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

**EU Directives  
and Reform of OSH and  
Labour Relations' Legislation**

**White Paper**

January, 2019



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# Abbreviations List

BS	British Standard
EC	European Community
EEC	European Economic Community
EU	European Union
EUOSHA	European Agency for Safety and Health at Work
ILO	International Labour Organization
ISO	International Organization for Standardization
NHS	National Health Service
NMCS	National Mediation and Conciliation Service of Ukraine
OH	Occupational Health
OSH	Occupational Safety and Health
PPE	Personal Protective Equipment
SEA	Single European Act
SLS	State Labour Service of Ukraine
WHO	World Health Organization

# Foreword

The present white paper, on the reforms necessary to establish a legal framework integrating the European Union (EU) legislation on selected OSH and labour relations issues, aims to highlight the ways through which Ukraine may align its legislation with International Labour Standards (ILS) and EU acquis and best practices on Occupational Health and Safety (OSH) and labour relations. It is based on the review and description of the ways EU Member States have transposed and implemented the relevant EU directives, as well as on their options, practices and respective outcomes.

The main focus has been EU Council OSH Framework Directive No. 89/391/EEC, of 12 June 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work. This directive is based on a holistic and non-prescriptive approach to the prevention of all occupational risks that may emerge in the work activities of the employers from all branches of economic activity (public or private) and which can affect their workers and third parties.

The white paper 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 and greatly benefited from the already developed activity.

Analyses have already been conducted on the EU Council OSH Framework Directive No. 89/391/EEC, Council Directive No. 89/654/EEC, of 30 November 1989, concerning the minimum safety and health requirements for the workplace, Directive No. 2009/104/EC of the European Parliament and of the Council, of 16 September 2009, concerning the minimum safety and health requirements for the use of work equipment by workers at work, 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, Directive No. 2003/88/EC of the European Parliament and of the Council, of 4 November 2003, concerning certain aspects of the organization of working time, and Council Directive No. 91/533/EEC, of 14 October 1991, on the employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship.

A description of the different impacts on the policy option adopted has been made in accordance with the case law of the Court of Justice of the European Union and also with the impact assessment studies commissioned by the European Commission.

The European Union's OSH legislation has as its context the fact that its member states have ratified the international labour standards on public OSH policies. That is the case of the following ILO Conventions: The Occupational Safety and Health Convention, 1981 (No. 155); the Occupational Health Services Convention, 1985 (No. 161); the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), the Labour Inspection Convention, 1947 (No. 81) and the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

That is why a description of the reforms necessary to establish the legal framework integrating the EU OSH and labour relations legislation have taken account of this fact.

The analyses and the recommendations can be used as a basis for discussion of solutions adapted to the cultural reality of Ukraine. This white paper aims, therefore, to be an instrument used to support the conduct of the approximation process to the International and European Labour Standards and best practices.

# Introduction

The Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, signed on the 21/03/2014 is the result of a confluence of interests in integrating into a space of European countries where the economic imperatives try to be consistent with the social policies as a presupposition to obtain sustainability and capacity to project the future of the societies that integrate into that space.

One of the vectors of strong intervention in the social domain has been evidenced in the promotion of OSH. Since the signing of the Single European Act (1989), this policy intervention has been the subject of a profound process of restructuring the approach perspective to guarantee the consistency of preventive action for occupational risks with other aspects of action aimed at improving working conditions.

This is, in general terms, the context of that association agreement and the adoption into Ukrainian law of a block of European directives in the field of health and safety at work. At its relief and central position on the labour, Community acquis adopted a particularly important directive that establishes the EU OSH legal framework - the 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. From the impact assessments on this directive, it is clear that it remains relevant for the future of the work and that it has positively affected business behaviour, although the SME and microenterprises reveal some difficulties with the interiorization of its principles in their processes.

The purpose of this white paper is to describe the objectives and the fundamental characteristics of the EU legal framework on OSH and Labour Relations, analyse and define the alternatives for its implementation in Ukraine, and to summarize the areas that need legislative intervention.

In this way, it is intended to be a useful tool for those who have a role to play in the design of this legal framework - political decision-makers, social partners, technical staff, etc. It is also addressed to those whose mission it is to promote and enforce compliance with the legislation.



# Part I - Occupational Safety and Health (OSH) Rationale

## 1. OSH and Development Contexts

### 1.1. Globalization

The activities of companies are strongly internationalized as a result of the development of light production technologies, transportation and information and communication systems, directing flows of raw materials, finished and semi-finished products, money and people to other countries. In addition, the transfer and movement of resources and capital. In a lesser extent is observed labour force mobility from one economy to another, in particular, through the creation of multi-territory production structures. An exponential circulation of capital around the world is a major evidence.

It has become more difficult to track, in terms of knowledge, all of the properties of new raw materials, materials and products as well as new work equipment, which, very quickly, began to replace the previous ones. These new components have been often acquired in other countries, and it is not always easy to obtain information on their composition, nature and mode of use, and, increasingly, the difficulty of adding devices or protection systems.

On the other hand, these components started to interfere strongly in the structure of the productive processes, giving rise to radical alterations to the methods and work processes, which allowed verifying the enormous influence of the operative modes in the level of the environment of OSH.

New forms of work organization arise, focused on the core business, inducing vertical disintegration, outsourcing, increase of autonomy in the work, processes of organizational development and constant (re)qualification. Such transformation implies a substantial increase in mental work and emotional demands.

These processes of change were not entirely foreseen in today's dawning digital transformation of work. This means the impacts of convergent applications of robotics technology, scanning, artificial intelligence, biotechnology, etc. predict a profound change in the performance of work activities as new systems associate digital machines and processes, making decentralized decisions and cooperating with each other and with man over the Internet.

This acceleration brings to question the level of effectiveness of traditional approaches to the prevention of occupational hazards. A wider and more comprehensive vision raises: Not only the risks related to the preservation of physical integrity, but all risks resulting from work activities, namely those who are able to affect mental health. The promotion of well-being at work becomes a renewed goal.

### 1.2. Quality and the Environment

The development of the market has brought the concern of "quality" to the management of companies. This concept began by referring to the guarantee of the characteristics of each final product placed on the market and gradually transformed into an approach centred on the processes (productive and organizational) developed by the organizations, potentiating the differentiation.

This need led to the creation of systems with its institutions and operating rules, combining public authorities and stakeholders of civil society, aimed at ensuring public confidence in their processes.

The prevention of occupational risks intersects with quality strategies, because it not only addresses the elimination of poor quality standards in production, but adds concerns that the company itself

meets quality standards benefitting both the worker and client. It is no longer possible to classify as "good" the product or process that does not also guarantee acceptable levels of well-being to those who produce, trade or consume them.

On the other hand, the developments that characterized industrial society produced far-reaching consequences in the environment. Traditional production processes have proved to be highly polluting (eg. the steel industry, pulp and paper, and the chemical industry) and, on the other hand, some of the new high-diffusion technologies have also proved to be of great environmental impact (eg, agricultural pesticides, solvents, plastics and fossil fuels).

The level of awareness and increasing accountability that societies impute to economic agents around the environmental impact of industrial processes has led companies to develop competencies in this area, and this clearly intersects with approaches to occupational risk prevention. Indeed, dysfunctions in the design, organization and management of workplaces often have repercussions in the external environment (eg. exhaust and evacuation systems for environmental contaminants and by-products, noise, etc.). The magnitude of the damage resulting from some serious industrial accidents (Seveso, Bhopal and Chernobyl, among others), also show this correlation.

### **1.3. Human Resources**

The role of human resources in an organization is now seen in a different way from that which characterized the paradigm of earlier industrial society. Among others, the segmentation between design and implementation of labour, its fragmentation, and multiplication of hierarchical controls for ensuring consistency and maximum efficiency in a stable market, is no longer part of the current lexicon of management work. In fact, the availability and introduction of new technologies, but above all, the management of the unpredictability of the market, has made business management practices more and more flexible in the sense of seeking greater and better adaptation of productive factors to a high level of efficiency in meeting the needs and expectations of various types of consumers. In such a context, what is wanted for the human resources of an organization is no longer in the domain of efficiency of the execution of pre-determined tasks. It requires evolving towards their understanding of the processes developed and, therefore, in their involvement with the objectives and with organization priorities.

All this presupposes the development of work organization and motivational factors of the worker, considered individually, and the appreciation of their individual knowledge, set in a job recovery strategy, and understood as a source of value and not as a mere cost.

Significant signs of these strategies can be recognized in the dynamism of vocational training, in the redefinition of professional profiles, in the insertion of human resources in the organization, in the development of information and communication systems, in the extension of forms of participation and, finally, in the development of a company's culture.

People are, therefore, at present, seen ever more as being worthy of investment (direct and indirect) by states, or by companies, so that their physical and psychological well-being and creative energy are not only preserved, but developed. Human resources, seen within this scope, constitute a real distinction regarding the identity of each organization and, as such, are increasingly a key vector of strategic management.

In this context, the challenges of work life extension and the respective capabilities for work performance must be added. Those challenges are the result of a double trend: longer life expectancy and an aging population, trends present in all European countries.

Furthermore, the prevention of occupational hazards, as consensus, plays a very significant role in the development of work organization and motivation of company employees and giving meaning to comprehensive interventions that enhance the improvement of working conditions, improvement of productivity, development of the spirit of initiative, optimization and rationalization of the production chain and the organization of the company, as well as the quality of the processes and the projection of the external image of the economic agents.

## 1.4. Accidents at Work and Occupational Diseases

It is often said that occupational accidents and diseases produce more victims than armed conflicts.

According to the International Labour Organization, approximately 270 million work-related accidents and 160 million occupational diseases occur every year around the world, with economic costs exceeding 4% of world GDP, in addition to the immense personal and family suffering that underlies this reality. The number of fatalities exceeds 2 million every year.

According to the European Agency for Safety and Health at Work, more than 140 thousand people die every year in the European Union due to occupational diseases and about 9,000 due to accidents at work.

The above statistics are of concern because, as is known, they fall short of reality as a result of difficulties in harmonizing the statistical systems for data collection, treatment and their availability.

The situation in Ukraine is similar to this type of evaluation. 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.

However, according to ILO,<sup>1</sup> 384 fatal work-related accidents were recorded in Ukraine in 2014.

Considering the number of workers exposed to occupational risks, 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.<sup>2</sup>

Regarding occupational diseases incidence, and according to the data of the Social Insurance Fund of Ukraine, Ukraine registered a total of 2,752 occupational diseases in 2014, a total of 1,764 in 2015 and about 1,603 in 2016.

This brief description allows us to foresee the drama experienced by the victims and their families as well as the loss of earning capacity that the accident or disease causes and the poverty that can originate.

However, the direct economic costs that Ukrainian society supports are relevant and can be estimated from data provided by the Fund for Social Security against Occupational Accidents and Diseases of Ukraine and the Social Insurance Fund of Ukraine.

**Table 1: Information on budget execution for different expenses of the Fund for Social Insurance against Occupational Accidents and Diseases of Ukraine, 2013-2016, and the Social Insurance Fund of Ukraine, 2017 (UAH 1,000)**

Budget items	2013	2014	2015	2016	2017
<b>Total</b>	<b>6615136.6</b>	<b>5387236.6</b>	<b>6626259.1</b>	<b>5869942.9</b>	<b>6489630.3</b>
<b>Expenses on fatal accidents</b>	<b>511400.6</b>	<b>393315.7</b>	<b>379823.9</b>	<b>300699.0</b>	<b>306807.5</b>
Insurance benefits to persons entitled thereto in case of the loss of breadwinner	261632.7	211370.9	266215.7	236493.9	249027.1
Insurance lump-sum benefits to a victim's family	248240.2	180781.0	112875.4	63597.9	57308.4

<sup>1</sup> Cases of fatal occupational injury by economic activity in Ukraine, from [http://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page27.jspx?subject=OSH&indicator=INJ\\_FATL\\_ECO\\_NB&datasetCode=A&collectionCode=YI&\\_afLoop=352972833442622&\\_afWindowMode=0&\\_afWindowId=19huznhaao\\_1081#!%40%40%3Findicator%3DINJ\\_FA](http://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page27.jspx?subject=OSH&indicator=INJ_FATL_ECO_NB&datasetCode=A&collectionCode=YI&_afLoop=352972833442622&_afWindowMode=0&_afWindowId=19huznhaao_1081#!%40%40%3Findicator%3DINJ_FA)

<sup>2</sup> Eurostat. (2017). Fatal accidents at work by economic activity in the EU 28, from

member (in case of the victim's death due to an occupational accident)					
Reimbursement of costs of the victim's burial and related ritual services	1527.7	1163.8	732.8	607.2	472.0
<b>Expenses on non-fatal accidents</b>	<b>6103736.0</b>	<b>4993920.9</b>	<b>6246435.2</b>	<b>5569243.9</b>	<b>6182822.8</b>
Monthly insurance benefits in case of partial or full loss of working capacity, which compensates for a respective part of the victim's lost earnings	4759587.9	4133190.8	5716523.0	5082468.2	5642678.7
Insurance lump-sum benefits in case of the victim's permanent loss of occupational capacity	785662.5	542393.3	156507.0	55221.1	42784.1
Benefit in connection with temporary loss of working capacity until restoration of working capacity or determination of disability	135951.2	86861.0	64633.9	69868.3	87058.4
Insurance benefits in case of the victim's transfer to an easier, lower-paid job	544.7	557.7	37.0	40.4	43309.0
Insurance benefits for medical and social assistance	421989.7	230918.1	308734.3	361645.9	410272.9

For these direct costs, several authors claim to add other indirect costs that, despite their difficult quantification, reach extraordinary proportions never less than five times the amount of direct costs. They are divided by a large number of types, such as the costs associated with replacing the injured worker, costs incurred by the health care system, administrative costs, repair of damaged equipment, production losses and losses of competitiveness, losses associated with image and other social costs.

## 1.5. Social Dialogue

The need for economic and social convergence, the need to introduce reforms and the problems posed by globalization and competitiveness have reinstated the role of social dialogue as an instrument for involving stakeholders in public policy definitions. In this way, in addition to mere wage bargaining or inflation control, it seeks to reconcile social policies with economic policies. The subject of OSH, in this context, has proved to be a field for consensus that can favour the realization of others in various areas of social life.

The system of representation of interests of workers and employers in Ukraine shows a good degree of representation from several points of view: expression in the national territory, in several sectors of economic activity and in the different typology of the organization's sizes. From this perspective it reveals the potential to contribute to and influence the definition of OSH public policies, including its legal framework, as well as to accompany the transition of the political options to levels of accomplishment and effectiveness in the workplaces.

In the same sense, it is clear that social dialogue regarding the definition and monitoring of public policies, including political policies on OSH, has its own institutional seat stabilized. The National Tripartite Social and Economic Council is 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. Territorial tripartite social and economic councils have also been established.

