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“Towards safe, healthy and declared work in Ukraine”



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Draft Legal Act

“On Minimum Workers’ Safety and Health Requirements for Temporary or Mobile Construction Sites”

**Technical recommendations for its better alignment with the
applicable International Labour Standards and EU Acquis**

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A. PURPOSE OF WORK

These technical recommendations are intended to promote a better alignment of the SLS draft Legal Act “On Minimum Workers’ Safety and Health Requirements for Temporary or Mobile Construction Sites”, with the main applicable International and European labour standards and best practices.

In particular, with the ILO Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Health Services Convention, 1985 (No. 161), the Labour Inspection Convention, 1947 (No. 81) and Labour Inspection (Agriculture) Convention, 1969 (No. 129).

Most especially with EU Council Directive 89/391/EEC, of 12 June 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work, and the Council Directive 92/57/EEC, of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

B. WORK SYSTEMATIC

I. MAIN POSITIVE ASPECTS

II. KEY ASPECTS TO IMPROVE

III. EU-ILO PROJECT DETAILED RECOMMENDATIONS

I. MAIN POSITIVE ASPECTS

1. The development of a modern legal regulation.
2. It reflects a more goal-oriented and organizational preventive approach.
3. Shifts from an approach based on protection, correction and compensation to an approach focused on prevention and foreseeing the general principles of prevention (GPP).
4. Incorporates the two fundamental pillars of the Directive 92/57/EEC:
 - ▶ Applies the philosophy enshrined in the GPP to the act of designing the building, namely, in terms of architectural options and technical choices of materials (prevention of design);
 - ▶ Strengthens coordination between the different stakeholders, from the preparation of the project of the work and also during the execution of the work, in order to streamline the articulation and succession of interventions, considering the different requirements for planning safety and health at work.

I. MAIN POSITIVE ASPECTS

5. Perceives the “client” as the first level of decision and responsibility and as who generates all the subsequent chain of responsibilities.
6. Realizes the existence of an integrated occupational safety and health coordination system, in which the safety and health coordinators assume a key mission.
7. Underlines the importance of safety and health planning, through the Prior Notification of the opening of a construction site and the Safety and Health Plan, which emerge as the main prevention tools and coordination instruments.
8. The distribution of responsibilities among the different stakeholders was well perceived and recognized.

▶ II. KEY ASPECTS TO IMPROVE

1. This normative act, or legal instrument, should assume the typology of, at least, a Cabinet of Ministers of Ukraine (CMU) Decree or Resolution, instead of an Order of the Ministry of Social Policy (or of the Ministry of Economy).
2. The legal act systematics, structure and clarity should be improved, in order to simplify it and to facilitate its understanding and alignment with the EU Directive 92/57/EEC, of 24 June.
3. The title of the draft legal act proposed by SLS should be replaced by “Minimum Safety and Health Requirements at Temporary or Mobile Construction Sites”, because the “Safety and Health Requirements” are not “of the workers”, but, instead, of the “workplaces”.

▶ II. KEY ASPECTS TO IMPROVE

4. The draft legal act misses to insert, in Section “I - General provisions”, a provision which, with the reference to Article 16(3) of the Framework Directive 89/391/EEC, foresees that “The provisions of the Law of Ukraine “On Occupational Safety and Health of Workers”, shall apply in full to the whole areas referred to in paragraph 1, without prejudice to more stringent and/or specific provisions foreseen in this ‘Minimum Safety and Health Requirements at Temporary or Mobile Construction Sites’”.
5. It was found, several times, that the proposing wording had clearly the intention to innovate a bit, so as not to copy exactly the expressions of the text of the Directive. However, very often, the results did not fully transpose what the legislator of the Directive intended, namely:
 - ▶ In paragraph 1 of section “I - General Provisions”, the word "engineering" was missing;

▶ II. KEY ASPECTS TO IMPROVE

- ▶ Despite the fact that the Directive 92/57/EEC and the draft legal act “Minimum Workers’ Safety and Health Requirements for Temporary or Mobile Construction Sites” present the list of works covered in an annex, it seems important that this list appears immediately in the body of the law;
- ▶ The Directive 92/57/EEC makes explicit the “drilling” and “extraction activities”, which are not include in paragraph 4 of section “I - General Provisions”;
- ▶ The sentence "except works related to underground mining of ore and non-ore mineral resources as well as construction and operation of underground mining workings created during open-pit development of mineral resource deposits", which was contained in the original Annex 1 was removed and was not incorporated in paragraphs 1 and 2 of the proposed new “Article 2 - Scope”, because it is useless - its meaning is contained in the wording of paragraph 2 of the proposed new Article 2 – “Scope”;

▶ II. KEY ASPECTS TO IMPROVE

- ▶ Paragraph 2 of Section “I - General provisions” was deleted. It is unnecessary to mention the interveners in this law, as they are clearly identified in it, as well as their responsibilities, which must, in cases of non-compliance, lead to the respective sanctions;
- ▶ In paragraph 5 of Section “I - General provisions”, and with regard to the definitions, several changes were made - of which the safety and health plan stands out. It was necessary to better specify the content of the safety and health plan, since their wording in the draft legal act proposed by SLS was somewhat confusing;
- ▶ In subparagraph 3) of paragraph 1 of Section XI, there is an example of how translations can change or constrain the application of a provision. Where the wording states, “*Workers representatives shall have the right to **approach** the employer (...).*” The text was change to “*Workers' representatives **have the right to ask** the employer (...).*”;
- ▶ Section XIII (2) on “Minimum requirements for on-site workplaces. Arrangement of indoor workstations”. In this case, the words "deposit" and "dirt" were added to replace the words "substance" and "dust".

▶ II. KEY ASPECTS TO IMPROVE

- ▶ There is often confusion between the meaning of the word's "hazards" and "risks";
- ▶ To the content of the safety and health plan (Section V) has been added the information and training systems for all workers present on the construction site in matters of prevention of occupational risks and the necessity of a written record of the activities of the coordinator for safety and health;
- ▶ In Section VI, it is important to emphasize the general principles of prevention – GPP - in the expression “general provisions on worker’s safety and health”;
- ▶ In Section VII - Responsibilities of the client and project supervisor - it was included that, regardless of the appointment of the coordinator, or safety and health coordinators, this does not relieve the client or project supervisor of their responsibilities;
- ▶ In Section VIII, and throughout the draft legal act proposed by SLS, there is no provision that emphasizes the responsibility of employers;

▶ II. KEY ASPECTS TO IMPROVE

- ▶ It is contrary to the spirit of the Directive 89/391/EEC to assume from the outset that the worker has had flaws and omissions in the field of occupational safety and health;
- ▶ In Section XIV (4) (1), the draft legal act proposed by SLS mentions specific measures for collective protections. Is this advisable?
- ▶ In Section XIV (7) it was necessary to change the title of the provision “Means of transport, excavating machinery and transporters” to “Excavating and materials-handling vehicles and machinery”;
- ▶ In Section XIV (9) (2) it was necessary to highlight in the provision, within earthworks, the word "excavating", because it is not obvious that the term “earthworks” encompasses excavation operations.

▶ II. KEY ASPECTS TO IMPROVE

6. Omission of the definition of the state authority that has the legal competence to promote, control and enforce compliance with its legal provisions.
7. It should also be ensured that the violation of the provisions of this legal act is properly covered by legal provisions aimed at sanctioning such infringements.
8. It is also recommended, to provide for the date of entry into force of this legal act, the indication of the legislation repealed with its entry into force, the adjustment of its annexes where appropriate, and the implementation of the measures necessary to conform the legal framework with its provisions in order to ensure its effective application.



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