the manufacture of isopropyl alcohol;
 - ii. Manufacture and manipulation of machines, devices or objects containing explosives.
- 8) Activities whose performance is subjected to the following working conditions:
- i. Risk of collapse;
 - ii. Handling of equipment for the production, storage or use of compressed, liquefied or dissolved gases;
 - iii. Use of vats, tanks, reservoirs, bottles or tanks containing the chemicals referred to in paragraph 5) or the substances and mixtures referred to in paragraph 6);
 - iv. Driving or operation of transport vehicles, tractors, forklifts and earth moving machinery;
 - v. Release of free silica dust, in particular in the projection of jets of sand;
 - vi. Emptying of molten metals;
 - vii. Glass blowing operations;
 - viii. Places for the breeding, raising or conservation of fierce or poisonous animals;
 - ix. Carried out underground;
 - x. Carried out in wastewater drainage systems;
 - xi. Performed on airport runways;
 - xii. Carried out in nightclubs and similar;
 - xiii. Where the pace is limited by machinery and the wages paid according to results;
 - xiv. Susceptible to exposure to hardwood dust.

2. Without prejudice to paragraph 3 of Article 67 and paragraphs 1 and 2 of Article 68, it is also forbidden the engagement of minors under the age of 16 in activities that take place in discos and similar.

Article 70. Activities, agents, processes and working conditions conditioned to minors

1. Minors aged 16 or over may only perform activities, processes and working conditions subject to exposure to physical, biological and chemical agents referred to in this Article.

2. For the purposes of the preceding paragraph, in addition to paragraph 1 of Article 67, the employer shall assess the nature, degree and duration of the minor's exposure to conditioned activities

or work and take the necessary measures to avoid such risks, giving these facts knowledge to central executive authority that ensures the implementation of the state policy on Safety and Health at Work, in particular by electronic means, through communication in a model approved by the central executive authority that ensures the formulation of the state policy on Safety and Health at Work.

3. The activities in which there is a risk of exposure to the following physical agents can be performed by a minor aged 16 years or more, provided the employer complies with the provisions of paragraph 2:

- 1) Ultraviolet radiation;
- 2) Noise levels above 85 dB(A);
- 3) Vibrations;
- 4) Temperatures below 0°C or above 42°C;
- 5) Contact with medium voltage electricity.

4. The activities where there is the risk of exposure to biological agents of groups 1 or 2 of the Community Classification of Biological Agents, as provided for in Article 2(2), Article 18 and Annex III of the Directive No. 2000/54/EC, of the European Parliament and of the Council, of 18 September 2000, on the protection of workers from risks related to exposure to biological agents at work, can be performed by a minor aged 16 years or over, provided the employer complies with the provisions of paragraph 2;

5. The activities in which there is a risk of exposure to the following chemical agents can be performed by a minor aged 16 years or more, provided the employer complies with the provisions of paragraph 2:

- 1) Ethyl acetate;
- 2) Uric acid and its compounds;
- 3) Alcohols;
- 4) Butane;
- 5) Ketones;
- 6) Chloronaphthalenes;
- 7) Proteolytic enzymes;
- 8) Manganese, its compounds and alloys;
- 9) Iron oxide;
- 10) Propane;
- 11) Phosphorus sesquisulphide;
- 12) Sodium sulphate;
- 13) Zinc and its compounds.

6. The activities governed by the following working conditions can be performed by a minor aged 16 years or more, provided the employer complies with the provisions of paragraph 2:

- 1) The use of work equipment which poses specific risks to the safety or health of workers;
- 2) Demolition work;
- 3) Performing dangerous manoeuvres;
- 4) Dismantling work;
- 5) Harvesting, handling or packing blood, organs or any other animal remains, handling, washing and sterilisation of materials used in these operations;
- 6) The removal and handling of waste from dumps and similar;
- 7) The manual handling of loads weighing more than 15 kg;
- 8) Excessive physical efforts, including work performed kneeling down or in positions and movements that require compression of nerves and nerve plexuses;
- 9) Work carried out in silos;
- 10) Work performed in refrigerating installations where there may be the risk of escape of cooling fluid;

- 11) Work carried out in slaughterhouses, butchers, fishmongers, aviaries, factories of sausages or tinned meat and fish, milk distribution tanks and cheese makers.

CHAPTER XII. WORKER WITH DISABILITY OR CHRONIC ILLNESS

Article 71. General principles

1. Workers with disabilities, chronic illness or oncologic disease hold the same rights and are attached to the same duties of other workers in access to employment, professional training, promotion or career and working conditions, without prejudice to the specificities inherent to their situation.

2. The State should stimulate and support the employer's action in hiring a worker with disabilities, chronic illness or oncologic disease and in his/her professional re-adaptation.

Article 72. Positive action measures

1. The employer shall take appropriate measures to ensure that the person with a disability or chronic illness, in particular active cancer in the treatment phase, has access to a job, can exercise it and progress therein, or to have vocational training, unless such measures entail disproportionate costs.

2. The State shall encourage and support, by appropriate means, the action of the employer in achieving the objectives referred to in the preceding paragraph.

3. The costs referred to in paragraph 1 shall not be considered disproportionate where they are offset by State support, in accordance with specific legislation.

4. It may be established by law or collective agreement, specific protection measures for workers with disabilities or chronic illness, including active cancer in the treatment phase, and incentives for the worker or the employer, particularly with regard to admission, conditions for the provision of the activity and adaptation of the workstation, taking into account their interests.

