

IMPLEMENTATION OF THE EU-UKRAINE ASSOCIATION AGREEMENT: LABOUR LAW, GENDER EQUALITY AND OCCUPATIONAL SAFETY AND HEALTH

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Under the EU-Ukraine Association Agreement of 2014, Ukraine is obliged to approximate its national legislation with EU directives in the areas of labour law, anti-discrimination and occupational safety and health.



The social aspects of the Agreement are rarely addressed by the stakeholders and the implementation of the EU acquis in domestic legislation lags behind.



Consolidated actions by all stakeholders are needed to facilitate the implementation of the AA in the social sphere within the stipulated timeframe.

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INTRODUCTION: THE EU-UKRAINE ASSOCIATION AGREEMENT AND MECHANISMS OF ITS IMPLEMENTATION

Negotiations on the EU-Ukraine Association Agreement (AA), which implied another level of relations between the EU and Ukraine consisting of “hard” provisions, including a requirement to bring Ukrainian national legislation in line with EU law began in 2007. After the former President of Ukraine Victor Yanukovich ultimately failed to sign the Association Agreement in 2013 at the Vilnius Summit, that led to massive protests and subsequently to an on-going violent conflict between Russia and Ukraine, a new government signed the political part of the Agreement on 21 March 2014.¹ President Petro Poroshenko signed the full Agreement on 27 June 2014, and it entered into force on 1 September 2017.²

Pursuant to Article 479 of the EU-Ukraine AA, the Association Agreement replaces the Partnership and Cooperation Agreement (PCA) of 1994 as the basic legal framework for EU-Ukrainian relations. The Preamble to the AA states that the parties are committed to a close relationship based on common values, such as respect for democratic principles, the rule of law, good governance and fundamental freedoms. The aim of the Agreement is to deepen political and economic relations between the EU and Ukraine as well as to establish an enhanced institutional framework and innovative provisions on the approximation of national legislation to that of the EU. It commits Ukraine to achieving “convergence with the EU in political, economic and legal areas.”

Furthermore, the Preamble specifies the need for Ukraine to implement the political, socio-economic, legal and institutional reforms necessary for the effective implementation of the Agreement. The EU for its part states that it is committed to supporting these reforms in Ukraine. It is emphasized that the Parties to the Agreement are committed “to gradually approximating Ukraine’s legislation with that of the Union along the lines set out in this Agreement and to effectively implementing it.”

In addition, the EU-Ukraine AA sets out two types of conditionality: one regarding Ukraine’s commitment to common values, such as democracy, the rule of law, and respect for human rights and fundamental freedoms,³ the other regarding market access, whereby Ukraine must implement its commitments on legislative approximation before it can gain access to the EU’s internal market.⁴ It is argued that in many respects the EU-Ukraine AA is relatively unique and provides a new type of “integration without membership,” while by establishing “close and privileged links” between Ukraine and the EU, the main objective of the AA is to ensure the partial integration of Ukraine into the EU without offering membership in the Union.⁵

The EU-Ukraine AA envisages specific provisions on legislative and regulatory approximation and contains detailed annexes that specify the approximation procedure offering detailed lists of respective EU legislation as a basis for approximation in some areas. Ukraine’s commitment to undertake the gradual approximation of its national legislation, pursuant to Article 474 of the AA, is set out in 44 annexes to the Agreement that stipulate specific commitments and mechanisms for approximation. It is the sophisticated mechanism for approximation of legislation that distinguishes it from other models of “integration without membership.”⁶ The mechanisms of legislative approximation vary in their scope depending on the envisioned level of market opening and integration.

Specific approximation clauses are enshrined in Title IV (Deep and Comprehensive Free Trade Agreement (DCFTA)), Title V (Economic and Sector Co-operation) and in Title VI (Financial Cooperation). Other Titles of the EU-Ukraine AA encompass more general provisions with reference to international conventions or “European and international standards.”⁷ The general provisions are therefore not regarded as approximation clauses, as they do not contain specific obligations concerning incorporation of the EU *acquis*.

¹ The political part of the Agreement signed on 21 March 2014 encompasses the Preamble, Article 1 (Objectives), Title I (General Principles), II (Political Dialogue and Reform, Political Association Cooperation and Convergence in the Field of CFSP) and VII (Institutional, General and Final Provisions).

² Association Agreement between the European Union and Its Member States, of the One Part, and Ukraine, of the Other Part, OJ L 161, 29.05.2014, pp. 3–2137.

³ See Articles 6 and 14, EU-Ukraine Association Agreement, 2014.

⁴ Van der Loo, G., P. Van Elsuwege and R. Petrov, “The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument,” EUI Department of Law Research Paper No. 2014/09, July 10, 2014, p. 12, <http://ssrn.com/abstract=2464681>

⁵ *Ibid.*, p. 10.

⁶ Van der Loo, G., P. Van Elsuwege and R. Petrov, 2014, p. 17.

⁷ Article 15, EU-Ukraine Association Agreement, 2014.

A variety of terms are used in the AA to describe the Ukraine's commitment in terms of EU law, e.g. to "align to," "approximate to" and "to achieve conformity with" the law of the EU, or to make national legislation "compatible" with the EU acquis. The term "approximation" is used more often in the 2014 Agreement, though in national legislation the definition of this term is similar to "adaptation." These variations in terms have caused confusion, although they all refer to the same process of bringing national legislation that is currently in force as well as future laws in line with the law of the EU.⁸

The EU-Ukraine AA is intended to promote the rule of law and requires judicial reform. Both the EU and Ukraine are to "attach particular importance to the consolidation of the rule of law and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular." In addition, with a view toward the gradual approximation of Ukraine's legislation to that of the EU, the AA establishes a multi-level institutional framework with the Association Council as a forum for the exchange of information on EU and Ukrainian legislative acts, including those already in force as well as draft legislation. The Council meets at the ministerial level and has decision-making capacities as laid down in Article 463 of the AA and is called on to assist with implementation, enforcement and compliance measures.

Furthermore, by virtue of the provisions of Article 469, Title VII of the AA, the Ukraine Civil Society Platform (CSP) was established on 16 April 2015, consisting of members of the European Economic and Social Committee (EESC) on the one hand, and representatives of civil society on the side of Ukraine, as a forum to meet and exchange views. Hence, the CSP is a joint EU-Ukraine civil society consultative body

under the AA and is responsible for representing and conveying to the signatories of EU-Ukraine AA and to the joint bodies established by the Agreement the joint positions and interests of the organisations represented therein in respect of all matters covered by the Agreement.⁹

The AA also requires a continuous monitoring system for the appraisal of progress in implementing and enforcing measures covered by it. Such monitoring shall include assessments of approximation and aspects of implementation and enforcement of Ukrainian law to EU law. Such assessments may be conducted individually or jointly by parties to the Agreement. To facilitate the assessment process, the Agreement stipulates the obligation of Ukraine to report to the EU on the progress of the approximation.¹⁰

In the areas of labour and social policy, Article 419 of the EU-Ukraine AA stipulates, "Parties shall strengthen their dialogue and cooperation on promoting the decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and non-discrimination."¹¹ The approximation of legislation is foreseen in the areas of labour law, anti-discrimination and gender equality, and health and safety at work. In addition, Annex XL to the AA contains the scope of the EU legislation that should be implemented by Ukraine, specifying timeframes for the implementation of each instrument.

To analyse implementation of the EU-Ukraine AA within the social sphere, this paper will focus on implementation of the EU acquis into Ukrainian national legislation in the areas of labour and employment law (Part I), anti-discrimination and gender equality (Part II) and labour protection and occupational safety and health (Part III).

⁸ Yarmolyuk-Kröck, K., "The Implementation of International and European Occupational Safety and Health Standards into the National Legislation of Ukraine", *Labor and Globalization* Vol.13, Reiner Hampp Verlag, Augsburg, München, 2018, pp. 90,91.

⁹ Rules of Procedure, EU-Ukraine Civil Society Platform: https://eu-ua-csp.org.ua/media/uploads/CSP_RoP.pdf

¹⁰ Article 475, Title VII, EU-Ukraine Association Agreement, 2014.

¹¹ Article 419, Chapter 21, Title V, EU-Ukraine Association Agreement, 2014.

