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**EU-ILO Project**  
**ENHANCING THE LABOUR ADMINISTRATION CAPACITY**  
**TO IMPROVE WORKING CONDITIONS AND TACKLE UNDECLARED WORK**

*For Final Validation by National Stakeholders*

**National**  
**Occupational Safety and Health Profile**  
**Ukraine**

**2018**

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## ABBREVIATIONS LIST

<b>AIC</b>	Agro-Industrial Complex
<b>CEA</b>	Central Executive Authority
<b>CMU</b>	Cabinet of Ministers of Ukraine
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>EEC</b>	European Economic Community
<b>EESE</b>	Enabling Environments for Sustainable Enterprises
<b>EU</b>	European Union
<b>EU-OSHA</b>	European Agency for Safety and Health at Work
<b>Fund</b>	Social Insurance Fund of Ukraine
<b>GPP</b>	General Principles of Prevention
<b>HSE</b>	Health and Safety Executive
<b>IALI</b>	International Association of Labour Inspection
<b>ILO</b>	International Labour Organization
<b>LN</b>	League of Nations
<b>LU</b>	Law of Ukraine
<b>MECI</b>	Ministry of Energy and Coal Industry of Ukraine
<b>MEDT</b>	Ministry of Economic Development and Trade of Ukraine
<b>MH</b>	Ministry of Health of Ukraine
<b>MI</b>	Ministry of Infrastructure of Ukraine
<b>MIA</b>	Ministry of Internal Affairs of Ukraine
<b>MSP</b>	Ministry of Social Policy
<b>NTSEC</b>	National Tripartite Social and Economic Council
<b>OSA</b>	Oblast State Administration
<b>OSH</b>	Occupational Safety and Health
<b>OSHMS</b>	Occupational Safety and Health Management System
<b>PPE</b>	Personal Protective Equipment
<b>SCLPS</b>	State Committee for Labour Protection Supervision
<b>SES</b>	State Emergency Service of Ukraine
<b>SLS</b>	State Labour Service of Ukraine
<b>SME</b>	Small and Medium-sized Enterprises
<b>SNRI</b>	State Nuclear Regulatory Inspectorate of Ukraine
<b>SRS</b>	State Regulatory Service of Ukraine
<b>SSGCC</b>	State Service of Ukraine for Geodesy, Cartography and Cadastre
<b>SSGS</b>	State Service for Geology and Subsoil of Ukraine
<b>SSS</b>	State Statistics Service of Ukraine
<b>UN</b>	United Nations



# INTRODUCTION

The present Occupational Safety and Health Profile of Ukraine (OSH Profile) was developed with the aims of describing and analysing the current Occupational Safety and Health (OSH) situation in Ukraine, stimulating discussion on possible ways to improve the current occupational safety and health approach and providing some recommendations to improve and facilitate national labour legislation to bring it closer in line with the International and European Labour Standards and best practices on OSH, labour relations and labour inspection.

The OSH Profile has been prepared within the scope of the ILO Project “Strengthening the Capacity of the Labour Administration to Improve Working Conditions and Tackle Undeclared Work” funded by the European Union.

The main goal of this paper is, therefore, to provide an all-round assessment of the current OSH situation in Ukraine, reveal gaps and identify priority areas to bring the current OSH legal framework into conformity with the International and European Labour Standards and best practices on OSH, labour relations and labour inspection.

The analytical review has been performed on the basis of the study and analysis of the international, European and national and sectoral legislation and regulatory legal acts on OSH. Besides a comparative analysis of Ukrainian sustainable OSH practices and existing OSH mechanisms, it also involved the analysis of a number of official statistics from ministries, institutions and agencies. In addition, it also included consultations and interviews with representatives of the central executive authorities of Ukraine, vested with powers on OSH, and with trade unions, employers’ associations, as well as from other institutions and organizations.

Aside from the present introduction and the conclusions sections (which are aimed at synthesizing the main recommendations of the study), this document is comprised of thirteen chapters.

The first chapter describes the current Ukrainian OSH legal framework, not only regarding applicable international laws and the national general laws on OSH, but also concerning specific and subordinated legal acts on OSH. The second chapter is focused on the approximation process of the Ukrainian legal framework to the International and European Labour Standards and best practices on OSH, labour relations and labour inspection. The third chapter is reserved for a description of the OSH labour administration and labour inspection system. The social dialogue processes and main forums are described in Chapter Four, along with their consultative and advisory roles. The fifth chapter reviews the main OSH programmes and agreements, at national, sectoral and regional levels. The trade unions and employers’ organizations activities, rights and powers, are addressed in Chapter Six. Chapter Seven is dedicated to workers’ and employers’ rights, powers, obligations and liabilities. The organization and functioning of employers’ OSH services are discussed in Chapter Eight. The following chapter, the ninth, is focused on the recording, notification and publication of data and statistics on work-related accidents and occupational diseases, whereas the tenth chapter deals with information and technical advice services, as well as with the organization and launching of awareness-raising campaigns. It is followed, in Chapter Eleven, with a description of the international cooperation that has been developed with Ukraine in recent years in the areas of labour inspection, labour relations and OSH issues. An analysis of the situation described in the preceding chapters is made in Chapter Twelve, and the main recommendations resulting from it are disclosed in Chapter Thirteen. The main conclusions of the document are then summarized in the conclusions chapter.

It is worth noting that the present document is a technical document, rather than a political one, and that it is aimed at assessing the current OSH situation in Ukraine and providing a number of relevant recommendations in order to improve it. The latter, moreover, are mainly focused

on the enhancement of the national OSH, labour relations and labour inspection legal framework and on the improvement of the implementation of related ILO and EU standards.

The aforesaid recommendations, in turn, can be used as a basis for discussion, as well as an important instrument for deepening the approximation process to the International and European Labour Standards, supporting further developments of a series of key regulatory acts on OSH, labour relations and labour inspection, and their relevant programmes.

Finally, this document identifies the main strengths and weaknesses of the existing OSH system in Ukraine, highlighting the key strategic priorities that should be incorporated in a Ukrainian National Strategy for the improvement of OSH, and that should be formulated and implemented.

# 1. UKRAINIAN OSH LEGAL FRAMEWORK

## 1.1. International Laws

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

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

Therefore, the ILO Conventions ratified by Ukraine, as well as the international treaties approved by the Ukrainian Parliament as being binding, apply in the Ukrainian internal juridical order.

### *1.1.1. ILO Conventions Ratified by Ukraine*

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

Regarding, in particular, Occupational Safety and Health (OSH) and labour inspection, the following ILO Conventions have already been ratified by Ukraine: No. 81, concerning Labour Inspection in Industry and Commerce (ILO, 1947); No. 102, concerning Minimum Standards of Social Security, (ILO, 1952); N.º 129, concerning Labour Inspection in Agriculture (ILO, 1969); No. 135, concerning protection and facilities to be afforded to workers' representatives in the undertaking (ILO, 1971); No. 138, concerning Minimum Age for Admission to Employment (ILO, 1973); No. 150, concerning Labour Administration: Role, Functions and Organisation (ILO, 1978); No. 154, concerning the Promotion of Collective Bargaining (ILO, 1981a); No. 155, concerning Occupational Safety and Health and the Working Environment (ILO, 1981b); No. 159, concerning Vocational Rehabilitation and Employment (Disabled Persons) (ILO, 1983); No. 160, concerning Labour Statistics (ILO, 1985a); N.º 176, concerning Safety and Health in Mines (ILO, 1995); No. 182, concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO, 1999); and No. 184, concerning Safety and Health in Agriculture (ILO, 2001).

### *1.1.2. International Treaties*

Ukraine took the strategic decision to strengthen its political, trade and economic relations with the EU and with Canada.

Following this decision, Ukraine established an Association Agreement with the EU (the political section was signed on 21 March 2014 and its economic section on 27 June 2014), which entered into force on 1 September 2017 (EU & Ukraine, 2014). More recently, on 11 July 2016, Ukraine signed a Free Trade Agreement with Canada, which entered into force in 1 August 2017 (Canada & Ukraine, 2016).

Besides several other areas (e.g., political, social, economic, health, education, etc.), both agreements also cover the fields of labour and employment.

The EU-Ukraine Association Agreement foresees, in this regard, for example:

#### *Cooperation on employment, social policy and equal opportunities*

##### *Article 419*

*Taking account of Chapter 13 (Trade and Sustainable Development) of Title IV (Trade and Trade-related Matters) of this Agreement, the Parties shall strengthen their dialogue and cooperation on promoting the decent work*

*agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and non-discrimination.*

#### *Article 420*

*Cooperation in the area covered by Article 419 of this Agreement shall pursue the following goals:*

- (a) improve the quality of human life;*
- (b) meet common challenges, such as globalization and demographic change;*
- (c) aim at more and better jobs with decent working conditions;*
- (d) promote social fairness and justice, while reforming labour markets;*
- (e) promote conditions of labour markets that combine flexibility with security;*
- (f) promote active labour market measures and improve efficiency of employment services to match the needs of the labour market;*
- (g) foster more inclusive labour markets that integrate disadvantaged people;*
- (h) reduce the informal economy by transforming undeclared work;*
- (i) improve the level of protection of health and safety at work, including by education and training on health and safety issues, promotion of preventive measures, prevention of major accident hazards, management of toxic chemicals, and exchange of good practice and research in this area;*
- (j) enhance the level of social protection and modernize social protection systems, in terms of quality, accessibility, and financial sustainability;*
- (k) reduce poverty and enhance social cohesion;*
- (l) aim at gender equality and ensure equal opportunities for women and men in employment, education, training, economy and society, and decision-making;*
- (m) combat discrimination on all grounds;*
- (n) enhance the capacity of social partners and promote social dialogue.*

#### *Article 424*

*Ukraine shall ensure gradual approximation to EU law, standards and practices in the area of employment, social policy and equal opportunities, as set out in Annex XL to this Agreement.*

*The Canada-Free Trade Agreement, on the other hand, and among other aspects, provides for the following:*

#### *Chapter 13: Labour*

##### *Article 13.3: General Commitments*

*1. Each Party shall ensure that its labour law and practices embody and provide protection for the following internationally recognized labour principles and rights, particularly bearing in mind their commitments as members of the ILO to the ILO 1998 Declaration:*

- (a) freedom of association and the effective recognition of the right to collective bargaining;*
- (b) the elimination of all forms of forced or compulsory labour;*
- (c) the effective abolition of child labour and, for the purposes of this Chapter, a prohibition on the worst forms of child labour;*
- (d) the elimination of discrimination in respect of employment and occupation;*
- (e) acceptable minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements;*
- (f) the prevention of occupational injuries and illnesses, and compensation in cases of injuries or illnesses; and*
- (g) non-discrimination in respect of working conditions for migrant workers.*

*2. To the extent that the principles and rights stated above relate to the ILO, paragraphs (a) to (d) refer only to the ILO 1998 Declaration, whereas paragraphs (e), (f), and (g) refer to the ILO's Decent Work Agenda.*

##### *Article 13.4: Non-Derogation*

*A Party shall not, as a means to encourage trade or investment, waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour law in a manner that weakens or reduces adherence to the internationally recognized labour principles and rights referred to in Article 13.3.*

##### *Article 13.5: Government Enforcement Action*

*1. Each Party shall, subject to Article 13.17, promote compliance with and effectively enforce its labour law through appropriate government action, such as:*

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

- (c) requiring record keeping and reporting;*
- (d) encouraging the establishment of worker-management committees to address the regulation of labour in the workplace;*
- (e) providing or encouraging mediation, conciliation and arbitration services; and*
- (f) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labour law.*

*2. Each Party shall ensure that its competent authorities give due consideration, in accordance with its law, to any request by an employer, employee, or their representatives, or other interested person, for an investigation of an alleged violation of that Party's labour law.*

## **1.2. Constitution of Ukraine**

The Constitution of Ukraine, came into effect by Law of Ukraine No. 254/96, on 28 June 1996, and guarantees its citizens the generality of the rights commonly enshrined in the constitutional acts of the modern nations, namely: to life and health; honour and dignity; integrity and security; to work, including the possibility to earn a living by labour that is freely chosen or to which is freely agreed; to proper, safe, and healthy working conditions and remuneration not less than the minimum wage as determined by law; to timely payment for work performed; to maximum duration of work time, minimum duration of rest and to days off and holidays; to weekly rest days and paid annual leave; to shorter working days for certain professions and industries, as well as reduced hours of night work; to protection from unlawful dismissal; to social protection; to health care, medical aid, and medical insurance; the prohibition of forced labour; etc.

## **1.3. General laws on OSH**

Apart from the above mentioned international and constitutional regulations, legal relations in the field of OSH are regulated by other general, specific, and subordinated national legislative acts. Currently, several dozen international regulatory acts and treaties and more than a hundred national laws are directly related to, or have impact on, the OSH field. Moreover, the regulation of certain matters of OSH foreseen in the Law “On Labour Protection” comprises almost 2,000 subordinate regulatory acts which are in effect.

The general legislation on OSH, however, mainly include the Law “On Labour Protection”, the Labour Code, the Law “On Compulsory State Social Insurance”, and the major regulatory legal acts adopted pursuant thereto.

### ***1.3.1. Law on Labour Protection***

The fundamental Ukrainian legal document on OSH is the Law “On Labour Protection”, which sets forth basic provisions as regards the exercise of workers’ constitutional rights to protection of their life and health in the process of labour activity, as well as to ensure proper, safe and healthy working conditions. It regulates, with involvement of respective public authorities, employer-worker relationship in terms of OSH and the working environment, and establishes a uniform procedure for the organization of OSH in Ukraine. Other regulatory legal acts are to comply not only with the Constitution and other laws of Ukraine, but with the said law in the first instance.

The Law “On Labour Protection”, adopted in 1992, became the first legal act not only in Ukraine but also within the former Soviet Union that, unlike the OSH provisions in force in the Codes of Labour Laws of the USSR and the Union’s republics, aims legislation at the protection of citizens’ interests, giving preference, in this important field, to legal regulation, not administrative regulation, as existed before.

In November 2002, the Verkhovna Rada of Ukraine adopted new wording in this law.

### ***1.3.2. Labour Code***

The Labour Code of Ukraine was approved by a law of the Ukrainian Soviet Socialist Republic on 10 December 1971, and entered into force on 1 June 1972. It underwent numerous changes and amendments. Legal regulation of OSH in this act is not confined to Chapter XI “Labour Protection”. OSH provisions are also contained in many articles of other chapters, such as “Employment Agreement”, “Working Time”, “Periods of Rest”, “Female Labour”, “Labour of Young People”, “Trade Unions, Workers’ Participation in Management of Enterprises, Institutions, and Organizations”, “Supervision and Control over Compliance with Legislation on Labour”, etc.

### ***1.3.3. Law on Compulsory State Social Insurance***

In 1999, according to the Constitution of Ukraine and the Fundamentals of the Legislation of Ukraine on Compulsory State Social Insurance, the Law “On Compulsory State Social Insurance against Occupational Accidents and Diseases that Caused Loss of Working Capacity” was passed. In the course of reformation of the compulsory state social insurance, the title of the law was reworded to Law “On Compulsory State Social Insurance”, effective 1 January 2015. This law defines the legal, financial and organizational foundations for compulsory state social insurance, and guarantees the social protection of workers in the event of temporary loss of working capacity, pregnancy and delivery, against occupational accidents and diseases, and protection of life and health.

### ***1.3.4. Fundamentals of the Legislation on Health Care***

The basic regulatory legal acts on OSH also include the Fundamentals of the Legislation on Health Care, which regulate social relationships in order to ensure harmonic development of physical and mental potentials, high working capacity, a long active life of citizens, eliminate factors adversely affecting human health, prevent and reduce morbidity, disability, and mortality, and improve inheritance.

The Fundamentals of the Legislation on Health Care stipulate uniform sanitary and hygienic requirements for the organization of production and other processes involving human activities, as well as for the quality of machinery, equipment, buildings, consumer goods, and other facilities able to have a harmful impact upon health (Art. 28).

Besides, they require compulsory medical examination for workers in certain individual categories, including workers employed where harmful and hazardous working conditions may exist (Art. 31), and lay down the legal foundations for medico-social expert examinations on the loss of working capacity and persistent bodily dysfunction (Art. 69).

### ***1.3.5. Law on Ensuring Sanitary Well-being and Protection from Epidemics among the Population***

The Law “On Ensuring Sanitary Well-Being and Protection from Epidemics among the Population” establishes the need for hygienic standardization of hazardous and harmful physical, chemical and biological factors present in the human life environment, and for their state registration (Art. 9); requirements for design, construction, development, manufacture and use of new means of production and technology (Art. 15); hygienic requirements for atmospheric air in inhabited localities and air inside production and other areas (Art. 19); requirements for provision of radiation safety (Art. 23), etc.

### ***1.3.6. Code of Civil Defence***

Ensuring fire safety on the territory of Ukraine and regulation of relationships in this field between public authorities, local governments, and economic entities and individuals is effected according to the Code of Civil Defence of Ukraine, laws, and other regulatory legal acts.



Measures to ensure fire safety are a component of production and other activities of officials and workers of enterprises, institutions, and organizations. This requirement is specified in employment agreements (contracts), statutes and regulations. Ensuring fire safety of an economic entity is a responsibility of owners and managers of such economic entities (Art. 55).

#### ***1.3.7. Law on High-Risk Facilities***

The Law “On High-Risk Facilities” defines legal, economic, social and organizational foundations for activities related to high-risk facilities, and aims at protecting human life and health and the environment against the harmful influence of accidents at such facilities, through their prevention, restricting (localizing) their development, and eliminating their consequences.

#### ***1.3.8. Criminal Code***

The Criminal Code of Ukraine is comprised of Section X (“Crimes Against Production Safety”) and establishes criminal liability for violations of OSH requirements (e.g., Art. 271-275) that result in damage to a worker’s health or death, or created a situation endangering human life.

### **1.4. Specific Laws and Regulations on OSH**

#### ***1.4.1. Law on Technical Regulations and Conformity Assessment***

This Law (No. 124-VIII, of 15.01.2015) defines legal and organizational principles for the development, adoption and implementation of technical regulations and conformity assessment procedures envisaged thereby, as well as for voluntary conformity assessment. It regulates relationships emerging in connection with the development and adoption of technical regulations and conformity assessment procedures envisaged thereby, with their application to products put into circulation, offered in the market or commissioned in Ukraine, as well as with voluntary conformity assessment.

#### ***1.4.2. Procedure for Workplace Assessment in Terms of Working Conditions***

This procedure was approved by a resolution of the Cabinet of Ministers of Ukraine (CMU) No. 442, on 1 August 1992 (as amended and supplemented by the Resolution of the CMU No. 741 of 5 October 2016). According to it, workplace assessment in terms of working conditions (hereinafter referred to as “assessment”) is conducted at enterprises and organizations of whatever form of ownership and economic management where the production process, equipment and raw materials used are potential sources of harmful and hazardous production factors able to adversely affect the health of workers, as well as their descendants both presently and in the future.

The main objective of the assessment is to regulate relations between the employer or a body authorized thereby and workers in exercising their rights to have healthy and safe working conditions, preferential pension provision, benefits and compensations for compensation for working in unfavourable conditions.

Findings of the assessment are used to develop measures for the improvement of workers’ working conditions and health enhancement, as well as when determining their entitlement to old-age pension on preferential terms, benefits and compensations at the expense of enterprises, institutions and organizations, and substantiating proposals on amendments to the lists of production operations, works, occupations, positions and indicators employment wherein provides entitlement to old-age pension on preferential terms.

#### ***1.4.3. Regulation on the Procedure for State Expert Examination***

This regulation, approved by Resolution of the CMU No. 431, on 23.06.1994 (last amended pursuant to requirements of the Resolution of the CMU No. 617, on 6.06.2011), defines a procedure for conducting state expert examinations (verification) of process, engineering and

technical documentation for the introduction of new technology, manufacture of production means, collective and personal protective equipment (PPE) in conformity with regulatory acts on OSH.

The expert examination of process, engineering and technical documentation on OSH is conducted by expert technical centres subordinated to the State Labour Service (SLS), with consideration of opinions provided by the bodies and institutions designated at the legislative level.

Based on the results of the expert examination of process, engineering and technical documentation on OSH, an expert opinion is drawn up.

The owner or a body authorized thereby, which commenced manufacture of production means without a positive expert opinion, is liable according to legislation in force.

#### ***1.4.4. Resolution on Identification and Safety Declaration of High-Risk Facilities***

The Resolution of the CMU No. 956, of 11.07.2002 (as amended and supplemented by Resolution of the CMU No. 1097, of 23.12.2015), envisages the maintenance of the State Register of High-Risk Facilities. In addition, it stipulates the procedure for identification, declaration and registration of high-risk facilities, and approves the rated mass thresholds for: hazardous substances for identification of high-risk facilities; some individual hazardous substances; and for hazardous substances by category.

#### ***1.4.5. List of Labour Protection Activities and Means***

The list of labour protection activities and means expenses on implementation and procurement whereof are incorporated in costs, was approved by the Resolution of the CMU No. 994, of 27.06.2003 (last amended and supplemented by the Resolution of the CMU No. 76 of 11.02.2016), and defines the activities and means which costs are to be taken in consideration for the achievement of the required level of expenses on labour protection<sup>1</sup>.

#### ***1.4.6. Procedure for Issuing Permits for High-Risk Work or the Use of High-Risk Machines, Mechanisms or Equipment***

This procedure was approved by the Resolution of the CMU No. 1107, of 26.10.2011 (last amended and supplemented by the Resolution of the CMU No. 76, of 11.02.2016).

It determines the order of issuance or denial of permits for performance of high-risk work and for the operation (use) of high-risk machines, mechanisms or equipment, their re-issuance, issuance of their duplicates, and cancellation of permits by SLS and its territorial bodies.

An economic entity intending to commence (or continue) performance of high-risk work or operation of high-risk facilities, machines, mechanisms or equipment (according to the lists as per Annexes 2 and 3), must obtain an appropriate permit from SLS or its territorial body.

<sup>1</sup> The activities and means which are included in the list are aimed at: bringing fixed assets into conformity with requirements of regulatory legal acts on labour protection; eliminating the impact of hazardous and harmful production factors upon workers or bringing their workplace levels into conformity with requirements of regulatory legal acts on labour protection; carrying out workplace assessment for conformity with regulatory legal acts on labour protection and conducting labour protection audits, making information stands, equipping offices and exhibitions, procuring necessary regulatory legal acts, visual aids, literature, posters, videos, models, software products etc. on labour protection; providing labour protection training and knowledge testing of official and workers in the work process, arranging lectures, seminars and consultations on the above-mentioned matters; providing special clothes, special footwear, and PPE to workers according to established rates (including detergents and agents that neutralize hazardous impact of harmful substances upon human body or skin in connection with performance of works that do not rule out possible contamination by such substances); providing workers employed in jobs with harmful working conditions with special food, milk or food products of equal value, and carbonated salt water; carrying out compulsory preliminary, periodic and unscheduled medical examinations of the workers employed in heavy work, jobs in harmful or hazardous working conditions, or jobs requiring occupational selection, etc.



This procedure for issuing permits contains a list of high-risk work (26 items) and a list of high-risk facilities, machines, mechanisms and equipment (21 items).

#### ***1.4.7. Procedure for Conducting Inspection, Testing and Expert Examination of High-Risk Machines, Mechanisms and Equipment***

This procedure was approved by the Resolution of the CMU No. 687, of 26.05.2004 (as amended and supplemented by the Resolution of the CMU No. 76, of 11.02.2016).

It applies to all economic entities conducting inspection, testing and (or) expert examination (technical diagnostics) of high-risk machines, mechanisms and equipment, a list of which is specified by the CMU, as well as to enterprises, institutions and organizations of whatever form of ownership, activity area and economic management, and natural persons using hired labour that intend to commence operation of such equipment or already operate it.

#### ***1.4.8. Procedure for Investigating and Recording Occupational Accidents, Diseases and Emergencies***

This Procedure was approved by the Resolution of the CMU No. 1232, of 30.11.2011 (last amended by the Resolution of the CMU No. 294, of 26.04.2017).

It specifies the procedures for investigation and recording of occupational accidents, diseases and emergencies occurred to workers at enterprises, institutions and organizations of whatever form of ownership, or in their branches, representative offices or other stand-alone units.

### **1.5. Subordinated Legal Acts on OSH Developed by Different Ministries**

#### ***1.5.1. Model Regulation on the Procedure for Training and Testing Knowledge on OSH***

This Model Regulation was approved by the Order of the State Committee for Labour Protection Supervision (SCLPS) No. 15, of 26.01.05 (last amended by the Order of the Ministry of Social Policy (MSP) No. 140, of 30.01.2017). It aims at implementing a system of continuous training on OSH for officials and other staff, on provision of pre-medical aid to accident victims, and on rules of conduct in emergencies.

According to Article 18 of the Law “On Labour Protection”, at time of hire and in the course of work, workers must receive, at employer’s expense, instructions and training on OSH, on provision of first aid to accident victims, and on rules of conduct in case of a breakdown.

Moreover, Ukrainian legislation, in particular, the Ukrainian Law “On Labour Protection” and the Order of the SCLPS No. 15 provides for the obligation of the employer to provide workers with training on labour protection. Training of enterprise workers is a component of the staff training system and the labour protection training of workers is provided at SLS educational establishments.

Requirements of the Model Regulation are binding on all central and local executive authorities, local self-government bodies, budget-funded and economic entities of whatever form of ownership and activity area. An economic entity intending to provide training on labour protection to workers of other economic entities shall submit a declaration of its material and technical infrastructure’s conformity with legislation on labour protection and industrial safety to the central executive authority that implements the state policy on industrial safety and labour protection (i.e., to the State Labour Service or SLS).

Testing knowledge of labour protection regulations of managers and deputy managers of central executive authorities and oblast state administrations is conducted by a commission established by a SLS order and headed by the SLS Head. Moreover, SLS also exercises state supervision (control) over the organization of training (including special) and testing of knowledge on labour protection.

### ***1.5.2. Regulation on the Procedure for Providing Workers with Special Clothing, Footwear and Other PPE***

This Regulation was approved by the Order of the SCLPS No. 53, of 24.03.2008. It applies to enterprises, institutions and organizations of whatever form of ownership and activity area, and establishes a procedure for the provision of PPE to workers for whom using it is mandatory during the work process.

Pursuant to Art. 8 of the Law “On Labour Protection” and Art. 163 of the Labour Code, on work with harmful and hazardous working conditions, as well as work connected with contamination or adverse weather conditions, workers shall be issued, free of charge and at established rates, special clothing, footwear, and other PPE.

An employer shall be required to ensure, at its own expense, procurement, stocking, issue and maintenance of PPE according to regulatory legal acts on labour protection and to a collective agreement.

### ***1.5.3. Rates of Free-of-Charge Provision of Special Clothing, Footwear, and Other PPE to Railway Transport Workers***

This regulation was approved by the Order of the MSP No. 141, of 30.01.2017. These rates were developed pursuant to Art. 8 of the Law “On Labour Protection”, to provide special clothing, footwear, and other PPE to workers of railway transport enterprises (Ukrainian Railways public joint-stock company and enterprises in its structure) employed at jobs with harmful and hazardous working conditions, as well as in work connected with contamination or adverse weather conditions.

### ***1.5.4. Procedure for Conducting Health Examinations of Workers in Certain Categories***

This procedure was approved by the Ministry of Health (MH) Order No. 246, of 21.05.2007 (last amended by the MH Order No. 107, of 14.02.2012). This procedure provides for a uniform methodology of organizing and conducting medical examinations of workers, optimizing the medical examination coverage completeness and quality and setting examination time frames, depending on harmful factors in the working environment.

A preliminary medical examination is conducted at time of hire to find out a worker’s state of health, record source objective health indicators, determine the worker’s ability to perform service duties without health impairment amid specific harmful and hazardous factors of the working environment and work processes, detect occupational diseases (poisonings) that emerged earlier during work in previous production operations and prevent work-related and occupational diseases (poisonings).

The goal of periodic medical examinations is: timely detection of early signs of acute and chronic occupational diseases (poisonings) and work-related diseases; ensure dynamic observation of workers’ health amid specific harmful and hazardous factors of the work environment and work processes; to decide about a worker’s ability to continue work amid specific harmful and hazardous factors of the work environment and work processes; design rehabilitation measures for the workers who are included in a risk group based on medical examination findings; and implement necessary health-improvement activities.

### ***1.5.5. Limits of Lifting and Moving of Heavy Items by Women***

These limits were approved by the MH Order No. 241, of 10.12.1993. These limits are established for the following work types: lifting and moving of loads in alternation with other work; continual lifting and moving of loads during a work shift; and as regards the total weight of the load moved during each hour of the work shift.

#### ***1.5.6. List of Heavy Work and Work with Harmful or Hazardous Working Conditions on Which Employing Women is Prohibited***

This list was approved by the MH Order No. 256, of 29.12.1993 (it was repealed on 22.12.2017, except for its Section 3, regarding work in mining) and includes around thirty different activities within several economic activity sectors<sup>2</sup>.

#### ***1.5.7. List of Heavy Work and Work with Harmful or Hazardous Working Conditions on Which Employing Minors is Prohibited***

This list was approved by the MH Order No. 46, of 31.03.1994. It establishes that it is prohibited to employ minors in production operations, occupations and work with severe and harmful working conditions (according to this list) at all enterprises, institutions and organizations regardless of their form of ownership and activity areas. It also foresees that the enrolment for training in the occupations mentioned in the list is only allowed if the students would attain 18 years of age by completion of the training. Moreover, when undertaking work practice (on-the-job training), persons under 18 years of age studying at vocational educational institutions may be present in production units, occupations and work included in the list for no longer than 4 hours subject to strict observance of the current sanitary rules and regulations as well as labour protection rules and regulations.

#### ***1.5.8. Rules and Regulations on Hygienic Classification of Labour***

These State Sanitary Rules and Regulations “Hygienic Classification of Labour by Indicators of the Harmfulness and Hazard Level of the Working Environment, Difficulty and Intensity of the Work Process” were approved by the MH Order No. 248, of 8.04.2014. These rules and regulations are aimed at conducting hygienic assessment of working conditions and nature of labour at workplaces and are used at enterprises, institutions and organizations of all forms of ownership in cases provided for by law.

The hygienic classification of labour is based on the principle of differentiation of working conditions assessment, depending on actually identified levels of impact of the working environment and work process factors, with account of their possible harmful impact upon workers’ health.

#### ***1.5.9. Limits of Lifting and Moving of Heavy Items by Minors***

These limits were approved by the MH Order No. 59, of 22.03.1996. They are valid within the whole territory of Ukraine and apply to all enterprises, institutions, organizations, and educational institutions, as well as to legal and natural persons using labour of minors aged between 14 and 18. It is prohibited to appoint minors to perform work connected solely with lifting, holding or moving of heavy items. However, minors having no medical contraindications proved by a relevant health certificate are allowed to perform work that requires lifting and moving of heavy items. Minors under 15 years of age are not allowed to perform long-term work that consists of lifting and moving of heavy items.

An employer must ensure compulsory preliminary and subsequent periodic medical examinations of all minors employed thereby.

<sup>2</sup> The list includes the following economic activity areas: metal processing; construction, assembly, and building repair operations; mining operations; geological exploration, topographic and geodesic operations; borehole drilling; oil and gas extraction; ferrous metallurgy; non-ferrous metallurgy; repair of electric power plant and network equipment; abrasive production; electrical production; radio and electronic production; aircraft production and repair; ship-building and repair; various chemical productions; rubber processing; reprocessing of oil, gas, shales and coal, manufacture of synthetic oil products, petroleum oils and lubricants; forest harvesting operations, timber rafting, and forest cupping; production of cellulose, paper, cardboard paper and products thereof; production of construction materials; production of glass and products thereof; textile and light industry; food industry; railway transport and underground railroad; automobile transport; sea transport; river transport; operational, pilot training undertakings (organizations), and flight test centres of civil aviation; communications; printing industry; manufacture of musical instruments; agriculture; and general working professions.

Moreover, it establishes that the total duration of working hours for minors must not exceed twenty-four hours per week (for those aged 14-15) and thirty-six hours (for those aged 16-17). Equal distribution of weekly working hours must be provided by days of a five or six days working week. In addition, it is envisaged that minors' work with loads must not exceed 1/3 of their working time.

#### ***1.5.10. PPE Technical Regulation***

This technical regulation was approved by the Resolution of the CMU No. 761, of 27.08.2008 (last amended by the Resolution of the CMU No. 76, of 11.02.2016). It defines requirements for the safety level of PPE, a procedure of assessment of conformity with such requirements and establishes the rules of labelling of the above-mentioned items and their putting into service.

PPE means the gear intended to be worn by its user or to secure the user's protection against one or more types of danger to his life or health. PPE falls into three categories. Definitions of each category are provided.

Free circulation of protective equipment in the territory of Ukraine is only allowed if such items are safe for the life and health and provided that their users are protected against injuries or diseases subject to intended use and a proper level of maintenance and operation. A producer, a person authorized thereby or a supplier must be familiarized with any decision made pursuant to this technical regulation, which restricts putting PPE into practice, with substantiation of the reasons thereof, and, at the same time, notification about statutory safeguards and deadlines of their implementation.

The technical regulation also specifies the PPE to which it does not apply to. The State Labour Service of Ukraine prepared a draft technical regulation of PPE.

#### ***1.5.11. Technical Regulation for Machinery Safety***

The technical regulation for machinery safety was approved by the Resolution of the CMU No. 62, of 30.01.2013. It establishes requirements for machinery in terms of protection of human life or health, animals or plants, property and natural environment. It also foresees a procedure for machinery conformity assessment and the requirements for their circulation in Ukraine's market and/or commissioning.

#### ***1.5.12. Procedure for Identification and Recording of High-Risk Facilities***

This procedure was approved by the Resolution of the CMU No. 956, of 11.07.2002 (last amended by the Resolution of the CMU No. 1097, of 23.12.2015). It applies to all economic entities which possess or use facilities where hazardous substances may be used or produced, reprocessed, stored or transported (hereinafter referred to as hazardous facilities), as well as to all economic entities intending to commence construction of potentially hazardous entities.

An economic entity possessing or using at least one potentially hazardous facility or intending to commence construction of such a facility shall organize its identification.

Authorized bodies keep records of high-risk facilities, based on notifications about identification results.

#### ***1.5.13. Directory of Regulatory Legal Acts on OSH***

This directory was approved by the State Labour Service (SLS) Order No. 88, of 10.07.2017, according to the Regulations on the SLS, as endorsed by the Resolution of the CMU No. 96, of 11.02.2015 and the Regulations on the State Register of Regulatory Legal Acts on OSH, approved by the Order of the SCLPS No. 151, of 8.06.2004 (as amended by the Order of the MSP No. 432, of 20.03.2017).

Upon the SLS initiative to improve regulatory legal acts on OSH, outdated regulatory legal acts on OSH are being revised and abolished. According to the Order of the MSP No. 592, of 10.04.2017, 122 regulatory legal acts of the USSR on OSH were already declared as not applicable on the territory of Ukraine.

In recent years, officials and specialists of the SLS and its territorial bodies considered and endorsed draft state standards, draft technical specifications and other documentation on the matters falling within the SLS competencies and participated in the work of the commissions for acceptance tests of experimental prototypes of high-risk equipment.

## **1.6. OSH Issues Covered by Current National OSH Legal Framework**

The current Ukrainian OSH legal framework, notably the Law “On Labour Protection” and the regulatory legal acts adopted pursuant to it, covers a wide range on OSH-related topics, in particular regarding: identification and determination of occupational hazards; prohibition, limitation or other means of reducing exposure to or of use of hazardous processes, machinery and substances; specification of occupational exposure limits; surveillance and monitoring of the working environment; prevention of hazardous work, and related authorization and licensing requirements; classification and labelling of hazardous substances; provision of PPE; safe methods for transportation and disposal of hazardous waste; working time arrangements; adaptation of work installations, machinery, equipment and processes to the capacities of workers (ergonomic factors); design, construction, layout and maintenance of workplaces and installations; and provision of adequate welfare facilities.

It is important to note, however, that the Ukrainian OSH legal framework reveals a dichotomy in approach to OSH, making a clear distinction between labour protection, which is mainly viewed as industrial safety, and sanitary, hygienic and work environment issues, which are seen as occupational health issues, to the detriment of a more integrated and holistic approach to OSH.

More recently, Ukraine is developing a concept of the reforming of the National OSH management system (ILO, 2017e; SLS, 2017)<sup>3</sup>. This OSH concept is a framework document that shapes a context, vision, principles, objectives and main directions for the restructuring of the OSH organization in Ukraine, based on a risk-oriented approach to ensure migration to the standards of the European Union Member States concerning OSH. It is aimed at identifying key challenges in the existing OSH management system in Ukraine and main directions and ways of addressing them to enhance its performance, shaping a modern safe and healthy working environment, minimizing socio-economic consequences of adverse impacts upon human health and working capacity during labour activities, and establishing a national preventative OSH culture.

The OSH Concept is designed for a long-term horizon and provides a basis for the development of organizational activities, a modern regulatory legal framework and nationwide, regional and sectoral programmes on OSH<sup>4</sup>.

<sup>3</sup> Pursuant to the provisions of the National Strategy on Human Rights, approved by the Decree of the President of Ukraine No. 501/2015, of 25 August 2015 (President of Ukraine, 2015); Article 424, Appendix XVII-5 and Annex XL to Chapter 21 of the EU-Ukraine Association Agreement (EU & Ukraine, 2014), ratified by the Law of Ukraine No. 1678-VII, of 16 September 2014 (Parliament of Ukraine, 2014) and its respective Action Plan (Cabinet of Ministers of Ukraine, 2017); Articles 2 and 3 of the European Social Charter (revised) 1996 (Council of Europe, 1996), ratified by the Law of Ukraine № 137-V, of 14 September 2006 (Parliament of Ukraine, 2006); Paragraph No. 12 of the action plan for the implementation of the provisions of the European Social Charter (revised) for 2015–2019, approved by the Order of the CMU No. 450, of 14 May (Government of Ukraine, 2015, 2016); Paragraph 149, Section I of the Government Priority Action Plan for 2017, approved by the Order of the CMU No. 275-p, of 3 April 2017; and Ukraine Decent Work Country Programme 2016–2019 (ILO, 2016b).

<sup>4</sup> According to its drafted version (SLS, 2017), the implementation of the OSH Concept is intended to promote: the enhancement of the workers’ life and health protection level; the establishment of a general societal workplace safety culture; the reduction of the State’s regulatory impact upon businesses; the introduction of more efficient mechanisms of economic incentives for employers to provide their workers with safer and healthier working conditions; the increasing of the competitiveness of domestic undertakings in the international market; the improvement of the investment climate in Ukraine;



## 2. UKRAINIAN APPROXIMATION TO THE INTERNATIONAL AND EUROPEAN LABOUR STANDARDS

As mentioned earlier, Ukraine has already ratified 71 ILO Conventions, including the Fundamental and Governance Conventions, as well as fifty-nine technical conventions.

Ukraine has not yet ratified, however, some OSH key ILO conventions. Nevertheless, Article 2.46 of the General Agreement on Regulation of Main Principles and Standards of the Implementation of Socio-Economic Policy and Labour Relations in Ukraine for 2016-2017 foresees that it should be considered a proposal for the ratification of the following ILO Conventions Nos. 121, concerning Benefits in the Case of Employment Injury (ILO, 1964); 152, concerning Occupational Safety and Health in Dock Work (ILO, 1979); 167, concerning Safety and Health in Construction (ILO, 1988); and 187, concerning the Promotional Framework for Occupational Safety and Health (ILO, 2006).

Moreover, and taking into account that as important as the formal ratification of the ILO conventions is their effective incorporation into the national legislation and, in particular, their effective implementation on the ground, Ukraine is also engaged in the further improvement of the implementation of the ILO Conventions, notably the ILO Conventions Nos. 81 and 129, on labour inspection.

Furthermore, and considering that integration into the European Union is one of its main strategic directions within its foreign policy, the alignment of the national OSH legislation with the *acquis communautaire* on OSH is assuming increasing relevance. In fact, on 16 September 2014, the Verkhovna Rada of Ukraine and the European Parliament ratified simultaneously the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part". In view of the signing of this Association Agreement and its entering into force in 1 September 2017, approximation of Ukraine's legislation to the EU legislation is becoming increasingly important. The approximation of Ukraine's legislation to that of the EU is provided for in Art. 51 of the Partnership and Cooperation Agreement between the European Communities and their Member States and Ukraine. The same article determines sixteen priority areas of approximation that include, *inter alia*, OSH.

The approximation of legislation takes place according to the provisions of the Law "on the National Programme of Approximation of the Legislation of Ukraine to the European Union Legislation". A list of Ukrainian legislative acts and those of the European Union *acquis* in priority areas is an integral part of the Programme. As far as labour legislation is concerned, the list of EU secondary legislation consists of 251 acts of the *acquis*. This law also foresees that the state policy of Ukraine on the legislation approximation shall be formulated as a component of legal reform in Ukraine and shall be aimed at ensuring uniform approaches to standard-setting, securing mandatory consideration of the European Union legislation requirements during the standard-setting, training of skilled specialists, and provision of proper conditions for institutional, scientific and educational, standard-setting, technical and financial support for the Ukrainian legislation approximation process. This means that since 2005 conformity with requirements of the EU acts has been mandatory for the development of any legal act on OSH.

According to Article 424 of the Association Agreement and its Annex XL to Chapter 21, Ukraine shall ensure its gradual approximation to the relevant EU law, standards and practices, in the area of employment, social policy and equal opportunities, in particular regarding OSH and labour relations. The respective directives and approaching deadlines are established in Annex XL to chapter 21 of this Agreement.

the prioritization and identification of the stages for the implementation of the European Union *acquis* provisions into the national legislation; and the strengthening of the employers' responsibilities for failing in the prevention of the occurrence of occupational injuries and diseases.

The section on the Health and Safety at Work of the mentioned annex foresees the implementation of twenty-nine EU Directives, twenty-seven of which with specific implementation timetables already set, providing that a considerable portion of EU regulatory acts, including those concerning OSH, should be implemented into Ukrainian legislation.

In order to support implementation of the Association Agreement signed between the European Union and Ukraine in 2014, the EU is funding actions under the Technical Cooperation Facility 2016, in order to provide policy advice, advice on the legal approximation process with the EU *acquis*, and capacity building in priority areas covered by the EU-Ukraine Association Agreement and the Association Agenda.

In this context, and within the scope of the long-lasting technical cooperation between the ILO and Ukraine and considering the MSP request for ILO's technical assistance to ensure that the new labour inspection service will work in accordance with ILO conventions and closer to EU good practices, following the signature, in April 2016, of the Decent Work Country Programme of Ukraine for 2016-2019 (ILO, 2016b), it was launched, in November 2017, the EU-ILO Project “Enhancing the Labour Administration Capacity to Improve Working Conditions and Tackle Undeclared Work”.

The project, funded by the EU and implemented by the ILO, is a contribution of the EU and of the ILO for the improvement of working conditions in Ukraine and for the reduction of the scope of undeclared work, through the provision of support to the rapprochement process of national legislation with EU *acquis* and ILO standards on OSH, labour relations and labour inspection. It also contributes to the capacity building of the State Labour Service by means of training and recommendations, in order to improve its performance. The project is aimed at supporting implementation of the EU-Ukraine Association Agreement and its relevant annexes, which provides for the approach of the Ukrainian legislation with the provisions of the EU OSH Framework Directive 89/391/EEC (European Council, 1989a) and a number of specific directives on OSH and labour relations, as well as with the provisions of the ILO Conventions No. 81 and No. 129, on labour inspection (ILO, 1947, 1969).