Article 73. Exemption from some forms of organization of working time

1. Workers with disabilities or chronic illness, including active cancer disease in the treatment phase, are exempted from the provision of work between 20:00 hours of a day and the 7:00 hours of the following day, if it may impair their safety or health at work.

2. For the purposes of the preceding paragraph, the worker must undergo a health examination prior to the start of the application of the work schedule in question.

3. Workers with disabilities or chronic illness are not obliged to work overtime.

4. Workers with disabilities or chronic illness may only be involved in overtime and night work by their consent and provided that it does not contradict the occupational physician recommendations.

CHAPTER XIII. WORKERS WITH FIXED-TERM OR TEMPORARY EMPLOYMENT RELATIONSHIPS

«COMMENT: To transpose EU Directive 91/383/EEC»

Article 74. General principles

1. Workers with a fixed-term or temporary employment relationship shall be afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment.

2. The existence of a fixed-term or temporary employment relationship shall not justify different treatment with respect to working conditions inasmuch as the protection of safety and health at work are involved, especially as regards access to personal protective equipment.

3. The provisions of this law and other legislation on safety and health at work shall apply in full to workers with a fixed-term or temporary employment relationship, without prejudice to more strengthen and/or more specific provisions set out in this chapter.

Article 75. Workers' training

Without prejudice to Article 21, the employer shall take the necessary measures to ensure that each worker receives sufficient training appropriate to the particular characteristics of the job, account being taken of her/his qualifications and experience.

Article 76. Provision of information to workers

1. Without prejudice to Article 22, the employer shall take the necessary steps to ensure that:
 - 1) Before a fixed-term worker or a temporary worker takes up any activity, s/he is informed by the undertaking and/or establishment making use of his services of the occupational risks to which s/he is or may be exposed to;
 - 2) Such information:
 - i. States clearly any increased specific occupational risks that the job may entail;
 - ii. Covers, in particular, any special occupational qualifications or skills or special health surveillance required; and
 - iii. Identifies the prevention measures taken to prevent those risks and to ensure their safety and health at work.

Article 77. Health surveillance

1. Without prejudice to Articles 34 to 37, employers shall ensure that fixed-term workers and temporary workers who are used for work which requires special medical surveillance, as provided for in this Law and other legislation, are provided with appropriate special medical surveillance.

2. When so provided for in legislation, such special medical surveillance shall be extend beyond the end of the employment relationship of the worker concerned.

Article 78. Occupational safety and health service

Without prejudice to Articles 22 and 29 to 44, employers shall ensure that the occupational safety and health service of the undertaking and/or establishment is informed of the assignment of workers with fixed-term and temporary employment relationships, to the extent necessary for the workers, services or persons designated to be able to carry out adequately their protection and prevention activities for all the workers in the undertaking and/or establishment.

Article 79. Special provisions on temporary employment relationship

1. Without prejudice to Article 76, the employer shall take the necessary steps to ensure that:
 - 1) Before a temporary worker takes up any activity, the user undertaking and/or establishment shall notify the temporary work agency that employs the temporary worker about, inter alia:
 - i. The occupational risks to which the temporary worker is or might be exposed to and the preventive measures implemented;
 - ii. The occupational qualifications required and the specific features of the job to be filled.
 - 2) The temporary work agency shall bring all these facts to the attention of the temporary worker concerned.

2. Without prejudice to the responsibility of the temporary agency, as employer, for the occupational safety and health of her/his temporary worker, the user undertaking and/or establishment is responsible for the safety and health of the temporary worker for the duration of the assignment in her/his undertaking and/or establishment.

CHAPTER XIV. OCCUPATIONAL ACCIDENTS AND OCCUPATIONAL DISEASES

«COMMENT: To pave the way for the ratification of the ILO Protocol of 2002, to the Occupational Safety and Health Convention, 1981»

Article 80. Notification of occupational accidents and occupational diseases

1. Without prejudice to other obligations laid down in this Law and in other legislation on Safety and Health at Work, the employers must notified, as soon as possible, and in any case no later than within 24 hours after its knowledge, the central executive authority that ensures the implementation of the state policy on Safety and Health at Work, in particular by electronic means, through a form and under a procedure to be defined in the legislation to be set forth by the Cabinet of Ministers of Ukraine, of any fatal occupational accident, occupational accident resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work and of any suspected case of occupational disease occurred with their workers or with workers providing work or services in their undertaking and/or establishment.

2. The same notification obligation, within the same time-frame and under the same procedure, although with a different type of form, applies to all public or private legal entities that, in the course of their activities and because of them, took notice of one of the events or situations referred to in the preceding paragraph, in particular, law enforcement, emergency and fire-fighting public authorities, private and public health care institutions and facilities, insurance institutions, as well as to medical doctors, occupational physicians and nurses.