Similarly, to the operationalization of policies, there is a board under the State Labour Service (SLS Board) with consultative and advisory functions, that discusses and approves decisions on the formulation and implementation of the state policy on OSH, labour relations, labour inspection and social protection.

## 1.6. Some Historical Data on OSH Regulation

The traditional model of occupational risks prevention that expanded across Europe until about the 1970's, limited its fundamental field of regulation, with a prescriptive feature, to three main domains.

The first was to specify the conformity of the workplace and work equipment, materials or products, seeking to eliminate or limit physical, chemical or biological hazards (the technical failure), preferably in a structural configuration of such components that would make impossible or limited the possible emergence of human error. From here derived particular attention to sectors or activities seen, objectively, as more dangerous (mining and quarrying, construction, agriculture and manufacturing industry). The second was aimed at the requiring of personal protective equipment use to limit the dangers from unprotected or insufficiently protected materials and work components. Finally, for the consistency of those interventions, orders and instructions were dispensed to operators in order to avoid the emergence of unsafe acts (the human error).

The resulting legal framework was strongly regulated, characteristically prescriptive and marked by "technical" specifications. The structure of rights and obligations was shaped around well-known risks with the control activity characterized by the law. It was the law's role to identify the problem and provide the solution. This prescriptive OSH regulation has advantages in the determinability of obligations that are attributed to the employer and tendentially facilitates the labour inspection activity. It is easy for labour inspectors to compare certain aspects of work situations with certain provisions where the legal compliances are established.

The persistence or even increase of the number of work-related accidents throughout Europe, the loss of size of the most dangerous sectors of activity (agriculture, the coal industry and steel ...), as well as the tertiarization of the economy, the shift to a more mental than physical work with a more autonomous exercise drove a search for other answers.<sup>3</sup>

The disadvantages of the prescriptive way are related to an excessive regulatory volume associated to a limited scope of regulation. In fact, this scope has been limited to certain specific risks and / or groups of vulnerable workers that occur in certain sectors of economic activity.

This huge volume of regulatory production poses problems. On the one hand, its quantity prevents their recipients from knowing all the legislation that they should apply; on the other hand, its excessive detail and technicality complicates its understanding, in particular for micro, small and medium-sized organizations as well as for workers and their representatives. Overall, these characteristics of the Ukrainian legislative production prevent its compliance.

The technical detail brings with it a potential for being out of date in face of scientific and technical developments, which is particularly aggravated by the time it normally takes to process a will to legislate. The fact that regulation is detailed and prescriptive has the perverse effect of disincentives to innovation: compliance with the requirement satisfies, comfortably, the purpose of the law and any other act can be interpreted as non-compliance.

Finally, the fundamental object of the regulation is the conformity of the material components of the work: the static work dimension. Therefore, it passes alongside the dynamic aspects involved in the work activities: the organization, the interaction with the external context, the social internal and external relationships, etc.. The OSH organizational performance needs to be regulated.

This diagnosis, summarily described, finds similarity in the OSH legal framework of Ukraine.

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<sup>3</sup> The Robens Report is a good example. Robens, Alfred et al (1972), Safety and Health at Work: Report of the Committee, 1970-72, London: Stationery Office Books.



## 2. Characteristics of the European OSH Legal Framework

### 2.1. Definitions of Public Policy

The constitutional guarantee of the right to safety and health at work presupposes a systematized framework of OSH legal norms that enforce the fundamental right, makes necessary the definition of a system of institutions capable of consistently ensuring that those fundamental rights become reality in the workplace. This notion of system is based on the idea that the OSH public policies are constituted by a set of entities and valences that acting in concert obtain a better result than the one that would come from the mere sum of isolated interventions. On the other hand, complementarity with other systems is relevant. That is the case, in particular, the case of quality systems, environmental protection, health, social security, education and training. In this sense, the principles of ILO Conventions 155 (1981), 187 (2006) and Protocol 155 (2002) constitute a systemic organization for realizing the fundamental right to OSH.

The Directive 89/391/EEC does not expressly refer to this object of legislative content, but states that it must comply with the laws, regulations and administrative provisions necessary to comply with this Directive. It can therefore be said that the directive presupposes these approaches also because the constitutional guarantee of the right to the OSH and the ratification of ILO Convention 155 are traits common to all member states.

In this sense, Ukraine has a network of public and private institutions whose specific competences can be mobilized for the domain of OSH.

### 2.2. Structure of the Legal Framework: Placing Safe Products on the Market

The Treaty on the Functioning of the European Union provides the empowerment of the EU for the production of relevant different standards for OSH regulation.

The rules that allow the "harmonization in progress" promoting the improvement of OSH working conditions through directives on minimum requirements (Article 153 of the Treaty on the Functioning of the EU) are distinguished from internal market rules (Article 114 of the Treaty on the Functioning of the EU), which establish essential requirements concerning the safety of products to be placed on the market.

The legal framework aimed at product safety, and its regulatory standard, is applicable to miscellaneous products which are the subject of specific certification, namely machinery, appliances, equipment, assemblies, safety components or components, units, installations, accessories or systems, etc., which are intended to be placed on the market or put into service for the first time in the Community market. In this way, new products manufactured in the Member States and new products, used or second-hand, imported from third countries are covered.

Both legal frameworks are complementary approaches to social goals. This intrinsically safe approach is part of the framework of standards for the design and manufacture of products to market. OSH standards relate, in particular, to the conditions of use of these products in the context of work activities. Furthermore, market standards ensure that the manufacturer or the dealer provides a set of information about product characteristics, conditions of use, instructions for maintenance, etc., that are relevant to structure the subsequent preventive activity.

This complementarity is particularly visible in Directive 2009/104/EC of 16 September 2009, concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC). The Directive 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 (third individual directive within the meaning of Article 16 (1) of Directive 89/391/EEC) is also relevant on this point of view.

### 2.3. OSH legal framework basis

The actual methodology of legislative production adopted in EU member states is based on a structure with emphasis on a framework law at its top, beneath which is developed a set of individual and specific law acts. This is the role of Directive 89/391/EEC. This law contains features aiming the consistency of the overall standards, the way in which the subjects are distributed and related to each other and the relation with other regulation instruments. It aims to facilitate the overall comprehensibility of the requirements, to avoid legislative inflation and excessive resource to technical detail. The purpose is expressed in the sentence “less law and more occupational risks covered”.

The objective of the legal framework is clear: to provide a clear, stable and flexible legal basis to address all risk situations that arise from work activities and to give general meaning to subordinate legislation.

The object proposed for the legal framework covers an aggregate of aspects considered crucial to the success of the regulatory framework, focusing on organizational performance, most notably:

- a) The statement of the basic obligations of employers on prevention and a set of general principles of prevention which guide action by identifying and evaluating occupational risks, providing a safety work system including workplaces, environment and work equipment; work, social relations, training and qualification of staff, the instructions made available and their supervision, as well as the obligations of the workers to observe the safety provisions and to act with care for themselves and for third parties;
- b) The characteristics of the aggregate of resources made available by the employer to manage OSH and ensure the technical quality of the procedures adopted;
- c) The implementation of the information, consultation and participation mechanisms for the workers and/or their representatives;
- d) The definition of the public institution with legal attributions for promoting and enforcing the OSH legislation, its powers and functions;
- e) Enabling the above entity to prepare legal instruments necessary for the implementation of the legal framework;
- f) Powers to regulate, in different ways and in different subjects, namely through licensing, authorization or other processes;
- g) Ability to promote research and training;
- h) Requirements to be able to apply sanction procedures in case of non-compliance.

In order for this framework to be able to attend to aspects of the work activity considered relevant or to meet better execution conditions, it needs to be complemented by two types of normative support instruments with different natures.

Firstly, a set of legal and regulatory rules, subordinate legislation, translated into details focusing on some aspects such as specific tasks (e.g., manual handling of loads, use of work equipment), specific risks (e.g., exposure to hazardous substances and physical or biological agents), specific sectors and workplaces (e.g., temporary or mobile construction sites, mining and fishing vessels) and vulnerable groups of workers (e.g., pregnant and breastfeeding woman, young workers and workers with work contracts of limited duration). This type of secondary legislation maintains some of the prescriptive features of traditional OSH legislation, although subject to a global regulatory philosophy marked by the definition of performance objectives and processes required to achieve them.

The second type of regulatory instrument concerns developments required by legislation or regulation, defining non-binding standards and codes of good practice for most of the matters requiring specification. This type of standard can benefit from the legitimacy conferred by its origin in the independent public citizenry and the respect for consultation mechanisms of representatives of employers and workers institutions. Another way of doing it concerns the use of technical standardization from quality systems. Their acceptance would have the effect of establishing a presumption of compliance with the law.

There is a problem represented by the duality of uncertainty/flexibility inherent in the different natures of the involved normative orders. The uncertainty associated with the voluntariness of adherence to the nonlegal legal command that prevents it from being legally enforced and adaptive flexibility that the non-binding standard provides.

The dilemma lays in the containment of the legal norm to situations wherein the values and objectives are to be achieved by preventive action. This view is based on the idea that the definition, in particular of methods or processes for achieving them generally corresponds to highly technical standards and is subject to frequent changes in the light of new scientific and/or technical knowledge. These methods could be included in distinct normative instrument susceptible of rapid change as soon as necessary. In fact, it is not for the law to define or decide technical-scientific disputes. In this perspective, there would be no place to produce law without previously examining whether the scope and object considered to regulated could be properly filled by non-binding instruments. Viewed this way, many regulations might not be necessary.

With this definition of structure and normative production style in OSH, several types of standards are defined according to the structure of their commands: standards that define general duties, performance standards and process standards, in addition to the traditional norms with technical prescriptions.

The fundamental assumption of this type of regulation is the promotion of multi-level self-regulation. At the shop floor level the actors inside and outside the company, their rights and duties, protection and resources. At the institutional level, a framework of public and private institutions, the participation of the collective representation of interests, would stimulate concrete action, as well a whole set of standardization instruments, non-binding but complementary to the legal framework.

Across Europe, the EU OSH Directives delivered a *momentum* of reform that improved various national laws. The extent of each reform was also dictated by the social and political context of each country. Some countries were careful to carry out a 'light touch' implementation of simply carrying over the wording (the United Kingdom and, to a large extent also, Germany). Other countries, by contrast, embarked on far-reaching, comprehensive reforms (e.g., Italy, Spain and Portugal).<sup>4</sup>

Finally, the law must provide for sanctions to be effectively enforced in the event of non-compliance. The EU Court of Justice has decided that failing to institute criminal, administrative or disciplinary proceedings sufficiently deterrent against the persons who took part in infringements of the national law or failing to carry out the necessary verifications, inquiries, and additional checks do not comply with UE law.<sup>5</sup>

## 2.4. Summary of Key Gaps in the Ukrainian OSH Framework

Apart from international and constitutional regulations, legal relations in the field of OSH are regulated by other general, specific, and subordinated national legislative acts. The regulation of certain matters of OSH foreseen in the law "On Labour Protection" comprises almost 2,000 subordinate regulatory acts that 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.<sup>6</sup>

It is therefore important to emphasize a challenge: the reduction of the current number of legal acts and their simplification and merger into a fewer number, structuring them according to their purposes.

Two fundamental orientations, however, are relevant to provide companies with an external environment that gives them the necessary confidence to acquire equipment, products and materials needed for production:

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<sup>4</sup> Laurent Vogel (2015), The machinery of occupational safety and health policy in the European Union History, institutions, actors, European Trade Union Institute

<sup>5</sup> Case Law before the Court of Justice EU, C-68/88, 21-09-1988 and C-383/92, 08-06-1994.

<sup>6</sup> ILO (2018), National Occupational Safety and Health Profile Ukraine. From

- a) 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;
- b) 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.

The context of having a systematic policy on activities of public or private institutions with OSH competence can also be advantageous legal framework object. This is the case in particular in reference to the following aspects:

- a) The increase of the technical and scientific research applied in the field of OSH, with particular reference to the emergence of new risk factors;
- b) Education for promoting improvements in occupational safety and health, namely the inclusion of OSH content in school curricula at the various levels of educational system;
- c) The inclusion of OSH in vocational education and training initiatives;
- d) Education and training of OSH professionals;
- e) Training of workers' OSH representatives;
- f) Information for promoting improvements in occupational safety and health;
- g) The role of standardization and quality systems regarding OSH;
- h) Raising the awareness of society in order to create a genuine culture of prevention.

The current Ukrainian specific legal framework about OSH should be merged into a smaller number of legal acts according to a modernized preventive approach. The law "On Labour Protection" and the regulatory legal acts adopted pursuant to it, covers a wide range of OSH-related topics, related to safety and health in and outside workplaces. There are 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.

Finally, the law must provide for a sufficiently deterrent system of sanctions for failure to comply and ensure that the Ukrainian labour inspectors are legally entrusted with all the necessary powers to discharge their duties, as foreseen in the ILO Labour Inspection Convention Nos. 81, 1947 and 129, 1969.

# 3. OSH legal Framework: Organizational Performance

## 3.1. Scope and Objective

As regards its scope, the current European OSH law covers the entire employed population, including civil servants, the economically dependent worker, trainees and apprentices (Articles 2 and 3 of ILO Convention 155, 1981; Directive 89/391/EEC) and applies to all sectors of activity both private or public (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).

The European law provides only two exceptions.

One refers to domestic workers. However, it should be noted that the ILO Domestic Workers Convention, 2011 (No. 189) provides for their right to occupational safety and health in accordance with national laws, regulations and practice. It is said that these measures may be applied progressively, in consultation with the most representative organizations of employers and workers.

The other exception refers to "certain binding characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services" indispensable for the proper functioning social life, without prejudice to the adoption of measures to ensure the safety and health of their workforces (Article 2/2 of Directive 89/391/EEC). The Community case-law clarifies a principle of general application of the OSH legal framework in deciding that "the exceptions to the scope of the Directive, including that provided for the number 2 of Article 2, must be interpreted restrictively "for what" in normal conditions, the activity of the staff of primary care teams (medical) cannot be equated to these activities".<sup>7</sup>

As for its object, there are two aspects to be noted that respect the legal concepts that significantly extend the field of events being integrated into the legal provision.

Firstly, the redefinition of the term "health in relation to work" and the "health and safety" approach represents a richer and far more embracing notion than the traditional "hygiene and safety". In effect, the concept of occupational health (cf. Article 3 / d of ILO Convention 155) "not only refers to the absence of disease or infirmity", but "also includes physical or mental elements related to safety and hygiene at work." Community jurisprudence clarified the extent of this design by pointing out that 'there is nothing to indicate that the terms 'working conditions', 'safety 'and' health' should be understood in the absence of other details and not in the sense that they cover all physical or other factors that may affect the health and safety of the worker in his work environment ... "sustaining" ... this interpretation ... in the preamble to the Constitution of the World Health Organization, which includes all Member States, which defines health as a complete state of physical, mental and social well-being and not just the absence of disease or infirmity."<sup>8</sup>

On the other hand, the term prevention is defined in a way that covers "all the provisions or measures taken or planned at all stages of the company activities, in order to avoid or reduce occupational risks" (cfr. Article 3/d of Directive 89/391/EEC) which are "work-related or occurring during work" (article 4/2 of ILO Convention Article 155 of 1981). According to this definition, the obligation of prevention is far from being reactive or piecemeal, since it integrates objectives to promote the improvement of working conditions.