One of the expected outputs of this project is to provide a set of recommendations on the approach of the national legislation on OSH and on selected labour law issues, ensuring the alignment of the Ukrainian national legislation with the EU *acquis*, in particular, regarding the following EU Directives: 89/391/EEC, concerning the introduction of measures to encourage improvements in the safety and health of workers at work (European Council, 1989a); 89/654/EEC, concerning the minimum safety and health requirements for the workplace (European Council, 1989b); 89/656/EEC, on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (European Council, 1989c); 91/533/EEC, on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (European Council, 1991b); 2003/88/EC, concerning certain aspects of the organization of working time (European Parliament & European Council, 2003b); and 2009/104/EC, concerning the minimum safety and health requirements for the use of work equipment by workers at work (European Parliament & European Council, 2009).

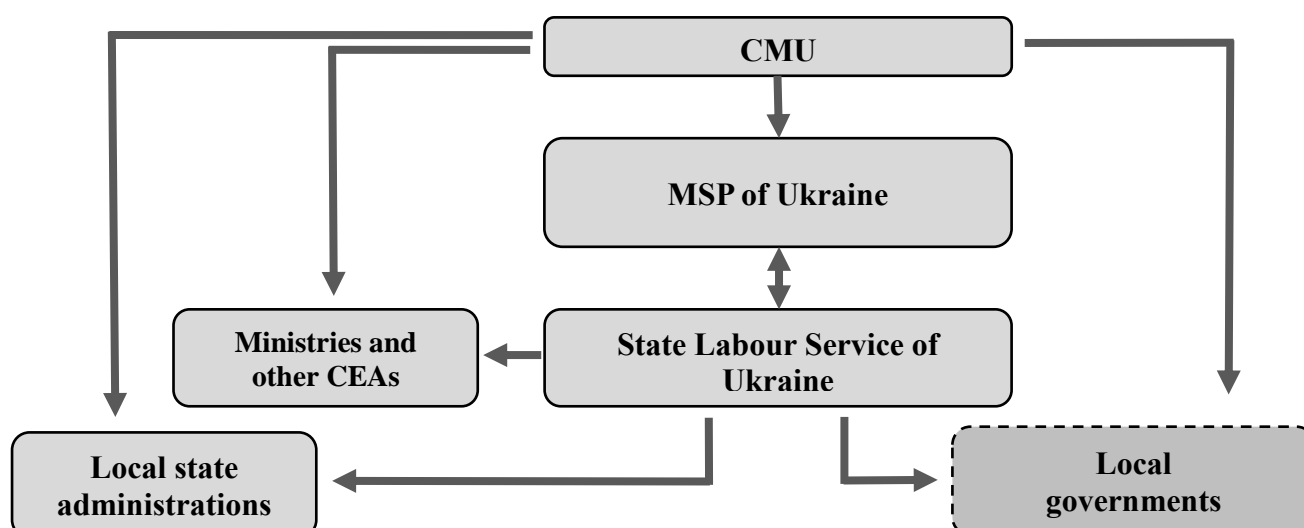
### 3. UKRAINIAN OSH MANAGEMENT AND ENFORCEMENT LEGAL FRAMEWORKS

In Ukraine, the system of administration of measures and means aimed at preserving human life, health and working capacity in the work activity process is regulated by the Law “On Labour Protection”.

State administration bodies for OSH are defined in Art. 31 of the Law “On Labour Protection”. Accordingly, the state administration of OSH is exercised by: the CMU; the central executive authority that formulates and implements state policy on industrial safety, labour protection, occupational health, handling of industrial explosive materials, and exercises state mining supervision (MSP); the central executive authority that implements state policy on industrial safety, labour protection, occupational health, handling of industrial explosive materials, and exercises state mining supervision (State Labour Service or SLS); ministries and other central executive authorities; and the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, and local governments.

The following figure provides a graphical depiction of the system of state administration bodies on OSH in Ukraine.

**Figure 1** - Ukrainian OSH State Administration Bodies



Source: Own elaboration

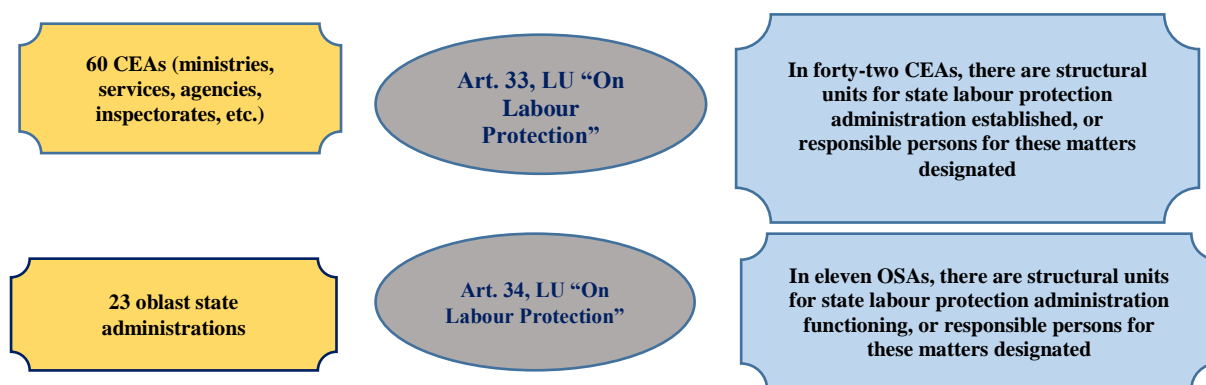
To exercise the powers in the field of OSH (Arts. 33 and 34 of the Law “On Labour Protection”), structural units for OSH were established, or responsible officials for these matters were designated, in Central Executive Authorities (CEA) and Oblast State Administrations (OSA).

In particular, in forty-two (out of sixty) CEA, and in eleven (out of twenty-three) OSA.

The next figure provides a graphical depiction of the performance of State OSH administration functions by CEA and OSA.



**Figure 2 - Performance of State OSH Administration Functions by CEA and OSA**



Source: SLS materials

### **3.1.1. Cabinet of Ministers**

According to Art. 116(3) and (6) of the Constitution of Ukraine, the CMU ensures the implementation of the policy on labour and employment, social protection, education, science and culture, nature protection, environmental safety and nature management, and exercises other powers determined by the Constitution and laws of Ukraine.

### **3.1.2. Ministry of Social Policy**

The Ministry of Social Policy (MSP), whose regulations were approved by the Resolution of the CMU No. 423, of 17 June 2015, is a central executive authority, which is directed and coordinated by the CMU.

The MSP's key tasks include ensuring the formulation and implementation of the state policy in the fields of labour and social policy, employment and labour migration, labour relations, compulsory state social and pension insurance, social dialogue, industrial safety, labour protection, occupational safety, handling of explosive materials, and exercise of state mining supervision.

### **3.1.3. State Labour Service**

The State Labour Service of Ukraine (SLS), whose regulations were approved by the Resolution of the CMU No. 96, of 11 February 2015, is a central executive authority, whose activities are directed and coordinated by the CMU, via the MSP.

The SLS was established in 2014, by means of merging three supervisory authorities in the fields of labour (State Labour Inspectorate), labour protection (State Service for Mining Supervision and Industrial Safety), and occupational health (State Sanitary and Epidemiological Service) into one structure.

The principal SLS activities are as follows:

- implementing state policy in such fields as industrial safety, labour protection, occupational health, handling of industrial explosive materials, exercise of the state mining supervision, as well as exercising the supervision and control over compliance with the legislation on labour and employment, compulsory state social insurance (to the extent related to setting, accruing and paying benefits and compensations, providing social services and other types of material security for the purpose of respecting the rights and guarantees of insured persons);
- exercising integral management of OSH at the state level;

- exercising state regulation and control in the field of activities connected with high-risk facilities;
- organizing and exercising state supervision (control) in the field of natural gas market functions (regarding maintaining proper technical conditions of systems, units and natural gas metering devices at natural gas production facilities and securing safe and reliable operation of the Unified Gas Transport System facilities).

#### **3.1.4. Ministry of Health**

The Ministry of Health (MH), whose regulations were approved by the Resolution of the CMU No. 267, of 25 March 2015, is a central executive authority, whose activities are directed and coordinated by the CMU.

The MH's key objectives include, *inter alia*, ensuring the formulation and implementation of state policy in health care and epidemiological surveillance (observation), and ensuring the formulation of state policy in the field of sanitary well-being and protection from epidemics for the population.

The MH, according to its legal competences, shall, in the field of health care:

- establish the rules and periodicity of compulsory preventive examinations of certain population groups for tuberculosis;
- approve the lists of population groups and worker categories subject to preventive vaccinations, including compulsory ones;
- approve the lists of heavy work and work with harmful or hazardous working conditions on which employing women and minors is prohibited;
- approve the limits of lifting and moving of heavy items;
- approve the procedures for: medical examinations of the workers employed in heavy work, work with harmful or hazardous working conditions, or work requiring occupational selection; annual compulsory medical examination of persons under the age of twenty-one; medical examinations of staff of professional emergency rescue teams and medical examinations of these staff after emergency rescue operations as well as the periodicity of such examinations; medical examinations of potential and hired drivers.

In the field of sanitary well-being and protection from epidemics for the population, and according to its mission, MH shall, *inter alia*:

- approve the state sanitary rules and regulations, state sanitary-epidemiological and sanitary-anti-epidemic regulations and rules, sanitary-epidemiological regulations and rules, anti-epidemic regulations and rules, hygienic and anti-epidemic regulations and rules, state sanitary-epidemiological rates, sanitary regulations; indicators and criteria of working conditions according to which annual additional leaves are granted to workers employed in work related to adverse health impact of harmful production factors; sanitary regulations and rules in the field of labour protection;
- approve the procedures for preparation and submission of state, sectoral and current reports on the sanitary and epidemic situation, and for state recording of infectious and occupational diseases and poisonings.

#### **3.1.5. State Nuclear Regulatory Inspectorate**

The State Nuclear Regulatory Inspectorate of Ukraine (SNRI), whose regulations were approved by the Resolution of the CMU No. 363, of 20.08.2014, is a central executive authority, whose activities are directed and coordinated by the CMU.

SNRI's mission is comprised of the formulation and the implementation of state policy on the safe use of nuclear energy and exercising state regulation of the safe use of nuclear energy.

According to the tasks assigned thereto, SNRI shall, *inter alia*:

- draft nationwide and other programmes on the safe use of nuclear power;
- coordinate the work of the central and local authorities that, according to the applicable legislation, are responsible for ensuring nuclear and radiation safety;
- define the safety criteria and requirements which observance is compulsory when using nuclear energy and, according to the them, approve the rules, regulations and standards on nuclear and radiation safety and the rules and regulations on physical protection of nuclear installations, nuclear materials, radioactive waste, and other sources of ionizing radiation.
- endorse draft state and sectoral standards on nuclear and radiation safety and labour protection;
- endorse standards, technical specifications and other documents for instruments of labour and production processes in terms of ensuring nuclear and radiation safety.

### **3.1.6. State Emergency Service**

The State Emergency Service of Ukraine (SES), whose regulations were approved by the Resolution of the CMU No. 1052, of 16 December 2015, is a central executive authority, whose activities are directed and coordinated by the CMU, via the Minister of Internal Affairs of Ukraine (MIA).

The main activities of the SES consists of, *inter alia*: implementing state policy in the following fields of civil defence, prevention and protection of the population and territories from emergencies, emergency management, rescue work, fire-fighting, fire and technological safety, operation of emergency rescue services, prevention of non-occupational injuries, and hydro-meteorological activities; exercising state supervision (control) over compliance with and observance of requirements of the legislation on civil defence, fire and technological safety, and operation of emergency rescue services; and submitting proposals on ensuring the formulation of the state policy in the above-listed fields to the MIA for consideration.

## **3.2. State Supervision on the Compliance with OSH Regulations**

State supervision over compliance with laws and other regulatory legal acts on OSH is exercised, according to Art. 38 of the Law “On Labour Protection”, by the central executive authority that implements state policy on OSH (SLS); the central executive authority that implements state policy on nuclear and radiation safety (SNRI); and the central executive authority that implements state policy on supervision and control over compliance with legislation on fire and technological safety (SES).

### **3.2.1. Legal Framework Regulating Inspection Activities on OSH**

The most important regulation concerning the public inspection activity on OSH carried out by state authorities, mainly by the SLS, is the Law No. 877-V, of 5 April 2007, on the Basics of State Supervision (Control) in Economic Activities (with key amendments subsequently made by the Law No. 1726-III, of 3 November 2016).

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

According to the above mentioned law:

- Article 4(1) - State supervision (control) is exercised at the place of business operations of an economic entity or its standalone units, or in the State supervision (control) body's office in cases provided for by law.
- Article 4(2) - If a business entity is included, at the same time, in the plans of several bodies of state supervision (control), the planned measures shall be carried out by the bodies of state supervision (control) in an integrated manner and at the same time by all bodies;
- Article 4(3) - Planned and unplanned measures shall be carried out during working hours of a business entity established by its internal regulations;
- Article 4(5) - Production (manufacture) or sale of production, performance of work, or delivery of services by economic entities may be stopped completely or partially solely through a court decision. Moreover, and after suspension, the business entities shall be authorized to proceed with the production (manufacturing) or sale of goods, or provision of work or services, after notifying the body of state supervision (control) which initiated the suspension about the elimination of all violations established by the court;
- Article 4(8) - The bodies of state supervision (control) and business entities shall have the right to record the process of carrying out the planned or unplanned measure or each separate activity using audio and video equipment, without prejudice to the carrying out of the measure;
- Article 4(9) - Failure to comply with the state supervision (control) body's orders, instructions or other executive documents entails the application of penalties to the economic entities according to law;
- Article 4(10) - During the measures of state supervision (control), it shall not be allowed to seize from business entities originals of their financial, business, accounting and other documents, computers and their parts, except as provided by criminal procedural legislation;
- Article 4(11) - Any planned or unplanned measure on a legal entity shall be carried out in the presence of a senior manager or a person to be authorized by the senior manager. Any planned or unplanned measure on an individual - entrepreneur shall be carried out in his presence or in the presence of his authorized person;
- Article 4(15) - In carrying out measures of state supervision (control), the officials of the bodies of state supervision (control) shall be required to use only standardized forms of documents. Currently, when conducting state supervision (control) measures in OSH, SLS labour inspectors use a unified form of the Statement on Inspection Activity of an economic entities (production facility), which was approved by the Order of the Ministry of Emergencies of Ukraine No. 826, of 11.08.2011, registered with the Ministry of Justice on 27.12.2011, under No. 1531/20269.
- Article 5(1) - The planned measures shall be carried out in accordance with the annual plans to be approved by the body of state supervision (control) no later than December 1 of the year preceding the planned one. No amendments to the annual plans of state supervision (control) shall be permitted. During the planned period, carrying out of more than one planned measure of state supervision (control), on one business entity by the same body of state supervision (control) shall not be allowed;
- Article 5(2) - The central executive body that implements state regulatory policy in the area of economic activities (SRS) shall develop the methodology for development of criteria to assess the risk of implementing economic activity, to determine the regularity of state supervision (control) and develop the methodology for standardized report forms to be prepared based on the results of the planned (unplanned) measures of state

supervision (control). According to such methodology, all business entities subject to supervision (control) shall fall into one of three risk levels: high, medium or low. Depending on the level of risk, the body of state supervision (control) shall compile a list of issues for the implementation of planned activities to be approved by order of the subject body. The planned measures of state supervision (control) shall be carried by the body of state supervision (control) over business entities, depending on their risk level, as follows: high level of risk - no more than once every two years; medium level of risk - no more than once every three years; and minor level of risk - no more than once every five years.

- Article 5(4) - State supervision (control) bodies shall carry out scheduled activities of the state supervision (control) subject to prior written notification of the economic entity concerned, no later than ten days before the date of inspection;
- Article 5(5) - The duration of the planned measure may not exceed: ten working days; and in case of micro/small businesses - five working days.

No extension of the planned measure duration shall be allowed;

The total duration of all the planned measures carried out by the bodies of state supervision (control) in a calendar year on the specific business entity (planned comprehensive measure) shall not exceed: thirty days; and, on micro/small business - fifteen working days.

- Articles 6(1) and 6(2) - The grounds for carrying out unscheduled state supervision (control) activities or measures shall be defined by law and carrying out unplanned measures on other grounds than those provided for in this article shall be prohibited;
- Articles 6(4) - The duration of the unplanned measure shall not exceed: ten working days; or two working days, for small businesses.
- Articles 7(1) to 7(5) - To implement the planned or unplanned measure, the body of state supervision (control) shall issue an order. On the basis of that order, a certificate (request) for the measure of state supervision (control) shall be issued, to be signed by the head of the body of state supervision (control) or his deputy. The certificate (request) shall be valid only for the measure duration specified therein. Before starting the measure, officials of the body of SS shall present to the head of a business entity/individual or authorized person the certificate (request) and the legal identification of the officials of the body of state supervision (control) and provide the business entity a copy of certificate. The official of the body of state supervision (control) who has no certificate for the measure and the official identification shall not be entitled to carry out the state supervision (control) of the business entity. The business entity shall be entitled to prevent officials of the body of state supervision (control) from implementing the measures, if they fail to present the certificate and the legal identification of the officials;
- Article 7(11)- If a business entity implements in full and in due time the instruction, order, resolution, other administrative documents to eliminate violations revealed during the measure of state supervision (control), no financial and administrative penalties or measures of response shall be applied to the business entity or its officials.
- Article 10 - Business entities have the right to prevent the officials of state supervision (control) from carrying out state supervision (control) in the following cases:
  - ✓ The state supervision (control) is carried out with breach of the statutory requirements on frequency of such measures;



- ✓ The official of the body of state supervision (control) fails to provide copies of the certificate or of the officials identification, or if those documents do not meet the requirements;
- ✓ Absence of prior notice to the business entity about the carrying out of the planned measure of state supervision (control), according to the above mentioned procedure;
- ✓ Failure to make an entry on the carrying out of a measure of the state supervision (control) in the register of state supervision (control) (if available);
- ✓ If the duration of the planned activity of state supervision (control) or the total duration of measures during the year exceeds the maximum duration above mentioned;
- ✓ If the duration of unplanned activities of state supervision (control) exceeds the maximum duration above mentioned;
- ✓ If the body of state supervision (control) carries out another unplanned measure of state supervision (control) for the same fact (facts) that was (were) the reason for the unplanned measure that has been conducted by state supervision (control);
- ✓ If the body of state supervision (control) has not approved or published on its official website a standard report which provides a list of questions depending on the degree of risk;
- ✓ If officials, when required, fail to provide a copy of the agreement of the central executive body which ensures public policy on state supervision (control) in the area of economic activities or a relevant state collegial body to carry out an unplanned measure of state supervision (control);

Moreover, business entities have the right to demand suspension of execution of a measure of state supervision (control), in the following cases:

- ✓ If the official of state supervision (control) is in breach of the maximum duration of the measure defined as defined above;
  - ✓ If the officials of state supervision (control) use illegal forms of reports;
  - ✓ When officials, during the carrying out unplanned measures of state supervision (control), verify or control issues other than those whose verification was the basis for the original measure.
- Article 22(3) - If the classification criteria of business entities according to risk levels or the regularity of the planned measures or the list of issues to be checked, have not been approved, those business entities shall be considered business entities with minor risk level and shall be subject to SS not more than once every five years.

Furthermore, it was introduced in January 2015, through Paragraph 8 of the “Transitional Provisions” section of the Law No. 76-VIII, of 28.12.2014, on Amending and Invalidating Some Legislative Acts, a *moratorium*, banning the performance of inspections (scheduled and unscheduled), by controlling bodies, on all economic entities (enterprises, institutions, organizations and individual entrepreneurs). This *moratorium* was then lifted, from 1 August 2015 until 31 December 2017, being re-established again, in January 2018, following the approval of the Ukrainian State Budget for 2018. Subsequently, on 23/02/2018, the SLS was taken out of the scope of this moratorium until 31/12/2018, through the CMU Resolution No. 1104.

According to the SRS, the number of inspections in the last quarter of 2014 decreased by 98.5%, when compared to the last quarter of 2013.

In addition, the Law No. 1669-VII, of 2.09.2014, on Provisional Measures for the Period of the Anti-terrorist Operation, introduced a *moratorium* on inspections by the bodies and officials authorized by laws to exercise state supervision (control) in economic activities. Article 3 of this law foresees that the bodies and officials authorized by law to exercise state supervision (control) in economic activities during the period and in the area of the anti-terrorist operation are temporarily barred from carrying out scheduled and unscheduled inspections of the economic entities active in the anti-terrorist operation area, except for unscheduled inspections of the economic entities that, according to the CMU-approved criteria, are classified as high-risk ones. In this context, SLS has already prepared a draft Law on amending Article 3 of this law, in order to improve the exercise of state supervision over labour legislation compliance, in line with the ILO Conventions No. 81 and 129, on Labour Inspection (ILO, 1947, 1969).

Moreover, it is also worth mentioning that the Executive Order of the CMU No. 1085, of 7.11.2014 that establishes the list of settlements where public authorities temporarily do not exercise their powers and the list of settlements situated on the contact line is still in force.

### **3.2.2. SLS OSH Inspection Staff**

The SLS inspectors staff includes 3 different categories of state inspectors:

- **State labour inspectors** - exercise state control over compliance with the legislation on: labour; employment; compulsory state social insurance against occupational accidents and diseases that caused loss of working capacity, in respect of temporary loss of working capacity and in relation to expenses caused by birth and funeral, and against unemployment (to the extent related to the assignment, calculation and payment of benefits, compensations, social services and other types of material security, for the purpose of respecting the rights and guarantees of insured persons);
- **State labour protection inspectors** - exercise state supervision over: compliance with the legislation on labour protection; employer's obtaining permits for performance high-risk work and for the use of high-risk machines, mechanisms and equipment; provision of safe working conditions at workplaces, including for women, minors, and persons with disabilities; vocational training of workers employed in high-risk work; provision of special food and other benefits and compensations to workers employed in work with heavy and harmful working conditions; work of labour protection services; financing of labour protection at supervised enterprises; provision of instructions, and organization of advanced training of workers on these matters;
- **State occupational health inspectors** - exercise state supervision in the field of occupational health, including : implementation of measures for preventing incidences of occupational diseases; timely implementation of prophylactic measures aimed to prevent any harmful impact of working environment and work process factors, and to protect workers' health; carrying out of compulsory medical examinations of workers; provision of special clothing, special footwear, and other personal and collective protective equipment to workers.

The following figure provides data on the level of the SLS inspectors staffing.

**Figure 3 - SLS Staffing Level**

Category Position	Central office			Territorial bodies		
	Staffing table	As of 15.12.2016	%	Staffing table	As of 15.12.2016	%
<i>Category A positions</i>	3	2	67	-	-	
<i>Category B positions</i>	38	32	84	674	538	80
<i>Category B positions</i>	108	83	77	2275	1500	66
<b>Total:</b>	<b>149</b>	<b>117</b>	<b>79</b>	<b>2949</b>	<b>2038</b>	<b>69</b>
<b>Of them:</b>						
<i>Labour inspectors</i>	24	18	75	742	506	68
<i>by function</i>	24	18	75	113	87	77
<i>by position</i>	-	-	-	629	419	67
<i>Labour protection inspectors</i>	5	5	100	1288	870	67
<i>by function</i>	5	5	100	240	189	78
<i>by position</i>	-	-	-			
<i>Occupational health inspectors</i>	5	2	40	139	48	35
<i>by function</i>	5	2	40	33	21	64
<i>by position</i>	-	-	-	106	27	25
<b>Total:</b>	<b>34</b>	<b>25</b>	<b>76</b>	<b>2169</b>	<b>1424</b>	<b>65</b>
<b>Of them:</b>						
<i>by function</i>	<b>34</b>	<b>25</b>	<b>76</b>			
<i>by position</i>	-	-	-	<b>1783</b>	<b>1127</b>	<b>63</b>

Source: SLS

Obs.: As of 15.12.2016

The next two tables provide additional information on the SLS staff. It shows the ratio between the number of labour protection and occupational health inspectors and the economic active population, the number of inspectors per 1,000 enterprises and 1,000 workers and their material security.

**Figure 4 - Number and Material Security of Labour Protection Inspectors**

Information on labour protection inspection	TOTAL		
	2014	2015	2016
Percentage of the economically active population covered by labour protection inspection	59%	61%	58%
Inspectors per 1,000 enterprises	1.36	0.86	1.02
Inspectors per 1,000 workers	0.09	0.06	0.07
Inspections per 1,000 workers per year	n/a	n/a	n/a
% of enterprises covered in the year by inspection visits/State supervision activities (labour protection)	9%	1.4%	3.4%
Inspectors per computer	2.13	2.66	2.67
Internet access	All directorates	All directorates	All directorates
Inspectors per office care	4.5	5.8	6.8
Own car used	n/a	n/a	n/a
Own car use remunerated	n/a	n/a	n/a
Average age of inspectors	45	45	44
Annual report produced for public (yes/no)	no	yes	yes

Source: SLS



**Figure 5 - Number and Material Security of Occupational Health Inspectors**

Information on occupational health inspection	TOTAL		
	2014	2015	2016
Percentage of the economically active population covered by occupational health inspection	-	-	36%
Inspectors per 1,000 enterprises	-	-	0.47
Inspectors per 1,000 workers	-	-	0.043
Inspections per 1,000 workers per year	-	-	information unavailable
% of enterprises covered by inspection visits during a year (occupational health)	-	-	-
Inspectors per computer	-	-	Every inspector has a computer
Internet access	-	-	All directorates
Inspectors per office care	-	-	0
Own car used	-	-	information unavailable
Own car use remunerated	-	-	no
Average age of inspectors	-	-	45
Annual report produced for public (yes/no)	-	-	yes

Source: SLS

The SLS staff number limit for 2016 was 3,636 full-time equivalents, including 158 in the SLS central office (149 civil servants and 61 inspectors), and 3,478 in territorial bodies (2,949 civil servants including 1,424 inspectors, which is 40.9% of the territorial bodies staff, or 48.3% of the territorial bodies staff having civil servant status).

### 3.3. Compulsory State Social Insurance

#### 3.3.1. Compulsory State Social Insurance

Ukraine has compulsory state social insurance, which is a system of rights and guarantees aimed at providing material support to individuals and their family members, in case of loss of earnings for reasons beyond their control (disease, accident, unemployment, pensionable age attainment, etc.), as well at implementing measures related to insured persons' health care. Social insurance is an important factor of social protection and for cohesion of the population.

According to Art. 5 of the Law on Labour Protection, all workers shall be subject to compulsory state social insurance against occupational accidents and occupational diseases that cause loss of working capacity.

The legal, financial and organizational fundamentals of compulsory state social insurance are specified by the Law on Compulsory State Social Insurance, and ensures, for employed individuals, their social protection in the cases of temporary loss of working capacity, pregnancy, delivery, as well as in cases of work-related accidents, occupational diseases, sickness or death<sup>5</sup>.

According to the Law on Compulsory State Social Insurance, social insurance is divided into three types: in respect to temporary loss of working capacity; against work-related accidents and occupational diseases that caused loss of working capacity (hereinafter referred to as the accident insurance); and regarding medical insurance.

<sup>5</sup> According to the Law on Compulsory State Social Insurance: *Social insurance entities* - means an insured person, their family members, or other person in cases provided for by the law, an insurer, and an insurant; *Insured person* - means a natural person who, according to law, is subject to compulsory state social insurance and pays (paid) a unified contribution and/or for whom the latter contribution is, or was, paid according to the procedure established by law; and *Social insurance object* - means an insured risk and an insured event occurrence whereof grants the insured persons (their family members or other persons) the right to material security and social services, according to law, and depending on social insurance types.

The list of circumstances under which an insured event<sup>6</sup> occurs and the list of occupational diseases are defined by the CMU.

A work-related accident investigation report or an occupational disease (poisoning) report completed in the prescribed form constitutes ground for payment of expenses for medical aid, medical, occupational and social rehabilitation and of insurance benefits to the victim.

A violation by an insured person of OSH rules that caused an accident or an occupational disease does not release an insurer from its obligations to the victim.

Rates of insurance contributions of insured are calculated as a percentage of the amount of wages accrued to every insured person, broken down by payment type, including base and additional wages, other incentive and compensation payments, including in kind, which are determined according to the Law “On Remuneration of Labour”, as well as a sum of remuneration to natural persons for work performed (services provided) under civil law contracts.

### **3.3.2. Social Insurance Fund**

Governance and management of compulsory state social insurance in terms of accident insurance, insurance in respect to temporary loss of working capacity and medical insurance is exercised by the Social Insurance Fund of Ukraine (hereinafter referred to as the Fund), which is a non-profit self-governed organization, managed by the state, representatives of insured persons, and representatives of employers on a parity basis, who act on the basis of its statutes, approved by its board<sup>7</sup>.

The management of this Social Insurance Fund is provided by the state and representatives of insured persons and employers on the parity basis. The Fund is directly managed by its board and executive directorate<sup>8</sup>.

Since 1 January 2017, a new, increased rate of monthly insurance payment has been set for almost thirty-nine thousand occupational accident and disease victims, with a base of 1,600 UAH taking into account the work capacity loss percentage, which allowed an increased payment of 210 UAH on average. In addition, the recalculation of insurance payments, suspended since 2015, have allowed a recalculation of insurance payments to 209,600 occupational accident and disease victims, with an average change of 415 UAH since 1 March 2017. A “money follows the person” mechanism has been introduced, enabling occupational accident and disease victims to freely choose health improvement facilities to receive relevant services by means of signing trilateral agreements.

In July 2017, a new integrated model of social protection system for the population was introduced, on the basis of 40 amalgamated territorial communities in 21 oblasts of Ukraine. This new model is a uniform mechanism for provision of social support services, via

<sup>6</sup> The insured events include: 1. Accidents – a work-related accident or an occupational disease (including established or detected during the period when a victim had no labour relations with the enterprise where the victim fell sick) that caused work-related bodily injury or psychological trauma to the insured person or a work-related accident or an occupational disease that occurred due to the insured person’s violation of regulatory acts on OSH; 2. Temporary loss of working capacity – a event occurrence whereof grants the insured person, their family members or other person, the right to receive material security or social services according to the Law.

<sup>7</sup> The mission of the Fund comprises: implementing state policy in the sectors of social insurance against occupational accidents and diseases that caused loss of working capacity, insurance of temporary loss of work capacity and medical insurance; providing material security, insurance benefits and social services as foreseen in the law; prevention of work-related accidents; verifying justification of the issuance and extension of sick notes to insured persons, including information from an electronic register of sick notes; exercising control over the use of the Fund’s money by employers and insured persons; and analyzing and forecasting receipts of funds from the unified contribution payment.

<sup>8</sup> The Fund is vested, *inter alia*, with the following powers and competencies: it establishes the Fund’s activity-specific standing and temporary commissions on a parity basis; it submits its proposals as regards determining the rate of contributions for compulsory state social insurance types to MSP for consideration and subsequent submission to the CMU; and it submits its proposals on the proportions for distribution of the share of the unified contribution for compulsory state social insurance against accidents and in relation to temporary loss of working capacity.

administrative service centres and authorized social units of executive committees of local governments.

### **3.4. OSH Scientific Research and Other Activities**

#### **3.4.1. Scientific Research Activities**

The goal of the scientific research work on OSH is to conduct research, scientific and technological activities in the form of fundamental and applied research concerning occupational safety, occupational medicine and work environment safety.

Provided below is a list of key scientific and research institutions, as well as specialized technical and medical organizations, with a description of the OSH issues they deal with.

#### **National Research Institute of Industrial Safety and Labour Protection**

This state institute's activities are aimed at providing scientific support to SLS on promoting OSH and preserving human life, health and working capacity in the work process, in particular, through: systemic analysis of occupational injury situations, research on trends in economic sectors; analysis of quality of special investigations of occupational accidents and recommendations for its improvement; summarized analysis of supervisory work, broken down by economic activity areas, and studies of supervisory work indicator patterns; assessment of supervisory activities against the background of occupational injury and occupational safety situations; systematization and in-depth analysis of detected violations of regulatory legal acts on OSH; development of evidence-based proposals for prevention of occupational injuries; and improvement of the regulatory legal framework for state supervision on OSH<sup>9</sup>.

#### **Institute of Occupational Medicine Under the NAMS**

This state institute has a modern experimental and technical basis for scientific research, particularly for the examination of the biological impacts of industrial aerosols; determination of micro-quantities of toxic agents in the environment; and research on electromagnetic optical band radiation, noise and vibration<sup>10</sup>.

Moreover, a unique welding-poisoning complex for toxicological hygiene studies of new welding materials has been designed.

<sup>9</sup> For example, the institute has already developed and implemented: a methodology for analytical assessment of supervisory activities carried out by territorial bodies of the central executive authority that implement state policy on OSH; an information analysis system for computer-aided processing of data concerning supervisory activities and occupational injuries; a information analysis subsystem for modeling and forecasting of mine air conditions in coal mines; concepts of economic management and regulation of OSH; methodology and evaluation of occupational safety costs in Ukraine; models for evaluation of losses per current regulatory acts in force in Ukraine; a methodology for evaluation of impacts by supervisory activities upon occupational injury situations; a draft OSH concept on OSH management system reform in Ukraine; draft regulations on the OSHMS in Ukraine's oblasts; draft methodological recommendations concerning accident and emergency risk assessment, improvement of efficiency of industrial safety supervision, determination of working efficiency of the enterprise-level OSHMS; and draft occupational classifications in terms of acceptable risk levels.

<sup>10</sup> Based on its experimental, clinical hygiene and epidemiological studies, as well as on its scientific developments and generalized experience, the institute has already delivered, *inter alia*: mathematical models for quantitative determination of transdermal chemical penetration (based on their physical and chemical properties) and obtained evidence on the reasonability of using these models to assess the risk of pesticide penetration into a worker's body; relevant studies on the specifics of working capacity and health formation mechanisms in persons working as operators under increased psych emotional stress in various economic sectors; priority data for scientific substantiation of criteria concerning the risk of development of occupational diseases in persons employed in the coal industry, machine-building and agriculture sectors in Ukraine (e.g. pneumoconiosis, vibration diseases, and occupational deafness); based on analysis of international experience concerning occupational cancer, scientific and methodological principles for the assessment of working conditions as cancer risk factors; recommendations to improve the system of detection and registration of occupational cancerous diseases in Ukraine; tests, in a sample of over 10,000 examined participants, on the elimination of the Chernobyl NPP accident consequences; the confirmation of the hypothesis of dependence of emergence and severity of cataracts on the radiation dose, which allowed a new method to be developed for epidemiological ophthalmological examination of workers exposed to ionizing radiation; drafts concerning the fundamentals of the State Sanitary Legislation on Occupational Hygiene and Physiology, in particular, its more than thirty state standards of Ukraine, more than one hundred sanitary regulations, and four hundred guidelines and recommendations; and substantiated and contributed to the approval of about 107 maximum allowable concentrations (MACs) and safe reference levels of impact (SRLIs) for workplace air.

The institute performs 15-20 scientific research projects annually, including under state programmes, competitions held by NAMS and NAN, as well as under international grants and contracts with scientific centres of other countries.

The Agricultural Occupational Health Centre has been established on an institute basis, cooperating with WHO. In the scope of its activities, inter-regional seminars on occupational health in agriculture, occupational disease incidence, and use of pesticides in present-day conditions are regularly held for countries of the CIS, Asia, Africa, Latin America and Europe. This cooperation has resulted in the development of unified hygiene standards, uniform methodological approaches to assessment of technologies, equipment and chemicals; and methods for early detection of negative effects of harmful production factors have been improved.

Finally, the institute is a founder of the Journal of Research and Practice for Hygienists, Physiologists, Toxicologists, and Occupational Therapists. The official website maintains the State E-Library on OSH.

### **Research Institute of Medico-Ecological Problems of Donbas and the Coal Industry**

The principal areas of scientific research of this state enterprise include the examination of working conditions, health status, prevention and treatment of occupational diseases in the coal industry and ferrous metallurgy workers and the surveillance and improvement of the work environment.

In recent years, the institute has carried out work to establish a relationship between myocardial infarction and cerebral stroke with occupational diseases, to create national and sectoral registers of occupational diseases, and to substantiate compensation for the impact of harmful and hazardous factors on miners.

### **Lviv Research Institute of Epidemiology and Hygiene of the MH**

One of the institute's activity areas consists of the drafting of legislative and regulatory acts on health care. Moreover, the institute carries out sanitation and hygiene expert examination of industrial and agricultural facilities; designs criteria, indicators and guideline values that assure human health-friendly production and application of domestic and imported products; and provides medical aid, namely laboratory diagnostics.

### **Association "Rehabilitation"**

Through sector-specific research and practical association, economic activities in the field of medicine are undertaken, aimed at developing evidence-based programmes for using natural factors for treatment and prevention, which allows major contributions to be made to the solution of a nationwide and regional problem – primary and secondary prevention of diseases, and improvement of the working population's health.

### **O.M. Marzeev Institute of Public Health Under the NAMS**

The scientists of this state institute took part in the drafting of the Law "On Ensuring Sanitary and Epidemiological Well-being of the Population" and other regulatory legal acts.

Experts of the institute provide information and support to legislative initiatives put forward by the Verkhovna Rada and co-author documents of CMU, ministries and agencies on many problematic issues of medicine, hygiene, and environmental ecology.

Studies on standard-setting for harmful factors in the environment are a considerable scientific achievement of the hygienists working in the institute.

Over the last twenty-five years, the institute alone has developed about two hundred sanitation regulations, rules and state standards, about 250 hygiene standards, and more than five hundred scientific and methodological materials.

### **Research Institute of Medico-Social Problems of Disability of the MH**

This is a scientific and high-level consultative establishment on medico-social problems of disability, which secures medico-social assistance to the population of Ukraine.

The institute contributes significantly to the improvement of scientific, methodological and organizational foundations of medico-social expert examination for various diseases, as well as to development of the network of medico-social expert commissions and residential social security facilities. Research workers and physicians of the institute provide considerable methodological, consultative, medical and diagnostic assistance.

### **Research Institute of Medical Rehabilitation and Balneology of the MH**

This state institute was founded to implement state policy on health care, which envisages carrying out fundamental and applied research in the field of medical rehabilitation, aimed at enhancing the medical aid level and ensuring protection of public health.

### **Scientific and Practical Centre of Emergency Medical Care and Disaster Medicine of the MH**

The key activity areas of this state institution include fundamental and applied research on the development and implementation of highly efficient medical technologies and methods of providing emergency medical care; scientific research on improving the forms and methods of provision of emergency medical care to the population in everyday settings and to victims of emergencies; and on the scientific justification of the regulatory legal framework (documentation) for the creation of a legislative base for operation of emergency medical care and disaster medicine service.

This centre is actively involved in the organization and holding of numerous scientific and practical conferences and international exercises, seminars and trainings.

Work in the field of emergency medical care and disaster medicine over last five years has resulted in scientific justification for seven laws, thirty-five orders and resolutions of the CMU, and more than forty orders of the MH.

### **Institute of Strategic Studies of the MH**

This state institution is the leading author of fundamental legislative, regulatory, policy, scientific and methodological documents in health care, particularly of the new wording of the Fundamentals of the Legislation of Ukraine on Health Care, the Concept of Development of Public Health in Ukraine, the Health of the Nation inter-sectoral comprehensive programme, etc. The institute's staff publishes about two hundred research papers annually.

In addition to its scientific activities, the institute carries out a broad scope of work for preparation and implementation of policy documents issued by the President of Ukraine and the CMU.

### **Research Institute for Labour and Employment under the MSP and NAS**

The key research areas of this organization include the socioeconomic problems of labour efficiency and reserves for its enhancement; labour organization and rate setting in economic sectors; and social protection through a system of insurance.

The institute's principal achievements and proposals include proposals to the European Social Charter (revised) as regards working conditions; proposals of amendment of the laws "On Ensuring Equal Rights and Opportunities of Women and Men", "On Civil Service", "On Service in Local Governments", and "On the CMU", aimed to take the principle of gender equality into consideration; and proposals on possible social risks of Ukraine's accession to the free trade area, in the view of the drafting of the Association Agreement between the European Union and Ukraine.



### **L.I. Medved Institute of Ecological Hygiene and Toxicology**

This state enterprise conducts toxicological, biomedical, hygienic and chemical analysis research.

#### **3.4.2. Educational Activities**

The goal of educational activities in the field of labour protection and occupational health is to provide knowledge, abilities and skills required to undertake efficient professional activities by means of ensuring optimal management of OSH at enterprises.

Provided below is a list of leading higher medical educational institutions that also conduct research in this field.

### **O.O. Bohomolets National Medical University**

This university's department of occupational health and occupational diseases has prepared a great number of scientific and pedagogical experts who develop occupational health and study occupational diseases.

The department's research areas include the following: hygiene and toxicology of synthetic polymers and plastic masses; combined and integrated impact of physical and chemical environmental factors, particularly ionizing radiation, pesticides, and heavy metal salts; hygienic assessment and toxicological mechanism of the damaging impact of global chemical environmental pollutants – lead and methyl tertiary butyl ether; and specifics of the impacts that nanoparticles of silver, barium, titanium nitride, molybdenum silicide, and chrome silicide have on the body of synthesis operators.

### **Vinnytsia State Medical University**

The Department of General Hygiene and Ecology has conducted scientific research for many years in OSH field.

During assessment of working and welfare conditions of rural machinery operators (especially in the cases of tractor drivers and trailer operators), the department designed an evidence-based package of sanitary, technical, organizational, medical and preventive measures.

Work in hygiene assessment of work conditions at sugar factories was an important component of the department's scientific research. Great attention was paid to the examination of labour organization specifics at a Vinnytsia chemical plant in the areas of sanitary standardization and adequate improvement of conditions for direct work activities, as well as for hygiene assessment of the production process at industrial enterprises of various profiles.

Work is underway to examine the specifics of human exposure to pesticides that are subject to toxicometric evaluation and sanitary standardization.

### **Ivano-Frankivsk State Medical Academy**

The Hygiene and Ecology Department of the academy conducts research aimed at reducing disease incidence and improving living and working conditions of the region's residents.

Considerable attention is being paid to the examination of working conditions, and rates and structures of disease incidence among workers of industrial enterprises and agriculture.

Based on the findings of such research, hygiene recommendations and measures for the prevention of occupational pathology are designed.

Moreover, that department is also engaged in a study of working conditions and health of workers in the gas, chemical and machine-building industries in the region.

### **Kharkiv National Medical University**

The hygiene and ecology department's research areas include occupational medicine and industrial toxicology, in particular: examination of working conditions and health of workers

employed in the modern production of leather; identification of regular patterns in the formation of a set of negative factors; hygiene systematization of working conditions; development of preventive measures; and examination of the specifics of toxicodynamics and toxicokinetics of chemical compounds in cases of combined action with lower temperature, etc.

#### **Dnipropetrovsk State Medical Academy of the MH**

The hygiene and ecology department's research areas include the examination of industrial environment and work process factors, as well as of changes in workers' bodies in the course of work. The department took part in the development of a new curricula on hygiene studies.

#### **Zaporizhzhia State Medical University**

The key activity area of the Department of Common Hygiene and Ecology consists of experimental and hygienic justification of maximum allowable concentrations of harmful substances in atmospheric air and medico-ecological monitoring in the city of Zaporizhzhia.

#### **Danylo Halytskyi Lviv State Medical University**

The Department of Common Hygiene and Ecology conducts hygiene assessments of factors shaping adult health.

In recent years, the department drafted requirements for working conditions of drivers and for transportation of passengers in inter-city buses.

#### **Uzhhorod State University (Medical Department)**

Research areas of the university's Department of Social Medicine and Hygiene include a variety of public health, hygiene and biological statistics matters.

## **4. NATIONAL CONSULTATIVE AND ADVISORY BODIES**

### **4.1. National Tripartite Social and Economic Council**

The National Tripartite Social and Economic Council was established at the suggestion of all-Ukrainian trade unions, employers' associations and the CMU as a consultative and advisory body under the President of Ukraine, consisting of representatives of the CMU, all-Ukrainian trade unions and their associations, and all-Ukrainian associations of employers' organizations, according to the Decree of the President of Ukraine No. 1871, of 29.12.2005, "On the Development of Social Dialogue in Ukraine".