3. The procedure for the notification mentioned in the preceding paragraphs must determine the data that shall be included in the notification forms mentioned in the preceding paragraphs, namely, where available and applicable:

- 1) The complete identification of the employer of the user undertaking and/or establishment, where appropriate, e.g., name, headquarters address, fiscal and social security number, sector of activity and concerned workplace;
- 2) The complete identification of the victim, e.g., address, birthday, citizen identification number, fiscal and social security numbers, professional category or job, type of relationship our employment relationship with the undertaking and/or establishment where the situation occurred, and, where possible and applicable, information on the activity being carried out, victim's work schedule and hours effectively worked;
- 3) Information on the occupational accident or disease, as the case may be, e.g., date and time, severity, circumstances, material components of the work involved, in particular physical, chemical or biological agents involved, frequency and duration of the exposure;
- 4) The complete identification of any witnesses;
- 5) Identification of the competent insurance institution, if any;
- 6) Description of the occupational accident or disease;
- 7) Codification of the occupational accident or disease, e.g., material agent of contact, type of injury, part of the body injured, type of workplace where the event or situation occurred, type of deviation that led to the accident, modality of the lesion, etc.

Article 81. Record of occupational accidents and occupational diseases

1. Without prejudice to other obligations laid down in this Law and in other legislation on Safety and Health at Work, the employer must record, within 48 hours from its date of occurrence or from its knowledge, any fatal occupational accident, occupational accident resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work and of any suspected case of occupational disease occurred with their workers or with workers providing work or services in her/his undertaking and/or establishment.

2. The employer must also, without prejudice to other obligations laid down in this Law and in other legislation on Safety and Health at Work:

- 1) Provide appropriate information to workers and their representatives, as well as to the occupational safety and health service of the undertaking and/or establishment and the occupational physician, concerning the recording system and notified cases;
- 2) Ensure appropriate maintenance of these records and their use for the implementation of preventive measures;
- 3) Refrain from instituting retaliatory or disciplinary measures against a worker for reporting an occupational accident, occupational disease, dangerous occurrence, commuting accident or suspected case of occupational disease;
- 4) Ensure the confidentiality of personal and medical data of the workers in its possession.
- 5) Keep a list of occupational accidents resulting in a worker being unfit for work for more than three working days and of occupational diseases.

3. These records must be available for consultation by the central executive authority that ensures the implementation of the state policy on Safety and Health at Work.

4. The records and files referred to in the preceding paragraphs shall be kept for at least 40 years after the accident or after the end of the exposure of the workers they refer to, as the case may be.

5. If the employer discontinues its activity, the records and files should be transferred to the central executive authority that ensures the implementation of the state policy on Safety and Health at Work which shall ensure their confidentiality.

6. All processing of personal data referred to in the preceding paragraphs shall comply with the governing law on personal data protection.

Article 82. Official investigation of occupational accidents and occupational diseases

1. The competent authority for carrying out official investigations of occupational accidents and occupational diseases is the central executive authority that ensures the implementation of the state policy on Safety and Health at Work, without prejudice to the legal competencies of other public authorities, foreseen in special legislation.

2. For the purposes mentioned in the preceding paragraph, labour inspectors of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work shall be granted the necessary powers and means to conduct the investigation of occupational accidents and diseases and to request to and receive from the employers, workers, workers' representatives, occupational safety and health service of the undertaking and/or establishment and respective occupational safety experts and occupational physicians, as well as from any public or private entity or expert, the necessary assistance to carry out the investigation.

3. As regards occupational accidents, the employer is prohibited from removing or changing any material component of the work related to the occupational accident and shall isolate the area where it occurred, in order to preserve the integrity of the evidences until the arrival of the labour inspector of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work.

4. The previous paragraph do not apply when the changes made are the ones strictly necessary to ensure the safety and health of other workers or persons or to provide the necessary medical and/or emergency assistance to the victim.

5. The procedure for the official investigation of occupational accidents and occupational diseases shall be set forth by the Cabinet of Ministers of Ukraine.

Article 83. Employer's investigation of occupational accidents and occupational diseases

1. Without prejudice to the official investigation mentioned in the preceding Article and other provisions of this and other legislation, the employer must carry out, directly or through the occupational safety and health service of the undertaking and/or establishment, foreseen in Articles 29 to 44 of this Law, its own investigation of any fatal occupational accident, occupational accident resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work and of any suspected case of occupational disease.

2. The employer's investigation of the events and situations mentioned in the preceding paragraph shall start on the day of its occurrence or of its knowledge, as the case may be, or, if duly substantiated reasons so justify, on the next day, and must be concluded, with the issuance of the respective report, within 60 days.

3. To the report mentioned in the preceding paragraph are applicable the provisions of paragraphs 2 to 6 of Article 81, including its matters of providing information about its conclusions to the concerned worker, if possible, as well as to the workers' representatives, occupational safety and health service and occupational physician.

4. Following the conclusions of the report on employer's investigation of an occupational accident or disease, in particular as regards their causes, the employer must implement the most appropriate preventive and protective measures to ensure the safety and health of the workers and to avoid the repetition of such or similar occupational accident or disease, with strict observance of the general principles of prevention laid down in paragraph 1 of Article 17.

5. The obligation foreseen in the preceding paragraph is without prejudice to other obligations of the employer regarding the occupational safety and health of the workers foreseen in this and other legislation and, in particular, without prejudice to the obligation of the employer to implement the preventive and protective measures that, in the sequence of the occupational accident or disease occurred, were determined by determined by the central executive authority that ensures the implementation of the state policy on Safety and Health at Work.

Article 84. Reparation of damages arising from occupational accidents and occupational diseases

1. The employer shall maintain compulsory state social insurance of workers according to the legislation.

2. The legislation may establish the employer's obligation to, in addition to or in alternative of the compulsory state social insurance in the part concerning the reparation of damages arising from occupational accidents and occupational diseases, transfer her/his responsibility for the reparation of damages arising from accidents and occupational diseases to an insurance institution legally authorized to make such insurances.

