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EU-ILO Project

“Towards safe, healthy and declared work in Ukraine”



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OSH FORUM

Ministry of Economy Draft Law on OSH

Key areas for improvement to better align with ILS and EU Acquis

▶ Positive aspects

- ▶ The definition of a **National Policy and System** for OSH – **Articles 2-4, 6, 8 and 10**
- ▶ The obligation of the employer to continually ensure the safety and health of the workers in all aspect of the work – **Article 26(1)**
- ▶ Holistic approach that includes both **safety + health** aspects of the work (and not just safety)
- ▶ Move from an approach based on protection and compensation to an approach focused on prevention and foreseeing:
 - ❑ the general principles of prevention (GPP) on the organization, by employers, of the safety and health services - **Article 15**
 - ❑ The employers' obligation to assess occupational risks - **e.g. Articles 14, 29-30**

► Positive aspects

- The specification of the **main employers' obligations** on OSH:
 - ❑ Organization and functioning of **preventive and protective services** of OSH and OSH System - **Articles 15-16**
 - ❑ **Management of occupational risks** – **Article 17**
 - ❑ Provision of collective and personal **protective equipment** - **Article 18**
 - ❑ Ensure the workers' **health surveillance** - **Article 20**
 - ❑ Provision of **training** on OSH to workers - **Article 21**
 - ❑ Provision of **information** on OSH to workers - **Article 22**
 - ❑ Planning and organization for **first-aid, fire-fighting and evacuation of workers** - **Article 23**
 - ❑ Ensure the consultation and participation of workers - **Article 24**

▶ Positive aspects

- ▶ The special protection of the safety and health of **special vulnerable groups of workers**:
 - ❑ Pregnant workers, workers who have recently given birth, or who are breastfeeding - **Article 29**
 - ❑ Workers under 18 years of age - **Article 30**
 - ❑ Workers with disabilities - **Article 31**
- ▶ The consideration of the aspects of **promotion and enforcement of the legal provisions**, in order to ensure their application:
 - ❑ Labor inspection powers and activities - **Articles 32-35**
 - ❑ Liabilities for non-compliance - **Article 36**

▶ Aspects to improve to better align it with ILS & EU Acquis

- ▶ **Structure and systematics:** Section II should only include **State obligations**. The parts of Articles 7, 9 and 11-14 that refers to employers' obligations should be moved a specific section on employers' obligations
- ▶ **Terms** (e.g., workplace, workstation, occupational accident, occupational disease, night workers, etc.) – **Article 1**;
- ▶ Timing for adoption of **by-laws with lists** of risk factors (e.g., high-risk works; high-risk work equipment; to genetic heritage; to pregnant workers, their unborn child, workers who have recently given birth, or who are breastfeeding; to minors; etc.) – **e.g. Articles 12-14, 29-30**
- ▶ Need to provide that, even when **high-risk works** or the use of **high-risk work equipment** was authorized, employer shall remain obliged to take all the necessary and adequate measures to minimize, as far as practically possible, the occupational risks and their impact on worker's OSH – **e.g. Articles 12-13**
- ▶ **Obligation to assess risks** in not usually accompanied by the clarification of **how** to do it and, **what** to do next (e.g. inform workers of the results and preventive and protective measures; health surveillance; adapt working conditions; etc). – **e.g. Articles 14, 29-30**

▶ Aspects to improve to better align it with ILS & EU Acquis

- ▶ **Organization and functioning of the preventive and protective OSH services** is not flexible, prescribing the adoption of the same modality for all employers' workplaces, instead of allowing (**Article 16**):
 - ❑ Its provision through one/or more joint services (for safety and health) or through one/or more separate services (for safety, for one side, and for health, on the other side);
 - ❑ Different modalities (internal vs external; joint vs separated) for different workplaces of the same employer (depending on the number of workers and risks)

- ▶ Employers' obligations on **first aid, fire-fighting, elimination of breakdowns, and evacuation of workers** are mainly focused on their obligations once a breakdown (or any other event) happens and requires emergency measures, to the detriment of the measures to ensure preparedness to deal with such events, if they occur (e.g., set up and train the team responsible for carrying up the measures, provide the team with the necessary means, inform the workers about the measures and actions that should be implemented in case of an emergency and about the workers responsible for implementing them, etc.) - **Article 23**

▶ Aspects to improve to better align it with ILS & EU Acquis

- ▶ Employers' obligation to subordinate all his/her actions on OSH to the strict observance of the hierarchical and sequential general principles of prevention should be improved. With the exception of the obligation to organize the OSH services (Article 15), no other employer obligation is subjected to the observance of the GPP
- ▶ Employers' obligation to formulate and implement an overall plan for the prevention of occupational risks is absent from this draft law and, in particular, from the its Article 26 (on employers' obligations)
- ▶ The draft Law provisions regarding labour inspectors' powers (Article 33) should be reviewed, to better align them with ILO C81 and C129. Also to ensure that "enforcement of laws and regulations concerning OS are secured by an adequate and appropriate system of inspection", as foreseen in Article 9(1) of ILO C155.

▶ Aspects to improve to better align it with ILS & EU Acquis

- ▶ Regarding **employers' liability for violation legislation** on OSH (**Article 36**), sanctions for non-compliance with legal provisions should be further reviewed, to ensure that “The enforcement system shall provide for adequate penalties for violations of the laws and regulations”, as foreseen in Article 9(2) of ILO C155. In particular:
 - ▶ Recommendations to adjust the amount of the fines to the size of the employers and to introduce, in addition to fines, accessory sanctions, should be considered;
 - ❑ Infractions should be more differentiated by amount of fines and level of severity and some important and very serious infractions should be specifically addressed;
 - ❑ Violations covered by the residual provision, foreseeing fines of a half minimum wage should be kept to a minimum.

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▶ Contacts

Дякую за увагу!

Thank you for your attention!





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