Since 2008, the National Council has been a full member of the International Association of Social and Economic Councils and Similar Institutions (AICESIS), whose mission is to promote the exchange of experiences among national social dialogue bodies on the development of social partnership across the world and on the elaboration of approaches to addressing acute issues of global development.

For the purpose of maintaining social dialogue at the national level, the National Tripartite Social and Economic Council was re-established as a permanent body, pursuant to the Law "On Social Dialogue in Ukraine".

The National Council consists of 60 members, including an equal number of authorized representatives of the parties on social dialogue at the national level who perform their duties on a voluntary basis, namely as representatives of the CMU, all-Ukrainian trade unions and their associations, and all-Ukrainian associations of employers' organizations (hereinafter referred to as the "parties of social dialogue").

The core tasks of the National Council include the promotion of the alignment of positions of the parties of social dialogue, concerning ways to further develop socioeconomic and labour relations and to conclude agreements on regulation of such relations; and to develop and submit proposals on the formulation and implementation of state socioeconomic policy.

In order to conduct social dialogue at the territorial level, territorial tripartite social and economic councils have been established according to the procedure specified in Art. 17 of the Law "On Social Dialogue in Ukraine", with equal representation of parties.

Moreover, sectoral (inter-sectoral) tripartite or bipartite social and economic councils and other tripartite bodies of social dialogue (committees, commissions, etc.) may be established at the initiative of the parties.

The councils may also consider matters related to OSH.

### **4.2. Board Under the State Labour Service**

The Board Under the State Labour Service (SLS Board) is a consultative and advisory body, established to address in a concerted way those issues submitted to the SLS and to discuss the most important SLS activity areas in a collective and free manner. It acts according to regulations approved by SLS Order No. 121, of 15.10.2015.

According to its mission, the SLS Board: discusses and approves decisions on the formulation and implementation of the state policy in OSH, labour relations, labour inspection and social protection areas (e.g., industrial safety, labour protection, occupational health, handling of industrial explosive materials, exercise of state mining supervision, as well as concerning supervision and control over compliance with the legislation on labour and employment and compulsory state social insurance); drafts proposals on improving the work of SLS, its territorial bodies, state enterprises and institutions, within the SLS scope of management; and analyses the SLS work situation.



In its work, the SLS Board is guided by the Constitution and laws of Ukraine, acts of the President of Ukraine and of the CMU, resolutions of the Verkhovna Rada, Regulations on SLS, orders of the MSP and of the SLS Head and the Regulations on the SLS directorate boards in oblasts of Ukraine.

The SLS territorial bodies also establish their own consultative and advisory bodies for addressing, in a concerted way, issues falling within the scope of competencies of the concerned SLS territorial bodies.

#### **4.3. Public Council under the State Labour Service**

The Public Council under the State Labour Service of Ukraine (Public Council) is a standing elected collegiate and consultative and advisory body, established to ensure public participation in the management of the State affairs, which ensures the consideration of the public opinion during the implementation of the State policy in the sectors falling within the scope of the SLS legal competencies and establishes the interaction with the public.

The Public Council is an advisory body that must be consulted by the SLS on a compulsory basis, whose activities are developed in accordance with the regulations endorsed by the SLS.

The Public Council's mission involves:

- creating conditions for the exercise, by people, of their constitutional right to participate in the management of state affairs;
- carrying out public control over the SLS activities;
- promoting consideration of public opinion by the SLS in the implementation of the state policy and in the exercise of state supervision and control functions in the areas, matters and parts specified in regulations on the SLS;
- cooperating with the SLS in the preparation and holding of public discussions on matters falling within its powers;
- preparing proposals of regulatory legal acts on ensuring people's rights, freedoms and legitimate interests authored by SLS.

Public councils have also been created in the SLS territorial directorates, in order to ensure openness in the SLS oblast directorates' work and to take public opinion into consideration when drafting and organizing its resolutions, pursuant to the requirements of the model regulations on the public council under a ministry or other central executive authority, approved by CMU Resolution No. 996, of 3.11.2010.

The Law of Ukraine "On Central Executive Authorities" (Art. 14) provides for the establishment of boards under CEA. Moreover, the CMU Resolution No. 996, of 3.11.2010, "On Securing Public Participation in the State Policy Formulation and Implementation" also envisages the establishment of public councils. Hence, similar consultative and advisory bodies shall also operate under all competent authorities, and labour protection issues may be included in their working agendas.

## **5. PROGRAMMES ON OSH AND OTHER DOCUMENTS**

The Law “On Labour Protection” provides for the draft of nationwide, sectoral and regional programmes for the improvement of OSH and the working environment.

### **5.1. OSH Nationwide Social Programme**

The Nationwide Social programme for improvement of OSH and the work environment for 2014-2018 was approved by the Law No. 178-VII, of 4 April 2013 (subsequently amended by the Law No. 77-VIII, of 28.12.2014).

The main goal of this programme consists of providing comprehensive solutions to problems in the field of labour protection, shaping a modern, safe and healthy work environment, and minimizing the risks of occupational injuries, occupational diseases and industrial accidents which would promote sustainable economic development and social orientation, preservation and development of Ukraine’s labour potential.

The programme provides for ways and methods of solving problems, stipulates objectives and activities and defines expected outcomes, as well as sources of financing.

The programme’s main responsables are the Social Insurance Fund of Ukraine; the ministries and other CEA; and the National Academy of Medical Sciences.

The amount of funds to be assigned for the implementation of programme objectives and activities is to be determined on an annual basis, in the respective budget programmes of the key spending units responsible for its implementation, during the formulation of the draft state budget for the concerned year, subject to state budget capacity.

In 2014-2015, the programme was only financed within the expenditures of the National Academy of Medical Sciences, with UAH 3.11 million disbursed, which was 4.54% of the expected sum of financing for the programme from the state budget for 2014-2016 (UAH 68.45 million).

The following activities were financed: defining unified procedures for registration, storage and exchange of information about individual occupational radiation doses for persons included in Personnel Category A; assessing the current situation with individual dosimetry control of occupational radiation of the personnel included in Category A in order to carry out effective state dosimetry control; and adapting the regulatory legal, scientific and methodological framework on control and registration of individual occupational radiation doses for the personnel included in Category A, according to requirements of Ukrainian and EU legislation.

Insufficient financing for the Nationwide Social programme for Improvement of OSH and the Working Environment for 2014-2018 was one of the reasons why the expected activities were not implemented.

No financing was provided at all from the fund’s resources, although UAH 81.53 million had been planned to be allocated.

At present, the new wording of the Law “On Compulsory State Social Insurance” (as amended by the Law No. 77-VIII, of 28 December 2014), does not obligate the fund to finance the programme.

### **5.2. OSH Sectoral Programmes**

Sectoral programmes for the improvement of OSH and the working environment are developed and implemented by ministries and other CEA, with the participation of trade unions.

Typically, its development involves research institutes, enterprises and the Social Insurance Fund of Ukraine, followed by the agreement of the trade unions and its approval by the concerned ministry or other concerned CEA.

These programmes usually include the following areas of activity: organizational; scientific and technological research and development; regulatory legal provisions; collective protection equipment and means of working environment control; information support; and other activities.

One of the issues usually addressed by sectoral programmes on labour protection is the design and implementation of mechanisms of economic incentives for employers, depending on the safety level, injury rates, occupational disease incidence and actual OSH situation at the workplace and through strengthening the employers' responsibility for provision of safe and healthy working conditions and for timely provision of reliable information about the OSH situation at enterprises.

The sectoral programmes are developed for all sectors of the national economy, including the agro-industrial complex (AIC) and agriculture.

The Ministry of Energy and Coal Industry of Ukraine drafted a sectoral programme for the improvement of occupational safety at coal-producing and mine-building enterprises for 2011-2015, which was approved by the CMU Resolution No. 374, of 29.03.2006 (later amended by the CMU Resolution No. 521, of 18.05.2011).

The sectoral programme is aimed at preserving miners' life and health by means of introducing legal, organizational, technical and socio-economic mechanisms to ensure the improvement of OSH conditions at coal-producing and mining enterprises.

The Ministry of Infrastructure of Ukraine (MI) has developed and implemented a sectoral programme for the improvement of OSH and the working environment in the transport and road complex and the mail communication sector for 2014-2018 (approved by the MI Order No. 302, of 9.07.2014).

The Ministry of Defence of Ukraine has developed and is implementing a sectoral programme for the improvement of OSH and the working environment in the Armed Forces of Ukraine for 2014-2018.

Moreover, a sectoral programme for the improvement of OSH and the working environment at the enterprises and organizations within the scope of management of the State Reserve Agency of Ukraine for 2014-2018 was also approved (by the Order No. 220, of 11.12.2013) Its aim is to provide comprehensive solutions to OSH problems, improve the creation of safe and non-harmful working conditions and minimize risks of occupational injuries, occupational diseases and industrial accidents, pursuant to the Law "On Labour Protection" and the Law "On Approval of the Nationwide Social Programme for Improvement of OSH and the Working Environment for 2014-2018".

### **5.3. OSH Regional Programmes**

Art. 35 of the Law "On Labour Protection" foresees that local governments approve, within the scope of their competencies, regional programmes for the improvement of OSH activities, as part of the regional programmes for socio-economic and cultural development.

The regional programmes are formulated by oblast state administrations, with the involvement of trade union representatives, the Social Insurance Fund of Ukraine and employers' organizations.

Activities within the framework of these programmes are financed from funds of enterprises and other institutions and organizations, the Social Insurance Fund resources and other sources not prohibited by the legislation in force.

These programmes usually include the same activity sections as the sectoral programmes.

## **5.4. Measures Targeting Vulnerable Workers**

According to the Law “On Local Self-Governance in Ukraine”, it is possible to implement measures focused on vulnerable populations, namely women, persons with disabilities, minors and pensioners, in the form of certain benefits, based on territorial and collective contracts, sectoral agreements and targeted programmes on the level of oblast, city and other local governments.

Hence, social protection and payments, as well as social benefits, are established for members of vulnerable populations, which is a result of agreements on such provisions by all the participants of the social dialogue.

## **5.5. Other Documents Dealing with OSH**

### **5.5.1. General Agreement**

Following the Law “On Collective Contracts and Agreements” and the Law “On the Social Dialogue in Ukraine”, a General Agreement was concluded between the all-Ukrainian associations of employers’ organizations, the all-Ukrainian associations of trade unions and the CMU.

This document regulates, on the national level, the basic principles and standards for the implementation of socio-economic policy, including social insurance, labour relations, working time and periods of rest, and labour protection conditions.

The General Agreement signed for 2016-2017, contains the specific section “Working Conditions and Labour Protection”, which specifies the arrangements reached by the parties and their obligations on this matter.

Moreover, the parties agreed to elaborate proposals concerning: the ratification of ILO OSH Conventions Nos. 121, 152, 167, and 187; labour protection training of representatives of employers and trade unions; examination of the question of improvement of state statistical reporting in terms of labour protection and occupational safety conditions; and the introduction of the labour protection management system at enterprises, etc.

### **5.5.2. Sectoral Agreements**

Sectoral agreements have been concluded at the sectoral level of the economy. The parties of a sector-level agreement are employers, employers’ associations or bodies authorized thereby, and trade unions or associations of trade unions or of other workers’ representative organizations that have appropriate powers (sufficient for negotiating and concluding agreements and for implementing provisions at most enterprises falling within their authority).

The parties of sector-level agreements include ministries, agencies, state committees, or, in their absence, other employers’ associations on a sectoral basis (unions, corporations, consortiums, etc.) and sectoral trade unions or associations of trade unions or of other workers’ representative organizations properly empowered.

The sector-level agreements cover, *inter alia*, working conditions and labour protection, medical services, organization of health improvement and recreation.

In the coal sector, a sectoral agreement has been concluded between the Ministry of Coal Industry of Ukraine, other public authorities, employers (employers’ associations) operating in the coal sector, and all-Ukrainian trade unions of coal industry.

This sectoral agreement cover wage workers employed in coal industry enterprises, associations, companies, partnerships, organizations and institutions, coal mining, coal processing, mine construction, coal machinery enterprises, institutions engaged in restructuring

of the sector enterprises, coal geology, sectoral science, other enterprises of the sector's production and social infrastructure, falling within the management scope of the Ministry of Coal Industry of Ukraine, and other enterprise of the sector, including those undergoing bankruptcy procedures according to the Law "On Re-establishing a Debtor's Solvency or Declaring It Bankrupt", regardless of their form of ownership and economic management, as well as apprentices studying in the sectoral system of staff training and retraining, and non-working trade union members with disabilities, pensioners of this sector, unemployed and persons dismissed from the sector's enterprises.

### ***5.5.3. Territorial Agreements***

Territorial agreements usually regulate social protection standards for wage workers, including social guarantees, compensations and benefits (which are usually higher than those provided in the General Agreements).

According to a territorial agreement, all-round (comprehensive) inspections are organized and conducted, concerning labour protection conditions and compliance with the current legal requirements as regards social protection of occupational accident victims, concerning provision of benefits and compensations to workers for work in adverse and harmful conditions, and concerning compliance with the Ukrainian legal requirements for minors' work and rest schedule.

Provisions of territorial agreements have direct effect and are binding on all the entities within the scope of competence of the parties that signed the agreement.

## **6. TRADE UNIONS AND EMPLOYERS' ORGANIZATIONS**

### **6.1. Powers and Activities of Trade Unions and Employers' Organizations on OSH at the Business, Sectoral and Regional Levels**

The powers and activities of trade unions and employers' organizations for ensuring safe and healthy working conditions at business, sectoral and regional levels are defined in the Ukrainian Labour Code, as well in the Laws "On Trade Unions, Their Rights and Guarantees of Activity", "On Employers' Organizations, Their Associations, Rights and Guarantees of Activity", "On Labour Protection", "On Compulsory State Social Insurance", "On Social Dialogue", "On Collective Contracts and Agreements", and in the regulatory legal acts adopted according thereto.

#### ***6.1.1. Main Powers and Activities of Trade Unions and Their Associations***

The main powers and activities of trade unions and their associations on OSH, at business, sectoral and regional levels, are stipulated in the Laws "On Labour Protection", "On Trade Unions, Their Rights and Guarantees of Activity", and "On Collective Contracts and Agreements".

Their main powers, at the business, sectoral and regional levels, include:

- exercising public control over the way an employer complies with legislation on labour protection, provides safe working conditions and proper workplace welfare for workers, and the timely provision of necessary protective equipment;
- taking part in the formulation and implementation of the state policy on labour protection and social protection of workers;
- taking part in the confirmation of the existence of an hazardous workplace situation for workers or their environment;
- taking part in the employer's development of integrated measures to achieve prescribed labour protection standards;
- taking part in the commissions on labour protection that perform the testing of knowledge of those officials whose work concerns the organization of safe performance of works;
- joint drafting, with employers, of collective contracts that include bilateral obligations regarding labour protection conditions, as well as preparing integrated measures to achieve the prescribed standards on OSH and working environment and to supervise implementation of the measures;
- taking part in investigations of occupational accidents and of occupational diseases;
- taking part in the work of enterprise labour protection commissions;
- submitting mandatory notices concerning labour protection matters to employers for consideration, and obtaining reasoned replies therefrom.

The main activities and tasks assigned to trade unions, in terms of promoting workers' OSH conditions, at business, sectoral and regional levels, are as follows:

- conduct measures of public control over compliance with legislation on labour protection, regarding the creation of safe and non-harmful working conditions, adequate workplace and sanitation and welfare facilities, and over provision of workers with special clothes, special footwear, and other personal and collective protective equipment. These measures are undertaken by a technical inspectorate of trade unions and by representatives of primary trade union organizations;



- submission of representation on labour protection to employers, public authorities and state supervision bodies;
- consideration of problematic labour protection issues, and adoption of appropriate decisions by senior trade union management bodies;
- provision of methodological recommendations to trade union organizations concerning measures for protection of workers' rights in terms of labour protection;
- training of trade union activists;
- practical assistance in consideration of important or controversial issues;
- case follow-up of legal proceedings regarding the violation of the rights of workers that are trade union members.

### ***6.1.2. Main Rights and Activities of Employers' Organizations and Their Associations***

According to the Law "On Employers' Organizations, Their Associations, Rights and Guarantees of Activity", the main rights assigned to employers' organizations and their associations, at business, sectoral and regional levels, include:

- to represent and protect their members' interests in the process of implementation of state supervision (control) measures in the field of economic activities by the respective controlling bodies;
- to represent and protect their rights and legitimate interests, and their members' rights and interests, in their relations with public authorities, authorities of the Autonomous Republic of Crimea and local governments, trade unions, their associations and bodies established thereby, other non-governmental associations, enterprises, institutions, and organizations;
- to carry out expert examination of draft laws and other regulatory legal acts on the matters related to their members' rights and interests;
- to obtain statistical data concerning labour, social and economic matters, work-related and non-work-related injuries and occupational diseases;
- to conduct sociological surveys;
- to establish scientific, information, expert analytical and research and training centres;
- to establish sectoral and inter-sectoral councils, educational institutions, research facilities, and independent expert examination centres.

The main responsibilities, activities and tasks assigned to employers' organizations and their associations, at business, sectoral and regional levels, are as follows:

- to promote the efficient development of the domestic labour market;
- to prevent the abuse of a monopolistic market position and the emergence of unfair competition in business;
- to observe the requirements of Ukrainian legislation and their statutes consistently;
- to use the means of protection of employers' rights and legitimate interests not prohibited by law;
- to take part in negotiations and consultations on the conclusion of collective contracts (agreements) and settlement of collective labour disputes (conflicts), according to law.

## 6.2. OSH in Collective Contracts

The legal foundations for the development, conclusion and implementation of collective contracts and agreements, with a view to promote the regulation of labour relations and socio-economic interests of workers and employers, are laid down in the Law No. 3356-XII, of 1 July 1993, “On Collective Contracts and Agreements”.

A collective contract is concluded at enterprises, institutions and organizations (hereinafter referred to as employers) of whatever form of ownership and economic management, using hired labour and having legal personality.

A collective contract is concluded between the employer, of one part, and one or more trade union bodies or, in the absence of such bodies, workers’ representatives elected and duly authorized, of the other part.

The terms and conditions of the collective contracts and agreements that were concluded according to the current legislation are binding to the employers they apply to and to the other parties with whom they were concluded with.

Any terms and conditions of collective contracts or agreements that make workers’ situations worse, compared with the legislation in force, are invalid and may not be included in contracts and agreements.

It is prohibited to include in employment agreements any terms and conditions that make a workers’ situation worse when compared to current legislation, collective contracts and agreements.

A collective contract must always contain a section on labour protection. Besides, according to Art. 20 of the Law “On Labour Protection”, the parties of a collective agreement or contract shall envisage therein provision of social guarantees on labour protection to workers at a level no lower than that already provided for in the legislation. Moreover, the foreseen measures to achieve the established standards on OSH and the working environment, shall be able to improve the existing labour protection level, prevent occupational injuries, occupational diseases, breakdowns and fires and shall specify the amounts and sources of the necessary funds to implement the above-mentioned measures.

Provisions of a collective contract shall apply to all workers of the employer that subscribed to it, regardless of whether they are trade union members or not, and are binding on both the employer (or the body for him authorized thereby) and their workers.

Control over compliance with a collective contract or agreement is exercised directly by the parties thereto or by their authorized representatives.

## **7. WORKERS' AND EMPLOYERS' RIGHTS AND OBLIGATIONS ON OSH**

The rights, obligations and responsibilities of workers and employers are defined in the Law “On Labour Protection”, in the Ukrainian Labour Code and internal work regulations.

### **7.1. Workers' Rights on OSH**

The main workers' rights in labour protection include the following:

- right to benefits and compensation for hazardous and harmful working conditions (e.g. extra payment for work in hazardous and harmful conditions, reduced working time, early retirement, free food and drink to combat the effects of hazardous factors);
- right to be kept informed about working conditions and about the existence of hazardous and harmful production factors present in their workplace, as well as about their possible health effects;
- right to be provided with special clothes, special footwear, and other PPE;
- right to incur in no personal costs for advanced training and protective equipment;
- right to elect authorized representatives on labour protection;
- right to refuse work assignments in cases of a workplace situation which is dangerous to life or health.

The legitimate interests of workers who perform the duties of persons authorized by wage workers to address labour protection matters may not be infringed upon.

Persons authorized by wage workers to address labour protection matters shall act pursuant to the model regulations approved by the CEA that ensures state policy-making in the field of labour protection.

### **7.2. Workers' Obligations on OSH**

The main obligations of the workers in labour protection, as foreseen in Art. 14 of the Law “On Labour Protection”, include the taking care of their personal safety and health, as well as of other people around them in the process of performing work; to make proper use of PPE; and to report to the supervisor any situation that presents a threat to safety.

### **7.3. Workers' Legal Liability on OSH**

The legal liability of workers are specified in the Law “On Labour Protection”, in the Ukrainian Labour Code, and in internal work regulations.

Persons guilty of violating the regulatory legal acts on labour protection, or of creating obstacles to the performance of the activities of the officials of the bodies of state supervision over labour protection, are held liable according to laws.

In cases of failure to observe safety rules as stated in the instructions on occupation-specific safe work methods, workers are held disciplinarily, administratively or criminally liable, depending on the nature of the violations.

Disciplinary liability is regulated by the Labour Code of Ukraine and envisages such penalties as reprimand and dismissal.

Dismissal, disciplinary or financial liability can only be possible with consent of wage workers, according to the procedure set forth by a collective contract.

Administrative liability is regulated by the Code on Administrative Offenses and envisages imposition of fines on employers' officials and owners in the amounts stipulated in Article 41

of Chapter 5 of Part II of the “Administrative Offenses in the Field of Labour Protection and Public Health Care”.

#### **7.4. Workers’ Representatives for OSH Rights, Powers and Obligations**

Basic statutory rights, powers and obligations of workers’ authorized representatives on labour protection are, according to the Law “On Labour Protection”:

- to investigate circumstances and causes of work-related accidents;
- to investigate complaints by workers related to OSH;
- to access information provided by the bodies of state supervision over compliance with the legislation on labour protection;
- to access lists of occupational accidents and diseases and reports of the employer;
- to receive information from and be consulted by an employer, in advance, concerning measures that may substantially affect the labour protection situation;
- to be consulted, in advance, regarding the designation of workers or involvement of external services and hiring of new workers with special responsibilities on labour protection;
- to submit proposals to the employer, with a view of mitigating risks and/or removing sources of danger;
- to receive advanced training during working hours;
- to attend meetings of the labour protection commissions;
- to have access to outside experts;
- the right to benefits and time off, with no loss of pay, in order to carry out their duties as workers’ authorized representatives on labour protection.

#### **7.5. Employers’ Obligations on OSH**

According to Art. 13 of the Law “On Labour Protection”, an employer must provide working conditions according to the regulatory acts at a workplace in every structural unit as well as to ensure compliance with legislative requirements concerning workers’ rights on labour protection.

Moreover, according to the above law, employers’ main obligations on labour protection are:

- to implement preventive measures to avoid occupational accidents;
- to introduce advanced technology, safe machinery and equipment;
- to use non-hazardous substances;
- to investigate and to record occupational accidents;
- to report occupational accidents and diseases to the competent authorities;
- to ensure the health surveillance of the workers;
- to inform workers on hazardous and harmful production factors present at the workplace;
- to consult with wage workers’ authorized representatives on OSH;
- to provide training and advanced training to workers;
- to organize cooperation with OSH commissions.

#### **7.6. Employers’ Liability Regarding OSH**

In cases of violation of legislation on labour protection and failure to comply with notices issued by officials of executive authorities supervising labour protection, employers are held liable by the above-mentioned authorities to a fine, according to the procedure established by law.

According to law, the maximum fine amount may not be greater than five percent of the employer’s average wage fund in the previous year.

Payment of a fine does not release the employer from the responsibility of eliminating the identified violations, within a prescribed time frame.

For violation of the requirements set forth in the third and fourth parts of Art. 19 of the Law “On Labour Protection”, a legal entity or individual who uses hired labour according to law must pay a fine amounting to 25 percent of the difference between the estimated minimum expenses on labour protection in the reporting period and the actual expenses on OSH in that period.

According to law, failure to pay (or incomplete payment) the fine by the legal entity or natural persons who use hired labour entails a late payment penalty on the outstanding amount of the fine, calculated as 120 percent per annum of the National Bank of Ukraine’s discount rate, which was in force during the period of such failure to pay, for each day of delay.

Receivables from the application of penalties to legal entities or natural persons who use hired labour to officials and to workers are included in the State Budget of Ukraine.

For violations of laws and other regulatory legal acts on labour protection, and for impediments to the work of officials of the bodies of state supervision over labour protection, as well as representatives of trade unions, their organizations and associations, the perpetrators are held disciplinarily, administratively, financially or criminally liable, according to law.

## 8. OSH SERVICES

### 8.1. OSH Services at the Business Level

Article 153 of the Labour Code provides that safe and non-harmful working conditions must be created at all enterprises, institutions and organizations, and that such conditions must be secured by the employer.

In this sequence, Article 13 of the Law “On Labour Protection” sets forth the employer’s duties as regards the organization and functioning of the labour protection system at the enterprise level.

Moreover, in accordance with the Law “On Labour Protection”, the employer is required to provide working conditions according to regulatory legal acts at a workplace in every structural unit as well as to ensure compliance with legislative requirements concerning workers’ rights in labour protection, in particular, the establishment of a labour protection service, which should be subordinated directly to him. The labour protection service that shall be established by the employer is expected to organize the implementation of legal, organizational and technical, sanitary and hygienic, socio-economic, treatment and preventive measures aimed at prevention of accidents, occupational diseases and breakdowns in the course of work activities.

For that purpose, the employer has the obligation to organize and ensure the functioning of a labour protection management system, taking account of all the factors affecting the labour protection situation, by means of:

- designing, with involvement of the parties to a collective contract, and implementing comprehensive measures to achieve the established standards and improve the existing labour protection level;
- ensuring implementation of necessary preventive measures according to changing circumstances;
- ensuring elimination of any sources or situations that lead to accidents or occupational diseases as well as implementation of preventive measures prescribed by commissions based on investigations of such sources or situations;
- organizing workplace assessments for compliance with regulatory legal acts on labour protection as per the procedure and timeframe specified by the legislation, and taking follow-up measures to eliminate any workplace factors hazardous and harmful to health;
- exercising control of a worker’s compliance with production processes and rules of handling of machines, mechanisms, equipment and other production means, and of the worker’s way of using collective and PPE and performing works according to labour protection requirements;
- organizing advocacy on safe work practices and cooperation with workers on labour protection;

Labour protection management at enterprises is implemented in accordance with the regulations on the labour protection management system (“the Regulations”) at enterprises.

The regulations define the procedure of design, introduction and operation of the labour protection management system based on the requirements of the DSTU OHSAS 18001:2010 “Occupational Health and Safety Management Systems Requirements”.

According to the Regulations, enterprises develop their labour protection management systems accounting for the specifics of their production and qualification approaches to the occupational safety and health issues.

For that purpose, enterprises have to develop and implement comprehensive measures for the achievement of established standards of labour protection and the working environment,



improvement of the existing labour protection level, and prevention of work-related injuries and occupational diseases, such as:

- establishing relevant services and appointing officials ensuring settlement of specific labour protection issues, approving instructions on their duties, rights and responsibilities for performance of functions assigned thereto, and supervising adherence to the instructions;
- designing, with the involvement of collective contract parties, and implementing comprehensive measures to achieve the established standards and improve the existing labour protection level;
- ensuring implementation of necessary preventive measures, according to changing circumstances;
- introducing advanced technologies, achievements of science and engineering, means of mechanization and automation, ergonomics requirements, positive labour protection experience, etc.;
- securing proper maintenance of buildings and structures, production equipment and machinery, and ensuring monitoring of their technical conditions;
- ensuring elimination of any reasons that may lead to work-related accidents or occupational diseases, as well as implementing preventive measures prescribed by commissions, based on the results of the investigation of such occupational accidents and disease;
- organizing labour protection audits, laboratory research of working conditions, assessment of technical conditions of production equipment and machinery, assessment of workplaces for compliance with regulatory legal acts on labour protection, according to the procedure and within the timeframe specified by law, and, based on findings thereof, taking measures to eliminate any production factors that are hazardous and harmful to health;
- developing and approving regulations, instructions, and other acts on labour protection that are in force within the enterprise (hereinafter referred to as enterprise acts) and setting up rules for the performance of work and conduct of workers on the territory of the enterprise, in production premises, construction sites, and workplaces, according to regulatory legal acts on labour protection, as well as providing workers with regulatory legal acts and enterprise acts on labour protection, free of charge;
- exercising control of a worker's compliance with production processes and rules of handling of machines, mechanisms, equipment and other production means, and of the worker's way of using collective and personal protective equipment and performing works according to labour protection requirements;
- organizing advocacy on safe work practices and cooperation with workers on labour protection;
- taking urgent measures to help victims, and involving professional emergency rescue teams as appropriate in case of emergencies or occupational accidents at an enterprise.

Routine control over the personnel's work is ensured by labour protection services. Some enterprises apply a method of evaluating efficiency of structural units' work and identifying workers' responsibility criteria.

According to the legislation in force, continuous monitoring of working conditions is carried out at workplaces. Based on the monitoring outcomes, for the workplaces where limit values of harmful production factors are exceeded, measures are developed to eliminate them and minimize their impact upon workers' bodies.

Enterprises organize and conduct targeted inspections of the workplace labour protection situation and of compliance with regulatory documents in terms of provision of safe and non-harmful working conditions, and take measures to eliminate the violations detected.

Some enterprises develop methods of staff incentives to strengthen the sense of personal responsibility for compliance with the labour protection requirements.

Furthermore, according to Article 15 of the aforesaid law, at an enterprise employing fifty or more persons, the employer shall establish labour protection services, according to the model regulations approved by the SCLPS (Order of the SCLPS No. 255, of 15.11.2004, last amended by the Order of the MSP No. 148, of 31.01.2017). At an enterprise employing less than fifty persons, functions of the labour protection services may be performed, on a concurrent basis, by persons appropriately trained. At an enterprise employing less than twenty persons, third-party specialists appropriately trained may be engaged in the performance of functions of the labour protection services, on a contractual basis.

Key activity areas and functions of the labour protection service include:

- in absence of an implemented quality system (such as ISO 9001) – designing an efficient system of labour protection management system at the enterprise, and promoting improvement of every structural unit's and every worker's activities, towards this goal and providing expert support to the employer's decisions on the above-mentioned matters;
- organizing preventive measures aimed at eliminating harmful and hazardous production factors, and averting occupational accidents, occupational diseases, and other threats to workers' life or health;
- studying and promoting industrial introduction of scientific and technical achievements, advanced and safe technologies and modern collective and personal protective equipment;
- controlling observance, by workers, of the requirements of laws and other regulatory legal acts on labour protection, the provisions of sectoral agreements (if any), the labour protection section of a collective agreement, and the labour protection internal regulations in force in the enterprise;
- providing information and explanations on labour protection matters to workers of the enterprise.

If any violation of labour protection rules is found, the labour protection services specialists shall have the right to:

- issue binding notices to managers of an enterprise's structural units to eliminate existing defects, and obtain necessary data, documentation and explanations on labour protection from them;
- demand suspension from work of any persons who fail to undergo medical examination, training, instruction or knowledge testing, as prescribed by law, and who are not allowed to perform respective work or that fails to comply with requirements of regulatory legal acts on labour protection;
- stop the work of a production unit, production floor, machines, mechanisms, equipment and other production means, in case of violations that pose a threat to life or health of workers;
- send a request to the employer for holding liable the workers who violate labour protection requirements.
- A notice issued by an labour protection specialist may only be annulled by the employer.

Liquidation of labour protection service shall only be allowed in case the closure of the enterprise or if an individual stops using hired labour.

## **8.2. OSH Activities Funding**

Financing of OSH activities at the enterprise is provided by the employer, regardless of their form of ownership, or by natural persons who use hired labour according to law, as the labour

protection expenses should amount to at least 0.5 percent of the wage fund for the previous year. At budget-funded enterprises, the amount of OSH expenses is established in a collective contract, subject to the financial capacities of the given enterprise, institution or organization.

The amounts of OSH expenses that belong to gross expenditures of a legal entity or natural person that uses hired labour according to law, are determined according to the list of labour protection measures and means approved by the CMU<sup>11</sup>.

<sup>11</sup> The “List of the labour protection activities and means expenses on the implementation and procurement whereof are incorporated in costs” (approved by the Resolution of the CMU No. 994, of 27.06.2003, amended by the resolution of the CMU No. 76, of 11.02.2016), includes: 1. Bringing fixed assets into conformity with requirements of regulatory legal acts on labour protection, in terms of: mechanization of handling and other heavy work, pouring and transportation of poisonous, aggressive, highly inflammable and combustible substances; protection of workers against electric shock, static electricity and lightning strikes; safe performance of work at heights; working process equipment and other production equipment; ventilation and aspiration systems, dust-collecting devices and air conditioning installations in operating production areas and at workplaces; systems of natural and artificial lighting in production, administrative and other premises, workplaces, passages, emergency exits, etc.; systems of thermal water or air curtains, as well as installations for heating (cooling) of air in production, administrative and other premises and, when working in open air, structures for worker warming and shelter from sunlight and atmospheric precipitations; production, sanitation and welfare premises, workplaces, emergency exits, etc., process gaps, passages and overall dimensions; arrangement of special passage galleries and tunnels in places of mass worker passages, and vehicle traffic zones; implementation of computer-aided labour protection information systems, emergency analysis and forecasting systems, systems of automatic and remote control of production processes and equipment, systems of automatic control and warning about presence (emergence) of hazardous or harmful production factors, and devices for emergency shut-off of equipment or communications in case of danger for workers, as well as relevant software and electronic databases on labour protection, according to the procedure and scope agreed upon with the SLS territorial bodies; 2. Eliminating impact of hazardous and harmful production factors upon workers or bringing their workplace levels into conformity with requirements of regulatory legal acts on labour protection; 3. Carrying out workplace assessment for conformity with regulatory legal acts on OSH and conducting labour protection audits, making information stands, equipping offices and exhibitions, procuring necessary regulatory legal acts, visual aids, literature, posters, videos, models, software products, etc., on labour protection; 4. Providing training and knowledge testing on labour protection for officials and other staff in the process of work activities, and arranging lectures, seminars and consultations on the above-mentioned matters; 5. Providing special clothes, special footwear, and PPE to workers, according to established rates (including detergents and agents that neutralize hazardous impact of harmful substances upon human body or skin in connection with performance of work that do not rule out possible contamination by such substances); 6. Providing workers employed on work with harmful working conditions with special food, milk or food products of equal value, and carbonated salt water; and 7. Carrying out compulsory preliminary, periodic and unscheduled medical examinations of the workers employed on heavy work, work with harmful or hazardous working conditions, or work requiring occupational selection, etc.

## **9. DATA ON OCCUPATIONAL ACCIDENTS AND DISEASES**

### **9.1. Publication of Information and Statistical Data on OSH**

Information concerning OSH is provided annually in the “Occupational Injuries” statistical newsletter and in the “Statistical Yearbook of Ukraine”, published by the State Statistics Service of Ukraine.

Furthermore, information on this matter is also provided in the “Newsletter on Labour Protection” (index 40637) and in the “Newsletter on Industrial Safety” (index 92027), published by the National Research Institute of Industrial Safety and Labour Protection, as well as in the following magazines: “Labour Protection” (a periodical), “Industrial Safety”, “All About Labour Protection”, “A Labour Protection Specialist’s Guide”, “Labour Protection and Fire Safety”, “Health and Safety”, “Occupational Safety”, “Ukraine: Aspects of Labour”, etc.

### **9.2. Recording and Notification of Occupational Accidents and Diseases**

The most relevant Ukrainian legislation on the notification, recording and investigation of work-related accidents and occupational diseases includes Article 22 of the Law “On Labour Protection”, Article 171 of the Labour Code and the procedure for investigating and recording of occupational accidents, diseases, and emergencies (Resolution of the CMU No. 1232, last amended by the Resolution of CMU No. 294, of 26 April 2017).

According to this legislation, the following occurrences should be notified by the employer to the SLS within one hour (using any means of communication) and within three hours (in paper format), and subjected to special investigation: fatal accidents; group accidents (i.e., that happened to two or more workers simultaneously, regardless of the severity of injuries the workers suffered); cases of worker’s death at the enterprise; cases of worker’s disappearance during performance of work (official) duties; and accidents that caused severe consequences, e.g., disability of the victim or the ones foreseen in the Severity-Based Injury Classification (z0902-07).

If the competent SLS territorial body does not make a decision to undertake a special investigation on the above occurrences within 24 hours, the investigation is undertaken by the employer or by the Social Insurance Fund of Ukraine, at the place of accident occurrence.

Regarding less serious accidents, the employer is required to deliver within one hour (using means of communications), and within 24 hours (on paper), a notice on the accident to: the Social Insurance Fund, the primary trade union organization, the State Sanitary and Epidemiological Service and, when appropriate, to the State Fire Supervision.

As for occupational diseases, for every patient referred to examination, specialized health care facilities must draw up a notice on occupational diseases according to the prescribed form, and send it to the territorial body of the State Labour Service that exercises state supervision over the given enterprise, and to the working body of the Social Insurance Fund’s executive directorate at the location of the enterprise.

Analysis of the causes of accidents must be performed by the employer (enterprise management bodies) and the local state administrations on a quarterly, half-year and annual basis.

Records of occupational accidents are maintained by: the enterprises and their management bodies (regarding all accidents); the working bodies of the fund’s executive directorate (concerning insured accidents); the state fire supervision bodies (regarding the victims of fires); and the SLS and other competent CEA and local state administrations (regarding the records of work-related accidents that were subject to the aforesaid special investigation).

The employer must submit to the state statistical reports about the victims of accidents at work according to the form approved by the State Statistics Service, and is responsible for its validity.

Collection of statistics and development of state statistical reporting forms concerning victims of occupational accidents are carried out by State Statistics bodies.

More recently, a draft text of the Resolution of the CMU “On Approval of the Procedure for Investigating and Recording of Occupational Accidents, Diseases, and Emergencies” has been developed and made public. The current wording of the procedure is being reviewed to improve the order of investigation and recording of occupational accidents and emergencies, to bring it into conformity with amendments and requirements of the legislation in force, and to ensure legal regulation of the investigation of occupational diseases and poisonings.

### **9.3. Statistical Data on Fatal and Non-fatal Work-Related Accidents and Occupational Diseases**

According to the ILO (2017b), 384 fatal work-related accidents were recorded in Ukraine in 2014, .

Moreover, according to the following tables, 375 workers died in work-related accidents in 2015. There was an increase in 2016 of the number of fatal work-related accidents to four hundred and, according to the State Labour Service (SLS), 257 workers died due to work-related accidents in the first nine months of 2017..

The highest number of fatal work-related accidents occurred in 2014 and were registered in the manufacturing sector (75); agriculture, forestry and fishing (49); transportation and storage (41); construction (40); and mining and quarrying (36) (ILO, 2017b).

Considering, however, the number of workers exposed to occupational risks (i.e. the number of workers of each economic activity sector), one can see that Ukraine in 2014 had an average incidence rate of 4.3 of fatal work-related accidents, which is about 2.4 times higher than the average incidence rate of fatal work-related accidents in the EU 28 (Eurostat, 2017; ILO, 2017d).

Furthermore, when looking at the distribution per economic activity sector of the fatal work-related accidents incidence rates, it is possible to see that the economic activity sectors that show the highest incidence rates are the following: construction (17.6); mining and quarrying (11.6); agriculture, forestry and fishing (9.5); professional, scientific and technical activities (9.1); water supply, sewage, waste management and remediation activities (8.5); and administrative and support service activities (8.2) (ILO, 2017d).

These figures, however, seem inconsistent with the data provided by the SLS, according to which SLS investigated about 548 fatal work-related accidents in 2014, as shown in the tables that follow.

As for non-fatal work-related accidents in Ukraine in 2014, the ILO statistics show that there were 137,345 non-fatal work-related accidents (which caused at least 1 day of absence, according to the ILO criteria) (ILO, 2017c), of which about 5,770 were investigated by the SLS (as shown in the following tables and SLS data).

Moreover, in 2015, the SLS investigated 3,885 non-fatal work-related accidents, in 2016 that number increased to 4,028 and, during the first nine months of 2017, the SLS registered 2,878 non-fatal work-related accidents (see following tables).

The majority of non-fatal work-related accidents registered in 2014 occurred in the following economic activity sectors: manufacturing sector (37,142); wholesale and retail trade, repair of motor vehicles and motorcycles (21,197), and construction (20,110) (ILO, 2017c).



With respect to the incidence rates of non-fatal work-related accidents, Ukraine reported in 2014 an apparently unfeasible average incidence rate of non-fatal work-related accidents of only 51.2 (ILO, 2017f), which seems to indicate a substantial under-reporting of non-fatal work-related accidents. This assumption, moreover, appears consistent with Hämäläinen, Leena Saarela, & Takala (2009), who found that Ukraine recorded a number of non-fatal work-related accidents (with 3 or more days of absence in 1998 and 2001; and with 4 or more days of absence in 2003) of 3,041,308, 1,786,662 and 1,733,404, respectively, corresponding to incidence rates of, respectively, 13,224, 8,828 and 8,433 (in 2003, this incidence rate was about 2,5 times higher than the average EU incidence rate).

The infeasibility and unreliability of the Ukrainian data on fatal and non-fatal work-related accidents in 2014 is also supported by its inconsistency with the H-1 form data of the Social Insurance Fund of Ukraine, according to which a total of 4,999 work-related accidents (384 of which were fatal and 4,615 non-fatal) occurred in Ukraine in 2014, as can be seen in the following tables.

Moreover, regarding occupational diseases incidence in Ukraine, and according to the data of the Social Insurance Fund of Ukraine (included in the following tables), Ukraine registered a total of 2,752 occupational diseases in 2014, a total of 1,764 in 2015 and about 1,603 in 2016.

In addition, and according to the Institute of Occupational Medicine under the NAMS of Ukraine, the majority of these reported occupational diseases are referred to as diseases of the respiratory system, loco-motor system pathology caused by nervous system impairment, vibration disease and to diseases of chemical etiology (cf. tables that follow).

These figures, however, seem also inconsistent with the data of the Institute of Occupational Medicine under the NAMS of Ukraine (as also shown in the tables that follow), which accounted for 4,352 cases of occupational diseases in Ukraine in 2014.

In fact, the Ukrainian statistical data on fatal and non-fatal work-related accidents, as well as on occupational diseases, provided by the various state agencies and institutions, present very serious discrepancies.

The following figure provides the SLS statistical data on work-related accidents and occupational diseases in Ukraine for 2014-2016 in terms of the following indicators: number of fatal work-related accidents; overall injuries at work and the work-related accidents severity rate; and number of recorded occupational diseases.

**Figure 6 - Work-Related Accidents and Occupational Diseases**

Indicator	2016	2015	2014	Trend (increasing / decreasing / stable)
Number of fatal accidents	400	375	548	Decreasing
Number of injuries at work (total)	4,428	4,260	6,318	Decreasing
Number of work-related accident severity rate Kt (number of man-days of incapacity for work / number of victims)	28.43	26.92	26.17	Increasing
Recorded occupational diseases (total)	1,603	1,764	2,752	Decreasing

**Source:** SLS

The following table provides the same statistical data (number of fatal work-related accidents; number of overall injuries at work, and number of recorded occupational diseases) and for the same period, but based on the information collected by the Social Insurance Fund of Ukraine, on the basis of received H 1 forms.