3. In cases where the employer did not transferred her/his responsibility for the reparation of damages arising from accidents and occupational diseases to the compulsory state social insurance under paragraph 1 nor to an insurance institution under paragraph 2, s/he will be responsible the sole responsible for ensuring the reparation of damages arising from occupational accidents and

occupational diseases, without prejudice to the liability for the practice of a very serious administrative offense.

4. The same as provided for in the previous paragraph applies regarding the part of the remuneration of the worker not declared for the purposes of calculation of the employer's contribution to the compulsory state social insurance mentioned in paragraph 1 or to the insurance institution mentioned in paragraph 2, which risks are therefore not covered by those entities.

CHAPTER XV. PROMOTION, CONTROL AND ENFORCEMENT OF SAFETY AND HEALTH AT WORK

«COMMENT: To better align national legislation with the provisions of ILO Conventions 81 and 129 on labour inspection, Article 9(1) of ILO Convention 155 on OSH and Article 4(2) of EU Directive 89/391/EEC»

Article 85. Central executive authority that implements the state policy on Safety and Health at Work

1. State intervention on the promotion, control and enforcement of compliance with the legislation on Safety and Health at Work shall be exercised by the central executive authority that ensures the implementation of the state policy on Safety and Health at Work.

2. Main functions of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work shall include, but are not limited to:

- 1) To ensure the monitoring, control and enforcement of the legislation on Safety and Health at Work;
- 2) To provide employers, workers and their representatives with technical information and advice concerning the most effective means of complying with legal provisions;
- 3) To bring notice of the competent authority of information about drawbacks, defects or abuses which are not covered or are insufficiently covered by existing legal provisions.

3. Other functions of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work shall include:

- 1) To promote actions and campaigns to raise awareness and promote the development of a genuine national preventive safety and health culture;
- 2) To promote the development, dissemination and application of scientific and technical knowledge concerning safety and health at work and to promote specialized training in the fields of safety and health at work;
- 3) To promote and participate in the drafting and implementation of policies on safety and health at work and to suggest appropriate measures in case of lack or inadequacy of legal or regulatory standards;
- 4) To ensure the management of the national system for Safety and Health at Work referred to in Article 7;
- 5) To coordinate the process of training and certification of Occupational Safety Experts and the licensing of Occupational Safety and Health External Service providers;
- 6) To manage the process of authorization of Occupational Safety and Health Services modalities;
- 7) To support public and private entities in the identification and assessment of occupational risks, in the application of preventive measures and in the organization of OSH services and to cooperate with other public administration with a view to the full respect of labour standards;

- 8) To participate, jointly with the competent services of the Ministry of Education, in the preparation of curriculum content, with a view to the introduction of materials on safety and health at work, for all degrees of education and vocational training;
- 9) To carry out investigations and inquiries in case of fatal occupational accidents, occupational accident resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work and of any suspected case of occupational disease;
- 10) To ensure and coordinate the formulation, implementation and evaluation of the national strategy for safety and health at work.

Article 86. Activities of labour inspectors of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work

1. Labour inspectors of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work perform their activities with the purpose of ensuring compliance with the legal provisions falling within the competence of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work with a view to promote the improvement of working conditions, including, but not restricted, to the following:

- 1) To provide technical information and advice to employers, workers and their representatives, in the workplace or in the services of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work, on the most appropriate ways to comply with legal provisions;
- 2) To develop the actions necessary for assessing working conditions;
- 3) To notify so that, within a defined period, necessary modifications are implemented in the workplace to ensure the application of the provisions relating to the safety and health of workers at work;
- 4) To notify so that measures are immediately taken, including for suspension of work in progress, in the event of high risk or serious probability of injury to life, physical integrity or health of workers;
- 5) To investigate the circumstances of fatal occupational accidents, occupational accident resulting in absence for more than three working days due to incapacity to work or demonstrating a particularly serious situation in terms of Safety and Health at Work and of occupational diseases, without prejudice to the powers of other entities, with the aim of developing appropriate prevention measures in the workplace;
- 6) To foster offence or infringement proceedings, issuing notices of infringement, making reports to other entities or undertaking preliminary investigations;
- 7) To carry out joint inspections with other bodies, including in the context of licensing processes relating to the installation, alteration and operation of establishments with a view to the prevention of occupational risks;
- 8) To foster collaboration with other entities with powers in the field of working conditions;
- 9) To report to other entities situations related to working conditions which fall within the scope of their powers.

2. If the suspension of work in progress is decided, in accordance with sub-paragraph 4) of the preceding paragraph, that work can only continue with the express authorization of the labour inspector.