PART I

SOCIAL ASPECTS IN THE EU-UKRAINE ASSOCIATION AGREEMENT: LABOUR ISSUES, ANTI-DISCRIMINATION, GENDER EQUALITY AND OCCUPATIONAL SAFETY AND HEALTH

1.1. LEGISLATIVE FRAMEWORK AND INSTITUTIONAL MECHANISMS OF IMPLEMENTATION

In the late 1990s, when Ukraine began its course towards European integration, a number of legislative acts were adopted with the intent to implement the EU-Ukraine Partnership and Cooperation Agreement of 1994 and to enhance the integration process. These legislative acts established the institutional framework for European integration and defined the scope of the competences of respective executive authorities.¹²

Until 2002, the process of adapting domestic legislation to EU law was de facto exercised by the executive branch of power, which can perhaps explain why no stable institutional mechanism existed to coordinate the adaptation process within all three branches of power in Ukraine.¹³ As a result, there were inconsistencies in regulations issued by the executive authorities and the laws adopted by the Parliament, Verkhovna Rada. For this reason, the parliamentary Committee on European Integration was established in 2002, and the Concept of the State Programme of Adaptation of Ukrainian Legislation to the Legislation of the EU was adopted.¹⁴ After that, quite extensive institutional reform began to take place, and institutional mechanisms underwent quite quick and occasionally unpredictable changes. For instance, the Centre of European and Comparative Law was established within the Ministry of

Justice in 2003.¹⁵ This Centre functioned for only one year before being replaced in 2004 by a new executive authority, the State Department on Adaptation of Legislation, also subordinate to the Ministry of Justice.¹⁶ In 2011, the Cabinet of Ministers dissolved the department with a view towards “optimising the central system of executive authorities agencies.”¹⁷

Such institutional changes hampered consistent integration policy and the adaptation of national legislation to the EU’s.¹⁸ In addition, unlike most European participatory democracies, Ukraine lacked instruments of public policy such as public consultations and research-informed decision-making,¹⁹ which posed another challenge for the effective implementation of the EU acquis.

Since 2004 the approximation of Ukrainian legislation to the EU acquis has taken place according to the provisions of the Law of Ukraine “On the State Programme for Adaptation of Ukrainian Legislation to the Legislation of the European Union”²⁰ and amendments introduced therein after the conclusion of the AA in 2014. A list of Ukrainian legislative acts and those of the EU acquis in priority areas constitutes an integral part of the Programme.

¹² Decree of the President of Ukraine “On Approval of the Strategy of Integration of Ukraine into the European Union,” No. 615/98 of 11.06.1998 (Ofizijnyi Visnyk Ukrainy, 1998, No. 24, p. 3, para.870); „On the National Council on the Adaptation of Ukrainian Legislation to the Legislation of the EU”, No. 1033/2000 of 30.08.2000 (Ofizijnyi Visnyk Ukrainy, 2000, No. 35, p. 12, para. 1481); “On the State Council on European and Euroatlantic Integration Issues,” No. 791/2002 of 30.08.2002 (Ofizijnyi Visnyk Ukrainy, 2002, No. 36, p. 3, para. 1676).

¹³ Petrov, R., “How Far to Endeavour? Recent Developments in the Adaptation of Ukrainian Legislation to EU Laws,” in: European Foreign Affairs Review 8, Kluwer Law International, 2003, p. 14.

¹⁴ Law of Ukraine “On the Concept of State Programme of Adaptation of Ukrainian Legislation to the Legislation of the EU,” No. 228-IV of 21.11.2002 (Vidomosti Verkhovnoyi Rady, 2003, No. 3, p.12).

¹⁵ According to the Resolution of Cabinet of Ministers of Ukraine “On the Establishment of Centre for European and Comparative Law” No. 716 of 15.05.2003 (Ofizijnyi Visnyk Ukrainy, 2003, No. 21, p. 378, para. 936).

¹⁶ Resolution of the Cabinet of Ministers of Ukraine “On the Establishment of the State Department for Adaptation of Legislation” No. 1742 of 24.12.2004 (Ofizijnyi Visnyk Ukrainy, 2004, No. 52, p. 297, para. 3447).

¹⁷ Decree of the President of Ukraine “On the Optimization of Central Executive Authorities System” No. 1085/2010 of 09.12.2010 (Ofizijnyi Visnyk Ukrainy, 2010, No. 94, p. 15, para. 3334).

¹⁸ Yarmolyuk-Kröck, K., “The Implementation of International and European Occupational Safety and Health Standards into the National Legislation of Ukraine”, Labor and Globalization Vol.13, Reiner Hampp Verlag, Augsburg, München, 2018, p. 109.

¹⁹ Anna Zygierewicz, ed., Association Agreements between the EU and Moldova, Georgia and Ukraine: European Implementation Assessment, Study: EPRS (European Parliamentary Research Service), June 2018.

²⁰ Law of Ukraine “On the State Program for Adaptation of Ukrainian Legislation to the Legislation of the European Union” No. 1629-IV of 18.03.2004 (Vidomosti Verkhovnoyi Rady, 2004, No. 29, p. 367).

The assessments regarding conformity of draft national legislation with the EU *acquis* is carried out at the parliamentary as well as the governmental level. The functions concerning adaptation of legislation are divided among the Parliament, the Cabinet of Ministers and the Ministry of Justice. The Ministry of Social Policy of Ukraine has authority over the implementation of the AA as regards social affairs.

The Parliament of Ukraine, as the central legislative authority, responsible for adopting laws, introducing changes to the State Programme of Adaptation of Legislation as well as carrying out judicial expertise of draft laws and to the EU *acquis*. Within the Parliament — the Committee on European Integration — coordinates the work on legislation adaptation.

1.2. LABOUR LAW IN UKRAINE: SOURCES, FEATURES AND HINDRANCES

Current labour law in Ukraine can be characterised as a “hybrid” law encompassing market-based principles along with a slightly modernised Soviet framework providing better guarantees of labour rights. The combination has resulted in an imbalance between *de jure* provisions and how laws are actually applied.²¹

Ukraine’s workforce suffers not only from low-paying jobs and insufficient social security, but also from a large percentage of the working population not enjoying legally recognized employment relations. According to official statistics, in 2017 the amount of illegal or undeclared work in Ukraine stood at 23 per cent, meaning that one in four citizens did not have formal employment relations.²² The figure declined slightly, to 21.6 per cent, in 2018. One should bear in mind that these statistics do not take into account temporarily occupied territories in eastern Ukraine as well as Crimea. Ukrainian labour law has also not adjusted to the new forms of social and labour relations in modern post-industrial society arising from the rapid development of information technologies, virtual labour market and other innovations.

The signing of the Association Agreement with the EU obligated Ukraine to approximating its national legislation to EU directives in the area of labour. Ukraine has ratified most International Labour Organization conventions and is bound to implementing them. To achieve this, it is necessary to develop an adequate normative framework drawn from international and European standards. The process of implementing these standards will require efficient mechanisms, cooperation among state authorities, proper application of legislation by the judiciary as well as the political will of all stakeholders involved in the European integration of Ukraine.

21 Yana Simutina, “Current Challenges of the Labour Law of Ukraine: On the Way to European Integration,” *Juridica International* 27, 2018, pp. 88–93, <http://ojs.utlib.ee/index.php/juridica/article/view/14391> (accessed 12 September 2019).

22 State Statistics Committee of Ukraine, www.ukrstat.gov.ua/operativ/menu/menu_u/rp.htm.

The main source of labour law in Ukraine is the Constitution of Ukraine adopted 28 June 1996, which stipulates principles of labour relations regulation unknown during the Soviet era.²³ Articles 3, 8, 19, 21–24, 36, 43–46, 49, 50, 55–61, 64 and 68 enshrine primary labour rights, social and labour protection and health care. Ratified international agreements become part of national legislation of Ukraine and thus constitute a source of labour law. To date, Ukraine has ratified 71 ILO conventions, of which 63 are in force, including all 8 core conventions and 4 priority conventions.²⁴ Furthermore, over the last decades, Ukraine has also ratified a number of important ILO instruments, including the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Administration Convention, 1978 (No. 150). The ratification of international instruments on safety and health represented real breakthroughs, among them the Occupational Cancer Convention, 1974 (No. 139), the Occupational Health Services Convention, 1985 (No. 161), the Safety and Health in Agriculture Convention, 2001 (No. 184), the Safety and Health in Mines Convention, 1995 (No. 176), the Prevention of Major Industrial Accidents Convention, 1993 (No. 174) and the Occupation Health and Safety Convention, 1981 (No. 155).²⁵ In addition, during the 1990s, the ILO adopted a few conventions dealing with new forms of employment, among them the Convention on Part-time Jobs, 1994 (No. 175); the Convention on Home Work, 1996 (No. 177), and the Private Employment Agencies Convention, 1997 (No. 181). Ukraine, however, did not ratify any of these instruments.

In pursuance of Ukraine’s obligations under the EU-Ukraine AA, the state has to approximate its legislation to seven EU directives in the area of labour within three to four years: Council Directive 91/383/EEC on improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship;²⁶ Council Directive 91/533/EEC on employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship;²⁷ Council Directive 1999/70/EC on the framework agreement on fixed-term work;²⁸ Council Directive 97/81/EC on the framework agree-

23 Constitution of Ukraine, Law No. 254к/96-BP of 28.06.1996 (Vidomosti Verkhovnoyi Rady, 1996, No. 30, p. 141).

24 As of October 2019.

25 See the ILO’s ratification table, http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102867 (accessed 10 September 2019).