**Figure 7 - Work-Related Accidents and Occupational Diseases**

Indicator	2016	2015	2014	Trend (increasing / decreasing / stable)
Number of fatal accidents (according to H-1 form statements)	364	360	384	Decreasing
Number of injuries at work, Ukraine overall (according to H-1 form statements)	4766	4592	4999	Decreasing
Number of recorded occupational diseases (according to H-1 form statements)	1603	1764	2752	Decreasing

**Source:** Social Insurance Fund of Ukraine

The following figure, on the other hand, provides data of the SLS and of the Social Insurance Fund of Ukraine on the number of occupational diseases according to П-4 form Statements in 2012-2016, by economic sector as per the National Classification ДК 009:2010. The general trend indicates a decline in the number of occupational diseases.

**Figure 8 - Numbers of Occupational Diseases by Economic Sector (П-4 forms for 2012-2016)**

No.	Economic sectors as per ДК 009:2010	2012	2013	2014 *	2015 *	2016 *
1.	Agriculture, forestry and fisheries	31	12	8	8	5
2.	Mining and quarrying	4 761	5 029	2 104	1 365	1311
3.	Manufacture of food products, drinks and tobacco products	4	3	2	1	3
4.	Textile manufacture, production of clothes, leather, leather products, and articles made of other materials	10	4	1	2	0
5.	Manufacture of wooden articles, paper, and printing operations	0	0	0	1	0
6.	Production of coke and petrochemical products	6	68	33	14	31
7.	Production of chemical substances and chemical products	12	4	5	3	3
8.	Manufacture of essential pharmaceutical products and preparations	0	0	0	1	0
9.	Production of rubber and plastic articles, other non-metal mineral products	25	22	13	9	7
10.	Metallurgical production, manufacture of finished metal products, except machinery and equipment	188	178	127	101	68
11.	Manufacture of computers, electronic and optical products	1	1	3	0	0
12.	Production of electric equipment	24	17	20	9	10
13.	Production of machinery and equipment	152	163	242	124	67
14.	Production of means of transport	21	8	25	6	4
15.	Other processing industries, repair and assembly of machinery and equipment	37	61	45	33	33
16.	Supply of electricity, gas, steam and conditioned air	9	5	5	2	2
17.	Water supply; sewerage and waste management	4	4	1	3	0
18.	Construction	183	163	47	27	17
19.	Wholesale and retail trade; repair of motor vehicles and motorcycles	9	5	4	4	2
20.	Transport, storage facilities, mail and courier services	12	9	10	3	3
21.	Temporary accommodation and catering organization	0	1	0	0	0
22.	Computer programming and other information services	0	0	1	0	0
23.	Financial and insurance activities	0	1	0	0	0
24.	Real-estate operations	6	1	3	0	0
25.	Activities in law, accounting, architecture and engineering, technical tests and studies	26	31	8	5	5
26.	Scientific research and developments	1	0	2	0	0
27.	Administrative and auxiliary services	0	2	0	1	0
28.	Public administration and defence; compulsory social insurance	19	20	5	3	1

No.	Economic sectors as per ДК 009:2010	2012	2013	2014 *	2015 *	2016 *
29.	Education	3	3	3	2	0
30.	Health care	66	46	35	36	29
31.	Delivery of care and social assistance services	2	0	0	0	1
32.	Delivery of other service types	0	0	0	1	1
	<b>Ukraine total</b>	<b>5612</b>	<b>5861</b>	<b>2752</b>	<b>1764</b>	<b>1603</b>

**Source:** State Labour Service of Ukraine, Social Insurance Fund of Ukraine

**Obs:** \* Not including the occupational diseases that occurred at the enterprises situated in the localities where public authorities temporarily do not exercise, or exercise not in full, their powers according to the Order of the CMU No. 1085-p of 7 November 2014 (as amended).

The following table also provides data on the number of occupational diseases, according to П-4 form Statements for 2012-2016, but disaggregated by age.

It shows a general decreasing trend in the number of occupational diseases, especially among workers above 50 years of age which, moreover, can also be explained by their early retirement. This table also shows a slight increase in the number of cases registered among workers aged between 30-39 and 40-49 years.

**Figure 9 - Numbers of Occupational Diseases by Age (П-4 forms for 2012-2016)**

Year	2012	2013	2014*	2015*	2016*
20-29	20	8	12	9	2
30-39	233	225	171	123	167
40-49	1677	1619	886	638	685
50-59	3024	3328	1384	847	643
60+	658	681	299	147	106
<b>Ukraine total</b>	<b>5612</b>	<b>5861</b>	<b>2752</b>	<b>1764</b>	<b>1603</b>

**Source:** Social Insurance Fund of Ukraine

**Obs.:** \* Not including the occupational diseases that occurred at the enterprises situated in the localities where public authorities temporarily do not exercise in full their powers according to the Order of the CMU No. 1085-p of 7 November 2014 (as amended).

The next figure displays the SLS information on several working conditions indicators, based on the detected infractions, in particular: exposure to noise above legal limit; exposure to vibration; exposure to radiation (ionizing); breathing in dangerous vapours, fumes, dusts, infectious materials; exposure to asbestos; inadequate lighting; lifting or carrying heavy loads; exposure to pesticides, etc.

**Figure 10 - Working Conditions Indicators**

Indicators	Widespread, serious problem	Serious problem for some workers	Moderate problem	Minor problem	Not a problem
Exposure to noise above legal limit		V			
Exposure to vibration		V			
Exposure to radiation (ionizing)			V		
Exposure to high temperatures			V		
Exposure to low temperatures				V	
Breathing in dangerous vapours, fumes, dusts, infectious materials			V		
Handling or touching dangerous substances or products			V		
Exposure to asbestos			V		
Exposure to pesticides		V			
Inadequate lighting				V	
Regular exposure to solar radiation (e.g. in construction work)				V	

Indicators	Widespread, serious problem	Serious problem for some workers	Moderate problem	Minor problem	Not a problem
Painful or tiring positions			V		
Lifting or carrying heavy loads		V			
Repetitive hand/arm movements					
Non-adjustable workstations (e.g. workbench, desk, chairs)			V		
Working at high speed				V	
Working to tight deadlines				V	
Stressful work			V		
Changing work organization					V
Working hours			V		

Source: SLS

The following figure, on the other hand, provides data of the Social Insurance Fund of Ukraine for 2012-2016 concerning the number of accident victims according to H-1 form statements in the most injury-prone economic sectors where accidents occurred (by economic sector as per the National Classification ДК 009:2010).

The most threatening situation seems to occur in such economic activity sectors as: mining and quarrying; transport, storage facilities, mail and courier services; agriculture, forestry and fisheries; metallurgical production and manufacture of finished metal products.

**Figure 11** - Numbers of Accident Victims in Highest Incidence Rate Sectors (H-1 forms for 2012-2016)

Economic sector as per ДК 009:2010	2012		2013		2014*		2015*		2016*	
	total	incl. fatal	total	incl. fatal	total	incl. fatal	total	incl. fatal	total	incl. fatal
Mining and quarrying	<b>3778</b>	128	<b>3307</b>	122	<b>1053</b>	36	<b>953</b>	31	<b>1015</b>	32
Transport, storage facilities, mail and courier services	<b>645</b>	72	<b>606</b>	72	<b>427</b>	56	<b>428</b>	56	<b>415</b>	60
Agriculture, forestry and fisheries	<b>637</b>	75	<b>509</b>	66	<b>425</b>	50	<b>387</b>	59	<b>391</b>	63
Metallurgical production, manufacture of finished metal products, except machinery and equipment	<b>580</b>	31	<b>518</b>	27	<b>303</b>	12	<b>262</b>	14	<b>246</b>	17
Health care	<b>414</b>	9	<b>387</b>	8	<b>278</b>	7	<b>241</b>	8	<b>273</b>	4
Construction	<b>674</b>	94	<b>450</b>	47	<b>231</b>	51	<b>231</b>	40	<b>199</b>	36
Manufacture of food products, drinks and tobacco products	<b>413</b>	31	<b>316</b>	16	<b>245</b>	14	<b>215</b>	10	<b>204</b>	11
Wholesale and retail trade; repair of motor vehicles and motorcycles	<b>433</b>	41	<b>323</b>	40	<b>238</b>	32	<b>219</b>	23	<b>275</b>	21
Public administration and defence; compulsory social insurance	<b>351</b>	12	<b>316</b>	8	<b>225</b>	15	<b>202</b>	12	<b>227</b>	11
Education	<b>298</b>	7	<b>290</b>	5	<b>164</b>	5	<b>158</b>	8	<b>171</b>	3
Supply of electricity, gas, steam and conditioned air	<b>223</b>	23	<b>232</b>	16	<b>140</b>	14	<b>154</b>	16	<b>161</b>	16
Production of machinery and equipment	<b>347</b>	12	<b>252</b>	7	<b>141</b>	6	<b>139</b>	9	<b>120</b>	6
Administrative and auxiliary services	<b>134</b>	11	<b>150</b>	11	<b>125</b>	10	<b>115</b>	8	<b>108</b>	9
Production of rubber and plastic articles, other	<b>185</b>	5	<b>155</b>	7	<b>131</b>	13	<b>113</b>	6	<b>113</b>	10

Economic sector as per ДК 009:2010	2012		2013		2014*		2015*		2016*	
	total	incl. fatal	total	incl. fatal	total	incl. fatal	total	incl. fatal	total	incl. fatal
non-metal mineral products										
Production of means of transport	<b>299</b>	9	<b>204</b>	5	<b>125</b>	9	<b>61</b>	0	<b>100</b>	5
Water supply; sewerage and waste management	<b>145</b>	21	<b>157</b>	16	<b>94</b>	10	<b>93</b>	10	<b>118</b>	25
Other processing industries, repair and assembly of machinery and equipment	<b>169</b>	7	<b>174</b>	5	<b>80</b>	12	<b>87</b>	7	<b>71</b>	2
Manufacture of wooden articles, paper, and printing operations	<b>159</b>	10	<b>103</b>	5	<b>100</b>	11	<b>100</b>	8	<b>85</b>	3
<b>Total</b>	<b>10822</b>	<b>648</b>	<b>9221</b>	<b>528</b>	<b>4999</b>	<b>384</b>	<b>4592</b>	<b>360</b>	<b>4766</b>	<b>364</b>

**Source:** Social Insurance Fund of Ukraine

**Obs.:** \* Not including the occupational diseases that occurred at the enterprises situated in the localities where public authorities temporarily do not exercise in full their powers according to the Order of the CMU No. 1085-p of 7 November 2014 (as amended).

The next figure displays the same data on the number of accident victims (according to H-1 form statements for 2012-2016), but disaggregated by age class (e.g., under 20; 20-29; 30-39; 40-49; 50-59; and over 60).

The information indicates a general decreasing trend in the number of accident victims, including fatal accidents, among workers aged between 20 and 60.

**Figure 12** - Numbers of Accident Victims by Age (H-1 forms for 2012-2016)

Age	2012		2013		2014*		2015*		2016*	
	total	incl. fatal	total	incl. fatal	total	incl. fatal	total	incl. fatal	total	incl. fatal
Under 20	<b>98</b>	2	<b>90</b>	2	<b>61</b>	5	<b>49</b>	4	<b>40</b>	2
20-29	<b>2284</b>	111	<b>1862</b>	98	<b>913</b>	54	<b>818</b>	55	<b>736</b>	47
30-39	<b>2567</b>	154	<b>2328</b>	112	<b>1142</b>	73	<b>1072</b>	80	<b>1174</b>	73
40-49	<b>2690</b>	170	<b>2325</b>	168	<b>1197</b>	96	<b>1129</b>	109	<b>1161</b>	99
50-59	<b>2506</b>	148	<b>2013</b>	114	<b>1286</b>	126	<b>1140</b>	87	<b>1210</b>	116
60+	<b>677</b>	63	<b>603</b>	34	<b>400</b>	30	<b>384</b>	25	<b>445</b>	27
<b>Total</b>	<b>10822</b>	<b>648</b>	<b>9221</b>	<b>528</b>	<b>4999</b>	<b>384</b>	<b>4592</b>	<b>360</b>	<b>4766</b>	<b>364</b>

**Source:** Social Insurance Fund of Ukraine

**Obs.:** \* Not including the occupational diseases that occurred at the enterprises situated in the localities where public authorities temporarily do not exercise in full their powers according to the Order of the CMU No. 1085-p of 7 November 2014 (as amended).

In addition, the next table disaggregates the latter data (on the number of accident victims, according to H-1 form Statements for 2012-2016) by sex.

The data seems to suggest that the number of accidents, including fatal, is greater among men than among women. The latter, moreover, can be probably explained not only by the composition of the Ukrainian workforce, but also by its distribution across economic activity sectors and nature of activities mostly performed by each sex.

**Figure 13 - Numbers of Accident Victims by Sex (H-1 forms for 2012-2016)**

Sex	2012		2013		2014*		2015*		2016*	
	total	incl. fatal	total	incl. fatal	total	incl. fatal	total	incl. fatal	total	incl. fatal
Male	8655	599	7425	495	3803	346	3485	326	3549	330
Female	2167	49	1796	33	1196	38	1107	34	1217	34
<b>Total</b>	<b>10822</b>	<b>648</b>	<b>9221</b>	<b>528</b>	<b>4999</b>	<b>384</b>	<b>4592</b>	<b>360</b>	<b>4766</b>	<b>364</b>

**Source:** Social Insurance Fund of Ukraine

**Obs.:**\* Not including the occupational diseases that occurred at the enterprises situated in the localities where public authorities temporarily do not exercise in full their powers according to the Order of the CMU No. 1085-p of 7 November 2014 (as amended).

The following table, on the other hand, depicts the SLS data on the number of workers injured in 2015 and 2016, by supervised sector.

The statistics show an increasing pattern of occupational injuries in Ukraine in global terms, especially in the social-cultural activities and trade, coal industry, housing and utility services and energy industry. Concerning fatal work-related injuries, they show an increase especially in the housing and utility services industry and in the transport industry.

**Figure 14 - Occupational Injuries per Supervised Sectors (2015-2016)**

Supervised sector	2016		2015		Difference	
	Total	Fatal	Total	Fatal	Total	Fatal
Coal industry	864	20	752	19	112	1
Mining and non-metallic industries	192	23	207	16	-15	7
Oil and gas production and geological exploration	23	5	11	4	12	1
Energy	136	14	113	18	23	-4
Construction	184	41	206	35	-22	6
Boiler supervision, lifting devices	20	6	10	1	10	5
Machine-building	313	19	311	21	2	-2
Metallurgy	255	12	268	14	-13	-2
Chemical industry	146	10	137	16	9	-6
Transport	364	70	396	54	-32	16
Communications	60	1	60	8	0	-7
Gas industry	36	2	48	2	-12	0
Housing and utility services	167	34	141	14	26	20
Agro-industrial complex	578	83	602	84	-24	-1
Wood processing	51	2	83	5	-32	-3
Light and textile industries	22	0	17	0	5	0
Social-cultural activities and trade	1017	58	898	64	119	-6
<b>Total</b>	<b>4428</b>	<b>400</b>	<b>4260</b>	<b>375</b>	<b>168</b>	<b>25</b>

**Source:** SLS

The next table, on the other hand, portrays the data on the resident population of Ukraine (in millions). According to the State Statistics Service of Ukraine, the population of Ukraine was 42,444,919 persons as of 1 September 2017, that being 0.5% (or 197,515 persons) less than as of 1 September 2016 (not including the temporary occupied ARC territory).

Between January and August 2017, the average resident population was 42,345,094 persons.

According to the State Statistics Service of Ukraine, the number of deaths has started to exceed the number of births considerably, with 63 new-borns per 100 deaths. In particular, 243,862 babies have been born in Ukraine since the beginning of 2017, whereas 386,505 persons have died during the same period. This trend, along with emigration, seem to explain the reduction of the Ukraine resident population.

**Figure 15 - Resident Population of Ukraine***(millions)*

Indicators	1991		2006		2014		2015		2016	
	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%
Under working age	11.77	22.7	7.4	15.8	6.4	15.1	5.8	13.7	6.49	15.2
Working age	28.81	55.7	28.22	60.4	29.6	69.3	30.1	70.8	29.32	68.9
Over working age	11.09	21.6	11.12	23.8	6.67	15.6	6.57	15.5	6.76	15.9
<b>Total population</b>	52.15	100	46.74	100	42.75	100	42.54	100	42.59	100

**Source:** Institute of Occupational Medicine under the NAMS of Ukraine

The following figure, on the other hand, shows information on the patterns of medical examination of persons working in harmful and hazardous conditions, for the period 2002-2015, according to the State Sanitary and Epidemiological Service of Ukraine.

It is worth noting, in this respect, that for the period from 3.03.2016 to 31.12.2016, functions concerning the implementation of the state policy on occupational health were transferred to SLS, by the CMU Executive Order No. 88, of 11.02.2016).

**Figure 16 - Patterns of Medical Examinations of Persons Working in Harmful and Hazardous Conditions**

Year	Subject to medical examinations	Examined	%	Suspended from work
2002	2101963	1895897	90,2	45450
2003	1874017	1804856	96,3	34768
2004	1977575	1920282	97,1	39339
2005	2014855	1969578	97,7	39792
2006	1994642	1948135	97,7	45885
2007	1947263	1909705	98,1	46196
2008	1868446	1807928	96,8	57435
2009	n/a	n/a	n/a	n/a
2010	n/a	n/a	n/a	52499
2011	1948741	1919251	98,5	48281
2012	1288036	1238536	96,1	17491
2013	1727944	1655104	95,8	4755
2014	1049563	999407	95,2	3290
2015	1409749	1363531	96,7	592
2016	485029	460421	94,9	n/a

**Source:** SLS

The following table is focused on the breakdown of occupational disease cases among employed people in Ukraine, by diagnosis, for the period 2014-2016 (share in the occupational disease structure), which indicates a generally decreasing trend in the number of declared occupational disease cases.

The situation regarding diseases of the respiratory system, loco-motor system pathology and nervous system impairments remains the most worrying.

**Figure 17 - Breakdown of Declared Occupational Disease Cases by Diagnosis (2014-2016)**

Pathology forms	2014		2015		2016	
	Absolute	Share (%)	Absolute	Share (%)	Absolute	Share (%)
Diseases of the respiratory system, including:	1201	43,6	899	50,9	717	44,7
pneumoconiosis	942	21,6	198	11,2	148	9,3
chronic bronchitis	467	10,7	244	13,9	227	14,2
COPD	1389	31,9	432	24,5	319	20,0
Vibration disease	210	4,8	134	7,6	143	9,0
Sensorineural hearing loss	113	2,6	71	4,0	60	3,8
Loco-motor system pathology, including:	757	17,4	601	34,1	640	40,0



Pathology forms	2014		2015		2016	
	Absolute	Share (%)	Absolute	Share (%)	Absolute	Share (%)
caused by musculoskeletal system impairment	95	2,2	19	1,1	10	0,6
caused by nervous system impairment	662	15,2	582	33,0	630	39,4
Infectious diseases, including:	37	0,9	35	2,0	29	1,8
tuberculosis	36	0,9	35	2,0	29	1,8
Malignant neoplasms	24	0,6	21	1,2	17	1,1
Skin and subcutaneous tissue diseases	4	0,09	-	-	-	-
Diseases of chemical etiology	140	3,2	64	3,6	32	2,0
<b>Total</b>	<b>2752</b>	<b>100,0</b>	<b>1764</b>	<b>100,0</b>	<b>1603</b>	<b>100,0</b>

**Source:** Institute of Occupational Medicine under the NAMS of Ukraine

The following figure provides SLS data on the working conditions situation in certain economic activities for 2015, based on the detected infractions regarding sanitary and hygienic regulations.

The data displayed seems to suggest that the situation is especially critical in the mining, processing and transport industries, whereas the major number of infractions appear to be detected in the processing industry.

**Figure 18 - Working Conditions in Certain Economic Activities (2015)**

Sector	Number of workers exposed to conditions failing to meet sanitary and hygienic standards		Including those working under excessive impact of: (%)			
	Total (1,000)	% to accounted staff number	harmful chemical agents of 1-2 and 3-4 hazard classes	dust, mainly fibrogenic	vibration	noise, infra-sound, ultrasound
Agriculture	39.4	11.2	2.3	1.6	2.7	3.2
Mining industry	158.0	68.7	9.8	53.5	14.2	42.3
Processing industry	365.8	29.2	12.4	10.0	2.4	17.2
Construction	26.0	20.8	7.4	7.8	3.7	10.3
Transport and communications	156.1	23.1	4.4	3.7	4.1	10.2
<b>TOTAL</b>	<b>1040.5</b>	<b>28.7</b>	<b>8.9</b>	<b>11.5</b>	<b>4.0</b>	<b>16.1</b>

**Source:** SLS

The next figure presents information concerning recorded disease cases among the working-age population in Ukraine.

The data indicates that the most prevalent diseases in 2016 were: neoplasms; endocrine, nutritional and metabolic diseases; mental and behavioural diseases; diseases of the eye and adnexa; diseases of the nervous system; diseases of the respiratory system; diseases of the skin and subcutaneous tissue; diseases of the musculoskeletal system and connective tissue.

It should be accentuated that many of these diseases have been detected for the first time ever.

**Figure 19 - Diseases Recorded Among Working-Age Population in Ukraine (2016)**

Disease classes	Cases recorded, total		including newly diagnosed	
	absolute data	per 100,000 respective population	absolute data	per 100,000 respective population
Certain infectious and parasitic diseases	869001	3 537.7	505468	2 057.7
Neoplasms	754574	3 071.8	207132	843.2

Disease classes	Cases recorded, total		including newly diagnosed	
	absolute data	per 100,000 respective population	absolute data	per 100,000 respective population
Diseases of the blood and blood-forming organs and certain disorders involving the immune mechanism	279366	1 137.3	64936	264.4
Endocrine, nutritional and metabolic diseases	1740507	7 085.5	196720	800.8
diabetes mellitus	398010	1 620.3	39125	159.3
Mental and behavioural diseases	1183760	4 819.0	79682	324.4
Diseases of the nervous system	1329249	5 411.3	414283	1 686.5
Diseases of the eye and adnexa	1580840	6 435.5	673431	2 741.5
Diseases of the ear and mastoid process	692742	2 820.1	515348	2 098.0
Diseases of the circulatory system	8177511	33 290.3	881804	3 589.8
Diseases of the respiratory system	6465462	26 320.7	5181118	21 092.1
Diseases of the digestive system	3658281	14 892.7	591061	2 406.2
Diseases of the skin and subcutaneous tissue	1097524	4 468.0	883775	3 597.8
Diseases of the musculoskeletal system and connective tissue	1897010	7 722.7	727642	2 962.2
Diseases of the genitourinary system	2698131	10 984.0	1326904	5 401.8
Pregnancy, childbirth and the puerperium	511607	4 986.0	415136	4 045.8
Congenital malformations, deformations and chromosomal abnormalities	93040	378.8	5913	24.1
Injury, poisoning and certain other consequences of external causes	1137612	4 631.2	1056805	4 302.2
<b>All diseases</b>	<b>34176576</b>	<b>139 131.6</b>	<b>13736120</b>	<b>55 919.2</b>

**Source:** Institute of Occupational Medicine under the NAMS of Ukraine

The figure below displays the available data on the incidence of malignant neoplasms based on the number of patients diagnosed with malignant neoplasms at health-care facilities.

The information indicates that a trend of increase changed in 2014, but resumed in 2015.

**Figure 20 - Malignant Neoplasm Incidence**

Disease class	2009	2010	2011	2012	2013	2014	2015
Number of patients (thousands)	960.9	988.6	1015.5	1052.2	1090.1	954.1	961.8
Per 100,000 resident population	2099	2168	2234	2319	2409	2231	2258

**Source:** Institute of Occupational Medicine under the NAMS

The table that follows presents data on the incidence of active respiratory tuberculosis based on the number of patients diagnosed with active respiratory tuberculosis at health-care facilities.

It shows a decreasing trend in the number of active respiratory tuberculosis cases during the period from 2009 to 2015, both in absolute and relative terms.

**Figure 21 - Active Respiratory Tuberculosis Incidence**

Disease class	2009	2010	2011	2012	2013	2014	2015
Number of patients (thousands)	84.9	78.6	70.7	136.1	47.6	38.7	36.2
Per 100,000 resident population	183.5	172.5	155.6	136.1	105.2	90.5	85.1

**Source:** Institute of Occupational Medicine under the NAMS of Ukraine

In short, the statistical data displayed throughout this section seem to suggest that the highest occupational injury rates in 2016 and the 1<sup>st</sup> half of 2017 were recorded among workers aged between 50 and 59 years.

Moreover, it seems to indicate that the main injury-prone sectors of Ukraine's economy in 2016 were as follows: social-cultural activities (1,017 persons injured, including 58 fatal cases); coal industry (864 persons injured, including 20 fatal cases); agro-industrial complex (578 persons injured, including 83 fatal cases); transport (364 persons injured, including 70 fatal cases); and machine-building (313 persons injured, including 19 fatal cases).

Furthermore, it allows seeing that the number of injured persons in these sectors in 2016 was 71% of the total number of injured persons across Ukraine.

The main injury-prone sectors of Ukraine's economy in the 1st half of 2017 were as follows: social-cultural activities (512 persons injured, including 14 fatal cases); coal industry (415 persons injured, including 17 fatal cases); agro-industrial complex (224 persons injured, including 31 fatal cases); transport (207 persons injured, including 26 fatal cases); construction (105 persons injured, including 24 fatal cases).

The number of injured persons in these sectors in 2017 was 68% of the total number of injured persons across Ukraine.

Moreover, it also highlights that the highest prevalence of occupational diseases in 2016, based on П-4 form statement data, was recorded among workers aged between 40 and 49: in the mining industry (1,311 occupational disease cases); metallurgical production, manufacture of finished metal products, except machinery and equipment (68); production of machinery and equipment (67); processing industry, repair and assembly of machinery and equipment (33); production of coke and oil products (31).

It should be noted that the 50-59 age group was the most vulnerable in the previous years.

Therewith, mining industry workers are the ones that are employed in conditions that most fail to meet sanitation and hygienic requirements (68.7% of the total number of staff workers).

In 2016, 460,421 medical examinations of persons working in harmful and hazardous conditions were conducted, whereas 485,029 persons were subject to medical examination (94.9% coverage).

Diseases of the circulatory system, respiratory diseases, and nutritional diseases, including newly diagnosed, were most prevalent among the working-age population in 2016.

Finally it is worth mentioning that the data provided above does not include accidents and occupational diseases that occurred at organizations in those settlements where public authorities temporarily don't exercise their powers in full.

## 10. TECHNICAL ADVICE AND AWARENESS RAISING ON OSH

SLS ensures the provision of information and technical advice on labour relations and OSH to workers, employers and their representative associations, through public reception rooms, located both in the SLS central office and its territorial bodies.

Furthermore, the SLS directorate, as well as its sector-specific experts, continuously provide online expert information and counselling to workers, employers and their representative associations, in order to help them address urgent issues of OSH. It is worth mentioning, in this regard, that, as of 1 March 2017, SLS territorial bodies established 398 information advisory units at state administrations, employment centres, and branches of the Social Insurance Fund of Ukraine.

On the other hand, local state administrations established information advisory units (centres) to provide methodological assistance on labour relations and OSH issues, to provide advice on safe and non-harmful working conditions, and to share positive experiences, concerning the prevention of emergencies, work-related injuries and occupational diseases, in accordance with article 34 of the Law “on Labour Protection” and articles 13 and 24 of the Law “on Local State Administrations”, which foresees such centres, in order to improve knowledge of officials, employees and individual entrepreneurs, engaged in the agro-industrial complex and social-cultural activities, about legislative and regulatory acts on OSH, enhance the enterprise-level OSHMS, and minimize occupational injuries and occupational risks.

Moreover, Ukraine usually celebrates, on 28 April every year, the World Day for Safety and Health at Work, under the slogan suggested by the ILO. In this context, SLS annually draws up a relevant action plan of awareness raising to disseminate information on the proposed theme, at both national and oblast levels. In 2017, the events took place under the slogan “Optimize the Collection and Use of OSH Data”.

Information and awareness raising campaigns on OSH also take the form of the organization and launching of OSH contests. For example, in 2010, the annual All-Ukrainian Children Drawing Contest “Labour protection through the children’s eyes” was launched, whose winner was announced during the celebration of the World Day for Safety and Health at Work. This contest is aimed at drawing the society's attention, including children and youth, to the existing problems in OSH, particularly nurturing a higher culture of occupational safety; focusing the youth on the hazards and risks inherent to work activities, their consequences likelihood and severity; promoting development of children’s creativity; finding, selecting and supporting talented youth. The contest also promotes preventive methods and measures to avoid the occurrence of work-related accidents and occupational diseases. Another example is the All-Ukrainian Review Contest “The Best Enterprise in Labour Protection”, launched by the SLS in 2017, whose first contest winners have already received their awards and prizes.

International conferences on OSH are another important and common instrument used to raise awareness on OSH issues. It is important to highlight, in this regard, the 5<sup>th</sup> conference on OSH, on the theme “Risk Management in the Systems of OSH and Industrial Safety Management”. “The European Way of Reforming and Improving the Organization of Working Conditions”, organized by the magazine, “Labour Protection”, with the SLS support, was held in 2017. The conference traditionally involves representatives of the ILO, public and local authorities, academia and trade unions, managers and specialists of OSH services of Ukrainian and foreign enterprises, as well as representatives of supervisory bodies from European Union countries. The conference usually includes plenary meetings, trainings for workplace risk assessment, demonstrations of advanced PPE, tours to enterprises that succeeded in the adoption of risk-oriented approaches in OSH management systems, and mass cultural events. The parties of social dialogue, trade unions and employers, are also actively engaged in educational activities.

In addition, information and technical advice on OSH are also provided through official websites and social media pages of the SLS central office and its territorial directorates. They disseminate useful and necessary information concerning major events, regulatory legal framework, injury statistics, registers, findings of inspection visits, etc.

It should also be noted that the Federation of Trade Unions of Ukraine (FTUU) usually takes an active part in awareness-raising efforts and in the provision advisory services on OSH. In fact, FTUU representatives usually organize workshops and seminar meetings on OSH, provide assistance to primary trade union organizations in the formulation and enhancement of the collective contract section “OSH”, and regularly participate in the events held within the framework of the World Day for Safety and Health at Work.

# 11. INTERNATIONAL COOPERATION ON LABOUR INSPECTION AND OSH

## 11.1. International Labour Organization

The ILO is a key partner with which there has been continuous cooperation concerning, in particular, the OSH, labour relations and labour inspection fields.

This cooperation is integrated on the scope of the ILO Decent Work Country Programme for Ukraine. The most recent programme was signed in 2016, for the period until 2019. The document was drafted on the basis of tripartite consultations, and approved by the MSP and social partners.

The programme contains 3 priorities, pursuant to which technical cooperation projects are developed and implemented.

The technical cooperation projects have been mainly focused on the following goals:

1. Bringing the national legislation on labour and labour inspection into conformity with the International Labour Standards;
2. Setting up an effective labour inspection;
3. Addressing the ratification of a number of ILO Conventions, notably on OSH;
4. Strengthening the capacity of the social partners and the social dialogue institutions; and
5. Updating OSH legislation and aligning it to the ILO standards and to the EU *acquis*.

In this context, and since 2016, the ILO has been implementing in Ukraine 3 projects on OSH, labour relations and labour inspection:

- The ILO Project “The Effectiveness of the Labour Inspection System and of Social Dialogue Mechanisms are Strengthened”;
- The EU-ILO Project “Strengthening the Capacity of the Labour Administration to Improve Working Conditions and to Tackle Undeclared Work”; and
- The ILO Project to improve safety and health in the mining industry of Ukraine, supported by the Government of Canada.

## 11.2. European Union

In light of the implementation of the EU-Ukraine Association Agreement, cooperation between the EU and Ukraine has been strengthened, especially in the areas covered by this Association Agreement (e.g., justice, freedom and security; trade; economic cooperation; energy; social development and protection; consumer protection; education and public health; equal rights; employment policy; labour market reforms; etc.).

Regarding, in particular, the OSH and labour relations regulations, and pursuant to the Article 424 of the EU-Ukraine Association Agreement Chapter 21 (concerning “Cooperation on Employment, Social Policy and Equal Opportunities”) and its Annex XL, Ukraine is expected to “ensure gradual approximation to EU law, standards and practices in the area of employment, social policy and equal opportunities, as set out in Annex XL to the Agreement”.

In this context, and in order to help the implementation of the commitments undertaken by Ukraine, the EU is supporting and financing the implementation of a number of technical cooperation projects in several of the aforesaid areas, particularly in what refers to the approximation of the Ukrainian legislation on OSH, labour relations and labour inspection to the International and EU Labour Standards and best practices, via the ILO.

Moreover, SLS had also established institutional cooperation with the European Agency for Safety and Health at Work (EU-OSHA) and with the European Bank for Reconstruction and Development (EBRD).



### **11.3. Cooperation with Labour Inspectorates from Other Countries**

Regarding Ukrainian cooperation with labour inspectorates from other countries, it is important to highlight the strategic partnership envisaged by the Protocol of Cooperation between the SLS and the State Labour Inspectorate of the Lithuanian Republic, signed on 12 December 2016, which is aimed at deepening and formalizing bilateral cooperation between the two countries labour inspectorates and at implementing Ukraine's policy of European and Euro-Atlantic integration.

It is also worth mentioning, in this respect, the efforts that are being developed by the SLS, in order to establish an international cooperation with the labour inspectorates of Poland, Hungary, Georgia and Moldova.

## 12. UKRAINIAN OSH SITUATION ANALYSIS

### 12.1. Occupational Safety and Health

#### 12.1.1. Fundamental Principles

The most important principle enshrined in the EU OSH legal framework is its purpose. The purpose of promoting the improvement of the safety and health of workers at work, as can be read in the title of the EU Directive 89/391/EEC. Is not just about protection of workers and prevention of work-related accidents and occupational diseases, but also improvement of occupational safety and health.

In Ukraine, however, the prevailing principle seems to be to protect the safety and health of workers, preserving human life, health and working capacity, especially regarding those engaged in work with harmful and hazardous working conditions as well as work connected with contamination or adverse weather conditions, and/or to compensate them (through, e.g., extra payment for work in hazardous and harmful conditions, reduced working time, earlier retirement, free food and drink to combat the effects of hazardous factors) for the unhealthy and unsafe nature of their workplaces.

As such, the employer's OSH obligations (eg., information, training, consultation, health surveillance, PPE, etc.) are mainly applicable to workers engaged in work with harmful and hazardous working conditions as well as work connected with contamination or adverse weather conditions, whereas the workers engaged in other activities and activity sectors are not entitled under the scope of such OSH provisions, although the risks to which they are, or may be, exposed to, have not yet been assessed.

Moreover, the current Ukrainian OSH legal framework seems to be exclusively based on "corrective actions" (i.e. reacting to dangerous cases and situations, as if they were inevitable, applying mainly OSH protective measures, notably, collective and personal protective measures), instead of the adoption of a more upstream approach, based on the principle of prevention. The focus tends to be downstream protection; rather than upstream prevention and improvement of the OSH conditions. It is mainly focused on the reparation and compensation, and this clearly needs to change to a more proactive risk assessment and prevention-based approach, more concentrated on the promotion of improvement of the OSH conditions at workplaces.

Another key principle of the EU OSH legal framework is the employers' non-transferable responsibility for ensuring the safety and health of workers in every aspect related to work.

This means that OSH obligations legally imposed to others (e.g., workers, external OSH services providers, suppliers, other employers engaged in work at the same workplace, other employer's workers, etc.) should not discharge the non-transferable responsibility of the employer regarding the safety and health of its workers in all aspects related to work.

It also means that the employer should be responsible for the safety and health of workers in all phases of the production process, even during the design of the facilities and the layout of the premises, through the choice of the production methods, technology, work equipment, agents and substances to be used, stored and produced, as well as for the organization of work, working conditions, social relationships and the influence of factors related to the working environment.

Moreover, it implies that the employers should also have responsibility for not only protecting the safety and health of the workers but, and much more important, the upstream obligation to prevent their exposure to occupational risks or, when they cannot be avoided, to assess them

and to take the necessary preventive and protective measures, according to the General Principles of Prevention (GPP), laid down on article 6(2) of the EU Directive 89/391/EEC<sup>12</sup>.

In addition, employers should also have the obligation to take, and continuously adjust to changing circumstances, the necessary measures to ensure the safety and health protection of workers, including prevention and assessment of occupational risks, consultation and participation of the workers, health surveillance, provision of information, training and the necessary organization and means, within strictly compliance with the aforesaid sequential and hierarchical GPP.

Notwithstanding the above, in Ukraine, the OSH legal framework appears to see the hazardous work materials components (the workplace, working environment, tools, machines, equipment and materials, substances and chemical, physical and biological agents and work processes) as if they were an inevitability and, consequently, the primary responsibility of the employers seems to be the protection of the workers against such hazards. It appears not to be even considered the upstream alternatives of avoiding risks, assessing the risks that cannot be avoided, combating the risks at their source, and so on. The focus tends to be on the implementation of collective and personal protective equipment and on the compensation of the workers for such poor working conditions, rather than on occupational risk prevention.

### ***12.1.2. Scope of OSH General Regulations***

The general provisions on OSH, foreseen in the labour code and in the law on labour protection appear to restrict their application to “legal and natural persons that use hired labour according to legislation”. Their scope appears not to apply to legal entities or individuals that use hired labour not according to legislation, thus leaving out of their application, in particular, those who have covert employment relationships and their respective workers (e.g., bogus self-employed, bogus civil contracts, bogus volunteers, bogus trainees, bogus internships, etc.).

In this context, the incorporation of the proposals of the ILO Recommendation No. 198 concerning the employment relationship (ILO, 2016a) into national legislation (labour code and/or OSH regulations) should be considered, in order to better tackle undeclared work, extend decent work conditions to all workers and improve the level of alignment of the national legal framework with the International and European Labour Standards, in particular, with the provisions of Article 2 of the EU Council Directive No. 89/391/EEC, of 12 June 1989, concerning the introduction of measures to encourage improvements in the safety and health of workers at work (European Council, 1989a).

Moreover, several OSH regulations are only applicable to enterprises, thus excluding other (private and public) organizations, as well as the own-account workers with employees.

Finally, the majority of the provisions on OSH, notably the ones foreseen in the law on labour protection, are mainly focused on labour protections, viewed as industrial safety, and not also on the health issues, which are interrelated, thus preventing the adoption of a more holistic and integrated OSH prevention approach.

<sup>12</sup> The sequential and hierarchical General Principles of Prevention (GPP) are the following: 1. To avoid risks; 2. To evaluate the risks which cannot be avoided; 3. To combat the risks at source; 4. To adapt the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing their effect on health; 5. To adapt to technical progress; 6. To replace the dangerous with the non-dangerous or the less dangerous; 7. To develop a coherent overall prevention policy which covers technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment; 8. To give collective protective measures priority over individual protective measures; 9. To give appropriate instructions to the workers.

### ***12.1.3. Reporting, Notification and Inquiries of Work-Related Accidents and Occupational Diseases***

According to the official statistical data, the highest occupational injury rate in recent years in Ukraine has been observed in socio-cultural activities, coal industry, agro-industrial complex, transport, and machine-building. In particular, the number of injured persons in these sectors during 2013-2016 was 60-70% of the total number of injured persons across Ukraine.

Analysis of SLS statistics over recent years highlighted the major causes of occupational injuries as follows:

1. Main organizational causes of occupational injuries (about 70% of total percentage / number):
  - insufficient or no training on occupational safety, due to which workers neglect safety rules, violate them, and do not use PPE;
  - failure to comply with requirements of the labour protection instructions;
  - production process violations;
  - unsatisfactory work organization (work mode violations, violations of occupational safety and health requirements by enterprise management).
2. Main technical reasons of occupational injuries (about 20% of total percentage / number):
  - malfunction of work equipment, mechanisms, or tools;
  - imperfect production processes;
  - design defects in equipment, imperfection or absence of protective guarding, safety devices, alarm and blocking means, etc.
3. Main psychophysiological reasons of occupational injuries (about 10% of total percentage / number):
  - wrong actions owing to a worker's fatigue due to excessive difficulty and intensity of work;
  - monotonous work; a worker's disease state;
  - negligence;
  - a worker's psychophysiological or anthropometric data do not match the technique used or the work performed.

The highest prevalence of occupational diseases during the period in question was recorded among workers employed in the mining industry; metallurgical production, manufacture of finished metal products; production of machinery and equipment; processing industry, repair and assembly of machinery and equipment; and production of coke and oil products.

The main sanitation and hygienic causes of occupational diseases and occupational injuries include the following: excessive content of harmful substances in workplace air; insufficient or irrational lighting; high levels of noise, vibration, infra- and ultrasonic radiation; unsatisfactory micro-climate; miscellaneous radiation exceeding allowable limits; and failure to comply with personal hygiene rules.

However, the data presented on work-related accidents and occupational diseases and, in particular, the conclusions that are often drawn from its analysis, should be interpreted with the utmost care, as they show important inconsistencies and discrepancies, as mentioned earlier.

Several factors are contributing to the inconsistencies and lack of practical usefulness and reliability of the national statistics of occupational accidents and diseases.

On one hand, the obligations and procedures of the notification and processing of data on occupational safety and diseases are unclear and require following a very complex and bureaucratic procedure with a huge number of documents.

On the other hand, they can also be explained by the differences in the recording and grouping of the information received by SLS and the Social Insurance Fund. This causes a certain inconsistency between the reports of the agencies.

Moreover, legislative requirements as regards referring a worker to a specialized health care facility for consultation, in cases of suspected occupational disease, are not always met. In spite of the legal provision for responsibility of the specialized health care facility manager for timely notification about an occupational disease (poisoning), notification sometimes is not ensured.

In addition, there are grounds to assume that a considerable number of work-related injuries are hidden and not reported by employers in order to prevent their investigation and, ultimately, to avoid being held accountable for their occurrence, as also reported in other cases by several researchers (Legg et al., 2015; Morse et al., 2004; Sørensen et al., 2007; Stevens, 1999). For example, according to the SLS data, the total injury count in 2016 was 4,428 cases, the number of fatal accidents being 400, i.e. the ratio is 11 to 1. Therewith, during that period 184 persons were injured in the construction sector, with 41 fatal cases, i.e. the ratio is 4:1; in transport, 364 persons were injured, with 70 fatal cases, the ratio being 5:1.

It suggests that every fourth or fifth injury case in the above-mentioned sectors has a fatal outcome. The data provided above is serious, considering that the overwhelming majority of the population is employed exactly in these sectors.

This under-reporting of work-related accidents is somehow more serious, as the workers themselves do not apply for medical aid, especially in cases of minor injuries. This, in turn, can be explained by a low level of OSH culture among workers, and by the lack of any economic incentives for employers to address this problem.

The systematization of data on occupational diseases and work-related accidents is essential for accident prevention. During the study of the issue, it was seen that at present in Ukraine there are insufficient effective mechanisms for the recording of occupational diseases and work-related accidents, which in turn leads to violations of the legal rights and interests of workers.

At the same time, it should be noted that in order to optimize the structure of government bodies in Ukraine, a deep and comprehensive reform of ministries and other CEA is underway in Ukraine. Elimination of function overlaps in these bodies is also expected to positively contribute to the improvement of the collection of data on work-related accidents and occupational disease and its accuracy, eliminating its double accounting.

Moreover, undeclared work also has a significant impact on the data on OSH in Ukraine, as work-related accidents or occupational diseases of “off-the-books workers”, those not being declared or registered as workers, are not notified nor subjected to investigation.