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<sup>7</sup> Case before the Court of Justice EU, C-303/89, 3-10-2000.

<sup>8</sup> Case before de Court of Justice EU, C-84/94, 12-11-1996.

## 3.2. The Employer's Prevention Obligation

The specific legislation on safety and health at work (Article 6/1 of Directive 89/391/EEC) explicitly states that the employer is obliged to ensure the safety and health of workers in every aspect related to the work activity and, under those responsibilities, must mobilize the necessary resources, particularly in the fields of engineering controls, training information and consultation of workers as well, prevention and protection services, internal or external, that is, through the creation and management of an organized system of means necessary for this purpose.

This general obligation has a set of associated characteristics that are fully accepted by the EU community authorities and the Member States and are listed below.<sup>9</sup>

Firstly, as expressly referred to in French jurisprudence, the obligation of prevention is an obligation of result, but its field of action is the circumstances of the work activities in progress which, in a prognosis exercise, is executable in accordance with the rules of experience of people, or of a certain professional type of person, can degenerate into unwanted events. There is a prospective responsibility that supports a new ethos of responsibility to the emerging future in an intensely technological society, a society with risk. It is based on the contractual relationship of the employer towards the employee, but it also is associated to the public supervision of protected legal interests which lay in constitutional or international standards.

Secondly, it follows from the previous statement, as community jurisprudence has already held, that the obligation of prevention does not give rise to objective responsibility, but the decision-making process and the choice of preventive solutions cannot be conditioned by economic factors. Only considerations of practicality or suitability of these measures for OSH purposes may be taken into account<sup>10</sup>. This is even the practice in the UK where the law seems to refer to a limitation: to ensure, so far as is reasonably practicable.

However, this Directive shall not restrict the option of Member States to provide for the exclusion or the limitation of employers' responsibility where occurrences are due to unusual and unforeseeable circumstances, beyond the employers' control, or to exceptional events, the consequences of which could not have been avoided despite the exercise of all due care.

Thirdly, the implementation of the preventive action presupposes a strategic approach with steps to be taken to define the orientation to be impressed and the rules leading the decision-making process regarding the options for occupational risk control measures to be implemented. This approach is subject to an orderly list of nine general principles of prevention (Article 6/2 of Directive 89/391 / EEC) which explain the course and the way of carrying out the prevention obligation, marking the decision processes that the employer has to carry out in its duty of prevention. The ordering of the general principles of prevention is not arbitrary because it obeys a determined sequential and methodological matrix.

These General Principles of Prevention are the following:

- (a) avoiding risks;
- (b) assessing the risks which cannot be avoided;
- (c) combating the risks at source;
- (d) adapting the work to the individual, especially as regards the design of workplaces, 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;
- (e) adapting to technical progress;

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<sup>9</sup> Roxo, Manuel M (2011), *Direito da Segurança e Saúde no Trabalho: Da Prescrição do Seguro à Definição do Desempenho*. Coimbra, Almedina

<sup>10</sup> Case before the Court of Justice EU, C-127/05, 14-06-2007.

- (f) replacing the dangerous by the non-dangerous or the less dangerous;
- (g) developing 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;
- (h) giving collective protective measures priority over individual protective measures;
- (i) giving appropriate instructions to the workers.

Fourthly, the employer's duty of prevention is not transferable from its legal sphere. This characteristic follows from the contractual nature and dominant position of the employer as to the organization of work that is intrinsic to the employment relationship. Law expressly refers to this principle. The employer is not exempt from its obligation of prevention if he resorts to entities (persons or services) external to the company and/or establishment to carry out OSH activities, nor the obligations of workers in the field of health and safety in the workplace affect the principle of employer responsibility (Article 5/2/3 of Directive 89/391 / EEC). Also, the employer's own responsibility is not impaired when the work activities take place in circumstances of simultaneity of time and place (i.e., when one or more employers share the same workplace), as foreseen in Article 6/4 of Directive 89/391/EEC.

Fifthly, the law (Article 6/1 of Directive 89/391/EEC) presupposes the creation of a management system whose action supports OSH. The employer, regardless the size of the company, has to formulate and implement an OSH policy; to identify and to assess the risks; to make a plan of action; to implement actions; to evaluate the plan of action; and to adapt the OSH policy to changing circumstances. To this purpose, there are some duties associated whose purpose is to provide evidence, including a list of occupational accidents that result in worker's being unfit for work for more than three working days and the reports of occupational accidents. The evaluation of the proper functioning of this system would benefit from the employers' obligation to make an annual report on the preventive activities developed during a period. This reporting obligation was provided for in the law of some countries.

The Framework directive does not clarify what kind of expertise is needed for the designated worker to develop OSH activities. Therefore, it is up to the Member States and their OSH-legislation to make choices clear. The advantage of this approach is that every Member State can shape its protective and preventive services to their own culture. The EU Court of Justice has already decided in this area that Member States have a duty to define what skills and abilities should possess those responsible for protection from and prevention of occupational risks to health and safety of workers.<sup>11</sup>

In the 1990's, standardized approaches for OSH management systems were developed, making use of experience with Total Quality Management, according to the International Organization for Standardization, ISO 9000 standard. Following these developments, the main *standards* are the Occupational Health and Safety Assessment Series British Standards (BS), OHSAS 18001. Meanwhile, the ISO 45001 was adopted with the same objective and is replacing the standardization of OHSAS 18001.<sup>12</sup> In general, it is recognized that these standardized developments of the OSH management system are suitable for larger companies, and that the others reveal difficulties in the internalization of their processes.

The ISO management standards imply an option for third party certification: an independent and competent agency confirms after a dedicated audit that there can be 'justified confidence' that the management system is functioning well (i.e., according to the set standards), and that the organization complies with all relevant requirements.

In 2001, the International Labour Organization (ILO) has also published OSH management system Guidelines.<sup>13</sup>

Finally, the implementation of prevention, protection or health surveillance measures may not result in any financial burden on the worker (article 6<sup>o</sup>/5 from Directive 89/391/EEC).

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<sup>11</sup> Case before the Court of Justice EU, C-49/00, 15-11-2001.

<sup>12</sup> ISO 45001 Whitepaper, A new International Standard for Occupational Health and Safety Management Systems

<sup>13</sup> ILO - International Labour Organisation. ILO-OSH-2001 Guidance on occupational safety and health management systems, ILO, 2001. from

### 3.3. OSH Preventive Services

In the OSH management system context, every employer is obliged to organize technical support on OSH from persons and/or organizations with expertise and knowledge of OSH. The main objective (article 7<sup>o</sup> of the Framework Directive 89/391/CEE) is to organize this expertise internally, via a designated worker/employee. If this is not possible, the employer has the opportunity to contract competent external persons or services. The Court of Justice of the EU has confirmed a priority rule. The employer should designate one or more employees “to carry out activities related to the protection and prevention of occupational risks”. If such designated workers cannot be found within the organization “for lack of competent personnel” the employer is allowed to “enlist competent external services or persons”. So, the employer should always give priority for an internal solution regarding OSH services than an external solution.

This subject is also the scope of the ILO-Convention C-161 on Occupational Health Services, accompanied by the ILO-recommendation on occupational health services (R-171).

In accordance with the Framework Directive, four criteria may be used to evaluate the organization of preventive services:

- universal coverage: preventive services must be accessible to all workers whatever the size of the company or sector of activity;
- multidisciplinary approach: the services must include different expert skills and the preventive action must, generally, enable cooperation between these different skills such that a global vision of work can be guaranteed. The Framework Directive specifies that it is up to the public authorities of each Member State to define the requisite skills and that this decision must not be left to the employer’s discretion. This notion of ‘service’ implies internal cooperation and an integration of different disciplines. It is not compatible with completely separate interventions conducted by individual prevention specialists who, more often than not, have the status of ‘consultants’;
- an approach to prevention that accords with the hierarchy of prevention tasks and measures. The main aim of the prevention services’ activity is to improve collective working conditions by eliminating risks. This means, in particular protecting the professional independence of prevention specialists from pressure by employers;
- effective participation of workers and their organizations in the activity of the services.

The structure of occupational health services’ legislation varies widely among EU member states. Most EU member states have a list of tasks described in their regulations. The ILO and WHO conventions and recommendations were often the basis for these tasks. The forms of transposition vary. For example, new law was introduced in Austria, Belgium, Denmark, Luxembourg, Spain, and Sweden; while other countries preferred to make amendments to existing laws.<sup>14</sup>

### 3.4. Worker Health Surveillance

Health surveillance is aimed at assessing the worker's ability to perform a certain professional activity, as well as the repercussion of this and the conditions under which it is provided in the health of the worker, monitor his health status, detect, as early as possible, cases of occupational disease and to identify particularly sensitive persons. Furthermore, that health surveillance activity allows an overall assessment of the health situation of the working population and assesses the effectiveness of the measures of prevention and control of occupational risks.

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<sup>14</sup> Riitta-Maija Hämäläinen (2008), The Europeanisation of occupational health services: A study of the impact of EU policies, Finnish Institute of Occupational Health

### 3.5. Organizational Performance and Key Players

As already mentioned, the promotion of self-regulation is an identity trace of good OSH regulation at workplaces advocated by Directive 89/391/EEC. Therefore, the law is based on three main perspectives. First, the role of the employer to whom the law sets prevention objectives to be achieved through evaluation and planning processes, monitoring and control of results and re-analysis to introduce continuous improvements. Second, the guarantee of the technical and ethical quality skills of the professionals and services that provide technical support to these processes and preventive activities. Thirdly, the participation of workers, since they are not merely the addressees of the prevention action, but rather their actors and even their authors (Article 13/1 of Directive 89/391/EEC). It is from the harmonious conjugation of these three strands of intervention in the company that it is possible to obtain positive results in the continuous improvement of OSH.

The relevance of the contribution of workers is particularly visible in Directive 2002/14/EC, which establishes a general framework for informing and consulting employees. According to its preamble, the Directive aims, among other objectives, “to strengthen dialogue and promote mutual trust within undertakings in order to improve risk anticipation, make work organization more flexible and facilitate employee access to training within the undertaking while maintaining security, make employees aware of adaptation needs, increase employees' availability to undertake measures and activities to increase their employability, promote employee involvement in the operation and future of the undertaking and increase its competitiveness.”

The participation of workers and their representatives implies considering the fields of information, training and consultation, the respective purposes and content development that are defined in Directive 89/391/EEC: the employer must (article 10) take measures so that workers and/or their representatives in the undertaking and/or establishment receive information, (article 12) ensuring that each worker receives adequate safety and health training, to his workstation or job and (article 11) consult workers and/or their representatives and allow them to take part in discussions on all questions relating to safety and health at work.

The topics to be dealt in the context of employee participation focus on the following aspects:

- a) The selection of workers' representatives for OSH;
- b) The protection of workers' representatives for OSH against any possible losses or discrimination arising from their role of representation;
- c) Exemption of work without loss of salary to perform the functions of OSH employee representative;
- d) Exemption of work without loss of salary to receive adequate training for the functional exercise of OSH workers' representatives;
- e) The right to inspect workplaces;
- f) The right to obtain from the employer relevant information on current and future OSH risks;
- g) The right to inquire about complaints made by employees regarding OSH conditions;
- h) The right to submit proposals and relate to the employer on relevant matters of OSH;
- i) The right to be consulted on the modalities of OSH, including future projects and on the introduction of new technologies;
- j) The right to be consulted on the employer's recourse to experts in OSH or external preventive and protective (OSH) services, including on his exemption;
- k) The right to relate to the OSH expert or external OSH services contracted by the employer;
- l) The right to interact with labour inspectors, in particular during the visits to companies and workplaces.

The OSH framework directive refers itself back to the implementation of the abovementioned rights for national practices and/or legislation.

This subject has also two additional important reference frameworks, in particular the ILO Convention 135 - Workers' Representatives Convention, 1971 and the ILO Recommendation 143 – Workers Representatives Recommendation, 1971.

### 3.6. Coordination of External Interventions

Outsourcing is a current practice of business management. In general, outsourcing consists of delegating to third parties the execution of work, parts of work or tasks, but remaining responsible for the final product. It may take diverse contractual forms.

This subcontracting may occur at one workplace and time, in simultaneous activities or in successive or discontinuous sequence of activities. It may also cover both companies or self-employed (independent worker) and diversified objects. This reality of working life refers us to a notion of an outside company, that is, a company legally independent of the company using its services, brought to work with its staff on the premises of a user company under a contractual relationship. It may also happen that this contractual relationship does not exist, but the work of both companies takes place in the same space or contiguous space, handling the same problems of interventions compatibility.

These types of practices dilute the legal relationship between the employer and the worker in the actual work performed by the user company and coexist in the same working process and, often, in the same place or in contiguous places with a number of participants in coactivity or in sequential activities, whose compatibility must be guaranteed in their various plans.

This question concerns the context of the general obligation of prevention in which each of the different acting companies are invested and the duties entailed towards their own workers. This obligation must be performed for each one of them before, during and after the realization of the work in coactivity. It is necessary to carefully define the obligations and responsibilities of each actor so that each one may be held accountable for their actions.

It seems particularly pertinent to point out, as regards the work to be carried out, the duty of assessing risks, to prepare the necessary preventive measures, to inform and train the workers, to know their state of health, and to carry out the work in which they will be involved... All this is an integral part of employer obligation of prevention in connection with third party involvement, as already mentioned.

Therefore, the duty to cooperate (Article 6/4), which is divided into two specific duties, has been established. The first is the duty of coordination, whose contents the law do not stipulate, referring to the decision of the affected companies. The second specific duty is information (Article 10/2 of Directive 89/391 / EEC). In this case, it is important to delimit its content and form of communication. Community legislation refers the matter to national laws and practices.

To the company that owns the workplace, this communication obligation also includes transmission of information to the contracted / subcontracted company and to ensure that this information reaches the respective workers (Article 10/2 of Directive 89/391/EEC), in particular:

- a) The existing risks, as well as the prevention and protection measures applied and to apply to remedy them and other necessary instructions;
- b) The risks inherent in coactivity
- c) Identification of workers assigned to the application of emergency measures (first aid, fire-fighting and evacuation of workers), as well as the equipment available for this purpose.