26 Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.

27 Council Directive 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.

28 Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

ment on part-time work;²⁹ Council Directive 98/59/EC on the approximation of the laws of the member states relating to collective redundancies;³⁰ Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;³¹ Directive 2002/14/EC on establishing a general framework for informing and consulting employees in the European Community.³² The implementation of these directives into Ukraine's labour legislation has experienced serious delays.

The main source of labour law in Ukraine — the Labour Code of 1971 — sets out legal grounds and guarantees for the right to labour and regulates labour relations.³³ The Code contains a range of provisions, including on Collective Agreements (Chapter II), Labour Contracts (Chapter III), Working Time (Chapter IV), Rest Periods (Chapter V), Remuneration (Chapter VII), Labour Protection and Occupational Safety and Health (Chapter XI), Women's Labour (Chapter XII), Youth Labour (Chapter XIII), Trade Unions (Chapter XVI), Supervision and Control over Observance of Legislation (Chapter XVIII).

Over the past decades, there have been numerous changes to the Labour Code of 1971 to adjust its provisions to the evolutions in the modern world of work. As a whole, however, the current Labour Code remains seriously outdated and cannot adequately respond to the needs of today's labour relations. The Parliament has been negotiating over a new Labour Code since 2015 but so far without positive results.

Other sources of national labour legislation include individual labour laws, the majority of which have been incorporated into the 1971 Labour Code. Thus, a wide range of laws cover labour relations, among them the Law of Ukraine "On the Procedure for Settlement of Collective Labour Disputes (Conflicts)" No. 137/98-VR of 1998;³⁴ "On Remuneration of Labour" No. 108/95-VR of 1995;³⁵ "On Labour Protection"

No. 2694-XII of 1992;³⁶ "On Vocational Education" No. 103/98-VR of 1998;³⁷ "On Trade Unions, their Rights and Guarantees of Activity" No. 1045-XIV of 1999.³⁸ In addition, subordinate normative legal acts, such as decrees by the Parliament of Ukraine, enactments by the Cabinet of Ministers of Ukraine, decrees of the President of Ukraine, regulations of the Ministry of Labour and Social Policy, acts of local government bodies as well as collective bargaining agreements also constitute sources of Ukrainian labour law. Such acts, however, must not contradict the Constitution of Ukraine or national laws.

During the last decade, a positive labour-related development was the adoption of the Law № 2862-VI "On Social Dialogue" in 2010, which determines the legal principles of organizing and the procedure for holding social dialogue.³⁹ According to Article 1 of the Law, social dialogue is defined as a process of parties outlining perspectives and reaching rapprochement, finding common ground and making accorded decisions based on discussions presenting the interests of employees, employers and the executive branch and local self-government in regard to creating and implementing state social and economic policy and regulating labour, social and economic relations. Article 9 of the Law № 2862-VI states that social dialogue is to be conducted at the national, industrial, territorial and local (enterprise, institution, organization) levels on a trilateral or bilateral basis. The Law further provides for the creation of the National Tripartite Socio-Economic Council and territorial tripartite socio-economic councils consisting of equal numbers of representatives from each level to conduct social dialogue at the national and territorial levels.⁴⁰ Almost nine years after the creation of the National Tripartite Socio-Economic Council, it remains a weak authority, lacking any real influence over the social dialogue and constantly suffering from understaffing and inconsistency in the coordination of its activities.

Another development in the area of labour is a draft law calling for amending legislation on collective agreements is submitted for consideration to the Parliament in 2017. It proposes that collective agreements be valid for three years with a possibility of prolongation by no more than an additional three years subject to agreement by the parties to it. In fact, according to Article 9 of the current Law of Ukraine "On Collective Contracts and Agreements" No. 3356-XII, 1993,⁴¹ and Article 17 of the 1971 Labour Code, upon expi-

²⁹ Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC -Annex: Framework agreement on part-time work.

³⁰ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the member states relating to collective redundancies.

³¹ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

³² Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community -Joint declaration of the European Parliament, the European Council and the Commission on Employee Representation.

³³ Labour Code of Ukraine, Law No. 322-VIII of 10.12.1971 (Vidomosti Verkhovnoyi Rady Ukrainian SSR, 1971, attachment to No. 50).

³⁴ Law of Ukraine "On the Procedure for Settlement of Collective Labour Disputes (Conflicts)" No. 137/98-VR from 03.03.1998 (Vidomosti Verkhovnoyi Rady, 1998, No. 34, p. 227).

³⁵ Law of Ukraine "On Remuneration of Labour" No. 108/95-VR from 24.03.1995 (Vidomosti Verkhovnoyi Rady, 1995, No. 17, p. 121).

³⁶ Law of Ukraine "On Labour Protection" No. 2694-XII from 14.10.1992 (Vidomosti Verkhovnoyi Rady, 1992, No. 49, p. 668).

³⁷ Law of Ukraine "On Vocational Education" No. 103/98-VR from 10.02.1998 (Vidomosti Verkhovnoyi Rady, 1998, No. 32, p. 215).

³⁸ Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity" No. 1045-XIV from 15.09.1999 (Vidomosti Verkhovnoyi Rady, 1999, No. 45, p. 397).

³⁹ Law of Ukraine "On Social Dialogue" № 2862-VI of 23.12.2010 (Vidomosti Verkhovnoyi Rady, 2011, No. 28, p.255)

⁴⁰ Article 9, Law of Ukraine "On Social Dialogue" № 2862-VI of 23.12.2010

⁴¹ Law of Ukraine „On Collective Contracts and Agreements" No. 3356-XII of 01.07.1993(Vidomosti Verkhovnoyi Rady, 1993, No. 36, p. 361)

ration of a collective agreement, the agreement remains in force until the parties conclude a new agreement or revise it, unless otherwise provided by the agreement.

Therefore, the duration of a collective agreement involves legal uncertainty because it depends on the mutual desire of both parties either to amend the existing agreement or to conclude a new one. If one of the parties refuses to agree to either, the collective agreement continues to be in force indefinitely, regardless of whatever socio-economic changes might have occurred as well as changes in labour legislation. Consequently, the absence in legislation of a clearly defined procedure for amending and terminating a collective agreement creates situations in which parties might be unable or unwilling to reach a consensus on the revision of a collective agreement. This foments increased litigation between employers and workers.

Analysis of court proceedings reveals an increase in labour disputes involving the (in)validity of collective agreements, the introduction of changes to them and their termination. The court decisions can be inconsistent or opposing, while claims of either unions or employers satisfied or denied based on the same legal grounds. The proposed draft law on collective agreements has been under consideration by the parliament for almost two years without clear prospects of its soon adoption.

1.3. A NEW LABOUR CODE OF UKRAINE

Perhaps the most striking issue in the labour arena is the long-awaited adoption of a new Labour Code. Ukraine becoming an independent state rendered many Soviet-era provisions of the 1971 Labour Code outdated or unable to adequately respond to modern labour relations in the long term. An early draft of a new Labour Code, intensively debated since 2000, had serious downsides. Among its faults, it was not oriented towards a market economy, nor was it in line with new socioeconomic conditions.⁴² Ultimately, another draft of the Labour Code of Ukraine No. 0955 was proposed in parliament in December 2014 and passed the first reading on 5 November 2015. That draft was sent to the ILO for analysis on its conformity with international standards and the ILO was quite critical of some of the draft law provisions.

The most debated provisions of the proposed draft Labour Code included the following:

- Small businesses employing up to 50 workers can give a one month's redundancy notice and can change the conditions of employment with one month's notice.

Furthermore, the right of workers to organize at such small companies is not guaranteed, thus potentially scaling back workers' rights and leading to discrimination. This is all the more troubling because most of the companies registered in Ukraine are considered "small" businesses;

- Employers will have the right to use fixed-term contracts and can fire a worker for only one instance of non-performance of duties within two months of the contract's start date. This clearly contradicts EU standards. Whereas the EU Directive 91/383/EEC recommends a prohibition on hiring temporary workers for certain types of dangerous work, the draft Labour Code No. 0955 allows the use of short-term contracts even in such areas as construction and mining. Therefore, some national experts predict that employers undoubtedly will use the advantages of the new conditions of short-term employment relations;⁴³
- Besides, employers will have the right to carry out video surveillance and control internet access. Such actions are prohibited under current labour legislation;
- Employers will be able to impose additional duties on workers if they believe an employee has free time during his or her eight-hour work day. In addition, managers will have the right to issue their own local regulations.