In the specific case of partially undeclared workers, such as the bogus self-employed or, more commonly in Ukraine, the holders of a “civil contract”, the Law “On Labour Protection” applies only to employers, individual entrepreneurs that use hired labour, and workers that are in labour relations with the employer. The legislation on OSH does not apply to individual entrepreneurs, self-employed persons, and individuals working under civil law contracts. In such circumstances, it is economically advantageous for an employer not to hire a worker, but to conclude an agreement with him (e.g. a civil law contract) as with the party that undertakes to perform certain work at its own risk, and sometimes even using his/her own high-risk equipment. As such, the work-related accidents or occupational disease that may occur with this type of undeclared workers will not be registered, which also makes it impossible to assess the overall picture of injury rates in the country.

The use of different criteria and methodologies for notifying, collecting, recording, grouping and analysing information is also likely to explain some of the incongruities detected. Notably, accidents are registered by SLS as of the date of their occurrence, whereas the Social Insurance Fund of Ukraine only registers the accident as of the date when the H-1 form statement is drawn

up. Moreover, if an accident occurs late in the current year SLS will register it in the current year whereas the Social Insurance Fund of Ukraine will only do it on the following year, as the H-1 form statement is only approved in the following year.

Moreover, SLS statistics on work-related accidents and occupational diseases only refers to the ones that are investigated by the SLS, and not to the overall occurrences in the Ukraine.

Furthermore, the conflict in certain areas of the Donetsk and Luhansk regions of Ukraine not under Ukrainian Government control and the situation in the temporary occupied Autonomous Republic of Crimea and the city of Sevastopol, does not allow obtaining reliable statistical data and led to the loss of important statistical information, which makes it impossible to conduct comparative statistical analysis.

In addition, there has been incorrectness in the presentation of statistical data about the occurrence of occupational accidents and diseases in certain areas of the Donetsk and Luhansk regions of Ukraine not under Ukrainian Government control and in the temporary occupied Autonomous Republic of Crimea and the city of Sevastopol. For example, 286 fatal occupational accidents were recorded in all industries in 2017, whereas the number of such cases was 548 in 2014 and 538 in 2013.

Such a difference in the accident count is explained by the fact that the bulk of fatal occupational accidents were accounted for in enterprises situated in the above-mentioned oblasts (almost 35%).

This absence of a comprehensive and reliable system for gathering and reporting data and relevant information and statistics on work-related accidents and occupational diseases is likely to prevent the Ukrainian government, workers, employers, their representative associations, along with other stakeholders, from obtaining the necessary information and data to study, analyse and understand the OSH current situation and, most especially, to develop and implement more adequate policies and the most appropriate measures in order to efficiently and effectively improve working conditions in Ukraine and to prevent the occurrence of work-related accidents and occupational diseases.

In particular, it seems that the current system does not allow access to timely, reliable, feasible and comparable statistical data on the number and incidence rates of work-related accidents and occupational diseases, about their causes, as well as about the nature of their victims (by age, gender, occupation, employment status, etc.), employers (economic activity sector, size, location, type of employer, etc.), as well as about the existing working conditions, OSH risks present, direct and indirect costs associated to the work-related accidents and occupational diseases, etc.

This situation also prevents the existence of necessary data for the performance of scientific studies regarding OSH (e.g., associations between risk factors and the occurrence of work-related accidents or occupational diseases, OSH cost-benefit analysis, etc.).

This situation also appears to reveal some difficulties in the implementation of Articles 2 and 7 of the ILO Protocol No. 155, of 2002, to the Occupational Safety and Health Convention (ILO, 2002), the resolution concerning statistics of occupational injuries (resulting from occupational accidents), adopted by the Sixteenth International Conference of Labour Statisticians (ILO, 1998), as well as the ILO Code of Practice on Recording and Notification of Occupational Accidents and Diseases (ILO, 1996).

Moreover, the criteria and methodologies applied in Ukraine for the collection, classification and recording of data on work-related accidents are not yet aligned with the Eurostat European Statistics on Accidents at Work (ESAW) methodology (Eurostat, 2001), which hinders international comparisons.

It is worth mentioning, in this regard, that the improvement of the collection and use of statistical data on OSH, besides being a key objective of the EU Strategic Framework on Health



and Safety at Work 2014-2020, have also been elected as the theme for the ILO World Day for Safety and Health at Work.

Finally, the CMU's Regulation Number 294 foresees that if the SLS territorial body did not make a decision to undertake a special investigation of an work-related accident within twenty-four hours, the investigation shall be undertaken by the employer or the Fund. This provision is likely to generate a conflict of interests, as the employer is obviously an interested part on the results and conclusions arising from such investigations about the causes of the work-related accident occurrence, because he can be held liable for its occurrence.

#### **12.1.4. Workers**

As already mentioned, Ukrainian legislation provides that the workers have the right to be compensated (e.g. extra payment for work in hazardous and harmful conditions, reduced working time, earlier retirement, free food and drink to combat the effects of hazardous factors) for the unhealthy and unsafe nature of their workplaces. It should be advised that the legislation foresees, in addition, the upstream right of the workers to safe and healthy working conditions in every aspects of the work, provided by the employers.

Moreover, and as already mentioned, the concept of the worker should be extended, in order to ensure an adequate level of protection to all workers, in accordance with the ILO Recommendation No. 198, concerning the employment relationship (ILO, 2016a).

Moreover, Article 159 of the Ukrainian labour code provides for the obligation of the worker "to personally take feasible measures to eliminate any workplace situation that poses a hazard to their life or health or to persons around him", whereas in Section 4(5)(11) of the Order No. 62, of 22 March 2010, on the approval of the Coal Mine Safety Rules, it is foreseen that "during work, the worker must monitor safe conditions of the workplace, observance of the dust and gas conditions, working order of the equipment serviced, devices, and means of protection and control". This provisions imposes to workers obligations that appear to go far beyond what is expected from workers, some of which are employer's obligations, according to the applicable EU Directive No. 89/391/EEC provisions.

In fact, the latter foresees, in this respect: that "the employer shall take action and give instructions to enable workers in the event of serious, imminent and unavoidable danger to stop work and/or immediately to leave the work place and proceed to a place of safety" (Article 8(3)(b)); "the employer shall, save in exceptional cases for reasons duly substantiated, refrain from asking workers to resume work in a working situation where there is still a serious and imminent danger" (Article 8(3)(c)); and "the employer shall ensure that all workers are able, in the event of serious and imminent danger to their own safety and/or that of other persons, and where the immediate superior responsible cannot be contacted, to take the appropriate steps in the light of their knowledge and the technical means at their disposal, to avoid the consequences of such danger" (Article 8(5)(1)).

As such, it should be considered, instead, that, in such situations, the workers have the right (rather the obligation) to intervene, in accordance with the instructions of the employer and their means and training, in the absence of its supervisor, and should not be asked to return or to resume work, where there is still a serious and imminent danger, as also foreseen in Article 19(f) of the ILO Convention No. 155.

Moreover, and in accordance with Articles 5(e) and 13 of the ILO Convention No. 155, and in line with the Articles 8(4) and 8(5)(2) of the EU Directive No. 89/391/EEC, the legal provision, in the law, of an adequate protection to workers against any harmful and unjustified consequences, disciplinary measures, liability actions or placement at any disadvantage (unless they had the necessary instructions, training and means and acted carelessly or there was negligence or malice on their part) should also be considered, if the workers:

- in the event of serious, imminent and unavoidable danger, leave their workstation and/or a dangerous area;
- in the event of serious and imminent danger to their own safety and/ or that of other persons, and where the immediate superior responsible cannot be contacted, take the appropriate steps in the light of their knowledge and the technical means at their disposal, to avoid the consequences of such danger;
- have removed themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health.

#### ***12.1.5. Employers***

Besides the comments already spent on the section regarding the scope of the general OSH regulations, concerning the need to extend their application to all organizations, as well as to those that use hired labour not according to the legislation, and having regard for the current OSH legal obligations of the employer in Ukraine, it seems that the current Ukrainian OSH legislation does not foresee a set of employer's obligations which are widely recognized as of paramount importance, being therefore provided for in the international and European labour standards, and which, accordingly, should be foreseen in the Ukrainian legislation, in particular:

1. The employers' non-transferable responsibility for ensuring the safety and health of workers in every aspects related to work;
2. The obligation of employers to take, and continuously adjust to changing circumstances, the necessary measures to ensure the safety and health protection of workers, including prevention and assessment of occupational risks, consultation and participation of the workers, health surveillance, provision of information, training and the necessary organization and means, with strict compliance of the already mentioned sequential and hierarchical GPP.

#### ***12.1.6. OSH Services***

As such, the current Ukrainian OSH legal framework seems to provide only for the legal obligation of employers to organize and to ensure the functioning of labour protection services, mainly focused on issues concerning industrial safety, to the detriment of health services, thus not ensuring the obligation of the employers to organize, in an integrated manner, both safety and health services.

Moreover, this law apparently limits the obligation to organize labour protection services to enterprises, thus excluding from this obligation the own-account workers with employees and the remaining (private and public) organizations, which, in turn, seems to be in contradiction with the provisions of the EU Council Directive No. 89/391/EEC and of the ILO Convention No. 161, concerning Occupational Health Services (ILO, 1985b).

In addition, this law does not seems to provide for some of obligation of the employers, concerning the function of the OSH services, that are foreseen in Article 7 of the EU Council Directive No. 89/391/EEC, in particular:

1. The obligation of the employer to designate one or more workers to carry out activities related to the protection and prevention of occupational risks for the undertaking and/or establishment (and not only if an employer has twenty or more workers);
2. The requirements that the designated workers for OSH activities are provided with, besides training, the necessary professional experience, knowledge, equipments, installations and means, taking into account the size of the undertaking/establishment, the existing risks and the number and distribution of the exposed workers;
3. The requirement that the external service providers or persons consulted should have the aptitudes and the necessary personal and professional means to deal with the organization of protective and preventive measures;

4. To ensure that the number of professionals of the OSH services (external or internal, as might be the case) are sufficient in number, considering the size of the undertaking/establishment, the existing risks and the number and distribution of the exposed workers,
5. To ensure close work between the different OSH services providers (designated worker, internal services or external services).

Furthermore, labour protection services foreseen in Ukrainian legislation which employers have to organize apparently do not include all the health services foreseen in the EU Council Directive No. 89/391/EEC and in the ILO Convention No. 161, in particular:

- Identification and assessment of the risks from health hazards in the workplace;
- Surveillance of factors in the working environment and working practices which may affect workers' health, including sanitation installations, canteens and housing where these facilities are provided by the employer;
- Advice on planning and organization of work, including the design of workplaces, on the choice, maintenance and condition of machinery and other equipment and on substances used in work;
- Participation in the development of programmes for the improvement of working practices as well as testing and evaluation of health aspects of new equipment;
- Surveillance of workers' health in relation to work;
- Promoting the adaptation of work to the worker;
- Contribution to measures of vocational rehabilitation;

Regarding the financing of labour protection, Article 19 of the Law “On Labour Protection” provides that it does not involve the workers in any financial cost, as foreseen in Article 6(5) of the EU Directive 89/391/EEC, but goes further, establishing for employers a minimum amount of expenses on OSH activities and measures (at least 0.5 percent of the wage fund for the previous year). The latter, however, can be wrongly seen as a threshold that, once met, ensures that the OSH situation in a given employer’s workplace is good or complies with the legislation, regardless of the risks to which the workers are exposed, the quality of their OSH management system and the adequateness of the preventive and protective measures put into place.

In addition, the “List of the Labour Protection Activities and Means Expenses on the Implementation and Procurement Whereof are Incorporated in Costs”, as well as the nature of the labour protection services foreseen in the law “On Labour Protection”, do not apparently include some widely acknowledged relevant OSH services activities, such as:

1. Planning prevention, integrating all levels and for all the activities of the employer, the risks assessment and the corresponding prevention measures;
2. Carrying out of risk assessments and preparing their reports;
3. Development of occupational risk prevention plans;
4. Participation in the drawing up of internal emergency plans, including specific plans for fire-fighting, evacuation of workers and first aid;
5. Collaboration in the design of sites, methods and organization of work, as well as in the selection and maintenance of work equipment;
6. Supervision of the provision, the validity and the conservation of PPE, as well as the installation and maintenance of safety signs;
7. Carrying out of health surveillance tests, preparation of reports and respective files, as well as organization and maintenance of updated clinical records and other information related to workers;
8. Development of health promotion activities;
9. Coordination of measures to be taken in the event of serious and imminent danger;
10. Monitoring of working conditions of workers in vulnerable situations;

11. Conception and development of information programmes for the promotion of safety and health at work, promotion of the integration of the preventive measures in information and communication systems of the company;
12. Conception and development of training programmes for the promotion of safety and health at work;
13. Support for the activities of information and consultation of workers ' representatives for safety and health at work or, in their absence, the workers themselves;
14. Ensuring or monitoring the implementation of preventive measures, promoting their efficiency and operability;
15. Arrangement of the elements required for compulsory notifications;
16. Establishment of obligatory participation in the event of an accident at work or occupational disease;
17. Coordination of accompanying internal audits and inspections;
18. Informing and cooperating with other departments responsible for measures whose implementation depends essentially of others responsible;
19. Analysis of the causes of accidents at work or occupational diseases occurred and preparation of their reports;
20. Collection and organization of statistical elements relating to safety and health at work.
21. Maintaining the following records updated:
  - a. Results of occupational risk assessments;
  - b. List of accidents at work and occupational diseases;
  - c. Reports on accidents at work;
  - d. List of sick leave and the number of days absent to work;
  - e. List of measures, proposals and recommendations made by the OSH services.

#### ***12.1.7. Worker's Information***

As SLS officials have pointed out during a survey carried out, Ukrainian law does not foresee risk assessment and management, hence, there is no provision on the obligation of employers to inform workers about the occupational risks they are exposed to and about preventive and protective measures, resulting from such risk assessment, which should be implemented.

In addition, the Ukrainian OSH legal framework also does not foresee (as provided for in the EU Directive 89/391/EEC):

- The obligation of employers to provide workers with information concerning the preventive and protective measures that should be adopted.
- That information concerning risk assessment and measures to be adopted are regarding not only the undertaking/establishment in general, but also regarding each workstation.
- The obligation of employers to provide workers with information should be given not only at the beginning of the employment relationship, but continuously as necessary.
- The obligation of employers to provide information (not only on admission, but continuously) to the workers designated to implement the measures for first aid, fire-fighting and the evacuation of premises.
- The employer's obligation to take appropriate measures so that employers of workers from any outside undertakings and/or establishments engaged in work in his undertaking and/or establishment receive adequate information concerning: the safety and health risks and protective and preventive measures and activities, in respect of both the undertaking and/or establishment and regarding each type of workstation and/or job); and about the designated workers to implement the measures for first aid, fire-fighting and the evacuation of workers.
- The employer's obligation to give access to workers with specific functions in protecting the safety and health of workers, or workers' representatives with specific responsibility for the safety and health of workers, to: the reports of risks assessment; the reports on the protective and preventive measures that should be adopted; the list and

reports on accidents at work and occupational disease; and to information yielded by protective and preventive measures, inspection agencies and bodies responsible for safety and health.

#### ***12.1.8. Worker's Consultation***

Concerning the employer's obligation to consult workers on OSH, as foreseen in the EU Directive 89/391/EEC, it seems that Ukrainian OSH legislation does not provide workers or workers' representatives with specific responsibility for the safety and health of workers in a balanced way (i.e., in parity with the employer), or are consulted in advance and in good time by the employer, on:

- The designation of the workers to carry out activities related to the protection and prevention of occupational risks for the undertaking and/or establishment, as well as regarding their activities.
- The information concerning the workers designated to implement measures for first aid, fire-fighting and evacuation of workers, as well as regarding the measures itself.
- The information concerning: the assessment of occupational risks; protective measures to be taken and, if necessary, the protective equipment to be used; a list of occupational accidents resulting in a worker being unfit for work for more than three working days; and reports on occupational accidents suffered by his workers.
- The information concerning the safety and health risks and protective and preventive measures and activities in respect of both the undertaking and/or establishment in general and each type of workstation and/or job.
- The enlistment, where appropriate, of the competent services or persons outside the undertaking and/or establishment, that will organize and maintain the functioning of the OSH services.
- The planning and organization of OSH training for workers.

In addition, the Ukrainian OSH national legislation foresees that only the worker's representatives for OSH are entitled to appeal to the authorities responsible for safety and health protection at work, if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health at work, not giving the same opportunity to the workers themselves, as provided for in Article 11(6) of the EU Directive No. 89/391/EEC.

#### ***12.1.9. Worker's Training***

Notwithstanding the provisions of the law on labour protection (e.g., Article 18) and the provisions of the Order of the SCLPS No. 15, on the Model Regulations on the procedure for training and knowledge testing on labour protection, the Ukrainian regulations only partially foresee the requirements set forward by Article 12 of the EU Directive 89/391/EEC. They appear to fail on providing, in particular, that:

- Training should be in the form of information and instructions;
- Training has to be specific to the worker's workstation or job;
- Training should be repeated as often as necessary (having only decided to establish its repetition on the basis of a pre-defined time frame.) which, moreover, does not allow ensuring that the training is adapted to take account of new or changed risks;
- Training provided to workers, in particular, on recruitment and in the event of a transfer or a change of job, change of equipment or change in technology, and whenever necessary, should be given during working hours.

#### ***12.1.10. Worker's Health Surveillance***

Within the Ukrainian OSH legal framework, worker's health surveillance is regulated mainly by the Law No. 2694-XII, of 14 October 1992, on Labour Protection, the Law No. 2801-XII, of 19 November 1992, on the Fundamentals of the Legislation of Ukraine on Health Care, and



by the procedure for conducting health examinations of certain worker categories, approved by the MH Order No. 246, of 21 May 2007.

However, and contrary to the provisions of the Article 14 of the EU Directive 89/391/EEC, the above mentioned legislation only foresees the obligation of the employer to ensure the surveillance and health examination of the workers regarding certain worker categories and only when the workers are employed in heavy work, work with harmful or hazardous working conditions, or work requiring occupational selection, as well as regarding the annual compulsory medical examinations of persons under 21, and not to all workers, as provided for in Article 14 of the EU Directive 89/391/EEC.

The national law limitations of the compulsory medical examination to just certain type of workers or to some work types, is very serious, especially considering that:

- Not only certain worker categories or workers employed in heavy work, work with harmful or hazardous working conditions, or work requiring occupational selection are exposed to occupational risks. Only a risk assessment of the workplace concerned can give information about the risks to which the workers are exposed and what should be the most adequate measures to prevent and protect the workers' OSH;
- The health examination does not serve only to assess the ability of the worker to perform a given task or job. It also serves the purpose of assessing the impact of his work, and of the conditions under which it is performed, upon his health.

#### ***12.1.11. Social Dialogue***

Analysing the activities held with the participation of the National Tripartite Social and Economic Council, it is fairly safe to say that the involvement of social partners in the state process of building and developing proposals concerning state policy-making, particularly on OSH, within the social dialogue framework, is ensured at a proper level.

In particular, all the activities involved both representatives of the trade union associations, employers and executive authorities, and representatives of the National Council Secretariat. It allowed the creation of a holistic system of dialogue-based relations between the executive authorities and local governments, and the trade unions and employers in Ukraine.

SLS takes active part in the work of the National Tripartite Social and Economic Council because the SLS Head is the deputy chair of the Council's committee for labour relations and labour market.

Every year, the Council Presidium approves an action plan for implementation of the council's activity priorities. For example, in the 4<sup>th</sup> quarter of 2017, the council committees intend to consider the first outcomes of the inspection campaign 2017 on tackling undeclared work in Ukraine, held as part of the ILO Project "The Effectiveness of the Labour Inspection System and of Social Dialogue Mechanisms is Strengthened". This issue will be considered at the council committee meetings within the framework of implementing the council priority "Review of the Mechanism of State Supervision (Control) over Compliance with the Legislation on Labour and Employment and Approximation of the Labour Legislation to the EU Acquis".

The proposals and recommendations approved by the resolutions of the National Tripartite Social and Economic Council are binding for consideration by public authorities and local governments.

The SLS Board started working in November 2015. Over that period, eight meetings were held at which twenty-seven different issues were considered.

The board meetings are attended not only by its members, but also by the heads of the SLS territorial bodies, representatives of the Federation of Trade Unions of Ukraine, the Confederation of Free Trade Unions of Ukraine, the Federation of Employers of Ukraine, the



Government, the Administration of the President of Ukraine, ILO, and Ukrainian parliament members.

At present, the SLS Board, including boards of its territorial bodies (regional level), considers, within the scope of its competence, important matters related to the improvement of efficiency of state supervision over compliance with the legislation on labour and on OSH.

On the other hand, the legislation provides conditions for tripartite consultations and collective bargaining on national, sectoral and territorial levels, as well as for negotiations between the employers and the workers (their representatives) at the enterprise level, including on OSH.

Besides, relevant tripartite bodies on respective levels have been established and are functioning.

According to the legislation, draft regulatory legal acts must be agreed upon by social partners.

Notwithstanding the above, practical involvement of social partners in the discussions and consultations on OSH should be improved. For example, during 2015-2017, the CMU cancelled 120 regulatory legal acts on economic activities, some provisions of which do not comply with the requirements of the Law “On the Basics of State Supervision (Control) in Economic Activities”, which created gaps in the regulation of important safety areas in the organization of production (use of harmful and hazardous materials, observance of state standards, compliance with other rules of safe operation of some machines, mechanisms and high-risk equipment, etc.). Cancellation of the standard rates took place without notification and consultations with the SLS, employers and trade unions.

At the enterprise level, interaction between management, workers and their representatives concerning OSH takes place via collective contracts. Every enterprise where trade unions exist drafts comprehensive plans for ensuring safe working conditions, which are discussed and approved by the work collective meetings (conferences); the plans form an appendix to the collective contract. The trade union committees, moreover, promote implementation of the comprehensive plans and control their implementation, subject to periodic reporting at the work collective meetings (conferences).

Furthermore, as mentioned earlier, ILO studies concerning the legal foundations and existing practice of collective bargaining in Ukraine also pointed out some important challenges.

The overwhelming majority of collective agreements of all levels are concluded on the basis of models designed by the working groups of experts delegated by tripartite partners, and contain substantial differences between agreements of various levels, mainly in terms of the provisions actually being agreed upon, the provisions establishing OSH standards (conditions), and the provisions being the parties’ commitments to achieve a certain level in ensuring proper OSH conditions (improvement of legislation; development and implementation of target programmes or a package of measures; etc.).

A rather considerable part of the collective agreement provisions are formal in their nature, concerning the role of social partners in OSH.

At the moment, it also seems that the role of social partners at the sectoral level is not sufficient, private sector employers’ organizations are underrepresented, and the action of sectoral agreements and their scope of application in the private sector are not clearly defined.

#### ***12.1.12. Programmes on OSH and Other Documents***

Analysis of implementation of the Nationwide Social programme for Improvement of OSH and the Working Environment for 2014-2018, showed that the programme had not been fully carried out due, among other reasons, to insufficient funding.

Considering the situation, as described earlier, as regards to the financing of the Nationwide Social programme for Improvement of OSH and the Working Environment for 2014-2018, it

is necessary to secure appropriate financing, in order to better ensure the execution of such programmes in the future.

Moreover, not all the ministries and other CEA developed such programmes. For example, the Ministry of Agrarian Policy and Food Ukraine, the Ministry of Internal Affairs of Ukraine, the Ministry of Youth and Sports of Ukraine, the Ministry of Regional Development, Construction and Housing of Utilities of Ukraine, the Ministry of Culture of Ukraine, the MH of Ukraine, the Ministry of Education and Science of Ukraine, and the State Nuclear Regulatory Inspectorate of Ukraine did not develop, in the period 2012-2015, any sectoral programmes for improvement of OSH and the working environment.

#### ***12.1.13. OSH Education and Vocational Training***

Training on OSH is aimed at raising awareness, information and knowledge among workers and employers on OSH. It is therefore expected that the quality of training delivered can have a relevant and positive impact on the reduction of the work-related accidents and occupational disease numbers and incidence rates.

Notwithstanding the above, Ukraine does not have any legislative requirements for economic entities entitled to provide training and organize knowledge testing on OSH in terms of material, technical, staffing, programmatic, training, methodological and information provision.

Given that the above training has certain specificities related to occupational safety and health, state regulation of this type of activity seems fully justified, in order to ensure its relevance and quality, by determining, at the legislative level, the relevant requirements and clear criteria for the selection of teaching staff in charge of conducting the training on OSH.

In addition, the thematic model plan and curriculum on OSH for officials need to be complemented with issues related to the risk assessment and management (requirements of the fundamental EU Directives and ILO Conventions on OSH and labour inspection).

It should be emphasized that special attention is to be paid to OSH during training of young people at educational institutions, as the conscious attitude towards these issues is better developed at a younger age.

Moreover, and considering Article 14 of the ILO Convention No. 155, strengthening and updating the contents regarding OSH and the work environment in the curricula of all levels of education and training should be considered, including higher technical, medical and professional education, in order to meet the needs of workers and employers, as well as their representatives.

#### ***12.1.14. Awareness Raising and Consulting Services on OSH***

A range of nationwide activities has been implemented in Ukraine in terms of awareness-raising work on OSH. Evidence of the awareness-raising efforts on the above-mentioned matters is the organization of permanent conferences on OSH, as well as industrial safety exhibitions. It demonstrates not only the current OSH situation, but also the adoption of advanced developments and innovative approaches in Ukraine. Every year, such conferences and exhibitions attract thousands of specialists in OSH, as well as other stakeholders, to discuss topical issues related to industrial safety. According to surveys, more than 90% of the visitors come to the exhibitions to learn about recent developments and see new products in the field of technological safety and advanced personal protective and rescue equipment. For more than 70%, ensuring safe production and preserving manpower resources is the main goal of the visits. It should be noted that information and awareness-raising activities are conducted by public authorities as well. For example, SLS has created its official websites and social media pages.

Moreover, information advisory units/centres (that provide methodological assistance on labour relations subjects, occupational safety and health issues, advocacy on safe and non-harmful

working conditions, and positive experience concerning the prevention of emergencies and work-related injuries and occupational diseases) were established at local state administrations..

#### ***12.1.15. International Cooperation on Labour Inspection, Labour Relations and OSH***

In view of the strategic decision concerning the approximation of Ukraine to the EU and Canada, the amount and depth of international support assigned to Ukraine have recently increased.

Notably, through the development of several technical cooperation and development projects in the fields of OSH, labour relations and labour inspection, in various regions of Ukraine, supported by the EU, ILO and the Government of Canada, in particular:

1. ILO Project “The Effectiveness of the Labour Inspection System and of Social Dialogue Mechanisms is Strengthened”;
2. EU-ILO Project “Enhancing the Labour Administration Capacity to Improve Working Conditions and Tackle Undeclared Work”;
3. Canadian and ILO project on the improvement of the safety and health in the mining industry of Ukraine, aimed at reducing work accidents and occupational diseases through a systematic development of modern occupational safety and health policies, supported by enhanced capacity of the social partners.

These projects are essentially aimed at:

- Promoting the improvement of working conditions in Ukraine;
- Improving / ensuring the implementation of the EU-Ukraine Association Agreement and its related Annexes; and
- Supporting the realization of the Canada-Ukraine Free Trade Agreement;

mainly through the provision of technical support to Ukraine, in the following areas:

- Approximation of Ukrainian OSH and labour relations legislation to applicable International and European Standards, especially in what concerns the EU directives listed in Annex XL to Chapter 21 of the EU-Ukraine Association Agreement;
- Capacity building of the Ukrainian labour administration system, especially concerning Ukrainian labour inspection, to improve working conditions and to fight against undeclared work;
- Support Ukraine on the further implementation of the ILO Conventions Nos. 81 and 129 on labour inspection;
- Supporting Ukraine in the ratification process of the ILO Conventions scheduled for future ratification, in particular in what concerns the ILO Conventions No. 121, concerning benefits in the Case of Employment Injury; No. 152, concerning the Occupational Safety and Health in Dock Work; No. 167, concerning Safety and Health in Construction; and No. 187, concerning the promotional framework for occupational safety and health; and
- Strengthening social dialogue mechanisms.

#### ***12.1.16. Approximation to the International and EU Labour Standards on OSH***

Considering the approximation of the Ukrainian legislation on OSH to International and European OSH Standards, Ukraine is gradually improving its regulatory legal acts on OSH and progressively aligning them with the requirements of the ILO Conventions and EU Directives.

The current situation can be described, in broad terms, as follows:

- The implementation is being done according to the Action Plan for Implementation of the Technical Regulation System Development Strategy until 2020 (approved by the Order of the CMU No. 844, of 19 August 2015), the Action Plan for Implementation of the EU-Ukraine Association Agreement for 2014-2017 (approved by the Order of the CMU No. 847, of 17 September 2014), and also taking into account the Order of the CMU No. 745, of 17 July 2015, on the implementation plans for some EU legislative acts developed by the SLS.
- An analysis is planned of a number of EU Directives to find out whether it is necessary to implement their provisions in Ukrainian legislation and how to do so. In this connection, and as mentioned earlier, it is being currently analysed within the EU-ILO Project “Enhancing the Labour Administration Capacity to Improve Working Conditions and Tackle Undeclared Work”, through 6 “tables of concordance”, the level of approximation of the Ukrainian legal framework to five OSH Directives (e.g., 89/391/EEC, 89/654/EEC, 89/656/EEC, 2003/88/EC and 2009/104/EC) and to one labour relations Directive (91/533/EEC). The aim is to identify the EU provisions that are already fully complied with, the ones that are only partially complied with (and, thus, require being complemented), as well the ones that are not provided for (and, therefore, need to be provided for) and the national provisions that are in contradiction with the EU ones (and, as such, need to be reviewed or repealed).
- Some provisions of European legislation have already been introduced in the national legislation, by means of approval of technical regulations and regulatory legal acts on OSH (NPAOP).
- There are also plans for drafting regulatory legal acts that will implement provisions of those and other EU Directives.
- Some draft regulatory legal acts adapted to the provisions of the EU legislation are under preparation for approval by the CEA that ensure state policy-making in the field of OSH.
- The process of approximation to EU legislation requirements covers only the regulatory legal acts developed under the respective approximation plans. Other current regulatory acts laying down OSH requirements are actually outside the scope of the approximation process and only formally undergo legal expert examination for their compliance with *acquis communautaire* if reviewed.

At this moment, however, the level of approximation of the Ukrainian OSH regulations with the provisions of the EU Directive 89/391/EEC, is still too low, as illustrated in the following figure.

**Figure 22 - Level of Alignment of Ukrainian OSH legislation with EU Framework Directive Provisions**

DIRECTIVE ARTICLE		LEVEL OF COMPLIANCE								RECOMMENDATIONS FOR FURTHER ACTION							
N.º	TITLE	FULL		PARTIALLY		NON PROVIDED FOR		CONTRADICTION		MAINTAIN		COMPLEMENT		REMOVE		PROVIDE FOR	
		N.º	%	N.º	%	N.º	%	N.º	%	N.º	%	N.º	%	N.º	%	N.º	%
1	Object	0	0.0%	0	0.0%	3	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	3	100.0%
2	Scope	0	0.0%	0	0.0%	2	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	2	100.0%
3	Definitions	0	0.0%	2	50.0%	2	50.0%	0	0.0%	0	0.0%	2	50.0%	0	0.0%	2	50.0%
4	State obligations	0	0.0%	1	50.0%	1	50.0%	2	100.0%	0	0.0%	1	50.0%	2	100.0%	1	50.0%
5	General provisions on employers	0	0.0%	0	0.0%	4	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	3	75.0%
6	General obligations of the employers	0	0.0%	2	18.2%	9	81.8%	0	0.0%	0	0.0%	2	18.2%	0	0.0%	9	81.8%
7	Protective and preventive services	0	0.0%	2	15.4%	11	84.6%	0	0.0%	0	0.0%	2	15.4%	0	0.0%	11	84.6%
8	First aid, fire-fighting and evacuation of workers, serious and imminent danger	0	0.0%	1	10.0%	9	90.0%	0	0.0%	0	0.0%	1	10.0%	0	0.0%	9	90.0%
9	Various obligations on employers	0	0.0%	1	20.0%	4	80.0%	0	0.0%	0	0.0%	1	20.0%	0	0.0%	4	80.0%
10	Worker information	0	0.0%	2	33.3%	4	66.7%	0	0.0%	0	0.0%	2	33.3%	0	0.0%	4	66.7%
11	Consultation and participation of workers	0	0.0%	2	14.3%	12	85.7%	0	0.0%	0	0.0%	2	14.3%	0	0.0%	12	85.7%
12	Training of workers	0	0.0%	7	63.6%	4	36.4%	0	0.0%	0	0.0%	7	63.6%	0	0.0%	4	36.4%
13	Workers' obligations	0	0.0%	4	57.1%	3	42.9%	1	14.3%	0	0.0%	4	57.1%	1	14.3%	3	42.9%
14	Health surveillance	0	0.0%	2	66.7%	1	33.3%	0	0.0%	0	0.0%	2	66.7%	0	0.0%	1	33.3%
15	Risk groups	0	0.0%	0	0.0%	1	100.0%	1	100.0%	0	0.0%	0	0.0%	1	100.0%	1	100.0%
16	General scope of this Directive	0	0.0%	0	0.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	100.0%
TOTAL DIRECTIVE PROVISIONS		0	0.0%	26	26.8%	71	73.2%	4	4.1%	0	0.0%	26	26.8%	4	4.1%	70	72.2%

**Source:** EU-ILO Project “Enhancing the Labour Administration Capacity to Improve Working Conditions and Tackle Undeclared Work” documentation

As shown in the figure above, around 73% of the directive provisions are not provided for in Ukrainian national legislation, whereas only about 24% of the former are partially foreseen in

the Ukrainian current legislation. It is also worth mentioning that the current Ukrainian OSH legal framework is contradictory to four provisions of the EU Directive. 89/391/EEC.

Moreover, a number of regulatory legal acts, which need review within the scope of the SLS competence, have already been registered with the Ministry of Justice (or are waiting for registration), in order to bring them into conformity with the Constitution and laws of Ukraine and the EU *acquis*, as it happens, for example, with the draft legal act intended to transpose to the Ukrainian juridical internal order the EU Directive 2009/104/EC.

Furthermore, some legal acts are also expected to be reviewed or invalidated in 2018, including orders of the State Committee of Ukraine for OSH Supervision; orders of the State Service for Mining Supervision and Industrial Safety of Ukraine; and orders of the CLPS under the MSP.

Nevertheless, there seems to exist a lack of concertation and coordination between CEA's actions to ensure compliance with some of Ukraine's commitments envisaged by the EU-Ukraine Association Agreement, particularly concerning the implementation of some EU Directives on OSH and labour relations into national legislation.

It is therefore expected that the new Department on Decent Work and Labour Standards of the MSP, which is currently engaged in the preparation of a road map in order to guide the alignment process of national legislation with EU labour relations and OSH *acquis*, can contribute to an improvement in coordination between the involved competent authorities.

Moreover, there also seems to be a certain inconsistency during the revision and cancellation of regulatory legal acts on OSH. Vulnerability of the situation consists of practical implementation of the revision or cancellation procedures by the Ministry of Justice and the State Regulatory Service of Ukraine, which is conducted without any all-round prior consultations with the parties of the social dialogue.

Besides, the requirements concerning the drafting of a new relevant regulatory legal act before the cancellation procedure of the precedent act are not being complied with. For example, the cancellation by the CMU of 120 regulatory legal acts on economic activities, some provisions of which do not comply with the requirements of the Law "On the Basics of State Supervision (Control) in Economic Activities", created gaps (legal *vacuum*) in the regulation of important safety areas in the organization of production (e.g., use of harmful and hazardous materials, observance of state standards, compliance with other rules of safe operation of some machines, mechanisms and high-risk equipment, etc.).

Besides the aspects that pose special challenges to the approximation process, already discussed in the preceding sections of this chapter, there are also other legal acts that should be addressed.

One such regulation is the "the limits of lifting and moving of heavy items by women" (approved by the MH Order No. 241), as well as the "list of heavy work and work with harmful or hazardous working conditions on which employing women is prohibited" (approved by the MH Order No. 256).

In fact, the principle of equality between men and women is a fundamental principle of the EU which is foreseen in Article 2 and Article 3(2) of the Treaty establishing the European Community (EU, 2002), in the case-law of the Court of Justice, in the Directive No. 2006/54/EC of the European Parliament and of the Council, of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (European Parliament & European Council, 2006), as well as in countless international treaties and agreements such as, for example, the line 1) of the Article 420 of the EU-Ukraine Association Agreement and Paragraph 1(d) of Article 13.3 of the Canada-Ukraine Free Trade Agreement.

Indeed, and whenever there is a risk, particularly of back injury to workers, the OSH preventive and protective measures should apply both to women and men, except when particular or specific situations, which are sex-related, do recommend otherwise (e.g. pregnant women,



women who have recently given birth or are breastfeeding or whenever there is a specific risk to the genetic heritage for women, men or their descendants). In that particular case (for example, the case of a pregnant worker or a worker who has recently given birth or is breastfeeding), the Ukrainian legislation should also take into consideration the specific provisions of the EU 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 (European Council, 1992d).

Furthermore, this regulation, on the limits of lifting and moving of heavy items by women, should also consider the provisions of the EU Council Directive N.º 90/269/EEC, of 29 May 1990, on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (European Council, 1990). In particular, it should foresee (as also provided for in the general applicable provisions of EU Directive No. 89/391/EEC) that, whenever there is a need for the manual handling of loads that cannot be avoided, the employer shall assess the risks to the worker's health and safety arising from that handling of loads and, in particular, take the appropriate measures and use the appropriate means in order to eliminate or reduce the occupational risks involved in the manual handling of such loads, having regard to the characteristics of the load, the physical effort required, the characteristics of the working environment, the requirements of the activity (as laid down on the Annex I of EU Directive 90/269/EEC) and also to the worker's individual risk factors (foreseen in the Annex II).

In addition, and regarding the mentioned limits, the applicable international standards on this matter, which establish ergonomic recommendations for different manual handling tasks, should also be applied. In particular, the ISO 11228, on *Ergonomics - Manual handling*, which is composed of the following parts: Part 1 - Lifting and carrying; Part 2 - Pushing and pulling; and Part 3 - Handling of low loads at high frequency.

Another regulation that should be reviewed is the “procedure for workplace assessment in terms of working conditions” (approved by the Resolution of the CMU No. 442). In fact, this resolution only foresees the mandatory assessment of workplaces where the production process, equipment and raw materials used are potential sources of harmful and hazardous production factors able to adversely affect the health of workers as well as their descendants both presently and in the future. As such, it does not provide for the mandatory assessment of all workplaces and, consequently, it does not ensure that the other workplaces (not assessed) do not expose the workers to occupational risks.

Furthermore, this CMU Regulation No. 442 also regulates the workplace assessment for compliance of working conditions with the OSH legislation that employers have to ensure, regarding workers engaged in works with arduous and harmful working conditions, in order to address their rights to the corresponding benefits and compensations. These workplace assessment results will enable the identification of workplaces within which the performance of work provides (or does not provides) the right to preferential pension, reduced working week, concrete duration of annual paid additional leave (in the case of work in arduous and harmful working conditions), as envisaged by the Law “On Leaves”. It is important to note, in this connection, that the lists of productions, work, occupations, positions and indicators which entitle workers to old-age pension on preferential terms, have been approved by the CMU Resolution No. 461, of 24 June 2016.

Moreover, according to Article 41 of the Code of Ukraine on Administrative Offenses, failure to comply with the deadlines and procedures on the workplace assessment for working conditions, as well as regarding other violations of the labour legislation requirements, entails the imposition of a fine (on officials of enterprises, institutions and organizations, regardless of their form of ownership, and on individual entrepreneurs), amounting to between 30 and 100 non-taxable minimums of individual income. Besides, liability for a repeated commission of an offense within a year is also stipulated.



However, as a result of the amendments introduced by the CMU Resolution No. 741, of 5 October 2016, in Article 7 of the procedure for workplace assessment in terms of working conditions (approved by the CMU Resolution No. 442), a new mechanism for assessment of laboratories for the right to undertake hygiene studies of the working environment and labour process factors, is not regulated in full. The absence of an appropriate procedure, approved by MSP and MH, can lead, in the future, to the impossibility of developing such hygiene studies, essential for the workplace assessment in terms of working conditions and, consequently, to the impossibility of establishing types and amounts of benefits and compensations in connection with such assessments.

In order to address this gap, a joint draft MSP/MH order “On Approval of the Procedure for Assessment of Laboratories for the Right to Undertake Hygienic Studies of the Working Environment and Labour Process Factors” is already being prepared.

Another aspect that should be addressed, in this context, is the absence of revision of some regulatory acts on the provision of benefits and compensations (e.g. the MH Order No. 383/55, on the duration of additional paid leave; and the organization of special medical food, which has not yet been definitively settled), pursuant to the adoption of the hygiene classification of labour in terms of harmfulness and hazard levels of working environment factors, work process difficulty and intensity.

In addition, and pursuant to the CMU Executive Order No. 94, of 20 January 2016, the GOST (the USSR occupational safety standards, issued prior to 1992), including important OSH-related acts such as the “sanitary and hygienic requirements to workplace air” and the “hazardous and harmful production factors”, etc.) should have also been considered for cancellation.

Moreover, regulations on the procedure for state expert examination (approved by the Resolution of the CMU No. 431, of 23 June 1994), also need to be addressed. They regulate the expert examination of process, engineering and technical documentation on OSH conducted by expert technical centres subordinated to the SLS, with consideration of opinions provided by the bodies and institutions designated at the legislative level. In fact, and in light of International and European best practices, it appears that such expert examinations should be the responsibility of employers, within the scope of their responsibilities for assessing the risks. Employers, in turn, could execute such assessments themselves (if they had the knowledge and means to do so), or subcontract them to specialized and certified experts. The role of the state should, in turn, be limited only to certify those experts (or revoke their certificates) and to ensure that employers comply with their obligations to ensure the execution of the required assessments.

Other legal provisions that should be reviewed include the “regulation on the procedure for providing workers with special clothes, special footwear and other PPE” (approved by the Order of the State Committee for Industrial Safety, Labour Protection, and Mining Supervision No. 53, of 24 March 2008), along with Article 8 of the Law “On Labour Protection” and Article 163 of the Labour Code. Indeed, those provisions only allow free-of-charge mandatory provision of PPE to workers that are engaged in work with harmful and hazardous working conditions and in work connected with contamination or adverse weather conditions.

Moreover, those provisions do not foresee that the use of PPE should be a result of risk assessment, nor does it highlight the fact that the use of PPE is the last resource to protect (not to prevent) the health and safety of workers and that employers have to first exhaust all other alternative preventive and protective measures, in strict observance of the GPP, as provided for in Article 6(1) and 6(2) of the EU Council Directive 89/391/EEC.

Another regulation whose revision should be considered in order to induce employer compliance with OSH regulations is the Law “On Collection and Accounting of the Uniform Contribution for Compulsory State Social Insurance”, which defines social insurance tariffs in

Ukraine. Its provisions seem to fail to stimulate and to encourage employers to improve the working conditions of their workers. It could be achieved, however, if the tariffs were determined taking into account, for example, the working conditions at workplaces and/or the number or incidence rate of work-related accidents and occupational diseases. The development of such a system of discounts or rate increments, nevertheless, is rather complex, and its implementation, besides a proper legal framework, requires an appropriate set of skills, at the level of insurance experts. Currently, the social insurance contribution actually transforms into a social tax.

The most important challenges in this process, however, seem to be the introduction in national law of a risk-oriented approach, in particular, to the legal provision of obligation of employers to take, and continuously adjust to changing circumstances, the necessary measures to ensure the safety and health protection of workers, within the strict compliance of the sequential and hierarchical GPP, especially taking into account its impact not only at the level of enterprises, but also at the state level.

It is expected that this process might require further cooperation and support from the ILO to Ukraine, not only regarding the further implementation of some already ratified convention, as the ILO Conventions No. 81 and 129, on labour inspection, but also concerning the ratification process, in accordance with the national needs and priorities, of the ILO Conventions scheduled for future ratification.