The responsibility of the various participating companies is thus related to the lack or insufficiency of the information they exchange between them and, by definition, each of them is responsible for their transmission, in the most appropriate terms, to their own employees. The time in which this information is to be provided is related to the phases and circumstances of the work where it is relevant and useful to OSH, in particular in the following situations:

- a) before the start of activity;
- b) when there are significant modifications during simultaneous work;
- c) when an emergency arises; or
- d) in the event of an emergency, affecting the safety and health of workers of other companies operating in the same workplace.

### 3.7. Rights and Duties of Workers

The set of rights and duties of the employees are established, among others, in Articles 6, 8 and 13 of Directive 89/391/EEC and include the following:

Worker's rights:

- a) Not be burdened with any of the financial charges arising from the company's OSH activities;
- b) Make proposals relating to OSH, whether in regard to his workplace, or in relation to larger aspects of the company, establishment or service, being the employer obliged to listen to and consult the employee and to give concrete meaning to that exercise;
- c) Stop work and/or immediately to leave the workplace and proceed to a place of safety "in case of a serious and imminent danger that may not technically be avoided" and the employer must refrain from asking him to resume its activity under these circumstances (Art. 8/3-c/4 of Directive 89/391/EEC);
- d) To appeal to the authorities responsible for OSH 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;
- e) Benefit from health surveillance, through the provision of health checks;
- f) Elect and be elected as employee's representative for OSH.

Worker's duties:

- a) To comply with employer's instructions and to cooperate with him in relation to OSH;
- b) To alert and report to employer or to the person(s) designated by him to perform functions relating to the safety and health, any dangerous event, or in any work situation for which there is reasonable grounds for considering that represents a serious and immediate danger to safety and health and of any shortcomings in the protection arrangements;
- c) To adopt the measures established for cases of serious and imminent danger;
- d) To know the information and participate in the trainings on OSH.

### 3.8. Summary of the Key Gaps of the OSH Legal Framework in Ukraine

In terms of preventive philosophy, 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.

Other more detailed aspects that deserve attention and should be revised were already the subject of a previous study<sup>15</sup>, aimed at analysing the level of alignment between the Ukrainian legislation and a set of selected EU directives on OSH and labour relations<sup>16</sup>.

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<sup>15</sup> ILO (2018), Brief notes on the main aspects of the alignment between Ukrainian national legislation and selected EU directives.

<sup>16</sup> Council Directive No. 89/654/EEC of 30 November 1989, concerning the minimum safety and health requirements for the workplace; Directive No. 2009/104/EC of the European Parliament and of the Council, of 16 September 2009, concerning the minimum safety and health requirements for the use of work equipment by workers at work; 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; Directive No. 2003/88/EC of the European Parliament and of the Council, of 4 November 2003, concerning certain aspects of the organization of working time; and Council Directive No. 91/533/EEC, of 14 October 1991, on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

Furthermore, the workers covered by the regulation cannot be just workers engaged in work with harmful and hazardous working conditions or in work connected with contamination or adverse weather conditions, but all workers.

There are, moreover, a large number of situations not appropriately provided by the national law, which should be legally addressed. These include, namely, the following aspects that are standard in modern OSH regulation:

- a) The scope of the current national legislation does not ensure its application to all sectors of activity, both public and private.
- b) It must be noted that the possibility of exception to certain peculiar and specific activities of public services (e.g., armed forces, police or civil protection) is very restricted and only limited to certain activities (within those public services) whose particular characteristics inevitably conflict with it (and not to those public entities as a whole).
- c) The concept of worker is too restricted and, namely, does not apply to workers (and their employers) that have no labour contract but have an employment relationship (e.g., total undeclared workers, bogus self-employed, bogus service providers, bogus volunteers, bogus trainees, bogus internships, etc).
- d) The general preventive obligations of employers, which are a foundational characteristic of European OSH regulations, are not provided by national legislation. This means that 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 must be taken, and continuously adjusted to changing circumstances whose description was previously made.
- e) The non-transferable responsibility of the employers to ensure the safety and health of workers in every aspect related to the work must be very clear in the OSH regulation. The use of external services or persons and the workers' OSH obligations do not discharge the employer from his responsibilities.
- f) The need to take into consideration the workers' OSH capabilities when entrusting tasks to them and the provision to them of appropriate training, information and instructions.
- g) The imperative of the employer to provide consultation with the workers and/or their representatives about prevention activities, the working conditions and the working environment for the safety and health of workers.
- h) The coordination, the cooperation and the information duties when and where several undertakings share a workplace.
- i) The preventive and protective services (OSH services) that must be ensured by the employer, requirements on the number, competencies, aptitudes and personal and professional means of the designated workers and external providers.
- j) The disposition of first aid, fire-fighting and evacuation of workers, serious and imminent danger, and the responsible workers; their number, training and equipment, depending on size and risks.

## 4. EU OSH Directives to Implement

The Association Agreement between the European Union and Ukraine, signed in Brussels on 21 March 2014 and 27 June, entered into force on 1 September 2017, in accordance with Article 486(2) of the Agreement, as the last instrument of ratification or approval was deposited on 11 July 2017. According to the Annex XL to Chapter 21 (Cooperation on Employment, Social Policy and Equal Opportunities) of the agreement, Ukraine agrees to undertake the gradual approximation of its legislation to EU OSH legislation within stipulated timeframes, transposing and implementing the European Union legislation into its domestic legal system.

This means that the aim is to 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 practices and research in this area.

Special reference should be made, in this context, to the Framework Directive (Directive 89/391/EEC) that shall be implemented within 3 years of the entry into force of the Agreement. This directive with its wide scope of application, has developments in further individual directives (within the meaning of its article 16/1), focusing on specific aspects of safety and health at work (minimum OSH requirements).

### 4.1. Individual OSH Directives

The Framework Directive and the individual directives are the fundamentals of the European safety and health legislation. In the aforementioned Annex XL to the Association Agreement, there is a timeframe for the implementation of all. Regarding individual directives, the timeframe is as follows:

**Table 2: Individual Directives to be Implemented in the Short Term (2 - 3 years)**

	Individual OSH Directives	Scope	Implementation	Transitional period
1.	89/654/EEC, of 30 November 1989 (1 <sup>st</sup> individual Dir.)	OSH for the workplace	3 years	6 years
2.	89/655/EEC, of 30 November 1989, and 2001/45/EC of 27 June 2001 (2 <sup>nd</sup> individual Dir.)	The use of work equipment by workers at work	3 years	7 years
3.	92/91/EEC, of 3 November 1992 (11 <sup>th</sup> individual Dir.)	OSH in mineral-extracting industries through drilling	2 years	5 years
4.	92/104/EEC, of 3 December 1992 (12 <sup>th</sup> individual Dir.)	OSH in surface and underground mineral-extracting industries	2 years	9 years

**Table 3: Directives to Implement in the Medium Term (7 years)**

	<b>Individual OSH Directives</b>	<b>Scope</b>
1.	89/656/EEC, of 30 November 1989 (3 <sup>rd</sup> individual Dir.)	The use by workers of personal protective equipment (PPE) at the workplace
2.	92/57/EEC, of 24 June 1992 (8 <sup>th</sup> individual dir.)	OSH at temporary or mobile construction sites
3.	83/477/EEC, of 19 September 1983 (2 <sup>nd</sup> individual Dir.) and - 91/382/EEC, of 25 June 1991 - 2003/18/EC, of 27 March 2003	Exposure to asbestos at work
4.	2004/37/EC, of 29 April 2004 (6 <sup>th</sup> individual Dir.)	Exposure to carcinogens or mutagens at work
5.	2000/54/EC, of 18 September 2000 (7 <sup>th</sup> individual Dir.)	Exposure to biological agents at work
6.	90/270/EEC, of 29 May 1990 (5 <sup>th</sup> individual Dir.)	OSH requirements for work with display screen equipment
7.	92/58/EEC, of 24 June 1992 (9 <sup>th</sup> individual Dir.)	Safety and/or health signs at work

**Table 4: Directives to Implement in a Longer Term (10 years)**

	<b>Individual OSH Directives</b>	<b>Scope</b>
1.	98/24/EC, of 7 April 1998 (14 <sup>th</sup> individual Dir.)	OSH of workers from the risks related to chemical agents at work
2.	2000/39/EC	1st list of indicative occupational exposure limit values in implementation of Directive 98/24/E on OSH from the risks related to chemical agents at work
3.	2006/15/EC	2 <sup>nd</sup> list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Directives 91/322/EEC and 2000/39/EC
4.	1999/92/EC, of 16 December 1999 (15 <sup>th</sup> individual Dir.)	OSH of workers potentially at risk from explosive atmospheres
5.	2002/44/EC, of 25 June 2002 (16 <sup>th</sup> individual Dir.)	OSH of workers to the risk arising from physical agents (vibration)
6.	2003/10/EC, of 6 February 2003 (17 <sup>th</sup> individual Dir.)	OSH of workers to the risk arising from physical agents (noise)
7.	2004/40/EC, of 29 April 2004 (18 <sup>th</sup> individual Dir.)	OSH of workers to the risks arising from physical agents (electromagnetic fields)
8.	93/103/EC, of 23 November 1993 (13 <sup>th</sup> individual Dir.)	OSH for work on board fishing vessels
9.	92/29/EEC, of 31 March 1992	OSH requirements for improved medical treatment on board vessels
10.	90/269/EEC, of 29 May 1990 (4 <sup>th</sup> individual Dir.)	OSH on manual handling of loads where there is a risk particularly of back injury to workers
11.	91/322/EEC, of 29 May 1991	Establish indicative limit values by implementing Council Directive 80/1107/EEC on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work

Moreover, according to the Association Agreement, and upon its entry into force, the Association Council shall define the timetable for implementation by Ukraine of the following directives:

- Directive 2003/88/EC of the European Parliament and of the Council, of 4 November 2003, concerning certain aspects of the organization of working time;
- Directive 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.

## 4.2. Summary of Key Gaps of the Ukrainian OSH Legal Framework on Individual Directives

The main challenges concerning the alignment of the Ukrainian national legislation with some EU directives that establish minimum OSH requirements have already been ascertained<sup>17</sup>. The global alignment level statistics suggest that only 26.7% of the EU directives provisions are fully provided for, 23.3% partially provided for, 48.7% not provided for and 1.3% are contradictory.

In general terms, the OSH national legislation is not currently applicable to all employers (e.g., it does not apply to not for profit legal persons, to self-employed with one or more workers and, in many cases, to public sector employers) of all branches of activity in the private, public, cooperative and social sectors and to all workers.

On the contrary, the EU OSH legislation, including individual directives, is applicable to all workers in all workplaces. This principle is only excepted in directives focused on certain aspects of specific sectors (e.g., mining, construction or work on board fishing vessels). But even in the latter case, the OSH framework directive still applies, without prejudice to the strengthening of specific provisions of these individual directives.

The EU OSHA directives notion of worker includes self-employed workers, practitioners, apprentices, trainees, administrators, directors, managers and workers without a formal employment contract that have an employment relationship. These include cases, for instance, of the worker without a formal worker-employer relationship but who is economically dependent on the activity's beneficiary, as well as of workers that have an employment relationship but do not have a formal or written labour contract, such as fully or partially undeclared workers (in particular, the case of the bogus self-employed, bogus internships, bogus trainees, bogus civil contracts or bogus service providers).

Regarding a more goal-oriented and organizationally-linked preventive approach, there is an absence of norms specifying the employer's general obligations. Moreover, the duties of information, consultation and participation of workers are not duly provided for.

There are also other situations to support this assertion, namely the following:

- There is no national law specifically addressing the OSH minimum requirements of the workplaces (Directive 89/654/EEC), including the obligation to ensure that traffic routes to emergency exists and are kept clear at all times, regular maintenance and checks of the workplace, equipment's and devices...
- Regarding work equipment, (Directive 89/655/EEC amended by Directive 2001/45/EC) has selection with attention to its purposed use, the specific existing working conditions, adequate installation and maintenance, regular checks, persons designated to perform...The fact that the current legal discipline emerges from hierarchically lower degrees also leads to the conclusion that the chosen source of law is inadequate.
- The determination of the use of PPE (Directive 89/656/EEC) with regard to the results of the risk assessment, the frequency of the worker's exposure to risk, the characteristics of the workstation and the performance of the PPE itself...
- Minimum safety and health requirements for the organization of working time (Directive 2003/88/EC), according to the general principle of adapting work to the worker, daily rest and rest between two days of work, the particular situation of night workers whose work involves

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<sup>17</sup> See ILO (2018), Brief notes on the main aspects of the alignment between Ukrainian national legislation and selected EU directives ()

special hazards or heavy physical or mental strain, the free health assessment to all the night workers, the notification to the competent authorities of their regular use, etc.

## 5. The Ex-Post Evaluation of EU OSH Legislation

The evaluation of the practical implementation of the EU 24 Occupational Safety and Health (OSH) Directives (Framework Directive 89/391/EEC, and the 23 individual directives) in EU Member States has been the object of a project commissioned by the European Commission.<sup>18</sup>

It is unquestionable that the OSH *acquis* represents a comprehensive package of legislation aimed at securing the same minimum level of protection from work related health and safety risks for the workers of all EU Member States and is the reference framework for national OSH regulatory regimes. They are relevant because all Member States have workers employed in a large range of important sectors who are consequently exposed to relevant risks, or who are members of vulnerable groups that are the subject of specific rules (pregnant/breastfeeding workers, young people, and temporary workers).

The presence of legal requirements is an important factor (but certainly not the only) influencing the compliance behaviour of companies and other institutions. This suggests that the Directives have an impact on compliance behaviour.

The Directives represent a mix of a goal-oriented approach – strongly expressed in the Framework Directive, but also mirrored in the individual Directives – and a more traditional prescriptive approach – which is seen in some very detailed and specific requirements included in the annexes of some Directives.

The evaluation indicates that the EU legislation – through the Framework Directive 89/391/EEC – has contributed to a development of the goal-oriented approach and a stronger focus on the risk-management cycle. An EU-OSHA study<sup>19</sup> suggests that the more goal-setting and participatory regimes are associated with higher levels of OSH management practice implementation.

The compliance with EU directives varies from moderate to good, from directive to directive, from Member State to Member State and across establishment sizes. It is higher in large establishments compared to SMEs and micro-establishments. However, small establishments with employee representatives have a good or very good overall quantitative compliance, while the corresponding group of establishments without safety and health representation have poor to moderate quantitative compliance. Employee representation has noticeable influence on the proportion of establishments performing risk assessments and an even more pronounced impact on other key requirements.

Data suggests that risk assessments performed by external service providers reduce the need to maintain in-house expertise and more often result in a lack of subsequent anchoring of OSH principles in the establishment in comparison to risk assessments performed by internal staff.

Most Member States have transposed the OSH Framework Directive 89/391/EEC by means of a national OSH framework act. In some cases, the existing OSH legislation has been brought together into one main OSH Act. The individual OSH directives are, as a rule, transposed one-to-one through legal act. The structure and general principles of the OSH *acquis* are well suited as a European framework to be transposed and implemented at the national level.