Article 87. Powers of labour inspectors of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work

1. In order to ensure the proper discharge of their duties, labour inspectors of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work provided with proper official ID card, shall have the powers to:

- 1) To visit, without prior notice, at any hour of the day or night any workplace, including manufacturing, service and administrative premises of legal persons of whatever form of ownership, activity or economic management type, and of natural persons using hired labour, to carry out an inspection visit on the matters falling within their competence;
- 2) To enter by day at any non-residential buildings, premises, structures and other facilities where there are natural persons concerning whom sufficient grounds exist to believe that they perform work;
- 3) To obtain the collaboration and be accompanied by experts, technicians of public services and representatives of trade unions and employers' associations, equipped with credentials issued by the inspection services, which state the entity to visit and the service to be performed;
- 4) To carry out any examination, inspection or investigation they regard as necessary to make sure that the provisions of the legislation on Safety and Health at Work are strictly observed, in particular:
 - i. To interrogate, alone or in the presence of witnesses, the employer, workers, workers' representatives and anyone else who is in the workplaces on any matters concerning the application of the legislation on Safety and Health at Work, alone or before witnesses, with the option of carrying out written declarations;
 - ii. To request the identification of the persons referred to in the preceding point;
 - iii. To require the production of any books, registers or other documents the keeping of which is prescribed by the national legislation on Safety and Health at Work, in order to see that they are in conformity with the legal provisions, and copy such documents or make extracts from them;
 - iv. To enforce the posting of notices required by the legal provisions;
 - v. To take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose;
- 4) To order with immediate effect or for presentation at the offices of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work, documents and other records of interest for examination or for copying them;
- 5) To make photographic and video records, and take video images and measurements that are relevant for the development of the inspection;
- 6) To request information on the composition of products, materials and substances used in workplaces;
- 7) To determine the demonstration of work processes adopted in workplaces;
- 8) To adopt the necessary and appropriate protective measures at any time during the inspection to prevent the destruction, disappearance or alteration of documents and other records and related situations referred to in sub-paragraphs 4) to 7), provided that such measures do not cause disproportionate damage;
- 9) To notify the employer, workers, workers' representatives, witnesses, experts or other persons that may have useful information to go to the offices of the central executive authority that ensures the implementation of the state policy on Safety and Health at Work or to another location for a meeting;

- 10) To submit to employers a binding written demand and/or notice concerning elimination of any violations of the legislation on Safety and Health at Work, causes and conditions leading thereto, including for the purpose of remedying defects observed in plant, equipment or working methods which they have grounds to believe constitute a threat to the health or safety of workers;
- 11) To draw up, in cases provided for by law, reports on administrative offences, consider cases on such offences, and impose administrative penalties and fines;
- 12) To inspect workplaces inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions;
- 13) To obtain assistance from law-enforcement bodies, particularly in the case of impediment or obstruction of the performance of the inspection, or if such is expected to occur.

2. Labour inspectors, when carrying out an inspection visit, shall notify the employer or the employer's representative of their presence, unless they consider that such notification may be prejudicial to the performance of their duties.

3. With a view to remedying defects observed in plant, work equipment or working methods which labour inspectors may have reasonable cause to believe constitute a threat to the health or safety of the workers, they shall have the power to require:

- 1) That such alterations to the plant or work equipment, to be carried out within a reasonable time limit, as may be necessary to secure compliance with the provisions relating to Safety and Health at Work; or
- 2) The implementation of measures with immediate executory force, in the event of imminent and serious danger to the safety and health of workers, including stoppage, termination or restriction of operation of enterprises, certain production facilities, workshops, sections, workplaces, buildings, structures or premises, manufacture and operation of machinery, mechanisms, equipment, transport and other means of production, performance of certain works, use of new dangerous substances, and sales of products.

Article 88. Technical information and advice and awareness raising

«COMMENT: The audits on OSH mentioned on the Min Economy draft law should not be provided by the State. They should be conducted voluntarily by the employers (through their OSH services) or subcontracted by employers to OSH external service providers, and should be aimed at improving their OSH and auto-verify if they comply with legislation. They should be seen as an instrument that employers should use to test and improve their OSH conditions. The risk assessment, identification of the most adequate preventive and protective measures and the prevention plan formulation and implementation, on the other hand, should be mandatory and its absence duly penalized. The State control should be done through inspection visits and focused on the results in terms of OSH conditions.»

1. The central executive authority that implements the state policy on Safety and Health at Work shall provide employers, workers, workers' representatives, and economic entities with free technical information and advice (written and verbal) as regards the most effective ways of complying with legal provisions on Safety and Health at Work.

2. The central executive authority that implements the state policy on Safety and Health at Work shall launch periodically nation-wide, region-specific and sector and subject specific occupational safety and health awareness-raising campaigns, in close collaboration and cooperation with the most representative associations of the workers and employers concerned, as well as society target occupational safety and health campaigns in order to develop a genuine culture of prevention.

Article 89. Public information in the field of Safety and Health at Work

1. The central executive authority that implements the state policy on Safety and Health at Work shall publish a general annual report on its activities in the field of Safety and Health at Work.

2. The annual report mentioned in the preceding paragraph shall provide detailed information at least on the following matters:

- 1) Relevant legislation to the work of the central executive authority that implements the state policy on Safety and Health at Work;
- 2) Staff of the central executive authority that implements the state policy on Safety and Health at Work;
- 3) Statistical data on workplaces liable to inspection and the number of workers employed therein;
- 4) Statistical data on inspection visits;
- 5) Statistical data on violations found and sanctions imposed;
- 6) Statistical data on occupational accidents;
- 7) Statistical data on occupational diseases.