Regarding the latter, it is important to highlight the level of approach already achieved by Ukrainian current legal framework, regarding their main provisions.

For example, Convention No. 121, concerning Employment Injury Benefits, outlines the relations concerning employment injuries and reimbursement for the insurance payments and social services related thereto as regulated by the Law “On Labour Protection”, the Labour Code, the Law “on Compulsory State Social Insurance” and regulatory legal acts adopted pursuant to them, in particular, the Procedure for Investigating and Recording of Occupational Accidents, Diseases, and Emergencies (CMU Resolution No. 1232).

With a view to its future ratification, the following aspects should be taken into account:

- the worker categories mentioned in Art. 3(1) of the convention are not liable to be excluded from the application of the convention during its ratification by Ukraine;
- Art. 4 of the convention: the procedure stipulates (in Art. 1 “General Provisions”) that “the procedure defines the order of investigation and recording of occupational accidents, diseases and emergencies that happened to workers at enterprises, institutions and organizations of whatever form of ownership, or in their branches, representative offices and other stand-alone units”;
- Art. 5 of the convention: does not require any amendments to the procedure;
- Art. 6 of the convention: the procedure stipulates (in Art. 7 “Investigation and Recording of Accidents”) that “an investigation is carried out in case of occurrence of an accident, namely a time-bounded event or sudden exposure of a worker to a hazardous workplace factor or environment, that happened in the process of the worker’s performance of work duties, due to which a harm to health was recorded, in particular a wound or injury, including due to bodily damage, acute occupational disease and acute occupational or other poisoning, sun or heat stroke, burn, freezing injury, as well as in case of drowning, damage by electric shock, lightning or ionizing radiation, or other damage due to an emergency, fire, natural disaster (earthquake, landslide, flood, hurricane, etc.), a contact with fauna and flora entities, which resulted in the worker’s loss of working capacity for one or more working days, or in the need for transferring the worker to some other (easier) job for at least one working day, or in the worker’s disappearance or death during performance of work (official) duties”;

- Art. 7 of the convention: requires some addition to the term “accident” provided in the procedure, in terms of the conditions under which a commuting accident is to be considered an industrial accident;
- Art. 26(1) of the convention: the procedure provides as follows:
  - ✓ “Art. 58 - The employer must analyse the causes of accidents in a quarterly, semi-annual, and annual basis, and develop and implement an action plan for preventing such accidents”; and
  - ✓ “Art. 59 - Management bodies of enterprises and local state administration must undertake, pursuant to H-5 and H-1 form statements, an analysis of circumstances and causes of accidents in a quarterly, semi-annual, and annual basis, bringing its findings to the notice of enterprises belonging to their scope of management, and develop and implement an action plan for preventing such accidents”;
- Art. 26(2) of the convention: information concerning the frequency and severity of industrial accidents is included, *inter alia*, in the national report of the Government of Ukraine on the implementation of provisions of Art. 3(1)-(4) of the European Social Charter (revised) (“The Right to Safe and Healthy Working Conditions”);
- Art. 27 of the convention: the procedure stipulates that “the procedure applies to workers, including foreigners and stateless persons who, according to law, have signed an employment agreement (contract) with an employer or have been actually allowed to work by the employer”, thus excluding from its application the workers that, in spite of having an employment relationship, does not have a written or formal employment contract, such as undeclared workers (either totally undeclared workers or partially undeclared workers, such as the bogus self-employed, bogus service providers) and workers to whom employers decided not to provide with a written or formal contract, in spite of working for him.

As for the ILO Convention No. 167, concerning safety and health in construction, the analysis carried out on Ukrainian national legislation seems to suggest that it complies with around one third of convention articles; the provisions of the national regulatory legal acts partially comply with seventeen articles of the Convention (56.7%); and non-compliance of the national provisions regarding three articles of the Convention (10.0%), namely in what refers to Art. 1(3) and Art. 7 (concerning self-employed persons) as well as Art. 20 (concerning cofferdams and caissons) appears to exist .

#### *Art. 1(2) of Convention No. 167*

Art. 2 of the Law “On Labour Protection” provides that this law shall apply to all legal and natural persons that use hired labour according to legislation, as well as all working individuals. It thus excludes from its application the ones that use hired labour not in accordance with the legislation (in particular, those that use undeclared workers, bogus self-employed workers, civil contracts, etc.) as well as their workers.

The national legislation of Ukraine on labour protection and occupational health provides for no exception for any sector, including agriculture. Nevertheless, it does not include, in its scope, workers that, in spite of having an employment relationship, fail to have a formal or written labour contract.

#### *Article 2(e)(ii) of Convention No. 167*

Direct cooperation with subcontractors at enterprises is regulated by relevant contractual obligations and enterprise orders, as well as internal enterprise documents, drafted pursuant to current regulatory legal acts. Contracts define the customer’s and contractor’s areas of responsibility and, based on them, process flow charts and operations certificates are drawn up.

Contractors’ responsibility in construction is defined by contract and by law.

According to Art. 875 of the Civil Code of Ukraine, a contractor under a construction contract undertakes to build and deliver a project within a specified deadline or perform other construction work according to design estimate documentation, whereas the customer undertakes to provide to the contractor a construction site (spread of work), deliver approved design estimate documentation (unless this duty is not assigned to the contractor), accept the project or completed construction works, and pay therefor.

Provisions concerning liability of the parties for failure to comply with their obligations under a construction contract, as well as a procedure of settling such disputes, are also envisaged in the “General Conditions of Conclusion and Performance of Capital Construction Contracts”, approved by the CMU Resolution No. 668, of 1 August 2005.

The matter of state architectural and construction control and supervision is regulated by Art. 41 of the Law “On Regulation of Urban Development Activities” No. 3038-VI, of 17 February 2011, and the procedure for exercising state architectural and construction supervision (CMU Resolution No. 698, of 19 August 2015), whereas liability for administrative offenses in the construction sector is stipulated by the Code of Ukraine on Administrative Offenses.

#### *Art. 3 of Convention No. 167*

On the sectoral level, consultations are held with the Trade Union of Workers of Construction and Building Materials Industry of Ukraine and the All-Ukrainian Association of Employers’ Organizations in Construction, Design and Architecture concerning OSH in construction. A plenary meeting of the sectoral trade union’s central committee considered the question “On Key Problems in Labour Protection and Ways of Addressing Them at Construction Enterprises and in the Building Materials Industry”.

Consultations were also held with sectoral organizations of trade unions and employers in the course of drafting and implementing of: the General Agreement on Regulation of Main Principles and Standards of the Implementation of Socio-Economic Policy and Labour Relations in Ukraine for 2010-2012, between the CMU, the Federation of Trade Unions of Ukraine, and the All-Ukrainian Association of Employers’ Organizations “Federation of Employers of Ukraine”, signed on 9 November 2010; the Sectoral Agreement between the Ministry of Agrarian Policy and Food of Ukraine, the All-Ukrainian Association of Employers’ Organization “Federation of Employers of Agro-Industrial Complex and Food of Ukraine”, and the Trade Union of Agro-Industrial Complex Workers of Ukraine in agriculture for 2014-2016, signed on 20 December 2013; and the Sectoral Agreement between the Ministry of Agrarian Policy and Food of Ukraine, the All-Ukrainian Association of Employers’ Organization, “Federation of Employers of Agro-Industrial Complex and Food of Ukraine”, and the Trade Union of Agro-Industrial Complex Workers of Ukraine in food and processing industries for 2014-2016, signed on 20 December 2013.

#### *Article 4 of Convention No. 167*

Occupational risks and hazards are assessed during the workplace assessment, in accordance with the procedure for workplace assessment in terms of working conditions, established by the CMU Resolution No. 442, of 1 August 1992, subject to hygiene assessment and establishment of working conditions classes according to GN 3.3.5-3.3.8; 6.6.1-083-2001 (Hygiene classification of labour in terms of harmfulness and hazard levels of working environment factors, work process difficulty and intensity, approved by the Order of the MH of Ukraine No. 528, of 27 December 2001).

After the workplace assessment, the employer identifies the working environment factors able to damage workers’ health at the stage of design, commissioning of new facilities and equipment, introduction of new production processes, as well as in carrying out sanitary and epidemiological supervision over compliance with the legislation on occupational health.

Based on the findings of the assessment, the employer issues an executive document, namely an enterprise order, providing a ground to establish a status of workplaces that require certain benefits and compensations for working conditions.

Moreover, the assessment of occupational risks and hazards is also envisaged by the concept of risk management for man-made and natural emergencies (approved by the CMU Executive Order No. 37, of 22 January 2014) and the action plan for implementation of the concept of risk management for man-made and natural emergencies for 2015-2020 (approved by the CMU Executive Order No. 419, of 25 March 2015).

*Art. 6 of Convention No. 167*

At the level of construction sector enterprises, collective contracts were also concluded, regulating, *inter alia*, occupational safety and working conditions.

*Art. 7 of Convention No. 167*

The employer must undertake a workplace assessment according to the procedure established by CMU Resolution No. 442, of 1 August 1992, “On the Procedure for Workplace Assessment in Terms of Working Conditions”. After the workplace assessment, the employer must inform workers of all known and probable working environment factors able to damage workers’ health at the stage of design, commissioning of new facilities and equipment and introduction of new production processes, as well as in carrying out sanitary and epidemiological supervision over compliance with the legislation on occupational health. Based on findings of the assessment, the employer issues an executive document, namely an enterprise order, providing a ground to establish a status of workplaces that require certain benefits and compensations for working conditions.

The employer takes preventive measures to avert and eliminate risks of emergency situations and occupational diseases.

The employer must ensure, at its own expense, procurement, stocking, issue and maintenance of PPE according to regulatory legal acts on labour protection and to a collective contract.

According to Art. 13 of the Law “On Labour Protection”, the employer is also required to provide working conditions according to regulatory legal acts at a workplace in every structural unit, as well as to ensure compliance with legislative requirements concerning workers’ rights in labour protection.

According to Art. 4.3 of the State Construction Rules DBN A.3.1-5-2009 «Organization of Construction Operations», workers’ labour protection in construction is mainly ensured through: the provision of conditions for maintenance of integrated construction safety; the observance, by the general contractor and subcontractors, of labour legislation, particularly on the provision of safe working conditions, healthy conditions for rest, duration of working week, working time, etc.; and through actions to guarantee safety during the arrangement and maintenance of construction sites and performance of construction and installation work, as provided for in the regulatory documents on construction safety (DBN A.3.2-2-2009 “Labour Protection and Industrial Safety in Construction. Basic Provisions”; and DBN B.1.2-12-2008 “Construction in High-Density Settings”).

*Art. 8(1) of Convention No. 167*

Requirements for cooperation in cases when two or more enterprises undertake activities simultaneously at one workplace are implemented according to the provisions of Art. 36 of the Law “On Labour Protection”.

If two or more employers undertake work simultaneously at one construction site, the principal responsible person coordinates all the measures related to OSH of workers and bears primary responsibility for safety of the work. It does not exempt either of the employers from responsibility for all the measures related to OSH of their workers.



Cooperation between employers in the field of OSH when undertaking activities simultaneously at one workplace is envisaged by the “General Requirements to Ensuring Workers’ Labour Protection by Employers” (Order of the Ministry of Emergencies of Ukraine No. 67, of 25 January 2012).

Instruction and training of workers of other enterprises are undertaken according to the requirements of the model regulations on the procedure for training and knowledge testing on labour protection (Order of the SCLPS No. 15).

#### *Article 9 of Convention No.167*

Labour protection requirements for the design, construction (manufacture) and reconstruction of enterprises, facilities and means of production are provided for in Articles 154 and 156 of the Labour Code, Article 21 of the Law “On Labour Protection”, and Article 15 of the Law “On Ensuring Sanitary and Epidemiological Well-being of the Population”.

Besides, designs for construction, re-equipment and re-purposing must contain a section describing labour protection activities. According to the current legal provisions, all work performance projects must undergo comprehensive state expert examination.

On the other hand, Article 21 of the Law “On Labour Protection” specifies that the designing of production facilities and development of new technology, production means, and collective and individual protective equipment must be carried out subject to labour protection requirements. Expert examination of construction projects and of their compliance with regulatory legal acts on labour protection shall be conducted according to Article 31 of the Law “On Regulation of Urban Development Activities”.

#### *Art. 10, 11 and 12(1) of Convention No. 167*

In the course of their work, workers cooperate with the employer in the compliance of its obligations, according to Article 158 of the Labour Code, Article 4 and 16 of the Law “On Labour Protection”, the enterprise’s regulations on labour service commissions, and the provisions of collective contract between employers and workers.

Workers have to immediately inform their supervisor about any situation concerning labour protection where they have good reason to believe that an imminent and serious danger to their life or health exists; until the employer has taken actions, as appropriate, to remove it, he may not require the workers to resume work where an imminent and serious danger to life or health persists, which is regulated by the requirements of Article 153 of the Labour Code, Article 6 of the Law “On Labour Protection”, Article 41 of the Mining Law of Ukraine, work safety rules for fuel and energy facilities, and the labour protection system.

Besides, in cases where a situation that creates, or may create, an imminent and serious danger to the worker’s life or health, as well as to environment or the enterprise’s assets, the labour protection instructions, job descriptions, and workplace briefings stipulate appropriate actions are to be taken by workers, such as notification of other people and the supervisor about the situation.

The worker has the right not to start working until the danger has been removed.

Workers’ rights and responsibilities, concerning their participation in implementation and supervision in the field of OSH, are provided for in Article 6 of the Law “On Labour Protection” and by the “General Requirements to Ensuring Workers’ Labour Protection by Employers”, approved by the Order of the Ministry of Emergencies of Ukraine No. 67, of 25 January 2012.

#### *Article 28(4) of Convention No. 167*

Requirements concerning OSH related to processing and disposal of hazardous substances and waste are regulated by the Laws “On Labour Protection”, “On Waste”, “On Pesticides and



Agrochemicals”, as well as by the “General Requirements to Ensuring Workers’ Labour Protection by Employers” (Order No. 67 of 25.01.2012, of the Ministry of Emergencies).

*Article 30(1) of Convention No. 167*

Provision of PPE, devices and clothing is stipulated by Article 8 of the law “On Labour Protection”, the Order of the Ministry of Emergencies No. 67, of 25.01.2012, the Order of the State Committee for Industrial Safety, Labour Protection, and Mining Supervision No. 53, of 24.03.2008, and the standard rates for provision of special clothing, special footwear and other personal protective equipment.

For procurement of personal protective equipment the owner allocates 3-5% of the enterprise staff labour remuneration fund, spending it from the resources designated for labour protection.

*Article 31 of Convention No.167*

The workers’ course of action in accidents and emergencies is regulated by various labour protection instructions that are developed according to the Regulations on development of labour protection instructions (approved by the Order No. 9, of 29.01.1998, of the Committee for Labour Protection Supervision).

*Article 33 of Convention No. 167*

Vocational training, including necessary advanced training, qualification and incentives for persons engaged in ensuring a proper level of OSH, are provided for in Articles 4, 18 and 25 of the law “On Labour Protection” and Articles 38 and 40 of the Mining Law.

Workers and their representatives at the enterprise undergo proper training in OSH as per Article 18 of the law “On Labour Protection” and the regulations on training and knowledge testing on labour protection to be developed at every enterprise, pursuant to the model regulations on the procedure for training and knowledge testing on labour protection and the list of high-risk work (SCLPS Order No. 15, of 26 January 2005).

Workers whose vocational training must meet special requirements, as to occupational safety, according to legislation have to undergo preliminary special training and are issued, in due course, a certificate entitling them to perform or manage such work.

Moreover, and according to the law “On Labour Protection”, when concluding an employment agreement, workers must be informed, against signed receipt, about working conditions and about there being hazardous and harmful production factors at their workplace not yet eliminated, possible consequences of their impact upon the worker’s health, and the worker’s right to benefits and compensations for work in such conditions, according to legislation and pursuant to a collective contract.

The ratification process of Convention No. 167 may become an important way to induce improvement of the OSH situation in construction, because it would entail more active steps towards the correction of regulatory acts in this sector, especially in what concerns the introduction of the International and European Standards and best practices regarding, in particular: the obligation of the employers to assess occupational risks and, in particular, to adopt the necessary preventive and protective measures, with strict observance of the GPP; the employer’s obligation to 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 present); the employer’s obligations to provide all workers with adequate training, information and health surveillance; and regarding the fulfilment, by the state, of its obligations concerning the improvement of the State supervision of OSH, the promotion of the improvement of working conditions, the enhancement of social protection of construction workers, and the maintenance of the sector’s labour potential.

As for the level of approximation of the Ukrainian OSH legal framework to the requirements of the ILO Convention No. 187, which consists in the combination of a national policy to promote safer and healthier working environments with a national system (composed by laws, regulations, responsible authorities, technical information, advice, training, education, OSH services, research and collection of data on accidents and diseases) and national OSH programmes (which should define priorities, time frames, means of action and performance assessment procedures), aimed at establishing a coherent, systematic and continuous improvement system to promote OSH, in order to prevent occupational injuries, diseases and deaths, it seems that, despite the considerable improvements already achieved, there is still a lot to be done, as shown ahead.

#### *Articles 1(a) and 3 of Convention No. 187*

The national policy on OSH is determined by the Constitution of Ukraine, the Labour Code, the law “On Labour Protection”, as well as regulatory legal acts of the CMU and of the CEA responsible for the formulation and implementation of the policy on labour protection and occupational health. It is aimed at providing proper, safe and healthy working conditions and at preventing occupational accidents and diseases. The procedure of preparation and approval of draft laws is regulated by the CMU Resolution No. 950, of 18 July 2007, which stipulates that draft regulatory legal acts on labour protection and occupational health must be agreed upon with the central and local executive authorities and the trade union organizations concerned.

According to Article 13 of the law “On Labour Protection”, the employer is required to provide working conditions according to regulatory legal acts at a workplace in every structural unit, as well as to ensure compliance with legislative requirements concerning workers’ rights in labour protection.

The employer must undertake a workplace assessment according to the procedure established by the CMU No. 442, of 1 August 1992 “on the procedure for workplace assessment in terms of working conditions”. Following it, the employer must inform workers about all known and probable working environment factors able to damage workers’ health at the stage of design, commissioning of new facilities and equipment, introduction of new production processes, as well as to carry out sanitary and epidemiological supervision over compliance with the legislation on occupational health. Based on the findings of the assessment, the employer issues an executive document, namely an enterprise order providing a ground to establish a status of workplaces that require certain benefits and compensations for working conditions.

The employer takes preventive measures to avert and to eliminate risks of emergency situations and occupational diseases.

As a preventive measure, to avert industrial accidents, injuries and occupational diseases, supervision and control over the labour protection situation at the enterprise is exercised through: control over the operation of high-risk facilities; workplace assessment; certification of working conditions that is carried out periodically and aimed at timely detection of existing hazardous and harmful workplace factors; and administrative public control, aimed at carrying out continuous inspection of the labour protection situation in the organizations.

Moreover, the employer is required to ensure, at its own expense, financing of, and organization of preliminary (at hiring) and periodic (during work activities) medical examinations of the workers employed in heavy work, work with harmful or hazardous working conditions, or work requiring occupational selection, as well as annual compulsory medical examinations of persons under 21. Based on the findings of periodic medical examinations, the employer must ensure implementation of appropriate health-improving activities where necessary.

Owners and managers of enterprises, institutions and organizations are liable for the timely compulsory medical examinations of their workers, as well as for any harmful consequences for the worker’s health resulting from the fact that persons did not undergo compulsory medical

examination or by allowing workers to perform works which were contraindicated for health reasons.

The employment of workers in whom were found changes during a periodic medical examination is to be decided by the labour protection and occupational health (medicine) service, in cooperation with representatives of workers (trade unions) and the enterprise's human resources department, taking into account the worker's state of health and extension of his functional disorders.

The employer has the right to hold a worker liable in disciplinary terms, as well as to suspend him from work, without paying him/her any wage, according to the procedure established by law, if a worker evades a compulsory medical examination.

As already noted, when employing a worker and signing an employment agreement, the employer must inform the worker about the working conditions and the existing hazardous and harmful production factors, possible consequences of their impact upon the worker's health, the need to comply with necessary precaution measures, and the worker's right to benefits and compensations for work in such conditions, according to legislation and pursuant to a collective contract.

According to Article 22 of the law "On Labour Protection", the employer organizes, via the enterprise's labour protection and occupational health (medicine) services, the investigation of work-related accidents and occupational diseases and maintains their respective records, according to the CMU Resolution No. 1232, of 30 November 2011.

The employer must ensure, at its own expense, procurement, stocking, issue and maintenance of PPE, according to regulatory legal acts on OSH and to a collective contract.

Representatives of workers at the enterprise are to receive proper information from the employers on the measures to ensure OSH conditions and may consult their representative organizations concerning such information, subject to non-disclosure of commercial secrets, as provided for Article 161 of the Labour Code, article 5(2), 23, 41 and 42 of the law on labour protection and in the enterprise-level collective contract.

Notwithstanding the above, a written, coherent and integrated policy framework on OSH, which promotes basic principles such as the assessment of occupational risks, their combat at source and the development of an national preventative safety and health culture seems to be absent.

*Articles 1(d), 3(3), 4(2)(d) and 4(3)(c) of Convention No. 187*

Enterprise-level cooperation, between management, workers and trade unions, in occupational safety and health, is regulated by Article 41 of the law "On Labour Protection", Article 21 of the law "On Trade Unions, Their Rights and Guarantees of Activity", and the model regulations on the work of the persons authorized by wage workers to address labour protection matters (Order of the State Committee of Ukraine for Industrial Safety, Labour Protection and Mining Supervision No. 56, of 23.03.2007).

In the course of work, workers are to cooperate with the employer in the accomplishment of its obligations (c.f. Article 159 of the Labour Code, Articles 4 and 16 of the law "On Labour Protection", the Regulations on enterprise labour service commissions, and the collective contract between employers and workers).

Based on the model regulations on the enterprise labour protection commission (SCLPS Order of the No. 55, of 21 March 2007), an enterprise labour protection commission is established by the work collective's decision under the trade union committee's guidance; the commission is a standing consultative and advisory body ensuring proportionate participation of workers in any decision-making on OSH and the working environment.

Representatives of workers at the enterprise cooperate with the employer in OSH according to Art. 5(2), 4, 41 and 42 of the law "On Labour Protection" and Article 159 of the Labour Code.

To ensure OSH at an enterprise, a collective contract, instructions and other regulatory documents (charts, regulations, provisions) and labour protection instructions are approved and regularly revised; places for meals, drying of work clothes, and first-aid rooms are arranged; preliminary and period medical examinations are conducted.

Occupational risks and hazards are assessed during the workplace assessment, according to the procedure established by the CMU Resolution No. 442, of 1 August 1992, subject to the hygienic assessment and establishment of working conditions classes (according to GN 3.3.5-3.3.8; 6.6.1-083-2001 - Hygienic classification of labour in terms of harmfulness and hazard levels of working environment factors, work process difficulty and intensity - approved by the MH Order No. 528, of 27 December 2001).

After a workplace assessment, the employer identifies the working environment factors able to damage workers' health at the stage of design, commissioning of new facilities and equipment, introduction of new production processes, as well as in carrying out sanitation and epidemiological supervision over compliance with the legislation on occupational health. Based on findings of the assessment, the employer issues an executive document, namely an enterprise order, providing grounds for establishing a status of workplaces that require certain benefits and compensations for working conditions.

In addition, assessment of occupational risks and hazards is stipulated by the concept of risk management for man-made and natural emergencies (approved by the CMU Executive Order No. 37, of 22 January, 2014 and the Action Plan for implementation of the Concept of risk management for man-made and natural emergencies for 2015-2020, approved by the CMU Executive Order No. 419, 25 March 2015).

Vocational training, including necessary advanced training, are provided for in Articles 4, 18 and 25 of the law "On Labour Protection" and Articles 38 and 40 of the Mining Law.

Workers and their representatives at the enterprise undergo proper training in OSH as per Article 18 of the law "On Labour Protection", the regulations on training and knowledge testing on labour protection to be developed at every enterprise pursuant to the model regulations on the procedure for training and knowledge testing on labour protection and the list of high-risk work, approved by the SCLPS Order No. 15, of 26 January 2005.

Workers whose vocational training must meet special requirements regarding occupational safety undergo preliminary special training and are provided with a competent certificated, issued in due course, entitling them to perform or manage such work.

Moreover, and according to the law "On Labour Protection", when concluding an employment agreement, workers must be informed, against signed receipt, about working conditions and about there being hazardous and harmful production factors at their workplace not yet eliminated, possible consequences of their impact upon the worker's health, and the worker's right to benefits and compensations for work in such conditions, according to legislation and pursuant to a collective contract.

#### *Article 4(2) of Convention No. 187*

The structure and operation of the Ukrainian OSH system is envisaged by the following legislative and regulatory acts: Article 13 of the law "On Labour Protection"; law "On Collective Contracts and Agreements"; Articles 153-173 of the Labour Code; regulations of the SLS (in accordance with the CMU Resolution No. 96, of 11 February 2015); Model Regulations on the procedure for training and knowledge testing on labour protection (SCLPS Order No. 15, of 26 January 2005); and Model regulations on the OSH service, approved by the SCLPS Order No. 255, of 15 November 2004.

According to Article 1 of the law "On Labour Protection", the term "labour protection" means a system of legal, socio-economic, organizational and technical, sanitary and hygienic activities

and means, intended to preserve human life, health and working capacity in the process of working activity.

The law “On Labour Protection” defines basic provisions on the exercise of the workers’ constitutional rights to their life and health protection in the process of working activity, and to proper, safe and healthy working conditions; regulates, with participation of relevant public authorities, relations between employers and workers, in terms of OSH and the working environment; and establishes a uniform procedure for the organization of the labour protection in Ukraine.

Moreover, Article 21 of the Law “Compliance with OSH Requirements in Design, Construction (Manufacture) and Reconstruction of Enterprises, Facilities and Production Means”, stipulates that production buildings, structures, machines, mechanisms, equipment, and vehicles, put into operation after construction (manufacture) or reconstruction, overhaul, etc., and production processes, must comply with the requirements of the applicable regulatory legal acts on labour protection.

Furthermore, an employer is required to obtain a permit for the performance of high-risk work and for the operation (use) of high-risk machines, mechanisms or equipment (hereinafter referred to as the permit). The CEA (that implements state policy on labour protection) issues permits on a free-of-charge basis, pursuant to a conclusion of an expert examination of the economic entity’s labour protection and industrial production safety situation conducted by the expert technical centres belonging to the management scope of the central executive authority that implements state policy on OSH, or by independent expert organizations providing scientific and technological support to state supervision over industrial and labour protection.

The permit for the use of high-risk machines, mechanisms or equipment must be obtained by a producer or supplier of high-risk equipment prior to undertaking any delivery commitment. No permit is required in the case of operation (use) of high-risk equipment that has been accepted into service with a relevant certificate issued, or for which an operational readiness certificate has been registered, as well as in the case of registration of high-risk machines, mechanisms or equipment by the central executive authority that implements the state policy on labour protection.

Relations between legal entities and natural persons using hired labour according to law and the workers, are defined by Chapter II, “Collective contract”, of the Labour Code of Ukraine.

Pursuant to Article 3 of the Law “on Collective Contracts and Agreements”, the parties to a collective contract are the employers (on one part); and one or more trade union bodies or, in the absence of such bodies, workers’ representatives elected and authorized by the work collective (on the other part).

According to Article 4 of the Law “on Collective Contracts and Agreements”, if there are several trade unions or associations thereof or other bodies authorized by work collectives to represent them at an enterprise, they must establish a joint representative body to negotiate and conclude a collective contract.

A collective contract must always contain an article on OSH. This article is governed by Article 20 of the Law “On Labour Protection”, according to which a collective contract must provide that the parties envisage therein provision of social guarantees on OSH to workers at a level no lower than that provided for in legislation, their responsibilities, as well as comprehensive measures to achieve the established standards on OSH and the working environment, improve the existing OSH level, prevent occupational injuries, occupational diseases, breakdowns and fires, provide individual and collective protective equipment on a compulsory basis, and specify amounts and sources of financing for the above-mentioned measures.

One of the main challenges regarding this convention’s Article 4(2), however, seems to lie in the difficulties of Ukraine in ensuring an effective labour inspection, not only due to the



*moratoriums* that are often imposed, which bans the performance of inspection visits, but mostly to the fact that Ukrainian labour inspectors lack the power they need to perform their functions, as foreseen in the ILO Conventions Nos. 81 and 129, which prevents them from discharging their duties.

#### *Article 4(3)(f) of Convention 187*

Collection of statistics and development of state statistical reporting forms concerning victims of occupational accidents are carried out by state statistics bodies.

Moreover, records on work-related accidents and occupational diseases are maintained by enterprises and their management bodies (regarding all accidents); by working bodies of the fund's executive directorate (concerning insured accidents); by the state fire supervision bodies (in cases of victims of fires); by an institution of the state sanitary and epidemiological service and by working bodies of the fund's executive directorate (concerning victims of acute occupational diseases/poisonings; and by other services, CEA and local State administrations (regarding accidents subjected to special investigation, i.e., regarding those more serious and fatal).

One of the major challenges that Ukraine faces in meeting the requirements of ILO Convention No. 187 is precisely the fact that the Ukrainian system for the notification and recording of occupational accidents and diseases, as well as for the publication of the correspondent statistics, is unreliable. As a consequence, published statistics present several important inconsistencies and incongruities, which compromise the reliability of the data and, therefore, the relevance and accuracy of the results of its analysis.

Therefore, the revision of the current procedure for investigating and recording of occupational accidents, diseases, and emergencies (CMU's Resolution No. 1232) in order to improve the implementation of Articles 2 to 7 of the ILO Protocol No. 155, the resolution concerning statistics of occupational injuries (resulting from occupational accidents), and the ILO Code of Practice on Recording and Notification of Occupational Accidents and Diseases should be considered.

In this context, the alignment of Ukrainian criteria and methodologies for the collection, classification and recording of data on work-related accidents with the Eurostat European Statistics on Accidents at Work (ESAW) methodology (Eurostat, 2001), should also be considered.

#### *Article 5(2)(b) of Convention No. 187*

According to the methodology "Health and Occupational Safety Risk Management", energy sector enterprises draw up hazard identification cards for all work types in all structural units.

Based on the analysis of such cards, the labour protection service compiles the "Register of Hazard Identification and Risk Assessment". Proceeding from the completed cards, the labour protection service develops measures to mitigate risks and draft programmes for implementation of the measures that are executed as "Programmes for Hazard and Risk Mitigation".

According to the regulations on the labour protection management system, nuclear power industry enterprises regularly identify workplace hazard emergence risks (health risks), and respective preventive activities are carried out to prevent them.

Moreover, and at present, the national legislation on labour protection contains no obligation regarding the introduction of a risk-oriented approach, either at the state, regional or workplace levels.

Upon the SLS initiative, when the draft Labour Code was refined for the second reading, the working group of the Committee for Social Policy, Employment and Pension Provision, of the Verkhovna Rada of Ukraine, endorsed some proposals that will envisage a change in the current



concept of OSH management in Ukraine.

Adoption of the Labour Code, as well as of the further amendments to the law “On Labour Protection”, are expected to result in the revision of the existing mechanisms and procedures, as well as of the scope of the responsibilities of the state, employers and workers, in ensuring healthy and safe working conditions at work.

Necessary changes require a comprehensive approach to address OSH issues, according to international rules, practices and standards, based on the continuous assessment of OSH risks, and they can be implemented according to the OSH concept, whose development was recently approved by the CMU.

Following the OSH concept, it is expected that the implementation of a OSH risk-oriented approach in Ukraine, aimed at avoiding risks, assessing the risks that cannot be avoided and implementing the most adequate measures to prevent and protect the OSH of the workers will contribute to a reduction in the number and incidence rates of work-related accidents and occupational diseases.

Notwithstanding the considerable improvements that have been made in OSH national legislation in the recent years, much more remains yet to be done, concerning the approximation of the national OSH legislation with the requirements of ILO Convention No. 187.

The latter seems especially true regarding: the apparent absence of a national policy (to promote, e.g., the assessment of occupational risks or hazards, to combat occupational risks at source and to develop a national preventative safety and health culture); the absence of an effective national system (mainly due to the absence of an effective labour inspection system, because of the lack of powers of the labour inspectors and the frequent *moratoriums* on inspection activity, as well as due to the non-reliability of system of reporting and notification of work-related accidents and occupational diseases); and the nonexistence of a formulated national programme on OSH, which defines objectives, targets and indicators of progress and whose implementation is duly monitored, evaluated and periodically reviewed.

As for ILO Convention No. 152, concerning OSH in dock work, which is aimed at improving the OSH in the performance of dock work activities (work of loading or unloading ships), the MI considers the existence of several areas of concern which are somehow hampering the conclusion of the ratifying process, in particular: the obsolete material and technical infrastructure of the Ukraine’s commercial seaports; and the outdated regulatory legal framework.

In fact, and following the request of the MI, the state enterprise “The Research, Design and Engineering Institute of Sea Fleet of Ukraine with Pilot Production” conducted a research that showed that sea sector enterprises need considerable financing for their full re-equipment, in terms of machinery and equipment, as well as for their adoption of new technology. For example, the number of the dock cranes with expired service life is 443 (around 92% of the total crane quantity). The number of cranes to be purchased is seventeen (about 3.5% of the total crane quantity). The total cost of the crane modernization is estimated at UAH 68,256,000. The total cost of cranes that should have been purchased in 2015-2017, moreover, was estimated at about UAH 247 million (2014 research data).

A meeting of the Joint Working Commission of the MI, the Federation of Transport Employers of Ukraine, and the Joint Representative Body of Trade Unions, regarding the implementation of the Sectoral Agreement in the Sea Transport for 2013-2015, discussed and agreed with the MI’s opinion, which understands that the question about the ratification of this convention needs to be addressed only after the material and technical infrastructures and the regulatory legal framework have been brought into conformity with its requirements.

Moreover, and as proposed by the MI, the Fund of Social Insurance against Occupational Accidents and Diseases of Ukraine issued Resolution No. 38, of 11 December 2014, “On

Approval of the Measures for Prevention of Occupational Accidents and Diseases for 2015” that approved a list of regulatory legal acts on OSH scheduled for drafting and revision, which included the Occupational Safety Rules in Sea Ports (currently under elaboration by SLS), the Labour Safety Rules on Sea Fleet Vessels, and the Rates of Free Provision of Special Clothing, Special Footwear and Protective Equipment.

Meanwhile, SLS published the NPAOP 0.00-1.75-15, on the “Labour Protection Rules in Loading and Unloading Work”, that also apply to dock work.

Furthermore, and taking into account the provisions of Articles 10 and 11 of the ILO Convention No. 152, a list of requirements for dock roads, passageways, and pedestrian sidewalk arrangement has already been drawn up, for the purpose of ensuring safe traffic of vehicles and pedestrians.

In addition, Article 13 of the ILO Convention No. 152 requires ensuring the safe operation of machinery, in terms of effective guarding of its dangerous parts. At the moment, not all Ukrainian ports seem to comply with this requirement. In fact, and in most cases, existing metal-cutting machine tools (threading lathes, milling machines, etc.), made before and after World War II, have no guards for the dangerous zones which would meet the applicable international standards. The situation in woodworking machinery, moreover, seems to be the same.

Furthermore, the national rules of occupational safety in seaports are outdated and appear to fail to meet the requirements set forth in Part III “Technical Measures” of the ILO Convention No. 152. According to Article 4(1) of the Convention No. 152, national laws or regulations shall prescribe that the measures foreseen in its Part III should apply to dock work. However, the current Occupational Safety Rules in Sea Ports (NPAOP 63.22-1.04-88), drafted and put into effect by the USSR Ministry of Sea Fleet, in 1 June 1988, do not yet comply, neither with the requirements of the Convention No. 152 requirements, nor with the current Ukrainian OSH legislation.

Moreover, the Labour Safety Rules on Sea Fleet Vessels (NPAOP 61.1-1.01-76 (RD 31.81.10-75), as well as the Labour Safety and Workplace Sanitation Rules at Industrial Enterprises of the MSF (Ministry of Sea Fleet) have not been revised for more than thirty-seven years; whereas the Rates of Free Provision of Special Clothing, Special Footwear and Protective Equipment, have not been revised for more than twenty years.

Notwithstanding the above, the General Agreement between the CMU, the Joint Representative Body of the Employers Party on the National Level, and the Joint Representative Body of the Representative All-Ukrainian Trade Union Associations on the National Level, envisages, upon its signing, submission to the Verkhovna Rada of set of draft laws concerning the ratification of the Convention No. 152. At this moment, however, such legal acts drafts are still under elaboration.

## **12.2. Labour Relations Issues with Direct Impact on OSH**

### ***12.2.1. Employment Relations***

The concept of “worker”, in the Ukrainian labour code, as well as in the Ukrainian law on labour protection, is defined as the person with an employment contract that works for an employer.

This definition, however, is too narrow and leaves out of consideration as workers, those persons that, in spite of having in fact, an employment relationship, do not have a formal or written labour contract. The latter usually happens not only with the workers whose employers have decided not to give them a formal, written or signed contract (in order to avoid the responsibilities legal imposed to employers) but, most specially, with total undeclared workers and with partially undeclared workers (such as bogus self-employed workers, workers that have

a bogus service provision contract or a bogus civil contract, bogus trainees, bogus volunteers and bogus internships).

By preventing these persons to be legally qualified as workers, this legal definition tends to leave these persons out of the scope of application and protection that should be granted to them of the remaining provisions of labour relations and OSH regulations.

As such, and in order to combat covert (masked) employment relationships and ensure adequate protection to workers, the implementation of the proposals of the ILO Recommendation No. 198 concerning the employment relationship (ILO, 2016a), should be considered. The latter is aimed at creating mechanisms and criteria to be used to determine the existence of an employment relationship, and the consecration of the principle of legal presumption of the existence of an employment relationship whenever certain evidence (indicators) are present, such as, but not restricted to, the following:

1. The activity provider has to obey the orders of the respective beneficiary;
2. The activity provider is subject to the disciplinary authority of the beneficiary of the activity;
3. The activity is held in the place of its beneficiary or in a place determined by him;
4. The work equipment and instruments used belong to the beneficiary of the activity;
5. The activity provider has to comply with the start and end hours of the activity provision determined by the activity beneficiary;
6. A right amount is paid to the activity provider, with determined periodicity in return for its provision;
7. The activity provider performs management or leadership roles in the organizational structure of the beneficiary of the activity;
8. The activity provider depends economically on the beneficiary of the activity;
9. The activity provider develops his activities exclusively to the beneficiary of the activity;
10. The activity provider enjoys paid holidays and its subsidy and receives a Christmas bonus;
11. The activity provider is subject to the absences' regime of the beneficiary of the activity;
12. The activity provider may not substitute himself in the execution of the activity;
13. The activity provider does not assume the risks of the execution of the activity;
14. The activity provider does not have the power to determine the price of the activity provided.

The incorporation of this recommendation into national law would also improve, on the other hand, alignment with the Articles 3(a) and 4(1) of the EU Directive No. 89/391/EEC and with the EU Directive N.º 91/533/EEC, thus fostering the implementation of the EU-Ukraine Association Agreement.

### ***12.2.2. Equality Between Men and Women***

According to the International and European labour standards, all workers, irrespective of their sex, are entitled to safe and healthy working conditions, which should be ensured by the employers.

Moreover, the employers have the obligation to take all the necessary preventive and protective measures, according to the GPP, in order to prevent or minimize the exposure of the workers, regardless of their sex, to any occupational risks that could not be avoided.

Furthermore, it should be responsibility of the state to promote equal opportunities in the choice of profession or line of work and its conditions, access to employment and vocational training, in order to avoid what is forbidden or limited on grounds of sex, the access to any offices, type of work or occupation, professional categories or training.

In this context, any special preventive or protective measures, targeting a specific sex group (women or men) should only be foreseen in the cases where a specific sex-related situation (e.g. pregnant women, women who have recently given birth or are breastfeeding, whenever there is a specific risk for the genetic heritage for women, men or their descendants, etc.) can objectively and proportionally justify the discrimination of a sex group in relation to the other, as results from the conjugation of Article 15 of the EU Directive 89/391/EEC with the provisions of the EU Directive 2006/54/EC, of 5 July 2006.

As such, and in order to improve the alignment of Ukrainian legislation with the EU *acquis*, in particular concerning its fundamental principle of the equality between men and women, as established in Articles 2 and 3(2) of the treaty establishing the European Community (EU, 2002) and in the case-law of the Court of Justice, the provisions regarding the work of women, foreseen in Ukrainian national legislation<sup>13</sup>, should be aligned with the EU Directive 2006/54/EC. The latter, in turn, would allow the improvement of the implementation of Line 1) of Article 420 of the EU-Ukraine Association Agreement, as well as Paragraph 1(d) of Article 13.3 of the Canada–Ukraine Free Trade Agreement.

In addition, and regarding the special protection that should be provided to particularly sensitive risk groups (mentioned in Article 15 of the EU 89/391/EEC), for example, to pregnant workers and workers who have recently given birth or are breastfeeding, Ukrainian legislation should consider the provisions of the EU Directive 92/85/EEC.

### **12.3. Labour Inspection**

To improve working conditions in Ukraine and, by this way, to contribute to the improvement of the living conditions of its population and, concomitantly, to develop a more fair and attractive marketplace in which to invest and do business, it is not enough to have good laws on OSH and on labour relations. It is also necessary to enforce them. In fact, and as widely acknowledged, without proper implementation and, in particular, without proper enforcement, the laws are mere pieces of paper, with which no one complies (Anderson, 2007; ILO, 2007; Jensen, 2004; Richthofen, 2002; Suard, 2016).

In this context, and as important as the alignment of Ukrainian legislation to the International and European Labour Standards and best practices on OSH and labour relations, is that Ukraine ensures, upstream, the existence of an effective labour inspection system that ensures and enforces the compliance with whatever law is in force at any given moment, in order to improve the working conditions of Ukrainian workers, increase their living standards and develop a more favourable business environment. The latter, in turn, would also contribute to fostering the implementation of the ILO Conventions Nos. 81, 129 and 155, alignment with the EU OSH Framework Directive No. 89/391/EEC and the implementation of the EU-Ukraine Association Agreement and the Canada-Ukraine Free Trade Agreement.

#### **12.3.1. Labour Inspectors' Powers**

Articles 4 to 7, 10 and 22 of the Law No. 877-V, of 5 April 2007, on the basic principles of State supervision (control) in economic activities, impose severe restrictions and limitations on the powers of the Ukrainian labour inspectors.

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<sup>13</sup> For example, in the Constitution of Ukraine, in the chapter on “Female Labour” of the Labour Code, and in the MH Orders Nos. 241, of 10 December 1993 and 256, of 29 December 1993.

The Ukrainian labour inspectors lack several of the basic powers foreseen in the ILO Conventions Nos. 81 and 129, which they need to effectively discharge their duties. In particular, and according to the Law No. 877-V, Ukrainian labour inspectors cannot:

1. Perform inspection visits to any workplace without prior notice;
2. Conduct inspection visits at any time of day or night;
3. Make inspection visits with the frequency and depth which they understand as necessary;
4. Impose sanctions regarding observed infractions when the employers meet the demands of a notification to take measures;
5. Monitor, promote and enforce compliance in employers which are not registered (which are often the ones that typically show higher levels of non-compliance, not only regarding undeclared work but also concerning OSH and labour relations regulations);
6. Suspend works, even in the event of imminent danger to the health or safety of the workers.

Moreover, the reasons that are commonly put forward to justify the limitation of the powers of labour inspectors have been twofold: labour inspectors' high level of corruption; and the need to help businesses grow and break down barriers to their development.