The enforcement, and particularly the combined role of labour inspectors enforcing legislation and providing guidance on implementation, generally, has a significant influence on compliance with the OSH *acquis*. This is particularly true in SMEs, where non-compliance is prevalent. All Member States have criminal and/or administrative sanctions in place, providing not only for imprisonment and/or fines, but also for other types of sanctions, such as various emergency measures to stop non-compliance, which can also prove very efficient. Strategic priorities for inspection are generally set per sector or sub-sector, group of workers, type of risk or company size.

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<sup>18</sup> European Commission, DG Employment, Social Affairs and Inclusion (2015), Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) Directives in EU Member States, Synthesis Report from

<sup>19</sup> EU-OSHA (2013), European Risk Observatory, Analysis of the determinants of workplace occupational safety and health practice in a selection of EU Member States,

## 5.1. OSH Professionals

It must be noted that safety engineers and occupational health physicians are no longer the only OSH-experts. Ergonomists, occupational health psychologists, industrial hygienists and other professionals operate nowadays as OSH-experts as well. Mostly all these OSH-experts are highly skilled in assisting employer and employee representatives with technical and scientific support. The ESENER results in 2009 show that safety experts and occupational health physicians are mentioned as the experts most often consulted by employers. Larger companies also use other OSH experts, such as occupational psychologists and industrial hygienists.

All member states regulate the practice of health care professionals. However, that is not the case of the safety professionals. In some EU countries, which are exemplified below, OSH occupational practice is covered by a regulated profession field. A profession is said to be regulated when access and exercise is subject to the possession of a specific professional qualification.

In the United Kingdom, the Chartered Safety and Health Practitioner is a health and safety professional that works across a diverse range of industrial, commercial and public sector organizations, providing advice, guidance and management of health, safety, and wellbeing and sustainability issues. This is particularly in: compliance with health and safety legislation, risk assessments, DSE assessments, working at height, manual handling, route cause analysis, audit, control, training, ergonomics, environmental matters, behavioural safety, wellbeing at work, rehabilitation, sustainable business strategy. The qualification level for this professional is a diploma of post-secondary level (3-4 years).

In Slovakia, the authorized safety technician is a professional that provides preventive and protective services to the employer, related to the selection, organization and implementation of professional tasks in ensuring occupational safety and health (OSH), in particular the prevention of occupational risks, including psychosocial risks and protection against them. Employees are informed about the legislation related to OSH, as well as about foreseeable risks, and people who can be banned from entering specific areas where the health and life of the employees may be possibly endangered. The authorized safety technician is a person who has, after at least two years of professional experience as a safety technician following the obtaining of a certificate of safety technician; and passed the examination before a board appointed by the National Labour Inspectorate.

In the Czech Republic, the OSH professional provides services related to occupational safety and health related to the security challenges arising from the regulations. They ensure the safety and security of technical equipment with increased risk to life and health, legislation establishing working conditions, basic requirements for the working environment and health protection at work and activities related to the prevention of risks. These include: designing measures to minimize and remove risks at their source; administer expert opinions on technical safety level machinery and technical equipment during the design, construction, manufacture, installation, operation, service, repair and maintenance; implementation of safety training; and to coordinate health and safety activities in construction sites.

In Poland, the health and safety specialist exercises consultative and supervisory function in the field of safety and health. Tasks particularly center on: control of working conditions and of compliance with the health and safety provisions and standards, inform the employer about identified risks, prepare health and safety analysis, participate in determining the circumstances and causes of work accidents and keep their records, be involved in risk assessment and perform other activities specified in regulation aimed at improving health and safety at work. The necessary qualification is a post-secondary level (3-4 years).

In the Netherlands, the Safety expert has a qualification level with a diploma of post-secondary level (4 years) and advises organizations on occupational health and safety systems. This entails risk identification, analysis and consultancy.

In Portugal, there are two types of OSH technicians: Occupational Safety Senior Technician and Occupational Safety Technician. The Occupational Safety Senior Technician, with a diploma of post-secondary level (3-4 years), organizes, develops, coordinates and controls the activities of prevention protection against occupational hazards. The Occupational Safety Technician, with a Certificate attesting the completion of a secondary course, develops prevention activities and protection against occupational

hazards. In the Portuguese case, the professional must assure a prior check of qualifications before the Portuguese Labour Inspectorate.

Another important issue is the independence of OSH professionals. OSH professionals should be neutral and take an advisory role in all questions concerning workers' safety and health. Employers pay for OSH, and so the health professionals must strike a balance among customer (employer) and clients (employees) in their activities, actions, and behaviour. This independence reflects the ethical values of society and the workplace. Privacy, information confidentiality, and trust among OSH professionals, employees and employers are also important aspects. Independence and ethical principles are mentioned in the legislation of several countries.

## 5.2. OSH External Services Providers

OSH experts can operate as a team within a company (internal service) or create an external OSH service.

If the employer contracts an external, competent person or service, they must be provided with all relevant information about the risks within the organization. The framework directive does not specify requirements for these external persons or services, except that they should have the necessary aptitude, personal and means. The framework directive does not mention any specific type of experts, like occupational health physician or safety engineer.

The ESENER results, in 2009, show that there is a wide variety in the EU countries concerning the contracting of external OSH service providers performing risk assessment. In Denmark, only 7% of the companies use external OSH service providers but, in Slovenia, 75% of the companies use external OSH service providers to perform risk assessment. In the EU as a whole, the average percentage is 37%.

Therefore, the characteristics of OSH services should be organized according to the national culture and system. For that purpose, it is possible to make use of the ILO Convention on Occupational Health Services Convention, 1985 (No. 161)] and the ILO Recommendation (R-171) on Occupational Health Services. The ILO-convention on Occupational Health Services establishes provisions on the function, the organization and the conditions of operations for Occupational Health Services. This Convention creates a framework for countries on how to organize the occupational health service.

In the Czech Republic, Occupational Health (OH) services are provided by the National Health Service and private health care facilities. There are two types of OH providers: occupational health physicians and non-specialists, usually general practitioners. Furthermore, companies can use their own employees to provide in-company preventive care; companies that are unable to do so can make use of contracted OH service providers. In all cases, the independence of the health care providers needs to be guaranteed. OSH services are obliged to focus on the surveillance of workers health, assessment and surveillance of health hazards, training and information provision for workers, first aid, emergency treatment, advising on occupational safety, work adaptation, work organization etc. The private health care facilities need to be registered and licensed.

In Germany, all employers are obliged to have occupational accident insurance (Statutory Accident Insurance). Private insurance companies therefore play an important role in influencing the OSH management system. They influence it both directly by proposing regulations regarding accident prevention, and indirectly through financial incentives for employers. Employers are obliged to use the service of a company doctor and a safety engineer. These can be employees of the company but if the necessary competences are not available within the company it is mandatory to make use of an external service. This can be part of an external multidisciplinary service, but also self-employed workers. An external service should include at least an occupational health physician and a safety specialist. German OSH legislation specifies the competences which people that work for an external service must have. Depending on the services offered, other occupational groups can be involved (e.g., ergonomists, OH psychologists, health experts, etc.). The company doctor is responsible for advising the employer regarding occupational medicine, carrying out medical supervision and preventive measures regarding occupational accidents and sickness absence. The safety engineer advises the employer about safety, checks the work equipment and checks whether the preventive measures are actually being adhered

to. Since it is mandatory for all employers to join a UVT (Unfallversicherungsträger; insurance company), the prevention of work accidents is an important topic. However, the UVT's tasks go beyond accident prevention. The UVT tasks include, among others, the prevention of occupational diseases and work-related health risks and efficient emergency medical care. There is no mandatory certification or accreditation of external services as such, but there is a system of voluntary certification.

In Italy, there is an obligation to set up an OSH service for companies with more than 200 workers and/or in specific sectors. This can be an internal or external OSH service provider. In general, the use of an external provider is mandatory if the necessary competences are not present internally. External OSH services are usually multidisciplinary and generally cover occupational safety, occupational medicine, industrial health and ergonomics. The tasks of the OH services are identification of risk factors, setting up health and safety measures and procedures, training and educating workers and advising employers on all relevant health and safety issues.

There are no occupational groups that legally need to be involved. However, engineers and industrial health experts are usually involved. Qualification can be obtained by completing a specific education or taking additional courses after secondary school. External prevention and protective services are organized by private organizations and do not have to be certified.

In the Netherlands, OSH management may be organized by private, for-profit companies. Many companies make use of external services in large, multidisciplinary 'arbodiensten' (OSH service providers). However, an employer can also choose to hire an independent (often self-employed) company doctor. An OSH service provider needs to be certified. Certification is valid for a 4-year period, and then needs to be reissued. An external OSH service needs to have specialists in at least 4 areas: occupational medicine, occupational safety, occupational hygiene and work organization.

Other occupational groups can also be involved. All the occupational health specialists mentioned need to be certified. This guarantees that their knowledge is and remains sufficient to the task. Furthermore, every company must have at least one health and safety officer in charge who can execute measures and supervise the execution of preventive measures. The health and safety officer can be an employee, or, in small businesses, the director may also act as a prevention officer. However, the profile of the health and safety officer is not stated clearly, and their level of expertise can therefore be low. OSH service providers and company doctors mainly focus on the reduction of absenteeism due to sickness. Other disciplines, such as safety engineers and occupational hygienists, are more focused on prevention (e.g., examination of risk inventory and assessment, as well as planning preventive actions).

Occupational safety and health services are mainly organized within the organizations themselves. Companies are only required to make use of external OSH service providers if their internal competencies are insufficient. The staffing of an OH service organization is not standardized. However, there are usually occupational health physicians, occupational nurses, physiotherapists, ergonomists, work environment engineers and OH psychologists. Companies with five or more workers are obliged to have a safety worker. The role of the OH services is an advisory one.

OSH services need to focus on the prevention and elimination of health hazards in workplaces. If a certain level of risk is present (or if a collective agreement requires it) medical surveillance is mandatory.

OH professionals are trained by universities and colleges. A variety of occupational groups can be involved (e.g., nurses, OH psychologists, doctors, work environment engineers and physiotherapists). There is no mandatory certification or accreditation for the OH service organization, but OH services can voluntarily be certified.

The Swedish Work Environment Authority has the task to enforce the legislation on OH service.

In the United Kingdom, a fundamental principle of the OSH system is that responsibility for health and safety lies with those who own, manage and work in industrial and commercial undertakings. This includes the self-employed. OSH services are therefore organized by three separate parties: public organizations, private organizations and the employers, but they all fall under the supervision of the National Health Services (NHS). Employers must appoint one or more 'competent persons' to help them meet the requirements of health and safety law. A competent person is someone who has sufficient training and experience or knowledge and other qualities that allows them to assist the employer properly. Employers must assess the risks involved in their activity and take the appropriate preventive

actions. The focus is, therefore, mainly risk reduction. Employers are not legally obliged to use external OSH services. If they do so, the disciplines covered (and thus the multidisciplinary) varies and depends on the services needed by the employer. The level of competence required will depend on the complexity of the situation and the particular needs of the employer. Certification or accreditation of an OSH service is not mandatory. Furthermore, in the UK, the regulatory trend is not one of prescriptive rules, but towards risk assessment and control.

In Portugal, an employer with less than 400 employees, or in cases of activities considered to be high risk, with less than 30 employees, may choose to contract external services of OSH. Companies with a higher number of workers must organize internal OSH services with professionals hired for that purpose. In order to be able to operate in the market, the OSH external services must be duly authorized by the national authorities for safety and health at work. This authorization is based on the prior verification of the adequacy of the professionals employed and the necessary resources, depending on the projection of the market characteristics to which the service provider is positioned. The quality of the professionals and the OSH procedures that will be used are also evaluated. In enterprises with less than nine employees and where work activities are not considered to be at high risk, preventive activities may be carried out by the employer himself or by his designated worker who demonstrates adequate professional training.

Nevertheless, the employer must designate an employee to carry out the protective and preventive activities. The level of expertise of such an employee, however, is not made clear by the Framework directive 89/391/EEC. As such, the Member States have the freedom to make their own considerations for the provisions of the expertise level of the designated worker. In the European Union, there is therefore a wide variety of expertise-levels of the designated workers, from a layman with a short OSH course to a more educated and skilled OSH expert. As in the Portuguese case, it is allowed in Member States that some employers have the right to perform the tasks of the designated worker by him or herself.

### 5.3. OSH Workers Representatives

It is widely accepted that the practice of joint participation in OSH is essential for the effectiveness of any prevention program in the workplace. This active participation of workers in workplaces takes shape through institutionalized representative bodies in the workplace.

It should be noted that the text of Directive 89/391/EEC states that “Employers shall consult workers and/or their representatives and allow them to take part in discussions on all questions relating to safety and health at work”, meaning that representatives should be consulted directly by the employers themselves.

The questions that are subject to the consultation processes are also identified: (a) any measure which may substantially affect safety and health; (b) the designation of workers to ensure activities in the protective and preventive services, (c) OSH information, (d) the enlistment of the competent services or persons outside the establishment, and the (e) planning and organization of the OSH training.

In this context, four different legal models of institutional representation in the field of OSH can be found in the EU:

- a) The representation is focused on business councils or similar institutions, whose existence is regulated by law, and when there are delegates or safety committees, they have a secondary role in relation to the role of the business council, as in the case of Germany;
- b) The delegates and safety committees set up by law assume the essence of representation in the field of OSH, even if there may be business councils or similar institutions, such as in France, Sweden or Portugal;
- c) The election of delegates and safety committees is provided for in law, which has no reference to business councils, such as the United Kingdom; and
- d) The law does not refer to the creation of business councils, delegates or safety committees.

The option for any of the models is closely related to cultural patterns of the industrial relations of each country. However, there is the conviction that the participation of workers in the field of OSH, to

be effective, should have legal support that makes it legitimate. It also secures the allocation of a specific mandate of representation in the field of OSH covering all the company's workers, not just union members, in which case it would be enough to have their appointment made by the union concerned. This purpose, to cover all employees of the company or establishment, implies the development of simplified electoral processes to ensure free voting of the working population in the shop floor and the independence of the elected regarding the referential interest of the employer. The simplicity of electoral processes is relevant in order to be carried out in small and medium-sized enterprises. Legal support for the institutionalization of workers' representation can also be provided, or supplemented, by collective bargaining.

A supportive cultural environment, as well as a share of interconnection of representatives for OSH with the action of the unions, particularly as regards involvement in the electoral process, is particularly important to create the necessary dynamics.

Another condition of effectiveness of this representation is training, because the workers' representatives must be able to communicate with their colleagues and often the issues dealt with take on a difficult technical character to explain. This ability to communicate allows us to solidify support of its role in relationship with company management and with OSH professionals. In this area of training, trade union support for representatives deserves to be encouraged.