The second reading in the parliament of the draft Labour Code No. 0955 was pending for almost four years. The criticisms of its provisions by the ILO, trade unions and civil society organisations in Ukraine made its adoption a never-ending process. The situation changed after the presidential and parliamentary elections in 2019. The newly elected President Volodymyr Zelenskiy and his party "Servant of People", which constitutes the parliamentary majority, has emphasised the necessity of adopting a new Labour Code, albeit not the draft law written by their predecessors. They instead prefer a new, "liberal" bill, with the hope of passing it by the end of 2019. To this end, the draft Labour Code No. 0955 was withdrawn from the parliamentary register on September 10, 2019.

The new draft of the Labour Code is, however, yet to materialise and so far is being developed without consultation with social partners and experts. The new draft is not yet registered in the parliament for consideration and its authors remain unknown. Although the draft is not yet available, the "Servant of People" party stresses its "liberal" nature, that is, liberalising labour relations in order to stimulate business and create new jobs in Ukraine. Given this, it is very likely that the new Labour Code will diminish those provisions on workers' rights stipulated by the current Code.

⁴² Bolotina N.B. and G.I. Chanusheva, *Labour Law of Ukraine* // Трудове Право України, Київ, 2000; See also Chanusheva, G., "Вплив міжнародних трудових норм на розвиток трудового права України (окремі питання), Підприємництво, господарство і право No. 5, 2001 // The impact of international labour norms on the development of labour law in Ukraine (some issues), *Entrepreneurship, economy and law* No. 5, 2001.

⁴³ See interview with V. Dudin, trade union lawyer and campaigner for workers' rights, in "Ukraine's New Labour Code: Neo-Liberalism in Action," *Ukraine Solidarity Campaign*, 1 February 2017, <https://ukrainsolidaritycampaign.org/2017/02/01/ukraines-new-labour-code-an-attack-on-workers-rights/>.

In sum, the new Labour Code might grant a broad scope of rights to employers as concerns workers' employment and dismissal, including allowing employers to fire workers for reasons previously not set out in Ukrainian labour legislation (e.g. pregnancy, maternity and sick leave) or forcing employees to work on holidays without union consent, which violates international labour standards and those of the EU. The new Code, if adopted, would also jeopardize the activities of trade unions and even their ability to organize, thus violating a broad spectrum of labour rights and, standing almost exclusively on the side of business.

For the moment, perhaps the greatest danger is posed by the "invisibility" of the draft Code for social partners, NGOs and international organizations working on social issues in Ukraine as well as for society in general. Meanwhile, adoption of the new Code could happen overnight, making the position of workers even more perilous in comparison to the scope of workers' rights and obligations set out in draft No. 0955. Therefore, only vocal demands by social partners, solidarity actions and the attention of the international community to the situation in the field of labour in Ukraine stand a chance of protecting and enhancing workers' rights.

PART II

ANTI-DISCRIMINATION AND GENDER EQUALITY

Ukraine ranks high among countries in Europe with a considerable degree of gender differentiation. According to the gender gap index, Ukraine ranked 65th out of 149 countries in 2018; the year before it was 61st out of 144 countries. For every \$100 in income earned by men, women earn only \$63.10, and in terms of participation in upper management—e.g. legislators, senior executives and so on—for every 100 senior male executives there are 70 females.⁴⁴

Women's average monthly salary does not exceed 80 per cent of that earned by men. For the first quarter of 2019, the figure stood at 77.2 per cent. In some types of economic activity, even according to official data, the wage gap is at least 35 per cent. As an example, the ratio of wages for women opposed to men in finance and insurance was 61.1 per cent; for postal and courier jobs, 61.5 per cent; in the arts, sports, entertainment and recreation, 65.5 per cent. The gender gap in remuneration within one particular occupation and office was 28 per cent. The unpaid domestic work of women, which is not taken into account in state calculations, reduces their chances of success in the labour market. Moreover, pregnancy and marriage reduce the attractiveness of women as workers and are sources of discriminatory practices against women at work.⁴⁵

Despite these sobering statistics, implementation of social and labour anti-discrimination norms in Ukraine based on the illusion that the country's gender issues were resolved during the Soviet era; on misconceptions about women's protection through domestic legislation and "high social standards" in this area; in the face of a lack of gender statistics on labour and social security and a critical shortage of gender expertise in these areas; and inefficient coordination of executive authorities in implementing policies aimed at equality and non-discrimination in gender relations.

The AA includes several provisions on gender equality, in particular Article 14, the Rule of Law and Respect for Human Rights and Fundamental Freedoms, under Title III (Justice,

Freedom and Security), and Articles 419, 420 and 424 of Chapter 21, Cooperation on Employment, Social Policy and Equal Opportunities, under Title V (Economic and Sector Co-operation).

First Action Plan for Implementation of the Association Agreement between Ukraine and the European Union and its Member States for the Years 2014–2017 has six articles directly related to gender equality and aims at the implementation of Article 14 of the AA. The aim of the Action Plan is to strengthen the national institutional mechanism for securing gender equality and extend the possibilities for national anti-discrimination legislation based on gender and the legal application of these provisions.

The relevant articles of the Action Plan are: 21. Improvement of the anti-discrimination legislation on the part of tackling multiple discrimination; 22. Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (also known as the Istanbul Convention); 24. Introducing the post of the Government Commissioner for Gender Equality Policy; 26. the Action Plan to Implement the National Human Rights Strategy of Ukraine by 2020; 54. Improvement of the mechanisms and procedures of investigation and bringing to responsibility for the violation of human rights, in particular those related to domestic, sexual, and gender-based violence; 56. Interim assessment of the implementation status of the National Action Plan on Implementation of UN Security Council Resolution Nr. 1325 "Women. Peace. Security" till 2020.⁴⁶

The issue of gender equality in social policy and ensuring equal opportunities for men and women in employment are covered by Articles 419, 420, and 424; as well as Annex XL to Chapter 21 "Cooperation on Employment, Social Policy and Equal Opportunities". It is the Annex that defines the goals for the gradual approximation of Ukrainian social and labour anti-discrimination legislation and practices to the EU acquis in the fields of employment, social policy, and equal

⁴⁴ The Global Gender Gap Report 2018, World Economic Forum, published 17 December 2018, <https://www.weforum.org/reports/the-global-gender-gap-report-2018> (accessed 29 September 2019)

⁴⁵ State Statistics Service of Ukraine, <http://www.ukrstat.gov.ua/> (accessed 29 September 2019)

⁴⁶ Order of the Cabinet of Ministers of Ukraine "On the National Action Plan on Implementation of UN Security Council Resolution Nr. 1325 'Women. Peace. Security' till 2020" No. 113-p of 24.02.2016 (Ofizijnyi Visnyk Ukrainy, 2016, No. 18, p. 494, para. 748).

opportunities, and contains a list of seven key anti-discrimination directives whose provisions are subject to priority implementation.

In addition, the AA also contains articles indirectly concerned with or that impact gender relations. Two good examples are Articles 396 and 397 of Chapter 15 “Audio-visual policy”. Article 396 refers to “European standards, including standards of the Council of Europe” in the field of media and features provisions on tackling sexism in the media and advertising. Another example is the provision of Council Directive 97/81/EC concerning the Framework Agreement on part-time work included into Annex XL of Article 424. The principle behind the Directive as regards non-discrimination towards part-time workers as opposed to full-time workers is to guarantee the flexible organization of working time in cases where part-time employment has a significant gender impact and will be beneficial for workers actively involved in the reproductive work. To date, there is no comprehensive analysis of responsibilities in regard to women rights and gender equality under the EU-Ukraine Association Agreement.

2.1. IMPLEMENTATION PROCESSES FOR SIX EU DIRECTIVES ON ANTI-DISCRIMINATION: SUCCESSES AND FAILURES

The overall scope of responsibilities with regard to gender equality and non-discrimination in social policy is provided in Article 424 of the AA, mainly in Annex XL to Chapter 21 “Cooperation on Employment, Social Policy and Equal Opportunities” of Title V «Economic and Sector Cooperation”.

Under the AA, Ukraine is to approximate its legislation within three to four years in regard to the following EU directives: Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;⁴⁷ Directive 2000/78/EC on a general framework for equal treatment in employment and occupation;⁴⁸ Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services;⁴⁹ Council Directive 96/34/EC on the framework agreement on parental leave;⁵⁰ Directive 92/85/EEC 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;⁵¹ and, Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security.⁵²

The major governmental activities for implementation of six anti-discrimination directives lasted from 2014 through October 2017, including those with implementation deadlines in 2018. The government developed the detailed Action Plan on the implementation of the AA and implementation plans for each specific directive in 2014, so they are considered major implementation documents. The updated Action Plan adopted in October 2017 was based on another set of principles and stated the tasks in the form of actual results reached during the implementation of the first Action Plan.⁵³

The Ministry of Social Policy was the main state body charged with implementing the AA. According to the civic assessment of the implementation process carried out in 2017, the ministry’s process for implementing the directives was mostly open and transparent. Those interested in the process could access most of the implementation documents for review and assessment. At the same time, the implementation process demonstrated a significant lack of internal (governmental) and external (civic) gender and social expertise.