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

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

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

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



improvement in the perception of attractiveness of their professional career which, in turn, will also facilitate the recruitment of new labour inspectors;

7. To assess, with the involvement of workers and managers of all business units of the labour inspectorate, the risks of corruption and related offenses and to draw up a plan, which should include, among other aspects: the clear identification of the risks of corruption; their main areas of concern; the situations that may generate conflicts of interest and incompatibilities; and adequate mechanisms and measures to ensure their prevention and management<sup>14</sup>.
8. To prosecute and to convict offenders, whether disciplinary or criminally, applying the corresponding disciplinary and criminal penalties to the full extent of the law.

Moreover, providing labour inspectors with the power they need to be effective, as foreseen in the ILO Conventions Nos. 81 and 129, will allow them to fulfil their mission of improving work conditions. As a consequence of that, the working conditions (and, hence, the living conditions) in Ukraine are likely to improve and, as a consequence, internal demand and investment will also likely increase. In addition, the approximation of Ukraine's laws and practices to the International and European Labour Standards and best practices, especially as concerns labour inspection (entrusting labour inspectors with the power foreseen in the ILO Conventions 81 and 129), fostering the implementation of Articles 13.3 to 13.5 of the Canada-Ukraine Free Trade Agreement, as well as the Articles 420 and 424 of the EU-Ukraine Association Agreement, is also likely to accelerate Ukraine's access to both the Canadian and European markets. Consequently, in a non-international market economy such as the Ukrainian, which heavily depends on internal demand, the decision to assign to labour inspectors the powers they need to be effective is likely to have a very positive impact on business. It will probably induce an increase in consumption (due to an increase in internal demand) and, therefore, prompting an increase in prices (along with business margins), an increase of production and investment, eventually leading to the creation of more businesses and, consequently, to a reduction of unemployment and emigration flow, and to a reduction in social security expenditures, to an increase of its revenues and, hence, to the possibility of a reduction in the social security contribution rate (or of public debt) which, in turn, will encourage further development in businesses, in an auto-induced positive cycle...

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

Indeed, when labour inspectors are provided with the necessary resources and powers, and carry out their duties effectively, they are able to improve the labour and OSH conditions at the workplaces, reducing the number of work-related accidents and occupational diseases, thus providing positive outcomes to workers, employers, the state, and to the population in general, as also noted by Anderson (2007), Frick (Frick, 2011), ILO (2007), Jensen (2004) Levine (Levine, Toffel, & Johnson, 2012), Niskanen (2014), Richthofen (2002), Suard (Suard, 2016) and Tösiñe & Wedege (2013). By improving working conditions at the workplace, an effective labour inspection presents considerable benefits and sound advantages, not only at the human level, but also at the social, economic and financial levels, not only for workers, but also for employers, the state, and society in general, contributing, in particular, to:

1. A reduction in the number and incidence rates of fatal and non-fatal work-related accidents and occupational diseases;

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<sup>14</sup> This is done, for example, by the Portuguese Labour Inspectorate. See, in this regard, the “ACT Risk Management Plan for Corruption and Related Offenses” (ACT, 2017). This ACT Plan results from the Recommendation No. 1/2009, of 1 July, and Recommendation No. 5/2012, of 7 November, of the Portuguese Council for the Prevention of Corruption (created by the Decree-law No. 54/2008, of 4 September), which foresees that the heads of the entities, whatever their nature, that manages public money or public assets, must draw up plans for the management of risks of corruption and related offenses, including their identification in each area or department and must also put into place mechanisms for monitoring and managing conflicts of interest.



2. A reduction of the direct and indirect costs<sup>15</sup>, arising from those events;
3. Greater access of businesses to new and more attractive markets (e.g., European common market, Canadian market, etc.);
4. The improvement of the work ability and labour capacity of the workforce;
5. The improvement of social security sustainability and revenues:
  - a. By ensuring the transition of those in the informal and undeclared economies (workers and employers) to the formal and declared ones, therefore raising the amount of social security contributions and reducing social security expenditures (e.g., with unemployment benefits and other benefits that were wrongly assigned to informal and undeclared workers and businesses);
  - b. Through the increase of the work capacity of the workforce which, therefore, instead of receiving early benefits from social security, will now contribute for a longer period; and
  - c. By reducing social security direct costs related to work-related accidents and occupational diseases (e.g., rehabilitation costs; early retirement pensions; disability and other pensions; funeral expenses; etc.).
6. The public finance balance and to the reduction of tax rates, through:
  - a. The increase of tax revenues, due to a reduction of the informal economy and undeclared work;
  - b. The decrease of state budget expenditures, through the reduction of the direct and indirect costs due to work-related accidents and occupational diseases (e.g., health care costs, emergency services expenditures; etc.);
  - c. The increase of business revenues, resulting from: an increase in sales due to access to new markets (e.g., European common market, Canada, etc.); the elimination of unfair competition and the improvement of the market environment; and the increase of productivity, resulting from improved working conditions and a consequent reduction of work-related accidents and occupational diseases.
7. The improvement of the revenues and net income of businesses, mainly through:
  - a. The elimination of unfair competition from businesses that do not comply with labour relations and OSH regulations;
  - b. Increased competitive advantage, founded on a more motivated workforce, on a more fair market, and on the reduction of tax rates and social security contribution rates (allowed by the improvement of social security and public finances *equilibrium*);
  - c. The increase of productivity, via the reduction of fixed and variable costs related to work-related accidents and occupational disease (e.g., compensation costs, insurance costs, training costs, loss of production opportunity costs, image and reputation indirect costs, opportunity costs in terms of economies of scale and

<sup>15</sup> Namely in terms of : emergency services; rehabilitation services; disability, early retirement and other pensions; health care and hospital and rehabilitation services expenses; compensation costs; work-related accidents and occupational disease insurance costs; opportunity costs related to the loss of production, hence, revenues, due to the absence of victims; increased training costs to train the workers that substitute victims; impact of victim absence and substitution in terms of economy of scale and experience; indirect costs related to damages to the image and reputation of the employers and of the state, related with the occurrence of such events; and indirect costs associated to the impact of such events on the motivation and commitment of the workers.

experience, indirect costs related to the motivation and involvement of workers, etc.);

- d. Increased revenues due to access to new markets (e.g., European common market, Canada, etc.); and
- e. Increased net profits, due not only to increased revenues and reduction of costs, but also resulting from the reduction of income tax rates (allowed by the improvement of public finances).

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

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

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

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

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

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

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

1. Article 9 of the ILO Convention N.º 155, that foresees that the enforcement of OSH regulations should be ensured by an adequate and appropriate system of inspection and that there shall be provided adequate penalties for their violations;
2. Article 4 of the European Directive No. 89/391/EEC, which foresees the obligations of the states for ensuring the legal subjection of employers, workers and workers'

representatives to the legal provisions necessary to implement its provisions and for ensuring adequate controls and supervision;

3. European Parliament Resolution No. 2013/2112(INI), of 14 January 2014, on effective labour inspections as a strategy to improve working conditions in Europe (European Parliament, 2014);
4. EU Strategic Framework on Health and Safety at Work 2014-2020 (European Commission, 2014; European Parliament, 2015), which sets as one of the EU OSH key objectives the improvement of the enforcement of OSH legislation by Member States;
5. Articles 420, 424 and Annex XL to Chapter 21 of the EU-Ukraine Association Agreement;
6. Articles 13.3 to 13.5 of the Canada–Ukraine Free Trade Agreement;
7. Article 9(1) of the Constitution of Ukraine, which provides that “the international treaties in force, consented by the Verkhovna Rada of Ukraine as binding, shall be an integral part of the national legislation of Ukraine”;
8. Article 3(2) of the Law No. 2694-XII, of 14 October 1992, on labour protection, which foresees that “if an international treaty that the Verkhovna Rada of Ukraine agreed to be bound to establishes provisions other than envisaged in Ukraine’s legislation on labour protection, the provisions of the international treaty shall apply”.

### **12.3.2. *Moratoriums***

The imposition of *moratoriums* on the exercise of inspection activities by state inspection services, including the SLS, is becoming a common practice in Ukraine.

In January 2015, a *moratorium* banning the performance of inspections (scheduled and unscheduled) by controlling bodies, to all economic entities (enterprises, institutions, organizations and individual entrepreneurs) was introduced, through the Paragraph 8 of the “Transitional Provisions” section of the Law No. 76-VIII, of 28.12.2014, on Amending and Invalidating Some Legislative Acts.

This *moratorium* was then lifted, from 1 August 2015 until 31 December 2017, being re-established again, in January 2018, following the approval of the Ukrainian State Budget for 2018. Subsequently, in 23.2.2018, the SLS was finally taken out from the scope of this moratorium, at least until 31/12/2018, by CMU Resolution No. 1104.

This practice, *a fortiori*, by preventing labour inspectors from performing inspections activities, is also inhibiting labour inspectors from discharging their duties and being effective.

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

### **12.3.3. *Labour Inspector Resources and Working Conditions***

The effectiveness of any labour inspection heavily depends on the existence of a sufficient number of labour inspectors<sup>16</sup>, adequately recruited, with the proper skills and qualifications, which enjoy civil servant status and employment stability, provided with the adequate training, equipment and working conditions, as well as on the existence of duly qualified expert and specialists.

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<sup>16</sup> Taking into account, in particular: the number, nature, size and situation of the workplaces liable to inspection; the number and classes of workers employed in such workplaces; the number and complexity of the legal provisions to be enforced; the material means placed at the disposal of the inspectors; and the practical conditions under which visits of inspection must be carried out in order to be effective (ILO, 1947, 1969).

In Ukraine, however, the level of inspection staff experts currently faces a shortage. In fact, after 2014, as reorganization began, a substantial outflow of experts took place. By the end of 2016, the workforce level compared to previous levels was 67% for the labour protection state inspection staff, and 35% for occupational health state inspection staff.

At the present moment, as shown earlier, there is a serious insufficiency of staff, as well as of financial, material and information resources, to ensure the adequate discharge of labour inspection duties.

As for the training of labour inspectors, it was reported that continuous training on OSH and labour relations issues was scarce. This is particularly worrying, taking into account not only the continuous alterations and approval of legislation in Ukraine, but, most specially, the need for the development of expertise and knowledge on the EU OSH *acquis*, in order to ensure the approximation of the national legislation to it, as foreseen in the EU-Ukraine Association Agreement.

As for the working conditions of labour inspectors, cited problems were mainly related to salary level, which was widely considered as being too low, as well as with the absence of prospects of career progression and development. This lack of attractiveness of the labour inspection career, in turn, has been inducing additional problems, notably, difficulties in retaining labour inspectors, problems regarding the recruitment of new labour inspectors (e.g., lack of applicants, the need for inception training) and the “brain drain” of labour inspectors, whose knowledge and experience is lost forever.

#### ***12.3.4. Labour Inspector Specialization***

Currently, Ukrainian labour inspection is composed of three different types of labour inspectors, each one assigned to a specialized field of activity<sup>17</sup>.

Considering the lack of labour inspectors, the difficulties in their recruitment and the benefits that can arise from ensuring a more holistic and integrated approach to labour inspection activities, the possibility of merging these three types of specialized labour inspectors into just one general type should be considered. The latter, in turn, would concentrate the competences of the current three types, without prejudice to the constitution, whenever appropriate, of more specialized teams, to deal with special phenomena or more complex areas (e.g., undeclared work, biological risks, chemical risks, ionizing radiation risks, etc.).<sup>18</sup>

It would require, however, a common core training in all the OSH and labour relations subjects and legislation within their competencies, as well as the harmonization of their inspection gesture.

Overall, it could contribute to: bridging the gap on the number and specialization of the labour inspectors; benefits from synergies arising from their integration; improvement of know-how, knowledge and best practices transfer between labour inspectors; the improvement of the efficiency of the labour inspection; and the minimization of the number of required different inspection visits and its impact on the economic agents.

<sup>17</sup> As mentioned earlier, these three different types comprise: state labour inspectors - focused on employment, compulsory state social insurance; etc; state labour protection inspectors - concentrated on: labour protection (permits for performance high-risk work and for the use of high-risk machines, mechanisms and equipment; safe working conditions at workplaces; vocational and advanced training; benefits and compensations for work with heavy and harmful working conditions; labour protection services; labour protection financing; etc.); and state occupational health inspectors - focused on: measures to prevent occupational diseases; prophylactic measures aimed at prevention and protection of workers' health; compulsory medical examination; collective and personal protective equipment; etc.

<sup>18</sup> As it happens, for example, with the labour inspectors of some EU countries, such as France, Italy, Latvia, Poland, Portugal, Romania and Spain.

### ***12.3.5. Labour Inspection Decentralization Process***

The Government of Ukraine started a process of decentralization of some labour inspection functions, regarding specific labour relation issues (e.g., undeclared work, salaries in arrears, minimum wages) to local state administration.

This process is very complex and should be developed carefully and in accordance with the provisions of the ILO Conventions Nos. 81 and 129, on labour inspection, ratified by Ukraine.

In fact, this process raises some concerns and poses some specific challenges, in particular, regarding the need to ensure, in line with the ILO Conventions Nos. 81 and 129, that:

1. Labour inspectors will have civil servant status in order to assure them stability of employment and their independence from changes of government and of improper external influences;
2. Their recruitment process is based solely on their qualifications for the performance of their duties;
3. They will be subjected, before initiating their duties and subsequently, to adequate training for the performance of their duties;
4. Their working conditions are adequate.

Moreover, this decentralization process also raises some serious concerns and challenges, regarding the ability of its future structure, to ensure the existence of a central body or authority that properly controls and supervises the labour inspection as provided for in the ILO Conventions Nos. 81 and 129 and, in particular, that assures:

1. The efficiency and effectiveness of the labour inspection;
2. The coordination of and cooperation between the decentralized services of labour inspection;
3. The homogeneity of the procedures and of the inspection gesture;
4. The synergies and efficiency of the labour inspection system, in terms of horizontal functions<sup>19</sup>;
5. The quality and homogeneity of the human resources policies and procedures<sup>20</sup>;
6. The definition of inspection procedures to be followed by the labour inspectors and the supervision of its application;
7. The formulation and implementation of a nationwide strategy and plan, regarding labour inspection strategic priorities and activities;
8. The collection, treatment, analysis and publication of labour inspection and OSH statistics;
9. Etc....

### ***12.3.6. Enforcement and Sanctions***

One of the mechanisms to economically influence (incentive) employers and induce them to observe the requirements of legislation on OSH (as well as on labour relations) is the application of penalties. Indeed, the enforcement of rule of law, the sanction of the behaviours viewed by society as unacceptable, the principle of general prevention of the non-compliance, along with its deterrence effect, are the major reasons why the International and European Labour

<sup>19</sup> For example: human resources management, procurement, IT systems, financial, training, international relations, audit and juridical affairs, communication, etc.

<sup>20</sup> Mainly regarding: recruitment, remuneration, training, qualifications development, performance assessment and career progression.



Standards foresee the need for the existence and effective application of sanctions for non-compliance<sup>21</sup>.

In Ukraine's current legislation it is also stipulated that persons guilty of violating the legislation on labour are held liable according to the laws in force, namely in the form of a fine, as foreseen in Article 259 of the Labour Code and other laws.

The CMU Resolution No. 509, of 17.07.2013, approved a procedure for imposition of fines on economic entities and employers for the violation of the legislation on labour and employment, as provided for in Article 265(2) of the Labour Code and Article 53(2)-(7) of the law on employment of the population.

The CMU Resolution No. 295, of 26.04.2017, regarding some matters of implementation of Article 259 of the Labour Code and Article 34 of the law on local self-governance in Ukraine, approved new procedures for state control and supervision over compliance with the legislation on labour.

The above-mentioned legislative provisions improved the mechanisms for the application of fines to employers who fail to comply with minimum state guarantees and standards in the fields of labour remuneration, social benefits and guarantees, and other labour provisions.

However, there are actually no effective mechanisms in place for the application of fines to employers who fail to comply with industrial safety requirements. For example, Article 43 of the law on labour protection regulates the application of penalties to legal entities and natural persons using hired labour according to legislation, their officials and workers. Nevertheless, no mechanism has been developed at the law level for applying fines to legal persons. There are only minor fines in place imposed on the employer's officials, but which have no impact on the improvement of the OSH situation.

Hence, the situation arises where it is economically more favourable for employers to pay a small administrative fine, which is later easily compensated by incentives, then to invest money in securing proper and safe working conditions at every workplace and comply with legislation. Risks of such a situation include the lack of any effective economic influence on the industrial safety level deterioration, which leads to growing injury incidence due to industrial accidents.

In this context, and in order to improve the level of compliance and to deter non-compliance, taking also into account the results of the Second European Survey of Enterprises on New and Emerging Risks<sup>22</sup>, the appropriateness of revising the amount and/or nature of the foreseen fines should be considered. Namely through the reflection, in their amount determination, *inter alia*, the following:

1. Business turnover, gross income or budget of the employer (depending on its private or public juridical nature);
2. The seriousness of the offenses;
3. The number of workers affected;
4. The nature of the affected workers<sup>23</sup>;
5. Recidivism;
6. The economic gain of the employer resulting from the non-compliance; and

<sup>21</sup> As can be seen, for example, in Articles 17 and 18 of the ILO Convention No. 81, Articles 22 and 24 of the ILO Convention No. 129, Article 9 of the ILO Convention No. 155, as well as in Article 4 of the EU OSH Framework Directive 89/391/EEC.

<sup>22</sup> Which found that the major reason for addressing OSH in the EU establishments is the fulfillment of legal obligations (85% of the establishments) and the third driver is avoiding fines from the labour inspectorates (78%) (EU-OSHA, 2014; European Parliament, 2015; Irastorza, Milczarek, & Cockburn, 2016; Suard, 2016).

<sup>23</sup> In particular, in the case of more vulnerable workers: minor worker; women who are pregnant, have recently given birth or are breastfeeding worker with disability; irregular immigrant worker; undeclared worker; etc.



#### 7. Non-compliance with the instructions or determinations of the labour inspectors.

Furthermore, the legal provision of an alternative way (rather the “average wage fund”) to calculate the amount of fine to be imposed to non-registered or non-declared companies which fail to comply with the law should also be considered, because they usually do not have organized accountancy or registers that enables the determination of their “average wage fund”.

In addition, the advantages of implementing the principle of joint liability of the owners, administrators, legal representatives and directors of the employers (and of the organizations that are in a group or societal relation with the employer; the organizations, farms and construction owners that subcontracted the employer; and the owner of the premises where the infraction was committed) for both the commitment of the infraction and for the payment of the corresponding fines should also be considered .

Furthermore, and in order to avoid an employer benefiting from non-compliance even when the fine is paid, the establishment of a more appropriate and sufficient accessory penalties to sanction the non-compliance, more directed linked to the vital interests of the employers should also be considered, namely:

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 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 licenses and permits;
8. Advertising of the condemnatory decisions; and
9. The individual registration of the subject responsible for the infringements.

#### ***12.3.7. Planning and Coordination***

The surveys conducted seem to indicate the emergence of other challenges. The efficiency and effectiveness of the national OSH system appear to require, in particular, the improvement of the OSH-related strategic planning, a more integrated approach and the implementation of mechanisms that ensure a better cooperation and coordination of the various entities with legal competences on OSH, eliminating current overlaps of powers and functions on OSH of the competent state executive authorities and local governments bodies.

## 13. RECOMMENDATIONS

This chapter is aimed at synthesizing the major recommendations that stem from the discussion and analysis carried out in the previous chapters, especially in the preceding one.

It is our belief that their implementation is likely to improve working conditions in Ukraine and, in this way, reduce the number and incidence rates of work-related accidents and occupational diseases in Ukraine.

It is as well foreseeable that their implementation will also ensure a better alignment of Ukrainian legislation and practices concerning OSH, labour relations and labour inspection with International and European Labour Standards and best practices.

The latter, moreover, is expected to help Ukraine in the fulfilment of the international commitments assumed within the scope of both the EU-Ukraine Association Agreement and the Canada-Ukraine Free Trade Association.

In order to facilitate the structuring, presentation and understanding of the following recommendations, they will be grouped by large areas, taking into account their different, yet correlated, natures.

### 13.1. OSH

#### *13.1.1. General Principles*

The general principles which are recommended to be applied within the Ukrainian OSH legal framework, in accordance to the International and European Labour Standards and best practices, are the following:

1. The purpose of the OSH legal framework should be to promote the improvement of the safety and health of workers at work<sup>24</sup>.
2. The OSH general regulations should apply to all branches of activity in the private, public, cooperative and social sectors and to all workers<sup>25</sup> and respective employers<sup>26</sup>.
3. The worker is entitled to perform the work in conditions that respect his/her safety and health, ensured by the employer or, in the situations identified in the law, by the natural or legal person which manages the premises in which the activity is undertaken.
4. The workers and their families are entitled to compensation for damages arising from work-related accidents and occupational diseases.
5. The economic development should promote the humanization of work in safe and healthy conditions.
6. The general EU framework directive provisions, in particular the employer's obligations (e.g., to avoid risks, to assess the risks that cannot be avoided, to provide information, training, consultation, health surveillance, PPE, organization and means, etc.) should be applied to all workers and not just to those engaged in works with harmful and

<sup>24</sup> Which goes far beyond their protection and compensation regarding their harmful and hazardous working conditions and their exposure to contamination or adverse weather conditions.

<sup>25</sup> Including: self-employed workers; practitioner, apprentice, trainee and other situations that should be considered as vocational training; administrator, director, manager or treated as such, without an employment contract but paid for this activity; to situations in which one person works for another without a formal worker-employer relationship, when the provider of work should be considered in the economic dependence of the activity's beneficiary; as well as to workers that have an employment relationship but do not have a formal or written labour contract, such as the total undeclared workers or the partially undeclared workers (like the bogus self-employed, bogus service providers or the ones that have the so-called "civil law contracts").

<sup>26</sup> Including not for profit legal persons, governed by private law, and to the self-employed with one or more workers.

hazardous working conditions or in work connected with contamination or adverse weather conditions.

7. The employers' non-transferable responsibility for ensuring the safety and health of the workers in every aspects related to work.
8. The employer's obligation to take, and continuously adjust to changing circumstances, the necessary measures to ensure the safety and health protection of workers, including prevention and assessment of occupational risks, consultation and participation of the workers, health surveillance, provision of information, training and the necessary organization and means, with strict compliance with the sequential and hierarchical GPP, laid down on Article 6(2) of the EU Directive 89/391/EEC<sup>27</sup>.
9. Instead of the current downstream corrective, reactive, reparative and compensation OSH legal framework approach, Ukraine should adopt an upstream and proactive risk assessment and prevention based approach, mainly focused on the promotion of improvement of OSH conditions at workplaces, grounded on a correct and constant risk assessment and developed according to the principles, policies, standards and programmes that ensure, in particular:
  - a. The design and implementation of a Ukrainian "National Strategy for the Promotion of Occupational Safety and Health";
  - b. The definition of the technical conditions governing the design, manufacture, import, sale, assignment, installation, organization, use and processing of the material components of work according to the nature and degree of the risks, as well as the obligations of the persons responsible for such;
  - c. 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;
  - d. The promotion and monitoring of the health of the worker;
  - e. The increase of the technical and scientific research applied in the field of occupational health and safety, with particular reference to the emergence of new risk factors;
  - f. Education, training and information for promoting improvements in occupational safety and health;
  - g. Raising the awareness of society in order to create a genuine culture of prevention;
  - h. The improvement of the effectiveness and efficiency of the labour inspection system, mainly through the reinforcement of legal powers, autonomy, working conditions and resources of the labour inspectors, in order to:
    - i. Promote the improvement of working conditions in Ukraine, as well as the efficiency and effectiveness of labour inspection in the performance of its

<sup>27</sup> The sequential and hierarchical General Principles of Prevention (GPP) are the following: 1. To avoid risks; 2. To evaluate the risks which cannot be avoided; 3. To combat the risks at source; 4. To adapt the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing their effect on health; 5. To adapt to technical progress; 6. To replace the dangerous with the non-dangerous or the less dangerous; 7. To develop a coherent overall prevention policy which covers technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment; 8. To give collective protective measures priority over individual protective measures; 9. To give appropriate instructions to the workers.

main duties, namely in the enforcement of the compliance with the law on working conditions and occupational safety and health; the provision of information and technical advice to the subjects of the labour relations (workers, employers and their representative associations) on the best way to comply with the legislation; and in bringing to the attention of the competent authority the defects or abuses not specifically covered by the existing legal provisions.

- ii. Improve the alignment and implementation of the International and European Labour Standards (in particular, the ILO Conventions Nos. 81, 129, 155, the EU Directive No. 89/391/EEC, the European Parliament Resolution No. 2013/2112(INI) and the EU Strategic Framework on Health and Safety at Work 2014-2020) and foster the implementation of the international agreements signed by Ukraine (e.g., the EU-Ukraine Association Agreement and the Canada-Ukraine Free Trade Agreement).
- iii. Remove some of the major obstacles to the development of business in Ukraine, such as the high level of non-compliance and unfair competition, as identified by the employers representatives, within the recent Ukrainian National Report on Enabling Environments for Sustainable Enterprises (ILO, 2017h).

- 10. There should be established appropriate and sufficient penalties (not only monetary sanctions, but also accessory sanctions, as discussed earlier) to sanction non-compliance.

#### ***13.1.2. OSHMS Structure and Coordination***

Concerning the structure and coordination of the national Occupational Safety and Health Management System (OSHMS), the main recommendations include:

- 1. The ministries responsible for labour and health areas should propose a policy to promote and monitor occupational safety and health, which should also be aimed at developing complementarities and inter dependencies between the fields of OSH and the social security system, the national health service, the protection of the environment and the Ukrainian quality system.
- 2. The 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 OSH.
- 3. The coordination of the implementation of policy measures and the evaluation of their results, in particular those relating to inspection activity, should be the responsibility of the competent body of the ministry responsible for the labour area (SLS).
- 4. The state should promote and develop, in the OSH fields, cooperation between the representative organizations of workers and employers at all levels (national, regional and local) and also at the company, establishment or service level, between the employer and the representatives of workers and employers.
- 5. The body with labour inspection competence of the ministry responsible for the labour area (SLS) should ensure the monitoring, control and enforcement of OSH legislation and the imposition of the corresponding penalties for a breach thereof, without prejudice to the specific duties of other entities.
- 6. Workers' representatives, trade unions' labour inspectors or, in their absence, workers themselves should be allowed to submit their comments to the body with labour inspection competence of the ministry responsible for the labour area, or to any other

competent authority, on the occasion of a visit or supervision of the company or establishment.

7. Workers' representatives, trade unions' labour inspectors or, in their absence, workers themselves should be allowed to request intervention of the body with labour inspection competence of the ministry responsible for the labour area (SLS), whenever they verify that the measures adopted and the means provided by the employer are insufficient to ensure their occupational safety and health.
8. The policy measures adopted and the evaluation of the results of those policies and of inspections undertaken in the OSH field, as well as the statistical information on work-related accidents and occupational diseases, should be annually published and adequately disclosed, and should allow a description of the work-related accidents and occupational 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.
9. The consideration of a legal provision, stipulating the obligation of the state for promoting the development of a national system (or network) for occupational risk prevention, in order to ensure the implementation of the right to safety and health at work, by safeguarding the coherence of the measures and the intervention effectiveness of public, private or cooperative entities which exercise powers and competencies in such areas as regulation, licensing, certification, standardization, research, training, information, consultation and participation, technical services of prevention and health surveillance and inspection.
10. There should be a legal provision foreseeing the possibility of the state to give support and to enter into agreements with private entities or cooperatives with technical capacity for carrying out actions in the field of OSH. In particular, where appropriate, the outsourcing of some OSH activities and functions which are currently performed by the state (e.g., training, medical examinations, workplace and equipment assessments) should be considered, being passed to the private sector, while maintaining, within the state, its fundamental authority and supervisory role over, in particular:
  - a. The definition of the legal requirements of such subcontracted service providers;
  - b. The licensing procedures and quality assurance of such subcontracted service providers;
  - c. The supervision, inspection and control over the performance of such activities and functions by the subcontracted service providers; and
  - d. The compliance with the law by the employers and the subcontracted service providers and for the application of the adequate sanctions for the non-compliance.
11. In order to improve the efficiency and effectiveness of the overall national OSH system, and to promote the sustainability of social security, the following should also be considered:
  - a. The clear definition of the responsibilities and legal competencies of the state bodies currently responsible for OSH, with particular emphasis on eliminating overlapping legal powers and on the definition of their coordination and cooperation mechanisms;
  - b. The creation of a legal framework, regulating a repair scheme for work-related accidents and occupational diseases, including rehabilitation and professional reintegration, based on the revision of the current "Compulsory State Social Insurance", and grounded on the following:

- i. A mandatory insurance system, through entities legally authorized to perform this insurance, to which the employers would be obliged to transfer their responsibility for damages arising from work-related accidents and occupational disease;
- ii. In order to provide economic incentives to induce employers to improve the OSH working conditions, differentiate the rates of the mandatory contributions, on the basis of the workplaces OSH conditions and/or in the number, incidence rates, frequency rates and severity rates of the work-related accidents or occupational diseases occurred in each employer, when compared to their sectoral averages.

### ***13.1.3. Reporting, Notification and Inquiries of Work-Related Accidents and Occupational Diseases***

The paramount importance of having relevant, timely and reliable data on the nature, causes and circumstances of work-related accidents and occupational diseases, in order to better target the measures towards a more efficiently and effectively fight against their occurrence and also to allow the introduction of economic incentives to employers to improve the OSH conditions at the workplaces is widely recognized. -

Moreover, considering the need to address detected inconsistencies and unreliability of Ukrainian statistics on work-related accidents and occupational diseases, the following recommendations, concerning the recording, notification and investigation of work-related accidents and occupational diseases, should be considered:

1. The development and implementation (in accordance with the ILO Code of Practice on Recording and Notification of Occupational Accidents and Diseases, ILO Protocol No. 155, and the ILO Resolution concerning statistics of occupational injuries) of an effective national policy and system that ensures<sup>28</sup>:
  - a. The adequate recording, notification and investigation of work-related accidents, occupational diseases, commuting accidents, and dangerous occurrences and incidents;
  - b. The compilation, analysis and publication of statistics on such accidents, diseases and occurrences.
2. The alignment of Ukrainian criteria and methodologies for the collection, classification and recording of data on work-related accidents with Eurostat European Statistics on Accidents at Work (ESAW) methodology (Eurostat, 2001).
3. The revision of the provision<sup>29</sup> of the CMU's Regulation No. 294, in order to avoid the employer's conflict of interests, concerning the results of such investigation.

### ***13.1.4. Workers***

Concerning workers, it is recommended that the Ukrainian OSH legal framework provides for the following:

1. The legal definition of "worker" should be extended, in order to include any person that has an employment relationship with an employer in any sector of activity, whether in the public or private sector.

<sup>28</sup> In relation to all workers (regardless of their status of employment) employed in all types of employers and economic agents, of all sectors of activity (whether public or private).

<sup>29</sup> Which foresees that, in the case that the SLS territorial body did not make a decision, within twenty-four hours, to undertake a special investigation of an accident subject to special investigation, the latter shall be undertaken by the employer or the fund.



2. The obligations of workers, in terms of OSH, should include:
  - a. To comply with the occupational health and safety requirements laid down in the laws and collective bargaining instruments, as well as the instructions of the employer;
  - b. To ensure their own safety and health, as well as the safety and health of other people who might be affected by their actions or omissions at work, especially when exercising managerial or supervision roles, in relation to services under their technical and hierarchical responsibility;
  - c. To comply with established work procedures and use correctly and in accordance with the instructions conveyed by the employer, the machines, apparatus, instruments, dangerous substances and other equipment and means placed at their disposal, in particular regarding the collective and personal protective equipment;
  - d. To actively cooperate in the company, establishment or service for the improvement of OSH, taking note of the information provided by the employer and attending the appointments and examinations defined by the occupational physician;
  - e. To report immediately to their superior officer or, if not possible, to the worker assigned to perform specific functions in the field of OSH, any failures and deficiencies detected that are likely to result in serious and imminent danger, as well as any defect verified in protection systems;
  - f. In the event of serious and imminent danger, the workers should have the right (rather the obligation) to intervene, adopting the measures and instructions previously established for such situation, in accordance with the instructions of the employer and their means and training, without prejudice to the duty to contact, as soon as possible, the immediate hierarchical superior or the workers performing specific roles in the field of OSH.
3. The legal provision<sup>30</sup> of adequate protection to the workers against any harmful and unjustified consequences, disciplinary measures, liability actions or placement at any disadvantage, if the workers (unless they had the necessary instructions, training and means and acted carelessly or there was negligence or malice on their part):
  - a. In the event of serious, imminent and unavoidable danger, they leave their workstation and/or a dangerous area;
  - b. In the event of serious and imminent danger to their own safety and/or that of other persons, and where the immediate superior responsible cannot be contacted, they take the appropriate steps (in the light of their knowledge and the technical means at their disposal), to avoid the consequences of such danger;
  - c. They have removed themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health.

#### **13.1.5. Employers**

Concerning employers, there should be foreseen in the Ukrainian OSH legal framework, the following:

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<sup>30</sup> In line with Articles 5(e) and 13 of the ILO Convention No. 155 and with the Articles 8(4) and 8(5)(2) of the EU Directive No. 89/391/EEC.

1. The definition of “employer” should be extended, to include any natural or legal person who has an employment relationship with a worker.
2. The employer’s general obligations on OSH, described below, should apply to all employers and to all workers<sup>31</sup>.
3. The non-transferable responsibility of the employer to ensure worker safety and health conditions in all aspects of their work.
4. The employer's obligation to ensure, continuously and permanently, that the activity is conducted in conditions of occupational safety and health for the workers, taking into account the following general principles of prevention:
  - a. Avoidance of risks.
  - b. Prevention planning as a coherent system that integrates the technical developments, the organization of work, working conditions, social relationships and the influence of environmental factors.
  - c. Identify and assess foreseeable risks in all activities of the company, establishment or service, in the design or construction of facilities, locations and work processes, as well as in the selection of equipment, substances and products, with a view to eliminating the risks or, when that is not feasible, to reduce their effects.
  - d. Integrate the assessment of risks to the safety and health of the workers in the set of activities of the company, establishment or service and adopt the appropriate protection measures.
  - e. Combat risks at the source, in order to eliminate or reduce exposure and increase protection levels.
  - f. Ensure in the workplace that exposure to chemical, physical, biological agents and to psychosocial risk factors do not constitute a risk to the safety and health of workers.
  - g. Adapt the work to the workers, especially in what concerns the design of workstations, 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.
  - h. Adapt to technical progress, as well as the new forms of work organization.
  - i. Replace what is dangerous by the non-dangerous or the less dangerous.
  - j. Prioritize the collective protection measures in relation to the individual ones.
  - k. Elaborate and disseminate understandable and appropriate instructions to the activity developed by the worker.
5. The implemented prevention measures must be preceded and correspond to the result of the risk assessment associated with the various stages of the production process, including preparatory activities, maintenance and repair, in order to obtain, as a result, effective levels of protection of the safety and health of workers.
6. Whenever tasks are assigned to a worker, their knowledge on OSH issues should be taken into account, and the employer is required to provide the information and training necessary for the development of the activity in safety and health conditions.

<sup>31</sup> And not to just the ones “that use hired labour according to legislation” or to the ones that are engaged in “work with harmful and hazardous working conditions, connected with contamination or adverse weather conditions or requiring occupational selection”, as foreseen in the current Ukrainian legal OSH framework.

7. Where it is necessary to access to high risk areas, the employer must allow access only to workers with adequate skills and training, and just for the minimum time necessary.
8. The employer must adopt measures and give instructions to enable the worker, in the event of serious and imminent danger that cannot be technically avoided, to stop the activity and/or move away immediately from the workplace, not resuming work while the danger persists, except in exceptional cases, provided that adequate protection is guaranteed.
9. When organizing the means of prevention, the employer must take into account not only the worker but also third parties likely to be covered by the risk of carrying out the work, whether on the premises or off-premises.
10. The employer must ensure the surveillance of workers' health in the light of the risks to which they are potentially exposed in the workplace.
11. The employer must establish the measures that must be adopted in the field of first aid, fire-fighting and evacuation of premises and identify the workers responsible for their implementation, as well as to ensure the necessary contacts with the competent external entities to perform those operations and the ones of medical emergency.
12. In the implementation of preventive measures, the employer must organize appropriate services, internal or external to the company, establishment or service, mobilizing the necessary resources, particularly in the fields of prevention technical activities, training, information, and protection equipment that may be needed.
13. The OSH provisions established to be applied in the company, establishment or service must be also observed by the employer.
14. The employer, in order to obtain an opinion, should consult in writing the workers' representatives for OSH (or, in their absence, the workers themselves), namely on what concerns:
  - a. The assessment of OSH risks, including those related to groups of workers subjected to special risks.
  - b. OSH measures before they were implemented or, in the case of their urgent implementation, as soon as possible afterwards.
  - c. The measures which, by their impact on technologies and functions, have repercussions on OSH.
  - d. The planning and organization of training in the field of OSH.
  - e. The appointment of a representative of the employer who accompanies the activity of the adopted type of OSH services.
  - f. The appointment and dismissal of workers performing specific functions in the fields of OSH.
  - g. The appointment of workers responsible for implementing the measures of first aid, fire-fighting and evacuation of premises.
  - h. The modality of the OSH services to be adopted, as well as the use of external OSH services providers and qualified technicians to ensure the undertaking of all or part of the OSH activities.
  - i. The protective equipment that must be used.
  - j. The occupational risks to the safety and health of the workers, as well as regarding the protection and prevention measures and how they should be applied, whether in relation to the activity developed or in relation to the company, establishment or service.

- k. The list and report of the fatal and serious non-fatal work-related accidents occurred.
15. The employer should ensure that the consultations and its results are duly recorded in a specific support for that purpose.
  16. Workers and their OSH representatives should be allowed to submit proposals, in order to minimize any occupational risk may, at any time.
  17. The employer must ensure that workers, as well as their OSH representatives within the company, establishment or service, have updated information about:
    - a. The occupational risks to the safety and health of workers, as well as regarding the protection and prevention measures and how they should be applied, whether in relation to the activity developed or in relation to the company, establishment or service.
    - b. The measures and the instructions to adopt in the event of serious and imminent danger.
    - c. The emergency, first aid, fire-fighting and evacuation of premises measures, as well as the identification of the workers or services in charge of their implementation.
  18. The employer has to ensure that the information is always given to workers in the following cases:
    - a. Admission.
    - b. Change of workplace or duties.
    - c. Introduction of new work equipment or modification of existing ones.
    - d. Adoption of new technology.
    - e. Activities involving workers from several companies.
  19. The employer has to inform the workers with specific OSH duties, namely on the following matters:
    - a. The assessment of OSH risks, including those related to groups of workers subjected to special risks.
    - b. OSH measures before they were implemented or, in the case of their urgent implementation, as soon as possible afterwards.
    - c. A list and report of the fatal and serious non-fatal work-related accidents occurred.
  20. The employer must inform the external qualified technicians and service providers engaged in OSH activities within the company, as well as other employers and respective workers which are providing services within the employer facilities, about:
    - a. The factors that are suspected or known to affect the safety and health of workers.
    - b. The assessment of OSH risks, including those related to groups of workers subjected to special risks.
    - c. Appointed workers for implementing the measures of first aid, fire-fighting and evacuation of premises.
  21. Regarding the training of workers, and in a manner that should not result in any kind of loss to the workers, the employer must:

- a. Provide workers with adequate training in the field of OSH, taking into account the workstation and the exercise of high-risk activities.
- b. Ensure that workers assigned to undertake all or some of the OSH activities, as well as the workers' representatives for OSH, are provided with permanent training by the employer or other entities, in order to exercise their duties.
- c. Train a sufficient number of workers, given the size of the company and the existing risks, responsible for the implementation of preventive and protective measures for first aid, fire-fighting and evacuation of premises, as well as to provide them with the appropriate material.

#### ***13.1.6. Worker's Health Surveillance***

The employer should have the legal obligation to ensure the surveillance and health examination of all workers<sup>32</sup>, and not just regarding certain categories of workers or workers engaged in heavy work, work with harmful or hazardous working conditions, work requiring occupational selection or workers under 21.

#### ***13.1.7. Provision of PPE***

It should be legally provided<sup>33</sup> that the employer has to provide adequate and free-of-charge PPE to all workers when the risks cannot be avoided or sufficiently limited by technical means of collective protection or by measures, methods or procedures of work organization, and not just to the workers engaged in work with harmful and hazardous working conditions and in work connected with contamination or adverse weather conditions, as currently foreseen in the current Ukrainian OSH legal framework.

Moreover, it should also be legally provided<sup>34</sup> that the use of PPE is the last resource to protect (not to prevent) the health and safety of the workers and that employers must first exhaust all other alternative preventive and protective measures, in strict observance of the GPP.

Finally, it should also be legally foreseen that the use and choice of the more adequate PPE results from a risk assessment, as foreseen in Article 5 of the EU Directive 89/656/EEC.

#### ***13.1.8. OSH Services***

As already discussed, the Ukrainian OSH legal framework appears to provide only for the legal obligation of employers to organize and to ensure the functioning of labour protection services mainly focused on issues concerning industrial safety. It does not seem to provide for employers' obligation to set up and run occupational health services, as provided for in the ILO Convention No. 161, nor does it provide for their obligation to provide, in an integrated manner, both safety and health occupational services, as foreseen in the EU Directive No. 89/391/EEC.

Moreover, the law, "On Labour Protection" apparently limits the obligation to organize labour protection services to enterprises, thus excluding from this obligation, the own-account workers with employees, as well as remaining (public and private) organizations.

As far as OSH services are concerned, the following recommendations should be considered within the Ukrainian OSH legal framework:

1. To provide for the employer's legal obligation to ensure the organization, function and means of both safety and health occupational services, according to the EU Directive No. 89/391/EEC and ILO Convention No. 161.

<sup>32</sup> As foreseen in Article 14 of the EU Directive 89/391/EEC.

<sup>33</sup> In line with Article 6(5) of the EU Directive 89/391/EEC and with Articles 3 and 4(6) of the EU Directive 89/656/EEC.

<sup>34</sup> In observance of the Article 6(1) and 6(2) of the EU Directive No. 89/391/EEC and of the Article 3 of the EU Directive 89/656/EEC.