For this purpose, the laws provide for the right of those representatives to receive training (Sweden, UK and France), the right to dispense hours without loss of pay for training, varying the prediction modes on defining content and timetables charges for this training.

In Germany, Sweden, the UK and France in particular, OSH delegates have the right to conduct inspections of workplaces to ensure compliance with OSH provisions. It should be noted that the right to receive information provided by the employer is a direct result of the Directive 89/391/EEC, which also delimits the perimeter of content that should be made available.

Legislation in many European countries is also devoted to defining the right to a credit of hours without loss of salary to abstain from work when exercising the functions of representation. Similarly, the identification of a set of material conditions, including the availability of a local support, telephone or other support tools necessary, place to display information, rooms or meeting places.

This set of rights is sometimes associated with a quota of representatives benefiting from such rights and is determined by the ratio of the number of representatives to the number of employees of the company or establishment that are represented.

Another important area concerns the relationship with labour inspection. In accordance with Directive 89/391/EEC (Article 11) "workers and/or representatives are entitled to appeal, in accordance with national law and/or practice, to the authority responsible for safety and health protection at work if they consider that the measures and the means taken by the employer are inadequate for the purposes of ensuring safety and health at work".

Moreover, workers' representatives must be given the opportunity to submit their observations during inspection visits by the competent authority.

Finally, protection mechanisms have to be set in cases when the representatives of the workers are being placed at any disadvantage because of the performance of their duties (art. 11/4 of Directive 89/391/EEC). These mechanisms range from the establishment of a legal presumption that there is discrimination or illegitimacy in the application of disciplinary sanctions or dismissal in the case of such acts occurring during the term of office or in a fixed period of time after the end of the mandate.

## **5.4. Derogations and Transitional Periods**

Derogations are provisions which explicitly allow Member States to derogate from certain requirements contained in a directive. They are provided by nine Directives: 89/656 (use of PPE), 92/57/EEC (Temporary or Mobile Construction Sites), 92/58/EEC (OSH Signs), 92/85/EEC (Pregnant/Breastfeeding Workers), 94/33/EC (Young Workers), 98/24/EC (Chemical Agents), 2002/44/EC (Vibration),

2002/49/EC (Noise), and the 2004/40/EC amended by 2008/46/EC (Electromagnetic Fields). All derogations are accompanied by conditions which need to be fulfilled before and/or after derogation is permitted.<sup>20</sup>

Member States have used some derogations to a large extent, namely the derogations laid down in Chemical Agents Directive from the prohibition of the use of certain chemical agents; two of the derogations provided by the Young Workers Directive have been used extensively, one relating to employment of adolescents for their vocational training and one concerning the prohibition of night work for young people in the case of adolescents and in specific areas of activity. The same remark can be made in relation to the two derogations provided by the Vibration Directive and the derogation laid down in the Noise Directive.

Other derogations have been applied to a far lesser extent.

Transitional periods are periods of time in which Member States are exceptionally awarded an extended deadline for the implementation of particular provisions of the directives. They constitute a basic tool to help authorities to adapt the implementation of directives to the actual capacities and characteristics of, e.g. establishments in the Member State or sectors, that may need a larger period of time to adopt or implement the provisions of a particular directive.

The transposition of the Framework Directive 89/391 and its five first individual directives 89/654 (Workplaces), 89/655 (Work Equipment), 89/656 (Personal Protective Equipment), 90/269 (Manual Handling of Loads) and 90/270 (Display Screen Equipment) into the national legislative framework of Member States was a lengthy process. The delays incurred in the transposition as well as the conformity problems, particularly for the Framework directive, have had a considerable impact on the levels of practical implementation as well as on the quality of implementation, since the supporting actions (information, training, technical assistance, etc.) necessary to create the required safety culture were delayed as well.<sup>21</sup> The Framework Directive is at the heart of the reform of OSH legislation and therefore its adequacy to the diversity of cultures of each Member State has put complex problems to overcome.

The transitional periods are contained in eight directives: 2004/49 EC (Drilling, Mines and Quarries), 93/103/EC (Fishing Vessels), 2002/44/EC (Vibration), 2002/49/EC (Noise), 89/655 (Work Equipment), 90/270 (Display Screen Equipment) and 2014/34/EU (ATEX).

Most of the transitional periods are not applicable anymore in the European Union, as the deadlines for implementation of the provisions in question have already passed. However, in Ukraine these periods must take into consideration the timeframes for transposition of the EU Directives which are foreseen in Annex XL of Chapter 21 of the EU -Ukraine Association Agreement.

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<sup>20</sup> DG Employment, Social Affairs and Inclusion (2015), Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) Directives in EU Member States, Synthesis Report

<sup>21</sup> European Commission (2004), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the practical implementation of the provisions of the Health and Safety at Work Directives 89/391 (Framework), 89/654 (Workplaces), 89/655 (Work Equipment), 89/656 (Personal Protective Equipment), 90/269 (Manual Handling of Loads) and 90/270 (Display Screen Equipment), COM(2004) 62 final.



# Part II – Labour Relations

## 1. Labour Relations / EU Directives to Implement

The Association Agreement between the European Union and Ukraine (Annex XL to Chapter 21 – Cooperation on Employment, Social Policy and Equal Opportunities) presupposes the gradual approximate of Ukraine’s internal juridical order to the following EU labour legislation, within the indicated timeframe.

**Table 5: EU directives on labour relations to be implemented**

	<b>Labour relation’s EU directives</b>	<b>Scope</b>	<b>Implementa- tion timeframe</b>
1.	91/533/EEC, of 14 October 1991	Employer's obligation to inform employees of the conditions applicable to the contract or employment relationship	4 years
2.	1999/70/EC, of 28 June 1999	Framework agreement on fixed-term work	4 years
3.	97/81/EC, of 15 December 1997	Framework Agreement on part-time work	3 years
4.	91/383/EEC, of 25 June 1991	OSH of workers with a fixed-duration employment relationship or a temporary employment relationship	3 years
5.	98/59/EC, of 20 July 1998	Collective redundancies	4 years
6.	2001/23/EC, of 12 March 2001	Safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses	3 years
7.	2002/14/EC, of the European Parliament and of the Council of 11 March 2002	General framework for informing and consulting employees in the European Community	3 years
	<b>Anti-discrimination and gender equality EU directives</b>	<b>Scope</b>	<b>Implementa- tion timeframe</b>
1.	2000/43/EC, of 29 June 2000	Principle of equal treatment between persons irrespective of racial or ethnic origin	4 years
2.	2000/78/EC, of 27 November 2000	General framework for equal treatment in employment and occupation	4 years
3.	2004/113/EC, of 13 December 2004	Principle of equal treatment between men and women in the access to and supply of goods and services	3 years
4.	96/34/EC, of 3 June 1996	Framework agreement on parental leave	3 years
5.	92/85/EEC, of 19 October 1992	Improvements in OSH of pregnant workers and workers who have recently given birth or are breastfeeding (10th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)	3 years
6.	79/7/EEC, of 19 December 1978	Principle of equal treatment for men and women in matters of social security	3 years

Labour relations legislation has a significant impact on OSH. OSH regulation, whose main characteristic is to promote the organizational performance capable of managing the occupational risks of all workers arising from the work activities, presupposes that the labour legislation is also consistent with this purpose. That is why some of the Community directives and ILO International Labour Standards, referred to in the Association Agreement, deserve special consideration.

The latter is particularly evident in cases of employment relationship, employer's obligation to inform employees and the regulations regarding anti-discrimination and gender equality.

It should be noted that women's work has a quantitative dimension, their strong presence in the labour market and the growing trend towards the feminization of employment, and a qualitative dimension that is related to the distinctive role of the genetic function indispensable to the reproduction of society and decent work.

## 2. Employment Relationship

The avoidance of complying with labour law is a well-known trend around the world, as a way used by marginal companies to remain in the market or to obtain illegitimate gains through the sacrifice of proper workforce working conditions.

Social dumping, moreover, has the capacity to affect fair competition, the sustainability of social protection systems and public finances and, in the end, does serious harm to the dignity of workers and, ultimately, of citizens.

One of the central aspects of this problem is the way labour law defines or qualifies an employment relationship. In this respect, the concept of "worker" in the Ukrainian labour code, as well as in the Ukrainian law on labour protection, is defined generically as the person with an employment contract that works for an employer.

This definition, however, is too narrow and leaves out of consideration those persons that, despite 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 legally imposed on employers) but, most especially, with fully 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.

In fact, Ukrainian labour law only foresees its application to "all legal and natural persons that use hired labour according to legislation as well as all working individuals". It is a concept of labour relations very much attached to the industrial work in vertical and very hierarchical productive organizations. It was characteristic of the Fordist organization of labour, dominant from the first half of the last century. That is why the concept of subordinate work is now regarded as one that is embedded in an organization determined by the employer and only characterized by submission to orders and instructions.

One way to address the problem is establishing a legal presumption of the existence of an employment relationship whenever certain evidence and indicators are present.

The latter should apply to all workers, including the ones that have no labour contract but that have an employment relationship (e.g., total undeclared workers, bogus self-employed, bogus service providers, bogus volunteers, bogus trainees, bogus internships, etc.), as well as to their employers.

In order to address the problem of covert (masked) employment relationships and ensure adequate protection and decent working conditions to all workers, it is recommended that the provisions of the ILO Recommendation no. 198, on the employment relationship, be incorporated into the labour code and/or OSH regulations. In particular, this means the creation of mechanisms and specific criteria to be used to determine the existence of an employment relationship, as well through the guarantee of the principle of legal presumption of the existence of an employment relationship. Whenever, regardless of formal, signed, or written arrangements, certain indicators of the existence of an employment relationship, such as, but not restricted to, the following are present<sup>22</sup>:

- The provider must obey to the orders of the respective beneficiary;
- The activity provider is subject to the authority of the beneficiary of the activity;

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<sup>22</sup> ILO (2018), Brief notes on the main aspects of the alignment between Ukrainian national legislation and selected EU directives; ILO (2018), National Occupational Safety and Health Profile Ukraine.

- The activity is held in the place of its beneficiary or in a place determined by him;
- The work equipment and instruments used belong to the beneficiary of the activity;
- The activity provider must comply with the start and end hours of the activity provision determined by the activity beneficiary;
- Is paid to the activity provider, with determined periodicity, the right amount, in return for its provision;
- The activity provider performs management or leadership roles in the organizational structure of the beneficiary of the activity;
- The activity provider depends economically on the beneficiary of the activity;
- The activity provider develops his activities exclusively to the beneficiary of the activity;
- The activity provider enjoys paid holidays and its subsidy and receives a Christmas bonus;
- The activity provider is subjected to the absences' regime of the beneficiary of the activity;
- The activity provider may not substitute himself in the execution of the activity;
- The activity provider does not assume the risks of the execution of the activity;
- The activity provider does not have the power to determine the price of the activity provided.

### 3. Employer's Obligation to Inform Employees

The legal commands of Directive No. 91/533/EEC, of the Council, of 14 October 1991, on the employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, has a reduced expression in the domestic law of Ukraine.<sup>23</sup>

In fact, the national provisions do not establish the obligation of employers to provide workers with the following information:

- The place of work and, if there is no fixed or main place of work, the principle that the employee is employed at various places and the registered place of business (or, where appropriate, the domicile of the employer);
- The length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or the method for determining such periods of notice (or the reference to the laws, regulations and administrative or statutory provisions or collective agreements governing the length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated);
- The initial basic amount (and the other component elements) and the frequency of payment of the remuneration to which the employee is entitled (or the reference to the laws, regulations and administrative or statutory provisions or collective agreements governing the remuneration to which the employee is entitled);
- The length of the employee's normal working day or week (or the reference to the laws, regulations and administrative or statutory provisions or collective agreements governing the length of the employee's normal working day or week);
- The collective agreements governing the employee's conditions of work or, in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded.

The means and time in which the information should be made available do not deserve proper guarantee. That is namely in case of:

- The obligation to provide information to the worker not later than two months after the commencement of employment (even if the employment relationship ends during that period);
- The written form of this information: a written contract of employment; and/or a letter of engagement; and/or one or more other written documents; or a written declaration.

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<sup>23</sup> ILO (2018), Brief notes on the main aspects of the alignment between Ukrainian national legislation and selected EU directives.

Expatriate employees (those who are required to work for more than one month in a country or countries other than the one whose law and/or practice governs the contract or employment relationship), are not duly considered on this matter, regarding the additional information that must be given, in particular:

- The duration of the employment abroad;
- The currency to be used for the payment of remuneration (or the reference to the laws, regulations and administrative or statutory provisions or collective agreements governing this point);
- The benefits in cash or kind attendant on the employment abroad, if applicable (or the reference to the laws, regulations and administrative or statutory provisions or collective agreements governing this point);
- The conditions governing the employee's repatriation, if appropriate.

During the execution of the contract, there may be modifications to its content. European law establishes the obligation of the employers to provide written information to workers in case of modification of aspects of the contract or employment relationship (apart from change in the cited laws, regulations and administrative or statutory provisions or collective agreements), within one month after the entry into effect of such modifications. The national provisions follow a similar line as regards the existence and content of a contract or employment relationship; and the relevant procedural rules.

## 4. Equality Between Men and Women in Employment and Occupation

According to 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, employers have the obligation to take all the necessary preventive and protective measures, according to the General Principles of Prevention, 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>24</sup>, should be aligned with the EU Directive 2006/54/EC. The latter, in turn, would allow the improvement of the implementation of Line I) 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.

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<sup>24</sup>For example, in Article 43(5) of the Constitution of Ukraine, in the chapter on “Female Labour” of the Labour Code, in the MH Order No. 241, of 10 December 1993, concerning the “limits of lifting and moving of heavy items by women” and in the MH Order No. 256, of 29 December 1993, concerning the “list of heavy work and work with harmful or hazardous working conditions on which employing women is prohibited”.

# Part III – Labour Inspection System

The EU - Ukraine Association Agreement, signed on 21 March 2014 (political section) and on 27 June 2014 (economic section), which entered into force on 1 September 2017 foresees that, *inter alia*, (...) the Parties shall strengthen their dialogue and cooperation on promoting a decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and non-discrimination” (Article 419) and that “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” (Article 424).

The Canada - Ukraine Free Trade Agreement, signed on 11 July 2016, which entered into force in 1 August 2017 provides that the parties should promote compliance with and effectively enforce its labour law, namely through “establishing and maintaining an effective labour inspection regime, including by developing responsible bodies and appointing and training inspectors” [Article 13.5(1)(a)], and “monitoring compliance and investigating suspected violations, including through onsite inspections” [Article 13.5(1)(b)].