The Department of Gender Development and Anti-Human Trafficking, the unit responsible within the Ministry of Social Policy on this issue, has been dealing primarily with tackling domestic violence and human trafficking. In essence, the department had no employees specialized in gender equality in social and employment rights. Thus, the ministry’s International Relations Department was vested with preparing implementation plans for the anti-discrimination directives, but it had no deep knowledge or competences in the field of gender approaches. In addition, as evidenced in the ministry’s documentation, the implementation of the anti-discrimination directives was not strengthened by the participation of expert support from the EU, unlike other directives subject to implementation under Article 424 of the AA, in particular those related to decent work conditions implemented by the Ministry of Social Policy of Ukraine within the same timeframe.

The issue of employment and social rights of women and men in Ukraine are very poorly grasped or visualised, primarily due to the critical lack of statistical data on labour and

⁴⁷ Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

⁴⁸ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

⁴⁹ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

⁵⁰ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

⁵¹ 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 (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

⁵² Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

⁵³ Decree of the Cabinet of Ministers of Ukraine “On the Action Plan on Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and Their Member States, of the One Part, and Ukraine, of the Other Part” No. 1106 of 25.10.2017.

Table 1
Anti-Discrimination Directives and Draft Laws Developed for Their Implementation

EU Directive	National Draft Law
Council Directive 2004/113/EC	"On Introducing Changes to Some Legislative Acts of Ukraine (on Harmonisation of the Legislation in the Field of Tackling Discrimination with the European Union Legislation) »
Council Directive 96/34/EC replaced by Council Directive 2010/18/EC)	"On Introducing Changes to Some Legislative Acts of Ukraine to Avoid Gender-Based Discrimination with Regards to Parental Leave"
	"On Introducing Sanctions for the Violation of the Legislation on Parental Leave"
	"On Collective Bargaining Agreements and Collective Contractual Agreements"
Council Directive 92/85/EEC	Draft Labour Code of Ukraine, No. 0955
	"On Collective Bargaining Agreements and Collective Contractual Agreements"
Council Directive 79/7/EEC	On Introducing Changes to the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men"
Council Directive 2000/43/EC	Draft Labour Code of Ukraine, No. 0955, (withdrawn)
	"On Introducing Changes to Some Legislative Acts of Ukraine (Concerned with Employment Rights), No. 5511, registered 8 December 2016
	"On Ratification of the ILO Convention Nr. 181 on Private Employment Agencies"
	"On Introducing Changes to Some Legislative Acts of Ukraine (with Regards to the Harmonisation of Legislation in the Field of Preventing and Tackling Discrimination with the European Union Legislation), No. 3501, registered 20 November 2015
Council Directive 2000/78/EC	"On Introducing Changes to Some Legislative Acts of Ukraine Concerned with the Employment of People with Disabilities, No. 4578, registered 4 May 2016
	"On Social Services", No. 4607, registered on 06 May 2016

social services. The lack of such data does not allow the involved parties to understand the real scope of discrimination experienced by key social groups and draft relevant regulations as required by the anti-discrimination directives. Moreover, the lack of these specific data in the field of labour and employment represents a long-term obstacle for the State Statistics Service of Ukraine and all users of such data, including specialists at the Ministry of Social Policy and NGOs involved in women's issues in the regions. To date, this problem remains unresolved.

Another problem of implementation is that no consultations with the beneficiaries were held at any stage of the implementation process, including women's representatives and other involved groups which conditions are likely to be subject to regulation by the provisions of the relevant directives. The one exception involved representatives of NGOs for people with disabilities.⁵⁴ Therefore, the lack of expertise, data, and consultations with stakeholders resulted in the implementing party having only a narrow vision of the scope of tasks stipulated by practically all the anti-discrimination directives.

A review of the implementation plans for the directives for 2015 and 2017 revealed that some steps suggested by the Ministry of Social Policy as tasks and implementation measures for the directives' provisions were formalised as elaboration of new draft laws and daily activities of the ministry. Of note in this regard are "elaborating a Draft State Programme for Ensuring Equal Rights and Opportunities for Women and Men until 2021" and "holding seminars or training sessions aimed at training and re-training the employees of the authorised body."⁵⁵ Thus, such implementation activities cannot be considered efficient, while the major implementation activity for all of the mentioned directives was legislation drafting. As reported by the Ministry of Social Policy, by October 2017, the end of the implementation timeframe, nine implementation draft laws had been developed and submitted to the Parliament of Ukraine (see Table 1).

Yet, some of these draft laws must still be registered by the Parliament, while others have not even been made public on the website of the Ministry of Social Policy of Ukraine (see Table 2).

⁵⁴ Skoryk M. Gender Discrimination in Employment and Services of the Implementation of EU Directives on Discrimination by the Ministry of Social Policies of Ukraine // Гендерна дискримінація у сфері праці й послуг: оцінка впровадження антидискримінаційних директив Ради ЄС Міністерством соціальної політики України / Київ, 2017, 60 pp.

⁵⁵ Skoryk M. Gender Discrimination in Employment and Services of the Implementation of EU Directives on Discrimination by the Ministry of Social Policies of Ukraine, 2017.

Table 2
Status of Nine Implementation Draft Laws⁵⁶

	Draft Law	Status of the Draft Law		
		Registration in Parliament	State of Parliamentary Review	Publication on Ministry of Social Policy website
1	“On Introducing Changes to Some Legislative Acts of Ukraine (on Harmonisation of the Legislation in the Field of Tackling Discrimination with the European Union Legislation) ”	Registered 20.11.2015, No. 3501	Second hearing pending	Yes
2	“On Introducing Changes to Some Legislative Acts of Ukraine Concerned with the Employment of People with Disabilities”	Registered 04.05. 2016, No. 4578	Review pending (submitted to the parliamentary Committee on 5 August 2016)	Yes
3	“On Introducing Changes to Some Legislative Acts of Ukraine (Concerned with Employment Rights)”	Registered 08.12.2016, No. 5511	Reviewed by the parliamentary Committee	Yes
4	“On Social Services”	Registered 06.05.2016, No. 4607	The Law is adopted on 17 January 2019, No. 2671-VIII 2019 and entered into force (1 January 2020)	Yes
5	Draft Labour Code of Ukraine No. 0955	Withdrawn	–	–
6	On Collective Bargaining Agreements and Collective Contractual Agreements	Not registered		Yes
7	On Ratification of the ILO Convention Nr. 181 on Private Employment Agencies”	Not registered	–	No
8	“On Introducing Changes to Some Legislative Acts of Ukraine to Avoid Gender-Based Discrimination with Regards to Parental Leave”	Not registered	–	No
9	“ On Introducing Sanctions for the Violation of the Legislation on Parental Leave”	Not registered	–	No

2.2. DIRECTIVE PROVISIONS AND THEIR IMPLEMENTATION IN NATIONAL LEGISLATION: SOME IMPLEMENTATION RESULTS

While in some countries signing an association agreement with the EU meant that a “Eurointegration” draft law would almost automatically get a “green light” and be immediately adopted, the situation in Ukraine proved to be somewhat different. The parties charged with implementation relied on legislation for approximating six anti-discrimination directives, but only one of nine implementation draft laws actually became law (see Table 2).

It went unnoticed that some aspects of the implementation measures were not performed, in particular assessments of compliance of the provisions in the national legislation with the provisions of the six directives under implementation related to gender and anti-discrimination. To what extent are national legislation provisions compliant with the directives’ provisions?

The assessment of the legislation compliance varies from

“with minor exceptions, everything has been implemented” – according to state officials, including employees of the Ministry of Social Policy of Ukraine as well as Research Institute for Labour and Employment, which analysed the implementation of the provisions of each single directive into the legislation of Ukraine during 2015–2018 — to much less optimistic results on select gender and legal analysis of compliance in regard to labour and social legislation with the provisions of the abovementioned directives, carried out by the experts of the Coalition “For Labour Equality and Non-Discrimination” in 2018-2019.