3. Such annual reports shall be published during the first quarter of the year following the year it refers to.

CHAPTER XVI. ADMINISTRATIVE OFFENSES LIABILITY ON SAFETY AND HEALTH AT WORK

«COMMENTS:

- 1) *This recommendations are aimed at better align national legislation with the provisions of Article 9(2) of ILO Convention 155 on OSH and Article 4(1) of EU Directive 89/391/EEC;*
- 2) *Regarding the responsibility for the violation of OSH law provisions, the ones that are liable are the employers, who cannot be exempt from their responsibilities, even when the infractions are due to the failure of their workers or of their subcontracted OSH external service providers.*
- 3) *The liability of the OSH external service provides regarding the eventual failure to comply with the contract signed with their clients (the employers) should be imputed according to commercial law. Moreover, in case of damages to employer due to under performance of the OSH external service providers, the External OSH Service providers are liable according civil law, regarding the compensation of employers for their damages. Moreover, OSH External service providers that under-perform, might lose their license to provide these services if they do not maintain the quality level or resources needed to maintain their licenses.*
- 4) *The liability of the workers for infractions to OSH provisions should be ascertained through the disciplinary power of the employers, following the procedures foreseen on procedural labour law.*
- 5) *Considering that the approach to liability/penalties that should be adopted for OSH shall be the same as the one that should be applied regarding a wider scope of issues, including labour relations legislation, our suggestions regarding liability/penalties will be provided as recommended principles and instruments, instead of alternative wording for the proposed articles»*

I. PRINCIPLES

1. Notion of labour misdemeanor - constitutes a labour misdemeanor the typified, unlawful and objectionable fact that constitutes a violation of a rule that consecrates rights or imposes duties to any subject of the employment relationship and that is punishable by a fine.
2. Negligence in labour misdemeanor is always punishable.
3. Where a labour misdemeanor consists of the omission of a duty, the payment of the fine shall not exempt the infringer from complying with the omitted obligation, if that is still possible.
4. At the end of each article there should be one (or more) paragraphs establishing the type of sanction that should be applied in case of violation of each one of its provisions.
5. Subject responsible for labour misdemeanor and for the payment of the respective fines:
 - i. The employer is responsible for labour misdemeanor, even if practiced by his workers in the performance of their duties, without prejudice to the liability committed by law to other subjects;
 - ii. The responsibility of the worker that practiced the infraction, on the other hand, should be assessed within a disciplinary procedure initiated by the employer in accordance with the law. If, following that disciplinary procedure, the conclusion is that the worker is responsible and should be sanctioned, the employer can impose to the worker the corresponding sanction foreseen in the law. However, that does not exempt employer from his own responsibility for the committed infraction and for the payment of the corresponding fine.
 - iii. If the infringer is a legal person, the respective administrators, managers and directors shall be jointly liable with the legal person for the payment of the fine;
 - iv. The main contractor and the owner of the work, the employer or the agricultural explorations, as well as their administrators, managers or directors, and the legal persons that have a relation of reciprocal societal participation, of group or of dominance with the main contractor, the owner of the work, the employer or the agricultural explorations, are jointly liable for compliance with the legal provisions and for possible violations committed by the subcontractor who executes all or part of the contract on their premises or under their responsibility, as well as for the payment of the respective fines.

II. PECUNIARY SANCTIONS (FINES)

1. **Employer's turnover or annual budget** - In determining the applicable fine the level of employer's turnover or annual budget (in case of public administration entities) is classified as:
 - i. Less than 500,000.00 €;
 - ii. Equal to or greater than 500,000.00 € and less than 2,500,000.00 €;
 - iii. Equal to or greater than 2,500,000.00 € and less than 5,000,000.00 €;
 - iv. Equal to or greater than 5,000,000.00 € and less than 10,000,000.00 €;
 - v. Equal to or greater than 10,000,000.00 €;
 - vi. Turnover or annual budget, as the case may be, relates to the calendar year preceding the commission of the infringement;
 - vii. If the employer does not have activity in the calendar year preceding the infringement, the turnover or annual budget of the most recent year shall be considered;
 - viii. In the year of commencing activity, the limits laid down for an employer with a turnover or annual budget of less than 500,000.00 € shall apply;
 - ix. If the employer does not indicate turnover or annual budget, the limits laid down for a company with turnover equal to or greater than 10,000,000.00 shall apply;
 - x. In the case of a plurality of agents responsible for the same misdemeanor, it is applied the fine corresponding to the employer with the highest turnover/annual budget.