Ukraine has ratified ILO Conventions 81 and 129 on labour inspection, which establish the powers that the labour inspectors should be entrusted with, in order to discharge effectively their duties. The ILO Convention 155, on OSH, which was also ratified by Ukraine, provides that the enforcement of OSH regulations should be ensured by an adequate and appropriate system of inspection and foresees that there shall be provided adequate penalties for their violations. In the same direction, Article 4 of the EU Directive No. 89/391/EEC 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.

So, it is necessary to bring Ukrainian legislation and practices on labour inspection closer to the aforesaid standards and best practices and, most especially, in order to improve the efficiency and effectiveness of the Ukrainian system of labour inspection.<sup>25</sup>

In this context, and regarding the SLS mandate, functions, structure and organization, the main recommendations that should be considered include, *inter alia*, to amend the “Regulations on the State Labour Service of Ukraine”, approved by the CMU Decree No. 96, of 11 February 2015 (SLS Statute).

That is the case of the focus of the labour inspection mission in the field of labour relations and OSH, to foster more technical capacity and ensuring more effectiveness. It means to clearly define the labour inspection functions and the legal competencies assigned to each of its specialized structural units. In order to achieve that it is necessary to transfer the SLS current legal competencies for non-labour administration functions (e.g., regulatory and market surveillance functions on the gas market and on the state mining supervision; over the objects subject to technical regulations; issuance of licenses or permits for industrial or business initiation, alteration or renovation) to the respective responsible ministries (e.g., Energy and Coal Mining Industry; Trade and Economic Development) to get its focus on its labour administration and labour inspection functions.

In the same way, the transfer of the SLS current legal competencies for several non-core activities and functions (e.g., training, medical examinations, workplace and equipment assessments, knowledge testing of managers and deputy managers of CEA and oblast state administrations) to the private sector, while maintaining its competencies for the definition of the applicable legal requirements, licensing procedures, supervision, inspection and control can be foreseen.

A simpler, more horizontal and rational organizational structure, based on a simultaneously functional and geographical departmentalization, is important to assure proximity to the business community, workers, as well as their representative organizations and other stakeholders. At the same time, it is important to emphasize the guarantee of the technical autonomy in choosing the most appropriate processes to obtain compliance and the independence in relation to the interests that characterize the world of work. For this, its division into logical functional units and definition of their internal structure,

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<sup>25</sup> ILO (2018). Ukrainian Labour Inspection Legal Framework. Analysis and Recommendations.

functions and legal competencies; and its decentralized services, along with the definition of their internal structure, functions and legal competencies and geographical areas of jurisdiction should be considered.

For the same reasons, it is important to consider the location (of the structure and organization of both its headquarters and territorial bodies), composition and legal competencies of the SLS tripartite consultative and advisory Board ("Collegium") of the "Public Council", as well as the location of the SLS itself, within the structure of the MSP.

A further aspect relates to the "Procedure for Investigating and Recording Occupational Accidents, Diseases and Emergencies". The legal competencies for carrying out official investigations and inquiries on work-related accidents and occupational diseases should be exclusively assigned to labour inspectors (without prejudice of the legal competencies of other public authorities or to the participation of other persons - individual or collective, public or private, if or when requested by labour inspectors). As such, the legal provision that foresees that whenever SLS's territorial bodies did not decide to undertake a special investigation of a work-related accident within twenty-four hours, the investigation shall be undertaken by the employer or the Fund, should be eliminated.

As for the labour inspectors' functions and powers, as well as regarding the inspection activity itself, the approval of a "Labour Inspection Statute" should be considered, which should address, *inter alia*: the definition and scope of the labour inspection system and its principles; the collaboration with other entities; the labour inspection legal competencies and activities (with the specification of the ones that should be exclusively performed by labour inspectors, as prescribed in the ILO Conventions Nos. 81 and 129 on labour inspection and its related recommendations), the powers of the labour inspectors to conduct inspection visits (without prejudice to the participation of other persons, when required by labour inspectors) and to carry out official work-related accidents and occupational diseases investigations and inquiries (without prejudice of the legal competencies of other public authorities or to the participation of other persons, when required by labour inspectors); and the definition of the labour inspection procedure (inspection action; procedure harmonization; modalities of inspection action; forms of the inspection actions; inspection visits; registration of inspection visits; information action; penalty action; conclusion of the inspection procedure; inspection process; communication and notification of inspection actions; etc.).

It is especially important to foresee in such a "Labour Inspection Statute" (as well as to ensure it in practice) that Ukrainian labour inspectors are entrusted with all the necessary powers to discharge their duties (namely with the ones foreseen in the ILO Conventions Nos. 81 and 129), in particular, with the powers to:

1. Perform inspection visits to any workplace of any employer without prior notice;
2. Conduct inspection visits at any time of day or night;
3. Carry out inspection visits even when the employer (or the employer representative) is not present at the workplace;
4. Conduct inspection visits with subjection to no pre-requirements or restriction concerning its grounds;
5. Perform inspection visits within all the scope of their legal competences (labour relations and/or OSH subjects), and adapt its scope, extension and depth do the circumstances found at the workplace;
6. Make inspection visits with the frequency and depth which they understand as necessary to ensure compliance with labour relations and OSH regulations;
7. 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.
8. Monitor, promote and enforce compliance in employers which are not registered, as well as regarding employers and workers which, despite having an employment relationship, do not have a formal or written labour contract;
9. Suspend work in the event of imminent danger to the health or safety of the workers.

The need to ensure an effective labour inspection system presupposes, therefore, the implementation of the following measures:

- a) Revocation of Law No. 877-V, of 5 April 2007, "On Basic Principles of State Supervision (Control) in the Area of Economic Activities" (last amended by the Law No. 2042-VIII, of 18 May 2017) or,

at least, to exclude the SLS from its scope. The labour inspection procedure, moreover, could be defined in the “Labour Inspection Statute”, as suggested above.

- b) Repeal of the “Procedure for State Control of Compliance with Labour Legislation”, approved by the CMU Decree No. 295, of 26 April 2017, “On some issues regarding the application of the Article 259 of the Labour Code of Ukraine and Article 34 of the Law ‘on local bodies of self-government in Ukraine’”. In addition, the labour inspection procedure would be defined, as already suggested above, in the proposed “Labour Inspection Statute”.
- c) Refraining from imposing *moratoriums* on labour inspection activity (especially to labour inspection visits);

Moreover, the position of the labour inspectors as professionals should also be addressed: professional status, directors with inspection powers, obligations, code of conduct, incompatibilities and impediments, permanent availability, duty to remain for a certain period after recruitment, training, civil liability insurance, support in legal proceeding against them, etc.

It is therefore important to approve a “Labour Inspector’s Career Statute”, which should legally establish and describe the special career of labour inspector, within the Ukrainian public administration, as public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences. Such a career statute should also provide for the definition of the different professional categories of labour inspectors, the advancement within categories, their activities, their functions and their respective salary and additional working conditions. It should be advisable to consider, in this regard, the merger of the current three types of specialized labour inspectors (state labour inspectors, state labour protection inspectors and state occupational health inspectors) into just one general type.

In the same sense, it is also important to regulate: access to labour inspection (career concerning, in particular, the specification of the selection and recruitment procedures for access to the mandatory internship which successful completion should be a pre-requisite for the access to a labour inspector career), requirements, selection procedures, regulations of the internship functioning and description of the theoretical and practical phases of the internship, subjects of the initial theoretical and practical training, criteria and methodologies for evaluating and assessing the trainees, etc. A specification for continuous training, the performance assessment procedures, geographical and functional mobility, duties and obligations, and disciplinary statute are also important areas that should be object of regulation.



# Part IV – Recommendations

The Association Agreement between the European Union and Ukraine, which is undertaken to gradually approximate national legislation to EU OSH legislation, stipulates timeframes for that purpose. The Agreement entered into force on 1 September 2017.

The following recommendations take into account the aforesaid agreement implementation timetable and propose the implementation of a set of strategic, legal and operational measures, with different timeframes: short term measures (until 2 years); medium term (until 6 years); and long term (until 9 years).

## 1. Strategic Measures

- 1) To launch, in consultation with social partners, a Ukrainian National Strategy for the Promotion of OSH, guiding the alignment process, which is to be formulated and implemented based on a “roadmap” defining its respective goals (short-term).
- 2) To assume a legislative intervention program for adapting national legislation to the European legislation in the field OSH and labour relations. The latter can be based on the legislative powers of the parliament and involve all stakeholders, particularly associations representing workers and employers and the labour administration. This program also aims to reduce the number of current legal acts and their simplification and merger in a fewer number (short-term).
- 3) To perform periodic diagnostic evaluations of the implementation of the defined measures of the alignment process and other OSH policy-setting instruments (short/medium-term).
- 4) To structure a panel of relevant indicators on working conditions in the workplace, including on the implementation of OSH legislation resulting from the alignment process (short-term).
- 5) To structure operational programs developing a Ukrainian National Strategy for the Promotion of OSH. The operational programs aim to support and stimulate the relevant axes of a national system for the prevention of occupational risks, in particular as regards the education and insertion of OHS materials in school curricula, the training of relevant OSH actors in the workplace (OSH professionals, employers assuming OSH activities, designated workers, workers representatives, OSH trainers...), the OSH information and scientific research (short/medium-term).
- 6) To strengthen the labour administration that is in charge of executing OSH public policies, so that they can assume their role of coordination of national resources on OSH (short/medium-term).
- 7) To improve labour inspection action, to ensure the effectiveness of safety and health at work in all workplaces. This includes enforcement of workplace OSH legislation, as well as cooperation with other public or private entities relevant to OSH, refrain from imposing *moratoriums* on labour inspection activity (especially on labour inspection visits, cancel the current decentralization process and replace it by another one designed to be consistent with the characteristics of the conventions), entrust labour inspectors with the powers they need to discharge their duties and, in general, initiate a legislative intervention that ensures consistency of national legislation and practices with ILO Conventions 81 and 129 on labour inspection (short/medium-term).

## 2. Legislative Measures

- 1) Transpose each directive through one national law instrument.

Considering the relationship established between the EU OSH directives, the need to prevent legislation gaps, the number of potential workers and employers covered, the nature of the risks to which they are or may be exposed to and the convenience for clarification and simplification of the national legislation, the main recommendation is to ensure, as much as possible, that each directive is transposed through just one national law. Each law may then need to provide for additional technical regulations or other technical developments, namely, guidelines (short/medium/long-term).

2) Create an OSH guidelines system.

The creation of an OSH guideline system, that, despite not being mandatory, could constitute the legal presumption that compliance corresponds to the best way of executing the law. To give it legitimacy, guidelines must be developed in consultation and with the participation of the representatives of employers and workers. It may be developed by the body of labour administration and/or public health responsible for the implementation of OSH public policies. The legal reference of this system should be included in the national legal act transposing the OSH Framework Directive (short-term).

3) Repeal replaced OSH legislation.

Each legal act transposing EU OSH legislation should expressly state which national legal instruments are revoked, to ensure certainty and juridical security. This presupposes that the legal act to be adopted may result from merging current legal definitions of the national legislation that may be maintained and are not contradictory to the philosophy of EU OSH legislation (short/medium/long-term).

4) To provide that the legal acts transposing the EU OSH legal framework have a reinforced nature in relation to other legislation

Alignment with the EU OSH framework Directive 89/391/EEC, which will act as an “umbrella law”, that sets the OSH architecture, beneath which will flesh out the other specific individual laws and which defines the main building blocks of the future national OSH legal framework, and that will establish 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 laws (short-term).

5) To provide additional regulations and/or OSH guidelines on OSH professional type and qualifications, OSH preventive services functions and quality requirements, OSH workers representative selection, relations with unions, resources and protection, and annual reports on the employer’s OSH management (short/medium term).

6) Improve the transposition of the Directive 2009/104/EC (Use of Work Equipment) and transpose other transversal directives, which regulate aspects that are common to the generality of employers, workers and sectors of activity (e.g., 89/654/EEC, Workplaces; 2003/88/EC, on Working Time; and 92/58/EEC, on Safety and Health Signs; etc.) (medium-term).

7) Transpose the directives on particular harmful risks, such as the exposure of workers to asbestos (Directive 83/477/EEC, 12th individual Directive, amended by Directives 91/382/EEC and 2003/18/EC), to carcinogens or mutagen agents (2004/37/EC, 6th individual Directive) and to biological agents (2000/54/EC, 7th individual Directive) (medium-term).

8) Transpose the directives focused on the protection of safety and health regarding the exposure of workers to other specific risks (e.g., 2003/10/EC, on noise; 2002/44/EC, on mechanical vibration; 90/270/EEC, on manual handling of loads; 2013/59/Euratom, on ionising radiation; 2013/35/EU, on electromagnetic fields; 2006/25/EC, on artificial optical radiation) (longer term).

- 9) Improve the transposition of Directive 92/57/EEC on temporary or mobile construction sites and ensure the transposition of other Directives focused on the protection of workers against the risks arising from work in specific sectors of activity (e.g., 92/91/EEC, on OSH in mineral-extracting industries through drilling; 93/103/EC, on work on board fishing vessels and 2010/32/EU, on injuries from sharp instruments in the hospital and healthcare sector) (medium-term).
- 10) Transpose the directives focused on the protection of OSH of specific types of workers (e.g., 94/33/EC, on young workers; 92/85/EEC, on pregnant workers; 91/383/EEC, on workers with a fixed-duration or temporary employment relationship) (longer term).
- 11) Transpose the EU directive on the obligation to inform employees of the conditions applicable to the contract or employment (Directive No. 91/533/EEC) (medium term)
- 12) Transpose EU directives focused on equality between men and women in employment and occupation and non-discrimination on the basis of gender (namely the Directive 2006/54/EC and the Directive 92/85/EEC) (medium term).
- 13) In order to promote the fundamental principle of equality between men and women, to uphold non-discrimination on the basis of gender<sup>26</sup>:
  - a. To 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:
    - Article 43(5) of the Constitution of Ukraine;
    - Chapter “Female Labour” of the Labour Code;
    - Regulation concerning the “limits of lifting and moving of heavy items by women” (approved by the MH Order No. 241, of 10/12/1993);
    - 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).
  - b. To align the national legislation with the provisions of the following EU Directives:
    - Directive 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;
    - Council Directive 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.
- 14) In order to combat covert (masked) employment relationships and ensure adequate protection to all workers<sup>27</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<sup>28</sup>:
  - a. The activity provider has to obey to the orders of the respective beneficiary;

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<sup>26</sup> ILO (2018), Brief notes on the main aspects of the alignment between Ukrainian national legislation and selected EU directives; ILO (2018), National Occupational Safety and Health Profile Ukraine.

<sup>27</sup> Especially regarding 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”).

<sup>28</sup> ILO (2018), National Occupational Safety and Health Profile Ukraine. From

- 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 absence policy 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.
- o. Moreover, Ukrainian legislation should also foresee that in situations where one or more of the abovementioned conditions are met the rights of 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.