Unfortunately, independent analyses on gender were selectively conducted only for three out of six directives and concerned Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC); and Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

⁵⁶ As of June 2019

Table 3

Implementation of the three Anti-Discrimination Directives under the EU-Ukraine AA

EU Directives	Implementing National Legislation	National Legislation Requiring Approximation
<p>Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services</p>	<p>Constitution of Ukraine of 28.06.1996 (Art. 24)</p> <p>Code of Administrative Proceedings of Ukraine, 2005 (Art. 8)</p> <p>Laws of Ukraine: "On the Principles of Preventing and Combating Discrimination in Ukraine" No. 5207-VI of 06.09.2012, (Arts. 1, 6, 9, 13, 14 (2), 15)</p> <p>"On Ensuring Equal Rights and Opportunities for Women and Men" No. 2866-IV of 08.09.2005 (Art. 1, 6, 7, 22, 23);</p> <p>"On Social Services" No. 966-IV of 19.06.2003 (Art. 3 para. 3)</p> <p>"On the Ombudsman of Ukraine" No. 776/97-VR of 23.12.1997 (Art. 13, 16, 22)</p> <p>"On Legal Aid" of No. 3460-VI of 02.06.2011 (Art. 8, 14)</p> <p>"On Local Self-Government in Ukraine" No. 280/97-VR of 21.05.1997 (Art. 38, para.10)</p> <p>Order of the Ministry of Social Policy of Ukraine "On the Regulations on the Expert Council for the Consideration of Complaints on the Facts of Gender Based Discrimination» No. 768 of 18.12.2012</p> <p>Order of the Commissioner on Human Rights of the Verkhovna Rada of Ukraine "On the Expert Council on Non-Discrimination and Gender Equality at the Representative of the Verkhovna Rada of Ukraine on Human Rights, Respect for the Rights of the Child, Non-Discrimination and Gender Equality" No. 11/02-13 of 01.02.2013</p>	<p>As regards gender-based discrimination in accessing goods and services the following Laws have to be brought in line with the EU directive:</p> <p>"On Administrative Services" No. 5203-VI of 06.09.2012</p> <p>"On Housing and Communal Services" No. 2189-VIII of 09.11.2017</p> <p>"On Protection of Consumer Rights" No. 1023-XII of 12.05.1991 (Art. 4, 5, 17, 22, 23, 25 paras. 9-11)</p> <p>"On the Non-State Pension Provision" No. 1057-IV of 09.07.2003</p> <p>"On the Fundamental Principles of State Supervision (Control) in the Field of Economic Activity" No. 877-V of 05.04.2007</p> <p>"On Consumer Lending" No. 1734-VIII of 15.11.2016</p> <p>"On Insurance" No. 85/96-VR of 07.03.1996</p> <p>"On Transport" No. 232/94-VR of 10.11.1994</p> <p>"On Free Legal Aid" No. 3460-VI of 02.06.2011 (Art. 8, 14)</p> <p>"On Local Self-Government in Ukraine" No. 280/97-VR of 21.05.1997</p> <p>"On Local State Administrations" No. 586-XIV of 09.04.1999</p> <p>Code of Civil Proceedings of Ukraine 2004 (Art. 81, Part 2)</p> <p>Code of Administrative Proceedings of Ukraine, 2005</p> <p>Code of Commercial Proceedings of Ukraine, 1991</p> <p>Code of Ukraine on Administrative Offenses, 1984 (Article 173 para.4)</p> <p>Resolution of Cabinet of Ministers of Ukraine "On Ensuring Public Participation in the Formation and Implementation of Public Policy" No. 996 of 03.11.2010</p>
<p>Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security</p>	<p>Constitution of Ukraine of 28.06.1996</p> <p>Laws of Ukraine: "On the Principles of Preventing and Combating Discrimination in Ukraine" No. 5207-VI of 06.09.2012 (Art. 6, 4, 8, 14, 15, 16)</p> <p>"On Ensuring Equal Rights and Opportunities for Women and Men" No. 2866-IV of 08.09.2005 (Art. 1, 4, 20, 24)</p> <p>"Fundamentals of Ukrainian Legislation on Mandatory State Social Insurance" No. 16/98-VR of 14.01.1998 (Art. 1)</p> <p>"On Employment of Population" No. 5067-VI of 05.07.2012 (Art. 4, 9, 3, 7, 8, 9, 10, 23, 28, 26, 33, 115)</p> <p>"On Mandatory State Social Insurance" No. 1105-XIV of 23.09.1999 (Art. 19, 20, 25, 35)</p> <p>"On Mandatory State Social Unemployment Insurance" No. 1533-III of 02.03.2000 (Art. 1, 7)</p> <p>"On State Social Aid to the Persons Not Eligible for Pension and Disabled" No. 1727-IV of 18.05.2004 (Art. 3, 4)</p> <p>"On Social Services" 2671-VIII of 17.01.2019 (Art. 7)</p> <p>"On State Aid to Families with Children" (Art. 1, 10, 12, para. 1, 18 para. 1) No. 2811-XII of 21.11.1992</p> <p>"On Citizens Appeals" No. 393/96-VR of 02.10.1996 (Art. 1, 7, 16)</p> <p>Code of Administrative Proceedings of Ukraine, 2005 (Art. 2, 8)</p>	<p>It is necessary to consolidate the principle of gender equality in special laws regulating certain types of social protection, including Laws of Ukraine:</p> <p>"Fundamentals of Ukrainian Legislation on Mandatory State Social Insurance" No. 16/98-VR of 14.01.1998 "</p> <p>"On Employment of Population" No. 50-67-VI of 05.07.2012</p> <p>"On Mandatory State Pension Insurance" No. 1058-IV of 09.07.2003</p> <p>"On Mandatory State Social Insurance" No. 1105-XIV of 23.09.1999</p> <p>"On Mandatory State Social Unemployment Insurance" No. 1533-III of 02.03.2000</p> <p>"On State Social Aid to the Persons Not Eligible for Pension and Disabled" No. 1727-IV of 18.05.2004</p> <p>"On Social Services" 2671-VIII of 17.01.2019</p>

EU Directives	Implementing National Legislation	National Legislation Requiring Approximation
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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)	Laws of Ukraine: "On Ensuring Equal Rights and Opportunities for Women and Men" No. 2866-IV of 08.09.2005 (Art. 22, 23, 24) "On the Principles of Preventing and Combating Discrimination in Ukraine" No. 5207-VI of 06.09.2012 (Art. 10) "On the Ombudsman of Ukraine" No. 776/97-VR of 23.12.1997 (Art. 13, 16, 22) "On Legal Aid" No. 3460-VI of 02.06.2011 (Art. 8, 14) Labor Code of Ukraine of 1971 (Art. 26, 33, 38, 56, 178 - 186, 224, 228, 232, 235, 265) "On Labour Protection" No. 2694-XII of 14.10.1992 (Art. 10, 14, 17, 43, 44) "On Mandatory State Social Insurance" No. 1105-XIV of 23.09.1999 (Art. 20) "Fundamentals of the Legislation of Ukraine on Health" No. 2801-XII of 19.11.1992 (Art. 31) "On Vocations" No. 504/96-VR of 15.11.1996, (Art. 17, 18, 20) "On State Aid to Families with Children" No. 2811-XII of 21.11.1992 (Art. 3, 4, 5, 7, 8, 9, 10, 11, 12, 23, 24) and some other subordinate legal acts. ⁵⁷	It is necessary to consolidate the principle of gender equality in special laws regulating the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding in: Labor Code of Ukraine of 1971, (Art. 26, 33, 38, 56, 178 - 186, 224, 228, 232, 235, 265) Law of Ukraine "On Labour Protection" No. 2694-XII of 14.10.1992, (Art. 10, 14, 17, 43, 44) Resolution of the Cabinet of Ministers of Ukraine «On Maintaining Average Wages for Pregnant Women during Examination in Specialized Medical Institutions» No. 268:1 of 15.10.1991 Orders of Ministry of Health of Ukraine "On the Approval of the List of Heavy Work and Work with Harmful and Dangerous Working Conditions where the Work of Women is Prohibited" No. 256 of 29.12.93 (repealed, except Chapter 3 "Mining" of Section I); "On the List of Hazardous Factors of the Production Environment and the Work Process at Work Which Require a Preliminary (Periodic) Medical Examination of Employees" No. 246 of 21.05.2007; "On Approving Border Standards for Lifting and Moving Heavy Loads by Women" No. 241 of 10.12.1993

There was no independent assessment of compliance for national legislation related to the provisions of the remaining three directives: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; and Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC;⁵⁸ and, Council 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 (recast),

since the parties of the AA have not chosen the latter as a priority directive for immediate implementation.

As for the compliance assessment of national legislation with the provisions of Council Directive 92/85/EEC, the provisions of only two out of twelve articles and two annexes of Council Directive 92/85/EEC have been fully implemented, that is, Article 8 (Maternity Leave) and Article 10 (Prohibition of Dismissal). This points to an overall low level of protection of the labour rights stipulated by the Directive for women at work. Even this selective gender analysis demonstrates that the scope of non-implemented directives provisions is much broader than that documented in the governmental implementation plans.