2. **Severity levels of labour misdemeanors** - In determining the applicable fine and taking into account the relevance of the interests infringed, labour offences are classified as:
 - i. Light;
 - ii. Serious; or
 - iii. Very serious.
3. **Degree of guilt of the offender** - In determining the applicable fine and taking into account the behavior of the infractor, the level of guilt is classified as:
 - i. Negligence; or
 - ii. Deliberate or malicious.
4. **Amount of fines** (depending on the employer's turnover/annual budget, severity level of the misdemeanor and degree of guilt):
 - i. **Light** misdemeanors:
 - If practiced by employer with turnover/annual budget less than 10,000,000.00 €:
 - ✓ In case of negligence: 204.00 € - 510.00 €;
 - ✓ Deliberate or malicious: 612.00 € - 918.00 €.
 - If practiced by employer with turnover/annual budget equal to or greater than 10,000,000.00 €:
 - ✓ In case of negligence: 612.00 € - 918.00 €;
 - ✓ Deliberate or malicious: 1,020.00 € - 1,530.00 €.
 - ii. **Serious** misdemeanors:
 - If practiced by employer with turnover/annual budget less than 500,000.00 €:
 - ✓ In case of negligence: 612.00 € - 1,224.00 €;
 - ✓ Deliberate or malicious: 1,326.00 € - 2,652.00 €.
 - If practiced by employer with turnover/annual budget equal to or greater than 500,000.00 € and less than 2,500,000.00 €:
 - ✓ In case of negligence: 714.00 € - 1,428.00 €;
 - ✓ Deliberate or malicious: 1,530.00 € - 4,080.00 €.
 - If practiced by employer with turnover/annual budget equal to or greater than 2,500,000.00 € and less than 5,000,000.00 €:
 - ✓ In case of negligence: 1,020.00 € - 2,040.00 €;
 - ✓ Deliberate or malicious: 2,142.00 € - 4,590.00 €.
 - If practiced by employer with turnover/annual budget equal to or greater than 5,000,000.00 € and less than 10,000,000.00 €:
 - ✓ In case of negligence: 1,224.00 € - 2,550.00 €;
 - ✓ Deliberate or malicious: 2,652.00 € - 5,100.00 €.
 - If practiced by employer with turnover/annual budget equal to or greater than 10,000,000.00 €:
 - ✓ In case of negligence: 1,530.00 € - 4,080.00 €;
 - ✓ Deliberate or malicious: 5,610.00 € - 9,690.00 €.
 - iii. **Very serious** misdemeanors:
 - If practiced by employer with turnover/annual budget less than 500,000.00 €:
 - ✓ In case of negligence: 2,040.00 € - 4,080.00 €;
 - ✓ Deliberate or malicious: 4,590.00 € - 9,690.00 €.
 - If practiced by employer with turnover/annual budget equal to or greater than 500,000.00 € and less than 2,500,000.00 €:
 - ✓ In case of negligence: 3,264.00 € - 8,160.00 €;
 - ✓ Deliberate or malicious: 8,670.00 € - 19,380.00 €.

- If practiced by employer with turnover/annual budget equal to or greater than 2,500,000.00 € and less than 5,000,000.00 €:
 - ✓ In case of negligence: 4,284.00 € - 12,240.00 €;
 - ✓ Deliberate or malicious: 12,240.00 € - 28,560.00 €.
- If practiced by employer with turnover/annual budget equal to or greater than 5,000,000.00 € and less than 10,000,000.00 €:
 - ✓ In case of negligence: 5,610.00 € - 14,280.00 €;
 - ✓ Deliberate or malicious: 14,790.00 € - 40,800.00 €.
- If practiced by employer with turnover/annual budget equal to or greater than 10,000,000.00 €:
 - ✓ In case of negligence: 9,180.00 € - 30,600.00 €;
 - ✓ Deliberate or malicious: 30,600.00 € - 61,200.00 €.

In scheme:

Infraction severity	Employer's level of guilt	Fine amount	Employer's turnover/annual budget				
			Less than 500.000,00€	500.000,00€ to 2.499.999,00€	2.500.000,00€ to 4.999.999,00€	5.000.000,00€ to 9.999.999,00€	Equal or greater than 10.000.000,00€
Light	Negligence	Minimum	204.00 €	204.00 €	204.00 €	204.00 €	612.00 €
		Maximum	510.00 €	510.00 €	510.00 €	510.00 €	918.00 €
	Deliberate or malicious	Minimum	612.00 €	612.00 €	612.00 €	612.00 €	1,020.00 €
		Maximum	918.00 €	918.00 €	918.00 €	918.00 €	1,530.00 €
Serious	Negligence	Minimum	612.00 €	714.00 €	1,020.00 €	1,224.00 €	1,530.00 €
		Maximum	1,224.00 €	1,428.00 €	2,040.00 €	2,550.00 €	4,080.00 €
	Deliberate or malicious	Minimum	1,326.00 €	1,530.00 €	2,142.00 €	2,652.00 €	5,610.00 €
		Maximum	2,652.00 €	4,080.00 €	4,590.00 €	5,100.00 €	9,690.00 €
Very serious	Negligence	Minimum	2,040.00 €	3,264.00 €	4,284.00 €	5,610.00 €	9,180.00 €
		Maximum	4,080.00 €	8,160.00 €	12,240.00 €	14,280.00 €	30,600.00 €
	Deliberate or malicious	Minimum	4,590.00 €	8,670.00 €	12,240.00 €	14,790.00 €	30,600.00 €
		Maximum	9,690.00 €	19,380.00 €	28,560.00 €	40,800.00 €	61,200.00 €

Table 1

5. Increase of the amount of the fines due to repeated offenses:

- It is sanctioned as a repeat offender who commits a serious offense deliberately or a very serious offense, after being convicted for committing a serious offense deliberately or a very serious offense, if between them a period did not pass a period of more than 2 years.
- In case of repeated offense, the minimum and maximum limits of the fine are raised by one third, and its amount cannot be less than the amount of the fine imposed by the previous infraction.