15) In order to improve the effectiveness and efficiency of the labour inspection system<sup>29</sup>:

Regarding the SLS mandate, functions, structure and organizations, the main legislative measures recommended include, *inter alia*, the following:

1. To amend the “Regulations on the State Labour Service of Ukraine”, approved by the CMU Decree No. 96, of 11 February 2015 (SLS Statute)<sup>30</sup>, in order to provide for the following:
  - a. Adoption of a simpler, more horizontal and rational organizational structure and organization, based on a simultaneously functional and geographical departmentalization, which takes into account:
    - i. Its division into logical functional units<sup>31</sup> and definition of their internal structure, functions and legal competencies;
    - ii. Its decentralized services, along with the definition of their internal structure, functions and legal competencies and geographical areas of jurisdiction;
    - iii. The transfer of the SLS current legal competencies for non-labour administration functions (e.g., regulatory and market surveillance functions of the gas market and state mining supervision; over objects of technical regulations; issuance of licences or permits for industrial or business initiation, alteration or renovation) to the respective responsible ministries (e.g., Ministry of Energy and Coal Mining Industry; Ministry of Trade and Economic Development), whilst maintaining within the SLS the legal competencies for labour relations and OSH in these sectors, and the reinforcement of its focus and resources on labour administration and labour inspection functions;
    - iv. The transfer of current SLS legal competencies for several activities and functions (e.g., training, medical examinations, workplace and equipment assessments,

<sup>29</sup> ILO (2018). Ukrainian Labour Inspection Legak Framework. Analysis and Recommendations.

<sup>30</sup> With the amendments introduced by the CMU decrees Nos. 1097, of 23 December 2015; 76, of 11 February 2016; 295, of 26 April 2017; and 630, of 18 August 2017.

<sup>31</sup> Including one unit specifically focused on labour inspection issues (which, moreover, should be further subdivided into subunits, according to the nature of the functions assigned to labour inspection).

- knowledge testing of managers and deputy managers of CEA and oblast state administrations) to the private sector, while maintaining SLS competencies for the definition of the applicable legal requirements, licensing procedures, supervision, inspection and control;
- v. The location (of the structure and organization of both its headquarters and territorial bodies), composition and legal competencies of:
    - The SLS tripartite consultative and advisory Board ("Collegium");
    - The "Public Council".
  - vi. The location of the SLS, within the structure of the MSP;
- b. To clearly define the labour inspection functions and the legal competencies assigned to each of its specialized structural units.
2. To amend the "Procedure for Investigating and Recording Occupational Accidents, Diseases and Emergencies"<sup>32</sup>, in order to provide:
    - i. That the legal competencies for carrying out official investigations and inquiries on work-related accidents and occupational diseases are exclusively assigned to labour inspectors, without the prejudice of other public authorities' competencies and the participation of other individual or collective (public or private) entities, if and when requested by labour inspectors;
    - ii. For the elimination of the legal provision that foresees that *if the SLS territorial body did not make a decision to undertake a special investigation of a work-related accident within twenty-four hours, the investigation shall be undertaken by the employer or the Fund*".

As for the labour inspectors' functions and powers, as well as regarding the inspection activity itself, the following legislative measures should be considered:

1. To draft and approve a "Labour Inspection Statute", which should address, *inter alia*:
  - a. The definition and scope of the labour inspection system and its principles;
  - b. The terms of the collaboration with other entities;
  - c. The definition of the labour inspection legal competencies and activities and the specification of the ones that should be exclusively performed by labour inspectors<sup>33</sup>, in particular:
    - i. To carry out inspection visits (without prejudice to the participation of other persons, when required by labour inspectors);
    - ii. To carry out official work-related accidents and occupational disease investigations and inquiries (without prejudice of the legal competencies of other public authorities or to the participation of other persons, when required by labour inspectors).
  - d. The definition of the labour inspection procedure (inspection action; procedure harmonization; modalities of inspection action; forms of the inspection actions; inspection visits; registration of inspection visits; information action; penalty action; conclusion of the inspection procedure; inspection process; communication and notification of inspection actions; etc.);
  - e. The legal provision of labour inspectors' powers, which should include, at least, the ones foreseen in the ILO Conventions Nos. 81 and 129 on labour inspection;
  - f. Human resources section (professional status, directors with inspection powers, obligations, code of conduct, incompatibilities and impediments, permanent availability, duty to remain for a certain period after recruitment, training, civil liability insurance, support in legal proceedings against labour inspectors, etc.).

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<sup>32</sup>Approved by the CMU Resolution No. 1232, of 30 November 2011 and last amended by the CMU Resolution No. 294, of 26 April 2017.

<sup>33</sup>Taking into account the special requirements (e.g., qualifications, training), professional status, conditions of service (i.e. wages, allowances and career prospects), powers, obligations and responsibilities legally and conventionally assigned to labour inspectors.

2. To draft and approve a “Labour Inspector’s Career Statute”, which should legally create the special position of labour inspector within the Ukrainian public administration, and foresee, *inter alia*:
  - a. The establishment and description of the special position of labour inspector.
  - b. The definition of the different professional categories of labour inspector, their activities, functions, respective salaries and additional working conditions. It should be advisable to consider, in this regard, the merger of the current three types of specialized labour inspectors (state labour inspectors, state labour protection inspectors and state occupational health inspectors) into just one general type<sup>34</sup>.
  - c. The requirements and regulations for:
    - i. The access to the labour inspection position concerning, in particular regarding the specification of the selection and recruitment procedures for access to the mandatory internship, upon which successful completion is a pre-requisite for access to the labour inspector position (requirements, selection procedures, regulations of the internship functioning and description of the theoretical and practical phases of the internship, subjects of the initial theoretical and practical training, criteria and methodologies for evaluating and assessing the trainees, etc.);
    - ii. The advancement within categories and promotion.
  - d. Continuous training of labour inspectors and their performance assessment procedures.
  - e. Geographical and functional mobility.
  - f. Powers, obligations and disciplinary statute.
3. Either to revoke or to fully exclude Labour Inspection from the scope of the Law No. 877-V, of 5 April 2007, “On Basic Principles of State Supervision (Control) in the Area of Economic Activities”<sup>35</sup> and, concomitantly, to define the labour inspection procedure in the proposed “Labour Inspection Statute”, which draft and approval was already suggested.
4. To substitute the “Procedure for State Control of Compliance with Labour Legislation”<sup>36</sup> by the proposed “Labour Inspection Statute”, within which the functions, activities and powers of the labour inspectors, along with the inspection procedures, should be defined in precise terms;

### 3. Operational Measures

- 1) Provide training on the forthcoming national OSH legal framework to the competent public authorities, social partners and other main national stakeholders (short/medium term).
- 2) Launch a nationwide information and awareness-raising campaign on the EU legislation being transposed to Ukraine in order to facilitate the understanding and, thus, compliance with the resulting forthcoming national OSH legal framework (short/medium term).
- 3) Develop and disseminate technical information, with special attention to micro, small and medium-sized companies, on OSH management and risk assessment (short/medium term).
- 4) Reorient the system for collecting, processing and disseminating data on work accidents and occupational diseases, in order to cover all sectors of economic activity and the entire employed population, providing timely, relevant, accurate and internationally comparable data to prevent occupational risks (medium term).

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<sup>34</sup>This new and general type of labour inspector would concentrate the competencies of the current three types (without prejudice of the constitution 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.). This is what is done, for example, in France, Italy, Latvia, Poland, Portugal, Romania and Spain.

<sup>35</sup>Last amended by the Law No. 2042-VIII, of 18 May 2017.

<sup>36</sup>Approved by the CMU Decree No. 295, of 26 April 2017, “On some issues regarding the application of the Article 259 of the Labour Code of Ukraine and Article 34 of the Law ‘on local bodies of self-government in Ukraine’”

# Part V - Roadmap

<b>Strategic measures</b>			
<b>Stakeholders</b>	Employers association's Unions Labour inspection and labour administration Other public administration: (health, agriculture, extractive industry, manufacturing industry, transport, commerce and services) National statistics service Universities and research centres'		
<b>Goals</b>	<b>Deliverables</b>	<b>Schedule</b>	<b>Risks</b>
Adopt a Ukrainian National Strategy for the Promotion of OSH	Consensus document with the axes of intervention, the measures of implementation, estimated schedule, the monitoring and evaluation process	Short-term	Lack of stakeholder's involvement. Absence of indicators for monitoring. Lack of periodic monitoring. No consideration of operational development programs.
Assume a legislative intervention program	List of national laws to be modified or repealed; laws to be adopted; hierarchical positioning; issuing entities. Definition of basic principles of legislative philosophy.	Short-term	Lack of parliamentary involvement. Option for hierarchically lower legal sources. Increase the number of laws in force. Lack of a participatory and goal-oriented OSH approach
Structure a panel of relevant indicators on working conditions	List of indicators Program of execution	Short-term	Impossible to measure the effectiveness and efficiency of the measures adopted
Strengthen the labour administration and Improve labour inspection action	Program of organizational development Promote cooperation with stakeholders	Short-term	Prejudice to public confidence and an increase in non-compliance of labour law

<b>Legislative measures</b>			
<b>Stakeholders</b>	Employers association's Unions Labour inspection and labour administration Other public administration: (health, agriculture, extractive industry, manufacturing industry, transport, commerce and services)		
<b>Goals</b>	<b>Deliverables</b>	<b>Schedule</b>	<b>Risks</b>
Transpose directives to national law instrument.	Draft of a reinforced law to transpose directive 89/391/EEC repealing expressly the replaced legislation Definition of additional technical regulations or other technical developments	Short/medium term	Lack of parliamentary involvement. Option for hierarchically lower legal sources. Increase the number of laws in force.  Lack of a participatory and goal-oriented OSH approach Rigidity of the legal framework.
	Draft only a legal act to transpose each directive, repealing expressly the replaced legislation Definition of additional technical regulations or other technical developments	Short/medium/longer term	
Create an OSH guidelines system.	Document about the scope, nature (not mandatory, but with legal presumption of conformity) method of development, issuing entity and publication	Short term	Absence of inclusion in the national legal act transposing the OSH Framework Directive 89/391/EEC
Provide additional regulations and/or OSH guidelines on OSH professional qualifications, OSH preventive services, OSH workers representative	Document with program Draft for normative instruments	Short/medium term	Rigidity of the legal solutions. Less consideration by micro and small enterprises
Strengthen and improve the efficiency and effectiveness of the labour inspection system	Amend the "Regulations on the State Labour Service of Ukraine" <sup>37</sup> ; Amend the "Procedure for Investigating and Recording Occupational Accidents, Diseases and Emergencies"; Draft and approve a "Labour Inspection Statute" and a "Labour Inspector's Career Statute"; Revoke or fully exclude the SLS from the scope of the Law No. 877-V, of 5 April 2007; Substitute the "Procedure for State Control of Compliance with Labour Legislation" by the proposed "Labour Inspection Statute"; Repeal the Law No. 1278-VIII, of 3 November 2016 or, at least, definitely exclude the SLS from its scope.	Short term	Lack of society confidence on public institutions and increase in non-compliance of labour law

<sup>37</sup> Approved by the CMU Decree No. 96, of 11 February 2015.

<b>Operational measures</b>			
<b>Stakeholders</b>	Employers association's Unions Labour inspection and labour administration Other public administration: (health, agriculture, extractive industry, manufacturing industry, transport, commerce and services)		
<b>Goals</b>	<b>Deliverables</b>	<b>Schedule</b>	<b>Risks</b>
Provide training on the forthcoming national OSH legal framework	Training program with the definition of the target audience, training objectives, contents and pedagogical methods, workload, venues, profile of trainers, evaluation system	Short/medium term	Demotivation and lack of qualifications
Launch a nationwide information and awareness-raising campaign on the EU legislation	Information program with the definition of the target audience, objectives, type of actions and support instruments, places, schedules and profile of communicators.	Short/medium-term	Demotivation disinterest or withdraws
Develop and disseminate technical information	Information program with the definition of the target audience, objectives, support instruments, and profile of co-operators.	Short/medium term	Lack of qualification and access to knowledge
Reorient the system for collecting, processing and disseminating data on work accidents and occupational diseases	Diagnosis of the present situation and design of an improvement program	Medium term	Lack of knowledge and information on the impacts of the measures taken and on the occupational diseases and accident situation. Difficulty in drawing assertive action programs.



# Conclusions

After the Single European ACT (SEA), 1989, the European Union has undergone a profound restructuring of its OSH legislation. Answers were found for various problems.

An overview of occupational accidents that, after decades of decline in the number of work accidents and occupational diseases, and which then began to show a strong trend of increase, called into question the traditional model of prevention of occupational hazards.

The European Union sought to affirm social policies and contributions to fundamental objectives for the sustainability and competitiveness development of the society. The challenges arising from the globalization of the economy, the availability of new technologies, changes in work organization, adaptability needs of enterprises, the aging of the working population and the impact of work on the environment, required, and still require, special attention.

The new OSH legislation, organized around the OSH Framework Directive 89/391/EEC, has allowed the initiation of a process that has positively influenced all the legislations of the EU Member States. Likewise, it had positive impacts on daily working life, promoting continuous processes to improve working conditions, organizational development and increased the well-being of the working population. The European Commission has promoted several assessment studies confirming this assertion.

The OSH Framework Directive is based on a goal-oriented preventive approach and a stronger focus on the risk-management cycle. This management is strongly linked to a participative regime from workers and their representatives. The scope of EU OSH legislation covers all work activities, in the private and public sector, all the employed population and all kind of occupational risks. Therefore, it requests a multidisciplinary approach and is based on a purpose of self-regulation from the relevant actors in the workplace. It means that the main challenges and conditions of success lie in three fundamental vectors: the delimitation of preventive obligations to the employer, the quality of the role of OSH professionals, giving technical support to the employer and employees decision making process, as well as the role played by workers' representatives. From the point of view of legislative production, the objective is simplification, with less law and more occupational risks covered.

The Ukrainian OSH legal framework is mainly viewed as taking a prescriptive approach, as industrial safety, sanitary, hygienic and work environment issues are mainly focused in work with harmful and hazardous working conditions and in work connected with contamination or adverse weather conditions. The volume of OSH legislation is very significant, making accessibility and comprehensibility difficult, which poses serious problems for compliance.

Therefore, as recognized in the Association Agreement between the European Union and Ukraine, there is a need of modernization of the legal OSH Ukrainian framework philosophy, merging the existing legislation into a renewed OSH legislation.

Finally, the law must provide for a sufficient deterrent system of sanctions for failure to comply and ensure that the Ukrainian labour inspectors are legally entrusted with all the necessary powers to discharge their duties, as foreseen in the ILO Labour Inspection Conventions Nos. 81 (1947) and 129 (1969).

The above presupposes the definition by labour administration, in consultation with the representative associations of workers and employers (without prejudice of other stakeholders), of a strategy embodied in a programme of legislative and operational measures which should be designed and constantly monitored and evaluated.

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