⁵⁷ Such as the Resolution of the Cabinet of Ministers of Ukraine „On Approval of the Procedure for Assignment and Payment of State Aid to Families with Children” No. 1751 of 27.12.2001; Regulation on the Expert Council on Combating Gender Discrimination, approved by the Order of the Ministry of Social Policy of Ukraine, No. 345 of 08.06.2012 No. 345, Orders of the Ministry of Health of Ukraine №256 of 29.12.1993 “On Approval of the List of Hard Work and Work with Harmful and Dangerous Working Conditions where Women Work is Prohibited” (repealed, except Chapter 3 “Mining” of Section I); “On Approving Border Standards for Lifting and Moving Heavy Loads by Women” No. 241 of 10.12.1993; „On Approval of the Instruction on the Procedure of Issuing Documents Certifying Temporary Disability of Citizens” No. 455 of 13.11.2001; “On Approval of Forms of Accounting Documents for the Assignment of State Aid for Pregnancy and Childbirth to Women Who Are Uninsured in the Compulsory State Social Insurance Scheme” No. 93 of 18.03.2002.

⁵⁸ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (repealed Council Directive 2010/18/EC of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC).

PART III

OCCUPATIONAL SAFETY AND HEALTH AT WORK: EU DIRECTIVES AND NATIONAL LEGISLATION

Occupational safety and health in Ukraine is a hotly debated issue, especially in industries like mining or construction. According to the State Labour Service, work-related accidents totaled 4,126 in 2018, and of those, 409 were fatal. In 2019 this figure reached 2948 in total,⁵⁹ including 319 fatal accidents.⁶⁰ Indeed, many employers continue to ignore labour legislation and to avoid norms favouring employees. For instance, there is a significant amount of undeclared work in construction and employees working extra hours, with no protective equipment, without safety training and sometimes with no remuneration for their work. Because labourers in the construction sector are often undocumented, injuries and fatal accidents involving them could go unrecorded, carefully hidden from authorities. Such workers might not exist anywhere on paper, while there is no formal registration of their labour relations.⁶¹ Moreover, effective labour inspection is often hindered by national legislation in conflict with ILO standards.

3.1. NATIONAL POLICY AND LEGAL FRAMEWORK ON OSH

Pursuant to Article 43 of the Constitution of Ukraine national policy on occupational safety is formulated by the Parliament of Ukraine (the Verkhovna Rada), which is called to provide proper, safe and healthy working conditions thus preventing accidents at work and occupational diseases. The government of Ukraine (the Cabinet of Ministers) is charged with executing the state labour protection policies.

In 2013 the State National Programme on Improving Safety, Occupational Health and the Working Environment for the

Years 2014–2018 was adopted.⁶² The aim of the Programme was to provide comprehensive approaches to labour protection, to ensure a safe and healthy working environment, and to minimize the risks of occupational injuries, diseases and accidents at work. The programme recognizes the necessity of increasing the effectiveness of public health and safety management, in particular by adapting the normative-legal framework on labour protections in line with EU requirements; improving the system of state oversight (i.e., inspection) and public oversight of compliance with national health and safety legislation; optimisation of structural health and safety units of central and local executive authorities and local self-governments.

Provisions on occupational health and safety are contained in the Labour Code of Ukraine of 1971 along with the Law of Ukraine “On Labour Protection” No. 2694-XII of 1992,⁶³ “On Mandatory State Social Insurance” No. 1105-XIV of 1999,⁶⁴ and other laws and regulatory acts adopted pursuant thereof, international conventions and agreements ratified by Ukraine, decrees and orders of the President of Ukraine, government resolutions as well as in numerous regulations of ministries and other central state executive authorities.⁶⁵

⁵⁹ As of October 2019.

⁶⁰ Statistics provided by the State Labour Service of Ukraine: <http://dsp.gov.ua/statystichni-dani-vyrobnychoho-travma-2/> (last accessed 18 September 2019)

⁶¹ See Aleksei Arunyan, “Building on Bones: Working Undercover on Ukraine’s Deadly Building Sites,” Open Democracy, 18 June 2019, <https://www.opendemocracy.net/en/odr/undercover-on-ukraines-deadly-building-sites/> (accessed 19 September).

⁶² Law of Ukraine “On the Approval of the State National Programme on Improving Safety, Occupational Health and Working Environment for the Years 2014-2018” No. 178-VII of 04.04.2013 (Vidomosti Verkhovnoyi Rady (VVR), 2014, No. 10, p. 112).

⁶³ Law of Ukraine “On Labour Protection” No. 2694-XII of 14.10.1992 (Vidomosti Verkhovnoyi Rady (VVR), 1992, No. 49, p. 668).

⁶⁴ Law of Ukraine “On Mandatory State Social Insurance” No. 1105-XIV of 23.09.1999 (Vidomosti Verkhovnoyi Rady (VVR), 1999, No. 46-47, p. 403).

⁶⁵ These include for example the Laws of Ukraine “On Radioactive Waste Handling” No. 255/95 of 30.06.1996; Law “On the Protection of People from Ionizing Radiation” No. 15 of 14.01.1998; Law “On the Prevention of AIDS and Social Protection of the Population” No. 1972-12 of 12.12.1991; Law “On Consumers’ Rights Protection” No. 1023 of 12.05.1991; Decree of the Cabinet of Ministers of Ukraine “On the Adoption of the National Programme for the Improvement of Occupation Safety and Health in Industry for 2001-2005” No. 1320 of 10.10.2001; Order of the Cabinet of Ministers of Ukraine “On Regulations Related to the Procedure for Imposing Fines on Enterprises, Institutions and Organizations in the Event of Violations of Occupational Safety Normative Standards” No. 754 of 17.09.1993 and others.

Today, Ukraine has more than a hundred national laws and more than two thousand subordinate legal acts (bylaws) in force concerning the regulation of specific issues pursuant to the Law “On Labour Protection” of 1992 and that deal with OSH as well as working conditions more generally.⁶⁶

3.2. INTERNATIONAL INSTRUMENTS AND NATIONAL LEGISLATION CONFORMITY: ILO STANDARDS AND EU DIRECTIVES

Up to this time, Ukraine has ratified a total of 71 ILO conventions that directly or indirectly deal with OSH issues, including the Radiation Protection Convention, 1960 (No. 115); the Hygiene (Commerce and Offices) Convention, 1964 (No. 120); the Occupational Cancer Convention, 1974 (No. 139); the Occupational Safety and Health Convention, 1981 (No. 155); the Occupational Health Services Convention, 1985 (No. 161); the Prevention of Major Industrial Accidents Convention, 1993 (No. 174); Safety and Health in Mines Convention, 1995 (No. 176); the Safety and Health in Agriculture Convention, 2001 (No. 184) as well as other ILO conventions related to OSH issues.⁶⁷

At the same time, Ukraine has not ratified such important ILO conventions in the area of OSH as the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148); the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152); the Asbestos Convention, 1986 (No. 162); the Safety and Health in Construction Convention, 1988 (No. 167); the Chemicals Convention, 1990 (No. 170), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

Provisions of the ILO conventions on OSH ratified by Ukraine are reflected in national legislation to varying extents, ranging from relatively full or partial conformity to poor conformity or conflicting norms.

The obligation of Ukraine to gradually approximate its national legislation on occupational health and safety to that

⁶⁶ ILO, National Occupational Safety and Health Profile: Ukraine, June 2018, p. 18 https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/meetingdocument/wcms_627038.pdf

⁶⁷ Ukraine has also ratified: the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16); the Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124); the Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27); the Underground Work (Women) Convention, 1935 (No. 45); the Medical Examination (Seafarers) Convention, 1946 (No. 73); the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77); the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78); the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79); the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90); the Medical Examination (Fishermen) Convention, 1959 (No. 113); and, the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).

of the EU is explicitly stipulated by the EU-Ukraine AA.⁶⁸ Articles 419-425, Chapter 21 (Cooperation on Employment, Social Policy and Equal Opportunities), Title V (Economic and Sector Cooperation) of the Agreement include the provisions regarding OSH issues as well as hygiene at work. Annex XL to Chapter 21 of the AA lists the EU OSH directives to which national legislation of Ukraine has to be approximated within stipulated timeframes ranging from two to ten years. These include the OSH Framework Directive (Directive 89/391/EEC of 12 June 1989) as well individual directives, supplementing it and containing provisions on specific tasks, workplaces and sectors, work-related aspects (e.g. the organization of working time), hazards at work (e.g. the exposure to dangerous substances or physical agents) and specific groups of workers (e.g. pregnant women, young workers etc.).

Annex XL foresees the implementation of twenty-nine EU directives, twenty-seven of which have established implementation timetables providing for a considerable portion of EU regulatory acts, including those concerning OSH, to be implemented in Ukrainian legislation.

During the last few years, Ukraine adopted implementation plans for the following EU OSH directives: Directive 90/270/EEC on display screen equipment,⁶⁹ Directive 92/91/EEC on mineral-extracting industries/drilling,⁷⁰ Directive 92/104/EEC on mineral-extracting industries,⁷¹ Directive 92/57/EEC on temporary or mobile construction sites⁷² and Directive 2009/104/EC on the use of work equipment.⁷³

However, many technical regulations on OSH in Ukraine were adopted during the Soviet era and amount to more than two thousand normative acts, which are often duplicative. To approximate the sheer number of normative legal

⁶⁸ Article 424 of the AA states: “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.”