In scheme:

Infraction severity	Employer's level of guilt	Fine amount	Employer's turnover/annual budget				
			Less than 500.000,00€	500.000,00€ to 2.499.999,00€	2.500.000,00€ to 4.999.999,00€	5.000.000,00€ to 9.999.999,00€	Equal or greater than 10.000.000,00€
Serious	Deliberate or malicious	Minimum	1,768.00 €	2,040.00 €	2,856.00 €	3,536.00 €	7,480.00 €
		Maximum	3,536.00 €	5,440.00 €	6,120.00 €	6,800.00 €	12,920.00 €
Very serious	Negligence	Minimum	2,720.00 €	4,352.00 €	5,712.00 €	7,480.00 €	12,240.00 €
		Maximum	5,440.00 €	10,880.00 €	16,320.00 €	19,040.00 €	40,800.00 €
	Deliberate or malicious	Minimum	6,120.00 €	11,560.00 €	16,320.00 €	19,720.00 €	40,800.00 €
		Maximum	12,920.00 €	25,840.00 €	38,080.00 €	54,400.00 €	81,600.00 €

Table 2

6. Increase of the amount of fines due to the **nature of the offenses** - The maximum amounts of fines applicable to very serious offences are doubled **in situations of violation of legal provisions concerning:**

- i. Work of minors;
- ii. Rights of pregnant workers, workers who have recently given birth, workers who are breastfeeding;
- iii. Safety and health at work;
- iv. Undeclared work;
- v. Rights of structures of collective representation of workers; and
- vi. Right to strike.

In scheme:

Infraction severity	Employer's level of guilt	Fine amount	Employer's turnover/annual budget				
			Less than 500.000,00€	500.000,00€ to 2.499.999,00€	2.500.000,00€ to 4.999.999,00€	5.000.000,00€ to 9.999.999,00€	Equal or greater than 10.000.000,00€
Very serious	Negligence	Maximum	8,160.00 €	16,320.00 €	24,480.00 €	28,560.00 €	61,200.00 €
	Deliberate or malicious	Maximum	19,380.00 €	38,760.00 €	57,120.00 €	81,600.00 €	122,400.00 €

Table 3

7. **Other elements to be taken into account in determining the amount of the fines:**

- i. Failure to comply with measures recommended in a warning notice shall be considered by the competent administrative authority or by the judge in the event of a judicial challenge, in particular for the purposes of assessing the existence of deliberate or malicious conduct;
- ii. Where the violation of the law affects a plurality of individual workers, the number of labour misdemeanors corresponds to the number of workers specifically affected;
- iii. If, with the infringement committed, the agent obtained an economic benefit, it must be taken into account when determining the amount of the fine;
- iv. Failure to comply with the recommendations contained in the warning notice;
- v. Coercion, forgery, simulation or other fraudulent means used by the agent;

- vi. Permanence or transience of the infringement;
- vii. Number of potentially affected workers;
- viii. The general principles of prevention to which protective measures must obey and measures and instructions adopted by the employer to prevent occupational risks.

III. ACCESSORY SANCTIONS

The establishment of appropriate and sufficient accessory penalties to sanction non-compliance, more directed linked to the vital interests of the employers, in order to avoid them from benefiting economically from the offenses (even when they pay the fines) foreseeing, for example:

1. The loss to the state of objects and assets belonging to the agent;
2. The prohibition of the exercise of professions or activities whose exercise depends on a title or public authorization or approval of a public authority;
3. The deprivation of the right to a grant or benefit granted by entities or public services;
4. The deprivation of the right to participate in trade fairs or markets;
5. The deprivation of the right to participate in public tenders relating to the contract or the award of public works, supply of goods and services to the State, the provision of public services, and the allocation of licenses or permits;
6. The closure of an establishment whose operation is subject to authorization or license of administrative authority;
7. The suspension of permits, licenses and permits;
8. Advertising of the condemnatory decisions; and
9. The individual registration of the subject responsible for the infringements.

CHAPTER XVII. FINAL AND TRANSITIONAL PROVISIONS

1. This Law shall take effect on 1 January 2022.
2. The Law of Ukraine “On Labour Protection” (Vidomosti Verkhovnoi Rady Ukrainy, 1992, No. 49, Art. 668, as amended) shall be declared null and void.
3. Amend the Code of Labour Laws of Ukraine (Vidomosti Verkhovnoi Rady URSR, 1971, Annex to No. 50, Art. 375), as follows:
 - 1) Article 4: after the words “of the Code of Labour Laws of Ukraine”, add the words “, Law of Ukraine “On Safety and Health at Work”;
 - 2) delete Articles 190-192;
 - 3) Article 259:
 - i. in the first part, delete the word “-entrepreneurs”, and replace the words “on supervision and control” with the words “in the field of Safety and Health at Work”;
 - ii. delete the second part;
 - 4) Reword Article 260 as follows: “Article 260. The central executive authority that implements the state policy on Safety and Health at Work
 1. The main tasks of the central executive authority that implements the state policy on Safety and Health at Work shall be as follows:
 - 1) exercise state control of compliance with the labour legislation;
 - 2) provide employers and workers and workers’ representatives with information and explanations concerning efficient means of complying with the legislation and preventing potential violations thereof;

- 3) summarize the practice of application of the labour legislation, and develop proposals on improvement of the legislation.
2. State control of compliance with the labour legislation shall be exercised by officials of the central executive authority that implements the state policy on Safety and Health at Work and of its territorial bodies who are labour inspectors.
3. The head and deputy heads of the central executive authority that implements the state policy on Safety and Health at Work shall be ex officio the Chief Labour Inspector of Ukraine and Deputy Chief Labour Inspectors of Ukraine, respectively.
4. The heads and deputy heads of the territorial bodies of the central executive authority that implements the state policy on Safety and Health at Work shall be ex officio the chief labour inspectors and deputy chief labour inspectors of respective administrative-territorial units who shall be appointed and dismissed by the Chief Labour Inspector of Ukraine.
5. Division of powers between the central executive authority that implements the state policy on Safety and Health at Work and its territorial bodies shall be implemented by the Chief Labour Inspector of Ukraine.”