2. To extend the obligation to organize OSH services (from the enterprises) to all employers (including own-account workers with employees) of all economic activities, both of the public and private sectors.
3. To maintain the principle of the non-transferability of employer responsibility regarding its workers' OSH working conditions, even in the case of the use of external OSH services providers.
4. To establish the legal conditions, requirements (technical personal, equipment, know-how, etc.) and procedures for the licensing (or its revocations) of the activity of external OSH providers and for the monitoring and control of the quality of their activity, which should be ensured by the labour inspection.
5. To stipulate the legal conditions, requirements (technical personal, equipment, know-how, etc.) and procedures for the training and certification (or its revocation) of the activity of the OSH technicians, which should be ensured either by the labour inspection services or by the state vocational training services.
6. To ensure the legal provision of the basic rules for the adequate functioning of such OSH services, in particular:
  - a. The obligation of the employer to designate one or more workers to carry out activities related to the protection and prevention of occupational risks for the undertaking and/or establishment regardless of the size of the undertaking (and not only when the employer has twenty or more workers).
  - b. The requirements that the designated workers for carrying out OSH activities should meet (which should include, besides the adequate training, the necessary professional experience and knowledge) and the conditions that the employer should provide to them, in order for them to carry out their functions (e.g., equipment, installations and means) which, moreover, should take into account the size of the undertaking/establishment, the existing risks and the number and distribution of the exposed workers.
  - c. Foreseeing that the external service providers or persons consulted should have the aptitudes and the necessary personal and professional means to deal with the organization of protective and preventive measures.
  - d. Ensuring the employer's obligation to have a sufficient number of professionals of the OSH services (external or internal, as might be the case), considering the size of the undertaking/establishment, the existing risks and the number and distribution of the exposed workers,
  - e. Foreseeing the obligation of the employer to ensure close work, cooperation and coordination between the different OSH services providers (designated worker, internal services and/or external services).
7. To ensure the legal provision for the mandatory performance, by the OSH services, of the following OSH activities (in addition to the ones already legally foreseen), in order to improve the OSH of the workers and the alignment with both the EU Directive 89/391/EEC and the ILO Convention No. 161:
  - a. To plan prevention, integrating, all levels and for all the activities of the employer, risk assessment and the corresponding prevention measures;
  - b. To carry out risk assessments and to prepare their reports;
  - c. To develop an occupational risk prevention plan;
  - d. To participate in the drawing up of an internal emergency plan, including specific plans for fire-fighting, evacuation of workers and first aid;



- e. To collaborate in the design of sites, methods and organization of work, as well as in the selection and maintenance of work equipment;
- f. To supervise the provision, validity and conservation of PPE, as well as the installation and maintenance of safety signs;
- g. To carry out health surveillance tests, preparing the reports and the respective files, as well as to organize and to maintain updated clinical records and other information related to workers;
- h. To develop health promotion activities;
- i. To coordinate the measures to be taken in the event of serious and imminent danger;
- j. To monitor the working conditions of workers in vulnerable situations;
- k. To conceive and to develop the information programme for the promotion of safety and health at work, promoting the integration of the preventive measures in the information and communication systems of the employer;
- l. To create and develop a training programme for the promotion of safety and health at work;
- m. To support the activities of information and consultation of workers ' representatives for safety and health at work or, in their absence, the workers themselves;
- n. To ensure and to monitor the implementation of the preventive measures, promoting their efficiency and operability;
- o. To arrange the elements required for compulsory notifications;
- p. To draw up the obligatory participation in the event of an accident at work or occupational disease;
- q. To coordinate or accompany internal audits and inspections;
- r. To inform and cooperate with other departments responsible for measures whose implementation depends essentially of others responsible;
- s. To analyse the causes of accidents at work and of occupational diseases occurred, preparing their reports;
- t. To collect and organize statistical elements relating to safety and health at work.
- u. To keep updated the following records:
  - i. Results of occupational risk assessments;
  - ii. List of accidents at work and occupational diseases;
  - iii. Reports on accidents at work;
  - iv. List of sick leave and the number of days of absence from work;
  - v. List of measures, proposals and recommendations made by the OSH services.

#### ***13.1.9. Concurrent or Successive Activities in the Same Workplace***

Moreover, in what concerns the performance of concurrent or successive activities in the same workplace, the Ukrainian OSH legal framework should foresee that, when several employers, establishments or services conduct, at the same time, activities with their workers in the same workplace:

1. The respective employers have to, taking into account the nature of the activities each one conducts, cooperate in order to ensure safe and healthy working conditions;
2. The following entities must ensure (notwithstanding their own responsibility for the safety and health of their own workers) the safety and health in relation to all the workers engaged in activities at the same workplace:
  - a. The user company, in the case of temporary workers;
  - b. The accepting company, in the case of staff on sporadic loan;
  - c. The company in whose facilities other workers provide services under a contract to provide services;
  - d. In all other cases, the company awarding a contract for works or a service, in which it should guarantee the coordination of other employers through the organization of OSH activities.
3. The user company or the company awarding the contract for work or services must 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 health and safety of its workers or temporary workers, or those sporadically loaned or workers employed by service provision companies.

#### ***13.1.10. Machinery and Work Equipment***

Regarding machinery and work equipment, the Ukrainian national OSH legal framework should provide that:

1. All natural or legal persons that manufacture machinery, apparatus, tools, plant and other equipment for professional use have to perform investigations and operations required so as to, at the design stage and during manufacturing, could be eliminated or reduced to its minimum, any risks that such products might pose for the safety and health of persons and ensure, by appropriate certification, before launch on the market, their compliance with applicable OSH requirements.
2. All natural or legal persons that import, sell, rent, assign in any form or place in exhibition machinery, apparatus, tools, plant and other equipment for professional use, must:
  - a. 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 that such equipment is used correctly and as intended, except when such equipment is duly certified;
  - b. Take the necessary measures to ensure that attached to such machinery, apparatus, tools, and other equipment for professional use are attached instructions, in Ukrainian, concerning their 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 safety and health of persons, provided that they are used correctly.
4. The machines, apparatus, tools or facilities for professional use may only be supplied or made operational provided that they contain a 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 or facilities 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. 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.

#### ***13.1.11. Standardization***

Regarding standardization, it is recommended that the Ukrainian national legislation approximation process also foresees that:

1. 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, should be approved under the Ukrainian quality system; and
2. The practical guidelines developed by the International Labour Organization, the World Health Organization and the International Organization for Standardization (ISO), as well as the Ukrainian technical standards and specifications, should be regarded as indispensable references to be taken into account in procedures and measures adopted in compliance with the OSH legislation, as well as in the production of goods and equipment.

#### ***13.1.12 Education, Training and Information on OSH***

It is also of paramount importance that the Ukrainian OSH legal framework foresees that the state has the legal obligation and effectively ensures:

1. The inclusion of OSH content in school curricula at the various levels of the education system, with a view to develop, in the general framework of the education system, a genuine culture of prevention of occupational risks in preparation for working life;
2. The inclusion of OSH content in vocational education and training initiatives, to enable the acquisition of knowledge and habits for the prevention of work-related accidents and occupational diseases;
3. The organization and launch of training and information initiatives aimed at employers and workers, as well as public information and explanation sessions in OSH matters.

#### ***13.1.13. Research and Specialized Training***

It is also recommended that the Ukrainian OSH legal framework provides for the obligation of the state to ensure the necessary conditions for the development of knowledge and research in the area OSH, which should be focused predominantly on the improvement of occupational risk prevention and on the protection of workers' safe and health, and should be guided, in particular, by the following principles:

1. Support of the creation of research and postgraduate training structures for specialists and researchers;
2. The collaboration between the various national structures concerned;
3. The dissemination of scientific and technical information that contributes to advancing the knowledge and progress of research;
4. The increase of national participation in international programmes;
5. The promotion of the development of studies on the best practices in the field of organization and operational systems of prevention activities.

#### ***13.1.14. Licensing and Operating Permits for Businesses***

It is also advisable to ensure that the Ukrainian legislation, on licensing and operating permits for businesses, contains the specifications appropriate for occupational risk prevention and health protection.

## 13.2. Labour Relations Issues Which Impact OSH

Concerning labour relations legislation which impact OSH, the main recommendations include the following:

1. In order to combat covert (masked) employment relationships and ensure adequate protection to all workers<sup>35</sup>, it is recommended to include in the labour code, in line with the ILO Recommendation No. 198, a legal presumption of the existence of an employment relationship whenever evidence (characteristics or indicators) of the existence of an employment relationship are present, such as, but not restricted to, the following:
  - a. The activity provider has to obey to the orders of the respective beneficiary;
  - b. The activity provider is subjected to the disciplinary authority of the beneficiary of the activity;
  - c. The activity is held in the place of its beneficiary or in a place determined by him;
  - d. The work equipment and instruments used belong to the beneficiary of the activity;
  - e. The activity provider has to comply with the start and end hours of the activity provision determined by the activity beneficiary;
  - f. Is paid to the activity provider, with determined periodicity, the right amount, in return for its provision;
  - g. The activity provider performs management or leadership roles in the organizational structure of the beneficiary of the activity;
  - h. The activity provider depends economically on the beneficiary of the activity;
  - i. The activity provider develops his activities exclusively to the beneficiary of the activity;
  - j. The activity provider enjoys paid holidays and its subsidy and receives a Christmas bonus,
  - k. The activity provider is subjected to the absences' regime of the beneficiary of the activity;
  - l. The activity provider may not substitute himself in the execution of the activity;
  - m. The activity provider does not assume the risks of the execution of the activity;
  - n. The activity provider does not have the power to determine the price of the activity provided.

Moreover, Ukrainian legislation should also legally foresee that, in situations where one or more of the above mentioned conditions are met, the rights of the concerned workers, as well as the obligations of the employers with them, should be the same as those legally applied to any other worker with a formal or written labour contract.

2. In order to promote the fundamental principle of equality between men and women, to uphold non-discrimination on the basis of sex, and to improve the alignment of Ukrainian labour relations legislation with the International and European Labour

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<sup>35</sup> Special to those that have masked employment relationships, such as the total undeclared workers and the partially undeclared workers (e.g., like the bogus self-employed, the bogus service providers and those with the so-called “civil law contracts”).

Standards and best practices<sup>36</sup>, Ukraine should repeal or amend the legal acts whose provisions impose unjustified and disproportionate limits to the equal treatment of men and women in matters of employment and occupation, namely:

- a. Article 43(5) of the Constitution of Ukraine;
- b. Chapter “Female Labour” of the Labour Code;
- c. Regulation concerning the “limits of lifting and moving of heavy items by women” (approved by the MH Order No. 241, of 10/12/1993);
- d. Regulation on the “list of heavy work and work with harmful or hazardous working conditions on which employing women is prohibited” (MH Order No. 256, of 29/12/1993).

### **13.3. Labour Inspection and Enforcement of Labour Relations and OSH Regulations**

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

In this context, in order to advance the effectiveness of Ukrainian labour inspection, improve the working and living conditions in Ukraine, develop a more attractive business environment, foster alignment of Ukrainian labour legislation with the International and European Labour Standards and best practices and promote the implementation of the commitments that Ukraine assumed in the EU-Ukraine Association Agreement and in the Canada-Ukraine Free Trade Agreement, the following recommendations should be considered:

1. Revoke the Law No. 877-V, of 5 April 2007, on the basic principles of state supervision (control) in economic activities, or exclude labour inspection of its scope;
2. Refrain from imposing *moratoriums* to the activities of the labour inspection;
3. Ensure that the Ukrainian labour inspectors are legally entrusted with all the necessary power to discharge their duties, foreseen in the ILO Convention Nos. 81 and 129, and, in particular, with the power to:
  - a. Perform inspection visits to any workplace without prior notice;
  - b. Conduct inspection visits at any time of day or night;
  - c. Carry out inspection visits even when the employer (or the employer representative) is not present in the workplace;
  - d. Perform inspection visits within all the scope of their legal competences (labour relations and/or OSH subjects), and adapt its scope, extension and deepness do the circumstances found at the workplace;
  - e. Make inspection visits with the frequency and depth which they understand as necessary to ensure compliance with labour relations and OSH regulations;
  - f. Impose fines regarding detected infractions foreseen in law whenever they feel that this is the most adequate procedure to ensure compliance and deter non-compliance.
  - g. Monitor, promote and enforce compliance in employers which are not registered, as well as regarding employers and workers which, in spite of having an employment relationship, does not have a formal or written labour contract;

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<sup>36</sup> In particular, with Articles 2 and 3(2) of the Treaty establishing the European Community and with the EU Directives Nos. 2006/54/EC and 92/85/EEC.

- h. Suspend work in the event of imminent danger to the health or safety of the workers.
4. Formulate and implement a comprehensive human resource policy in the SLS, with special focus on labour inspectors<sup>37</sup>, which should cover several relevant areas, (e.g., recruitment, selection, training, motivation, leadership, remuneration, performance assessment, career development, mobility, etc.), in order to improve the working conditions of labour inspectors and further implement the ILO Conventions Nos. 81 and 129. This human resource policy should be able, in particular, to ensure that:
  - a. The labour inspectors have a civil servant status, in order to assured them the stability of employment and their independence from changes of government and of improper external influences;
  - b. Labour inspectors are recruited solely on the basis of their qualifications for the performance of their duties, through public competition;
  - c. Labour inspectors will be subjected, before initiating their duties, to an adequate inception training, of both theoretical<sup>38</sup> and practical<sup>39</sup> nature and, subsequently, to an adequate training for the performance of their duties.
  - d. Their working conditions (e.g., remuneration, training, career path, equipment, etc.), are adequate for the performance of their duties and to ensure the attractiveness of their career, in order to facilitate the recruitment of new labour inspectors and the retention of the current ones, by improving their motivation and preventing them from leaving the service prematurely.
  - e. The number of labour inspectors is sufficient to secure the effective discharge of the duties of the Ukrainian labour inspectorate<sup>40</sup>.
5. In order to improve the efficiency of the labour inspection system, bridge the gap and shortage on the number, skills and coverage of the territory by the current three different types of labour inspectors, improve the know-how, knowledge and best practices transfer between labour inspectors, ensure a more holistic and integrated approach and reduce the disruptive impact of the labour inspection visits to businesses, it should be considered the possibility of merging the current three types of specialized labour inspectors into just one general type. The latter, in turn, would concentrate the legal competences of the current three types, without prejudice to the constitution, whenever appropriate, of more specialized teams, to deal with special phenomena or more complex areas (e.g., undeclared work, biological risks, chemical risks, ionizing radiation risks, etc.), and would be provided with a common core training in all labour relations and OSH subjects, within their legal competencies, as well as on the harmonization of their inspection gesture.
6. In the view of the current decentralization process, there should be put into place mechanisms likely to ensure that, in the course and at the end of such complex process,

<sup>37</sup> As recommended by ILO's report on "Recommendations to the State Labour Service - Human Resources Policies with special focus on Labour Inspection" (ILO, 2017g), following ILO's "Analytical Overview of Legal Framework and Procedures of the State labour Service of Ukraine on selection, Career Development, Motivation and professional Training for the Staff, with Focus on Labour Inspectors" (ILO, 2017a).

<sup>38</sup> Mainly focused on the international and national labour relations and OSH legal frameworks, administrative and criminal laws, social security and tax regulations, prevention of occupational risks, labour inspection deontology and ethics, etc.

<sup>39</sup> Concentrated, in particular, in: the inspection gesture and behavior; performance of inspection visits; conducting inquiries on work-related accidents and occupational diseases; carrying out industrial licensing surveys; elaboration and application of the adequate inspection procedures; provision of information and technical advices to workers and employers, on the best way to comply with the legislation; write opinions regarding workers or employers consultations on labour relations and OSH legislation; draft of reports on the activities carried out; registration of the activities carried out in the information system; etc.

<sup>40</sup> Taking into account, in particular: the number, nature, size and situation of the workplaces liable to inspection; the number and classes of workers employed in such workplaces; the number and complexity of the legal provisions to be enforced; the material means placed at the disposal of the inspectors; and the practical conditions under which visits of inspection must be carried out in order to be effective.



its main concerns and challenges are properly addressed, especially in what regards the ability of its future structure to ensure:

- a. The existence of a central body or authority that properly controls and supervises labour inspection;
  - b. The efficiency and effectiveness of labour inspection;
  - c. The coordination of and cooperation between the decentralized services of labour inspection;
  - d. The homogeneity of the procedures and of inspection gesture across the entire system;
  - e. The capture of the benefits of synergies and efficiency across the labour inspection system, in terms of horizontal and general functions<sup>41</sup>;
  - f. The quality and homogeneity of the human resources policies and procedures of recruitment, remuneration, training, qualifications development, performance assessment and career progression;
  - g. The definition of inspection procedures to be followed by labour inspectors and the supervision of its application;
  - h. The formulation and implementation of a nationwide strategy and plan, regarding labour inspection strategic priorities and activities;
  - i. The collection, treatment, analysis and publication of labour inspection and OSH statistics;
  - j. Etc....
7. In order to improve the level of compliance and to deter the non-compliance, fostering general prevention and reinforcing the rule of law and the authority of the state, the revision of the current system of sanctions to penalize the non-compliance with the labour relations and OSH regulations should be considered, in particular through:
- a. The revision of the form used to calculate the amount of foreseen fines, which should take into account, *inter alia*, the following:
    - i. Business turnover, gross income or budget of the employer (depending on its private or public juridical nature);
    - ii. The seriousness of the offenses;
    - iii. The number of workers specifically affected;
    - iv. The nature of the affected workers<sup>42</sup>;
    - v. Recidivism;
    - vi. The economic gain of the employer resulting from the non-compliance; and
    - vii. The non-compliance with the instructions or determinations of the labour inspectors.
  - b. The legal provision of an alternative way (rather the “average wage fund”) to calculate the amount of a fine to be imposed on non-registered or undeclared companies that fail to comply with the law because, as a rule, they do not have

<sup>41</sup> Such as: human resources management; procurement; IT systems; financial; training; international relations; audit and juridical affairs; communication; etc.

<sup>42</sup> Especially in cases of the most vulnerable workers: minor workers; women who are pregnant, have recently given birth or are breastfeeding; worker with disability; irregular immigrant workers; undeclared workers; etc.

organized accountancy or registers that enables the determination of their “average wage fund”.

- c. The establishment of a legal mechanism for applying fines to legal persons, as foreseen in Article 43 of the Law “On Labour Protection”, regarding the application of penalties on legal and natural persons using hired labour according to legislation, their officials and workers, pursuant to the CMU Resolutions No. 295 and No. 509.
  - d. The establishment of a more 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), namely:
    - i. The loss to the state of objects and assets belonging to the agent;
    - ii. The prohibition of the exercise of professions or activities whose exercise depends on a title or public authorization or approval of a public authority;
    - iii. The deprivation of the right to a grant or benefit granted by entities or public services;
    - iv. The deprivation of the right to participate in trade fairs or markets;
    - v. 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;
    - vi. The closure of an establishment whose operation is subject to authorization or license of administrative authority;
    - vii. The suspension of permits, licenses and permits;
    - viii. Advertising of the condemnatory decisions; and
    - ix. The individual registration of the subject responsible for the infringements.
  - e. The implementation of the legal regimen of joint liability of the owners, administrators, legal representatives and directors of the employers (and of the organizations that are in a group or societal relation with the employer; the organizations, farms and construction owners that subcontracted the employer; and the owner of the premises where the infraction was committed) for both the commitment of the infraction and for the payment of the corresponding fines.
8. To formulate and implement (with the involvement of workers and managers of all business units of the labour inspectorate) an integrated “ programme to prevent and tackle corruption and related offenses, as well as conflict of interests and incompatibilities” in labour inspection, which should foresee, among other aspects, the clear identification and assessment of those risks; their main areas of concern; the situations that may generate conflicts of interest and incompatibilities; and the more adequate mechanisms and measures to ensure their avoidance, prevention, minimization and management. Such measures could include, *inter alia*:
- a. To review the requirements for access to the career of labour inspector and the procedures and methodologies used for the selection of applicants, in order to avoid the recruitment of persons who do not meet the integrity and honesty requirements to serve as public officials;

- b. To include, both in the inception training and in the continuous training of labour inspectors, subjects related to inspection gesture, professional deontology and ethics, and behaviour and communication skills;
  - c. To develop a performance assessment system for labour inspectors which accounts not only for the quantitative results of their activities (e.g., number of inspection visits, number and type of legal procedures adopted, number of persons informed, etc.), but especially for the qualitative part of their performance, in terms of the measurement of the extent to which they have contributed to the improvement of the workplaces that they have inspected (e.g., number of follow-up visits, number of infractions detected on the first visit that the employer corrected, etc.);
  - d. To develop a labour inspectors' code of conduct, on the basis of the IALI "Global Code of Integrity for Labour Inspection" (IALI, 2008);
  - e. To develop a labour inspector activity guide, in order to provide guidance to labour inspectors regarding more adequate gesture, behaviour and conduct that they should adopt in situations that can occur during the different types of inspection visits and inspection activities;
  - f. To review the remuneration policy of the labour inspectors, in order to ensure them decent working conditions and, in particular, their independence from improper external influences;
  - g. To prosecute and convict offenders, whether disciplinary or criminally, applying the corresponding disciplinary and criminal penalties to the full extent of the law and disclose their respective convictions.
9. Launch a nationwide information and awareness campaign, mainly directed at employers and their representative associations, workers and their representative associations, policy makers (e.g., members of the parliament; members of the government and government officials; and responsible public authorities) and the general public, on the fundamental and irreplaceable role of labour inspection in improving work conditions and about the advantages of having an active and effective labour inspection. The advantages that should be addressed include, among others, its contribution to:
- a. The reduction of the number and incidence rates of fatal and non-fatal work-related accidents and occupational diseases.
  - b. The reduction of the direct and indirect costs, arising from those events<sup>43</sup>
  - c. The access of businesses to new and more attractive markets (e.g., European common market, Canadian market, etc.).
  - d. The development of the work ability and capacity of the workforce.
  - e. The improvement of social security sustainability and revenues:
    - i. By ensuring the transition of those in the informal and undeclared economies (workers and employers) to the formal and declared ones, therefore raising the amount of social security contributions and reducing the social security expenditures (e.g., with unemployment benefits and

<sup>43</sup> Namely in terms of: emergency services; rehabilitation services; disability, early retirement and other pensions; health care and hospital and rehabilitation services expenses; compensation costs; work-related accidents and occupational diseases insurance costs; opportunity costs, related to the loss of production, hence, revenues, due to the absence of the victims; increased training costs to train the workers that substitute the victims; impact of the victims absence and substitution in terms of economies of scale and experience; indirect costs related to the damages to the image and reputation of the employers and of the state, related with the occurrence of such events; and indirect costs associated to the impact of such events on the motivation and commitment of the workers.

- other benefits that were wrongly assigned to informal and undeclared workers and businesses);
  - ii. Through the increase of the work capacity of the workforce which, therefore, instead of receiving early benefits from social security, will now contribute for a longer period;
  - iii. By reducing social security direct costs related to work-related accidents and occupational diseases (e.g., rehabilitation costs; early retirement pensions; disability and other pensions; funeral expenses; etc.).
- f. The public finances *equilibrium* and to the consequent possible reduction of tax rates, through:
- i. An increase of tax revenue, due to the reduction of the informal economy and of the undeclared work;
  - ii. The decrease of state budget expenditures, through the reduction of the direct and indirect costs due to work-related accidents and occupational diseases (e.g., health care costs, emergency services expenditures; etc.);
  - iii. An increase in business revenue resulting from: increases in sales due to access to new markets (e.g., European common market, Canada, etc.); the elimination of unfair competition and improvement of the market environment; and an increase in productivity resulting from the improvement of working conditions and consequent reduction of the work-related accidents and occupational diseases.
- g. The improvement of the revenues and net income of businesses, mainly through:
- i. The elimination of unfair competition from businesses that do not comply with labour relations and OSH regulations;
  - ii. Increased competitive advantage, founded on a more motivated workforce, a more fair market, and a reduction of tax rates and social security contributions rates (allowed by improvement in social security and public finances *equilibrium*);
  - iii. Increase of productivity, via the reduction of fixed and variable costs related to work-related accidents and occupational diseases<sup>44</sup>;
  - iv. Higher revenues resulting from access to new markets (e.g., European common market, Canada, etc.); and
  - v. Higher net profits, due not only to increased revenues and reduction of costs, but also resulting from the reduction of income tax rates (allowed by the improvement of public finances).
10. Clear definition of the responsibilities and legal competencies of the state bodies currently responsible for the promotion and enforcement of the OSH regulations, with particular emphasis on eliminating overlap of legal powers and on the definition of their coordination and cooperation mechanisms.

### 13.4. Legislative Approximation Process

Regarding the ongoing approximation process of the Ukrainian legal framework to OSH, labour relations and labour inspection to the International and European Labour Standards and best

<sup>44</sup> For example: compensation costs; insurance costs; training costs; loss of production; opportunity costs; image and reputation indirect costs; opportunity costs in terms of economies of scale and experience; indirect costs related to the motivation and involvement of workers; etc.

practices, following the EU-Ukraine Association Agreement and the Canada-Ukraine Free Trade Agreement, the main recommendations are as follows:

1. The approximation process should be guided by:
  - a. The Ukrainian National Strategy for the Promotion of Safety and Health at Work, which is yet to be formulated and implemented. This national strategy should guide the efforts on the development of a nationwide system for the promotion of OSH, incorporating the preceding recommendations and establishing the objectives, indicators and targets to be attained.
  - b. The schedule for the approximation process, as laid down in Annex XL to Chapter 21 of the EU-Ukraine Association Agreement.
2. The approximation process should also be based on an Approximation Road map, which should be drawn-up, on the basis of the aforesaid Ukrainian National Strategy for the Promotion of Safety and Health at Work, as well as on the schedule contained in Annex XL to Chapter 21 of the EU-Ukraine Association Agreement. This Road map should, in particular:
  - a. Deliver a clear identification of international and European standards with which the national legislation will be aligned and of the national regulations that should be amended, repealed or approved; provide the necessary guidance on priorities; identify the persons and institutions responsible for that alignment; and define the various phases of such process and its respective deadlines.
  - b. Consider, as a priority, the further implementation of the ILO Conventions Nos. 81 and 129 (especially in what regards labour inspectors' powers), in order to improve the effectiveness of the labour inspection system and its ability to improve the working conditions and to ensure the compliance with Ukrainian OSH and labour relations legislation.
3. The alignment with the EU directives on OSH, reflected in the aforesaid road map, should follow a specific sequential process, likely to ensure the establishment, at the Ukrainian national judicial order (as if it was a mirror), the EU OSH legal architecture (framework), which, in turn, is similar in all EU countries. Therefore, the following procedure is recommended:
  - a. First stage: the transposition of (alignment with) the EU OSH framework Directive 89/391/EEC, mainly because:
    - i. It is the “umbrella directive”, that sets the OSH architecture, beneath which will be fleshed out the other specific individual directives and which defines the main building blocks of the EU OSH legal framework;
    - ii. It stipulates the general provisions applicable to all employers (of all economic activities of both the public and private sectors), to all types of workers and workplaces, to all aspects of the work, and to the exposure of all types of risks, without prejudice to more stringent and/or specific provisions contained in other individual directives.
  - b. Second stage: the transposition of the transversal directives<sup>45</sup>;

<sup>45</sup> The Directives which regulate aspects that are common to the generality of employers, workers and sectors of activity, such as: European Council Directive No. 89/654/EEC, of 30 November 1989, concerning the minimum safety and health requirements for the workplace (European Council, 1989b); European Parliament and Council Directive No. 2009/104/EC, of 16 September 2009, concerning the minimum safety and health requirements for the use of work equipment by workers at work (European Parliament & European Council, 2009); European Council Directive No. 89/656/EEC, of 30 November 1989, on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (European Council, 1989c); European Parliament and Council Directive No. 2003/88/EC, of 4 November 2003, concerning

- c. Third stage: the transposition of the directives focused on the protection of safety and health regarding: specific types of workers; exposure to specific risks; and the risks arising from work in specific sectors of activity<sup>46</sup>.
  - d. Fourth stage: in order to facilitate the understanding and, thus, compliance with the new national OSH framework that follows the approximation to the International and European Labour Standards and best practices on OSH, labour relations and labour inspection, it is also recommended:
    - i. To establish through the labour inspection service communication systems (e.g., phone, internet web page and social networks) and the local branch network, a nationwide technical information and advice service, in order to provide information, counselling and technical advice to workers, employers and their representative organizations about the best way to comply with the new OSH and labour relations regulations.
    - ii. To launch a nationwide information and technical advice campaign on the best ways to comply with the new labour relations and OSH regulations, targeting employers, workers and their representative organizations, as well as civil society, through mass media and through the organization of conferences, seminars and workshops, with the involvement of social partners, as well as through information visits to workplaces.
    - iii. To launch a comprehensive training programme on the new OSH, labour relations and labour inspection regulations, especially targeting state authorities and public and private entities and institutions with responsibilities on those issues, as well as their workers, in order to improve their knowledge about the new legislative framework.
  - e. Fifth stage: to launch a nationwide labour inspection campaign mainly targeting employers, in order to enforce compliance with the new national legal framework on OSH and labour relations, as well as to provide information and technical advice on the best way to comply with it.
4. In order to ensure legal certainty, to promote the simplification of the legal framework, facilitating compliance and reducing the regulatory burdens and contextual costs over the businesses, while avoiding the creation of a legal *vacuum* and reinforcing the level of protection of the workers' OSH working conditions, the following are also recommended:

certain aspects of the organization of working time (European Parliament & European Council, 2003b); European Council Directive No. 92/58/EEC, of 24 June 1992, on the minimum requirements for the provision of safety and/or health signs at work (European Council, 1992c); etc.

<sup>46</sup> For example: European 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 (European Council, 1992d); European 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 (European Council, 1991a); European Parliament and Council Directive No. 2000/54/EC, of 18 September 2000, on the protection of workers from risks related to exposure to biological agents at work (European Parliament & European Council, 2000); European Council Directive No. 92/57/EEC, of 24 June 1992, on the implementation of minimum safety and health requirements at temporary or mobile constructions sites (European Council, 1992b); European Council Directive No. 92/91/EEC, of 3 November 1992, concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (European Council, 1992a); European Parliament and Council Directive No. 2003/10/EC, of 6 February 2003, on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) (European Parliament & European Council, 2003a); etc.



- a. As much as possible, each OSH directive should be transposed through just one legal act (except where there is the need for a specific bylaw, in order to provide for too specific technical regulations); and
  - b. The repeal of outdated laws should be always preceded by an in depth analysis of the OSH legal framework and of consultations with social partners, in order to ensure that such cancellation will not leave any legal *vacuum*.
5. Ukraine should build on the ongoing approximation process, following the EU-Ukraine Association Agreement and the Canada-Ukraine Free Trade Agreement, to facilitate the preparation of the ratification process of the ILO Conventions Nos. 121, 152, 167 and 187.

# CONCLUSIONS

Ukraine's current nationwide OSH system was created in the course of the general development of domestic legislation after Ukraine's secession from the USSR.

Despite the need for a transition stage from the administrative command (Soviet) system to an open market economic system, Ukraine managed to design and implement, within a relatively short time frame, a functioning OSH system that corresponded to the societal relations situation at that time.

In view of further developments of the national legislation, in order to respond to the demands arising from social and economic changes, globalization, demographic evolution, economic and management sciences advancements, evolution of market relations between economic entities both at macro and micro levels, technological innovation and its impact on production methods, the current OSH system seems no longer adequate for the current socioeconomic context and shows signs of some maladjustment, regarding the needs of citizens and businesses.

As such, a few years back, Ukraine took a very brave and strategic decision: to strengthen its political, trade and economic relations with EU countries and Canada.

As a corollary, Ukraine established an Association Agreement with the EU (the political part was signed in 21 March 2014 and its economic part in 27 June 2014), which entered into force on 1 September 2017; and more recently, in 11 July 2016, signed a Free Trade Agreement with Canada, which entered into force on 1 August 2017.

With a view to ensure compliance with the commitments on labour legislation underlying those agreements, and, concomitantly, to improve working conditions in Ukraine and to reduce the number and incidence rates of work-related accidents and occupational diseases, Ukraine has been undergoing considerable efforts, in the recent years, to improve its legal framework on OSH, labour relations and labour inspection and to better approximate it to the International and European Labour Standards and best practices.

Despite these extraordinary efforts, however, much more remains yet to be done, regarding this legal approximation process, in particular regarding Ukrainian OSH regulations.

In this context, the following main aspects should be properly addressed:

1. The OSH general regulations should apply:
  - a. To all employers (including self-employed with one or more workers) of all branches of activity of the private, public, cooperative and social sectors<sup>47</sup>; and
  - b. To all workers<sup>48</sup>.
2. The current legal dichotomy and independent approach concerning labour protection issues, on one side, and the sanitation and hygienic issues, on the other side, should be replaced by a more integrated, holistic and interrelated legal and practical approach.
3. There should be a shift from the current downstream corrective, reactive, reparative and compensation OSH legal framework approach, to an upstream and proactive risk

<sup>47</sup> Except to certain specific public service activities, such as the armed forces or the police or to certain specific activities in the civil protection services, which peculiar characteristics can conflict with it.

<sup>48</sup> Here including, in particular: self-employed workers; practitioner, apprentice, trainee and other situations that should be considered as vocational training; administrator, director, manager or treated as such, without an employment contract but paid for this activity; situations in which one person works for another without a formal worker-employer relationship, when the provider of work should be considered in the economic dependence of the activity's beneficiary; to workers that have an employment relationship but do not have a formal or written labour contract, such as the total undeclared workers or the partially undeclared workers (e.g., bogus self-employed, bogus service providers or the ones that have the so-called "civil law contracts").

assessment and prevention based approach, mainly focused on the promotion of the improvement of OSH conditions at the workplaces, grounded on a correct and constant risk assessment and, based on its results, in the implementation of a coherent occupational risk prevention programme and measures.

4. Ukrainian OSH legislation should foresee that employers have the non-transferable responsibility for ensuring the safety and health of workers in every aspect related to work.
5. Regarding the use of PPE, the following aspects should be legally foreseen:
  - a. The use of PPE should be viewed as a last resource to protect (not to prevent) the health and safety of the workers and, as such, until the decision to use PPE, employers should have the obligation to first exhaust all other alternative preventive and protective measures, in strict observance of the GPP, as provided for in the Article 6(1) and 6(2) of the EU Council Directive No. 89/391/EEC and in Article 3 of the EU Directive 89/656/EEC.
  - b. It should be provided that, in line with Article 6(5) of the EU Directive 89/391/EEC and with Articles 3 and 4(6) of the EU Directive 89/656/EEC, the employer has to provide adequate and free-of-charge PPE to all workers whenever the risks cannot be avoided or sufficiently limited by technical means of collective protection or by measures, methods or procedures of work organization, and not just to the workers engaged in work with harmful and hazardous working conditions and in work connected with contamination or adverse weather conditions.
  - c. The use and choice of the more adequate PPE has to result from a risk assessment, as foreseen in Article 5 of the EU Directive 89/656/EEC.
6. Ukrainian OSH legislation should provide for the employer's obligation to take, and continuously adjust to changing circumstances, the necessary measures to ensure the safety and health protection of workers, including prevention and assessment of occupational risks, consultation and participation of the workers, health surveillance, provision of information, training and the necessary organization and means, with strict compliance with the sequential and hierarchical General Principles of Prevention laid down on Article 6(2) of the EU Directive 89/391/EEC<sup>49</sup>.
7. To provide for the legal obligation of employers to ensure the surveillance and health examination of all workers (as foreseen in Article 14 of the EU Directive 89/391/EEC), and not just regarding certain categories of workers or workers engaged in heavy work, work with harmful or hazardous working conditions, work requiring occupational selection, or workers under twenty-one years of age.
8. It also seems necessary to improve the current legal provisions concerning the organization, means and functioning of employers' OSH services. In particular as concerns the following:
  - a. To provide for the employer's legal obligation to ensure the organization, function and means of not only occupational safety services, but also, and in an

<sup>49</sup> The sequential and hierarchical General Principles of Prevention (GPP) are the following: 1. To avoid risks; 2. To evaluate the risks which cannot be avoided; 3. To combat the risks at source; 4. To adapt the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing their effect on health; 5. To adapt to technical progress; 6. To replace the dangerous by the non-dangerous or the less dangerous; 7. To develop a coherent overall prevention policy which covers technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment; 8. To give collective protective measures priority over individual protective measures; 9. To give appropriate instructions to the workers.

integrated manner, of occupational health services, according to the EU Directive No. 89/391/EEC and ILO Convention No. 161.

- b. The extension of the nature of the services that the current legislation assigns to the labour protection services.
  - c. The requirements to ensure the adequate functioning of such services (minimum number of OSH professionals and necessary qualifications and means), taking into account the number of workers in the organization, undertaking or establishment, their distribution and the risks to which they are or may be exposed.
  - d. The specification of the qualifications, training and certification of workers or external persons or organizations engaged in the provision of such services, and the means at their disposal, etc.
  - e. The legal conditions, requirements (technical personal, equipment, know-how, etc.) and procedures for the licensing (or its revocations) of the activity of external OSH providers and for the monitoring and control of the quality of their activity.
  - f. The legal conditions, requirements (technical personal, equipment, know-how, etc.) and procedures for the training and certification (or its revocation) of the activity of the OSH technicians.
  - g. The legal provision that the use of external OSH services will not discharge the employer from its non-transferable responsibility regarding its workers' OSH conditions.
9. Considering the unreliability and inconsistencies of the data and statistics on occupational accidents and diseases, it is advisable to develop and implement an effective national policy and system to ensure the adequate recording, notification and investigation of work-related accidents, occupational diseases, commuting accidents, and dangerous occurrences and incidents, as well as to compile analysis and publication of statistics on such accidents, diseases and occurrences. The latter, moreover, should be developed according to the ILO Code of Practice on Recording and Notification of Occupational Accidents and Diseases, the ILO Protocol No. 155, and the ILO Resolution on statistics of occupational injuries.
10. The alignment of Ukrainian criteria and methodologies for the collection, classification and recording of data on work-related accidents with the Eurostat ESAW methodology (Eurostat, 2001).
11. The revision of the provision<sup>50</sup> of the CMU's Regulation No. 294, in order to avoid an employer's conflict of interests concerning the results of such investigation.
12. In order to encourage and induce employers to improve OSH conditions at Ukrainian workplaces and, at the same time, promote the sustainability of social security, the creation of a legal framework should be considered, regulating a repair scheme for work-related accidents and occupational diseases, including rehabilitation and professional reintegration, based on the revision of the current "Compulsory State Social Insurance", and grounded on a mandatory insurance system, through entities legally authorized to perform this insurance, to which the employers would be obliged to transfer their responsibility for damages arising from work-related accidents and occupational diseases.
13. In order to provide an economic incentive to induce employers to improve OSH

<sup>50</sup> Which foresees that, in the case that the SLS territorial body did not make a decision within twenty-four hours to undertake a special investigation of an accident subject to special investigation, the latter shall be undertaken by the employer or the fund.

conditions, mandatory contribution rates to the latter repair scheme for work-related accidents and occupational diseases would be established on the basis of workplaces OSH conditions and/or on the basis of the number, incidence rates, frequency rates and/or severity rates of work-related accidents or occupational diseases occurring in each employer, when compared to their sectoral averages.

14. In order to improve the efficiency and effectiveness of the national OSH system, where appropriate, outsourcing of some OSH activities and functions (e.g., training, medical examinations, workplace and equipment assessments) to the private sector should be also considered, while maintaining in the state, its fundamental authority and supervisory role over the definition of the legal requirements and the licensing procedures of such subcontracted service providers, as well as regarding the inspection and control over the performance and quality of such activities and functions and over the compliance with the law by the employers and the subcontracted service providers.
15. The need to improve the efficiency and effectiveness of the overall national OSH system also seems to require a more clear demarcation of responsibilities and legal competencies of the state bodies currently responsible for OSH, with particular emphasis on elimination of overlapping legal powers and on the definition of their coordination and cooperation mechanisms.

In addition, and taking into account the relatively high level assumed by undeclared work in Ukraine<sup>51</sup>, and taking into account that undeclared workers are covered neither by the labour relations legislation nor by the OSH regulations, the incorporation of the provisions of the ILO Recommendation No. 198 on Ukrainian labour legislation should be considered within the scope of the current approximation process. In fact, and in order to effectively combat covert (masked) employment relationships and ensure adequate protection for all workers, it is of paramount relevance to introduce into Ukrainian labour law the necessary mechanisms and criteria to determine the existence of an employment relationship, mainly through the legal consecration of the principle of legal presumption of the existence of an employment relationship whenever certain evidence (indicators to be legally foreseen) are present.

Furthermore, the legal provisions regulating the work of women should also be revised, in order to promote the fundamental principle of equality between men and women, to uphold non-discrimination on the basis of sex, and to improve the alignment of Ukrainian labour legislation with the International and European Labour Standards and best practices<sup>52</sup>.

Moreover, and considering that as important as having good and properly aligned laws is to ensure that they are effectively implemented on the ground through an effective labour inspection system, entrusting labour inspectors with the necessary powers to discharge their duties, as foreseen in the ILO Conventions Nos. 81 and 129, and refraining from imposing *moratoriums* to the inspection activities, should be considered. In this way, Ukraine will manage to improve working conditions and the business environment and, at the same time, promote the alignment and implementation, not only of the international and European labour standards and best practices, but also its international commitments, foreseen in the EU-Ukraine Association Agreement and in the Canada-Ukraine Free Trade Agreement.

In addition, and considering the importance of having in place appropriate and sufficient penalties in order to induce compliance and sanction and deter non-compliance<sup>53</sup>, the modification of the way the fines are calculated (foreseeing an increase depending on a number of factors) should be considered, as well as the establishment of accessory sanctions (more

<sup>51</sup> Especially in what concerns total undeclared work and the use of bogus self-employed workers and bogus service providers (notably, through the use of the so-called “civil contracts”).

<sup>52</sup> In particular, with Articles 2 and 3(2) of the Treaty establishing the European Community and with the EU Directives Nos. 2006/54/EC and 92/85/EEC.

<sup>53</sup> As foreseen, by the way: in Articles 17 and 18 of the ILO Convention No. 81; Articles 22 and 24 of the ILO Convention No. 129; Article 9 of the ILO Convention No. 155; and Article 4 of the EU OSH Framework Directive 89/391/EEC.

directly linked to the vital interests of employers), along with the introduction of a legal regimen of joint liability.

It is also worth highlighting at this point, regarding the ongoing approximation process, that an “Approximation Road Map” should be drawn-up, based on the schedule defined in the Annex XL to Chapter 21 of the EU-Ukraine Association Agreement, in order to: clearly identify the international and European standards with which the national legislation will be aligned and the national regulations that should be amended, repealed or approved; provide the necessary guidance on the priorities; identify the persons and institutions responsible for that alignment; and to define the various phases of such process and its respective deadlines.

Moreover, alignment with the EU directives on OSH should also follow a specific sequential process and ensure the establishment, in Ukraine, of an OSH legal architecture (framework) similar to the one existing in EU countries.

As such, it is important to ensure that, within the scope of the current alignment process:

1. Each OSH directive should be transposed through just one legal act (except where there is the need to provide for too specific technical regulations).
2. The first directive that should be transposed is the EU OSH framework Directive 89/391/EEC<sup>54</sup>.
3. The process should then follow with the transposition of the transversal directives<sup>55</sup>, concluding with the transpositions of the directives focused on the protection of the safety and health of specific types of workers<sup>56</sup>, on the exposure of the workers to specific risks<sup>57</sup> and on the risks arising from work in specific sectors of activity<sup>58</sup>.
4. The repeal of outdated laws should be preceded by an in depth analysis of the OSH legal framework and with consultation of social partners, in order to avoid the creation of a legal *vacuum*.

Furthermore, Ukraine should build on the *momentum* and take the opportunity of the current approximation process to leverage the ratification of the ILO Conventions Nos. 121, 152, 167 and 187.

Finally, it is important to stress that, besides the active involvement of social partners, the success of the current approximation process will also require an extensive information and awareness-raising campaign, in order to explain its purposes and main alterations introduced in national legislation, as well as to strengthen professional training of the main actors of the national OSH system (e.g., workers and their representatives organizations, workers and their associations, labour inspection and other relevant authorities officials, research, education and vocational training institutions, etc.).

<sup>54</sup> Which is the “umbrella directive”, that sets the OSH architecture, beneath which will be fleshed out other specific individual directives and that stipulates the general provisions applicable to all employer (of all economic activities of both the public and private sectors), to all types of workers and workplaces, to all aspects of the work, and to the exposure of all types of risks (without prejudice to more stringent and/or specific provisions contained in other individual directives)

<sup>55</sup> Which regulate aspects that are common to the generality of employers, workers and sectors of activity (e.g., minimum safety and health requirements for the workplaces, use of work equipment, use of PPE, organization of working time, safety and/or health signs, etc.).

<sup>56</sup> For example: pregnant workers and workers who have recently given birth or are breastfeeding; workers with a fixed-duration employment relationship or a temporary employment relationship, etc.

<sup>57</sup> e.g.: exposure to biological agents, noise, etc.

<sup>58</sup> For example: minimum safety and health requirements at temporary or mobile constructions sites; minimum safety and health requirements in mineral-extracting industries through drilling, etc.



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