⁶⁹ Council Directive 90/270/EEC on display screen equipment of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (Fifth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ 1990 L 156/14.

⁷⁰ Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (Eleventh individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ 1992 L 348/9.

⁷¹ Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (Twelfth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ 1992 L 404/10.

⁷² Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (Eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ 1992 L 245/6.

⁷³ Directive 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 (second individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ 2009 L 260/5.

acts to the EU acquis requires thorough examination of legislation by experts in the field, provided adequate institutional capacity exists.

3.2.1. OSH Framework Directive

As stipulated by the EU — Ukraine AA, the provisions of Council Directive 89/391/EEC of 12 June 1989 — OSH Framework Directive —, shall be implemented within three years of the entry into force of the Agreement.⁷⁴ To date, the requirements of the OSH Framework Directive have been considered in a number of national legislative acts,⁷⁵ albeit only to a certain extent, as reflected in Table 4.

In sum, it is estimated that around 73 per cent of the provisions of the OSH Framework Directive are not provided for in Ukrainian national legislation, whereas only about 24 per cent of the directive provisions are partially implemented. In particular, there is rather low conformity regarding employers' general obligations to take the measures necessary for the workers' safety and health, including prevention of occupational risks and provision of information and training as well as necessary organization and means in regard to labour protection (Article 6, para. 1, Directive 91/383/EEC); partial conformity as regards protective and preventive services (Article 7); employers' obligations as regards protective measures and protective equipment, keeping record of occupational accidents and reporting to the responsible authorities (Article 9, para. 1 (b), (c), (d)); the right of workers to leave their workstation in the event of serious danger (Article 8, para. 4).

Furthermore, the following provisions of the OSH Framework Directive are generally reflected in national legislation: Article 10 (worker information), Article 11 (consultation and participation of workers), Article 12 (training of workers) and Article 14 (health surveillance of workers).

Some of the provisions of Directive 91/383/EEC are only partially considered in national legislation or contain contradictory provisions in domestic legal acts. These include Article 13, on workers' obligations, and Article 8, para. 2, on the obligation of employers to designate workers for first aid, firefighting and the evacuation of workers.

⁷⁴ Annex XL to Chapter 21 of the EU — Ukraine AA of 2014.

⁷⁵ Other normative legal acts that reflect some of the provisions of the OSH Framework Directive include: the Procedure of Investigation and Registration of Accidents, Occupational Diseases and Emergency at Work, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1232 of 30 November 2011; the General Requirements on Securing Workers' Labour Protection by Employers, approved by the Ministry of Emergencies of Ukraine, Order No. 67 of 25 January 2012; the Model Regulation on Labour Protection Service, approved by the Order of the State Committee of Ukraine on Labour Protection Supervision, No. 255 of 15 November 2004; the Model Regulations on the Procedure for Conducting Training and Knowledge Examination of Labour Protection Issues and the List of High-Risk Jobs, approved by the Order of the State Committee of Ukraine on Labour Protection Supervision No. 15 of 26 January 2005; the Procedure on Medical Examination of Certain Categories of Workers, approved by the Order Ministry of Health of Ukraine No. 246 of 21 May 2007.

Certain requirements of the OSH Framework Directive are not reflected in Ukrainian domestic legislation, such as those on general principles of prevention (Article 6, para.2), on cooperation and action coordination by employers in implementing OSH provisions, where several establishments share a workplace (Article 6, para. 4); on employers' obligation to refrain from asking workers to resume work under serious and imminent danger (Article 8, para. 3); and employers' obligations to provide information on safety and health risks to workers from any outside establishments (Article 10, para. 2).

Moreover, the current Ukrainian OSH legal framework is contradictory in regard to such provisions of EU Directive 89/391/EEC as Article 4 (1), (2), Article 8 (3) (b), (c) Article 13 (1) and Article 15 (1).⁷⁶

3.2.2. Individual EU OSH Directives

Concerning the requirements of individual EU directives on OSH, there is a relatively high conformity of national legislation to the provisions of Directive 89/654/EEC on workplace requirements, Directive 89/656/EEC on the use of personal protective equipment, Directive 92/57/EEC on temporary or mobile construction sites, Directive 2009/148/EC on exposure to asbestos at work, Directive 98/24/EC on risks related to chemical agents at work, Directive 2004/37/EC on carcinogens or mutagens at work, Directive 93/103/EC on work on board fishing vessels, Directive 90/269/EEC on manual handling of loads and Directive 2013/35/EU, on electromagnetic fields.

At the same time, only partially reflected in national legislation are the requirements of Directive 2009/104/EC on the use of work equipment, Directive 90/270/EEC on display screen equipment, Directive 91/322/EEC on indicative limits values, Directive 92/58/EEC on safety and health signs, Directive 99/92/EC on risks from explosive atmospheres, Directive 92/104/EEC on mineral extracting industries and Directive 92/91/EEC on mineral-extracting industries/drilling are.

There is a low degree of conformity or inconsistencies in national legislation as regards the requirements of Directive 2002/44/EC on vibration, Directive 2003/10/EC on noise, Directive 2000/54/EC on biological agents at work, Directive 2006/25/EC on artificial optical radiation and Directive 92/29/EEC on medical treatment on board vessels.

⁷⁶ ILO, Стилі нотатки з основних аспектів узгодженості між українським національним законодавством і вибраними директивами ЄС //Brief notes on the main aspects of coherence between Ukrainian national legislation and selected EU directives], Working Paper, 24 May 2018, p. 19, https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/meetingdocument/wcms_633190.pdf.

Table 4
OSH Framework Directive 89/391/EEC and National Legislation Conformity

Articles of Directive 89/391/EEC	Implementing National Legislation	Level of Conformity
Art. 2 Scope	National legislation does not cover the broad scope of Art. 2 (1) of the Directive, that shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.) National provisions should cover those engaged in undocumented and undeclared work. ⁷⁷	Low conformity
Art. 3 Definitions	The Law of Ukraine "On Labour Protection" No. 2694-XII of 1992 contains definitions of "worker", "employer" and "the prevention of occupational risks"	General conformity
	Definition of "worker" is inconsistent with the Directive (any person employed by an employer, including trainees and apprentices but excluding domestic servants).	Low conformity
Art. 4	National provisions stipulating obligations of employers as regards specific workers (e.g. employees engaged in high-risk facilities) or specific sectors (private sector, specific industries, etc.) conflict with directive Art. 4 (1), while the provisions of the Directive shall concern all workers, including those working informally as well as all employers and all types areas of economic activity.	Contradictory provisions
	Obligation of states to ensure adequate control and supervision stipulated by Art. 4 (2) is not implemented in Ukraine because of restrictions and limitations as regards the activities and powers of labour inspectors. ⁷⁸	Contradictory provisions
Art. 5 Employers' obligations (General provision)	Labour Code of Ukraine, 1971, contains general provisions on employers' obligations to ensure safe and healthy working conditions at enterprises (Art. 153); to improve working conditions through the introduction of advanced technologies, reduction and elimination of dust and air pollution in production premises, reduction of noise, vibration, ionizing radiation, etc. (Art. 158).	General conformity
	No legislation foreseen stipulating that the responsibility of the employer to ensure the safety and health protection of employees in all aspects related to work cannot be transferred to other persons.	Low conformity
Art. 6 General obligations on employers	Art. 6 (1), (2) of the Directive is not reflected in national legislation as regards employers' obligation to take the measures necessary for the safety and health protection of workers, including prevention of occupational risks as well as general principles of prevention.	Low conformity
	Ukraine's legislation does not contain the provisions envisaged in Art. 6 (3) (a–e): employers' obligation on risks evaluation, consideration the worker's capabilities as regards health and safety when entrusting particular work; planning and introduction of new technologies; access to areas where there is serious and specific danger.	Low conformity
	No consideration given to Art. 6 (4): cooperation and coordination by employers, where several undertakings share a workplace, in implementing safety, health and occupational hygiene provisions, and the protection and prevention of occupational risks.	Low conformity
Art. 7 Protective and preventive services	Art. 8 of the Law "On Labour Protection" No. 2694-XII, 1992, on employers' obligation to provide workers with individual protective equipment, as well as taking measures necessary for the safety and health protection of workers; Art. 13, obligations of employers on safety management.	General conformity
	Para 2.1. of the General Requirements on Securing Workers' Labour Protection by Employers of 2012 ⁷⁹ stipulates the obligation of employers to secure healthy and safe working conditions for workers at an enterprise, albeit national provisions shall envisage protective and preventive services not only for occupational health services but also for hygiene services; designated employees cannot be disadvantaged; they should have sufficient time; possibility of involvement of third-party services in the absence of competent personnel; informing risk providers; the necessary means; cooperation between employees, employer and service providers; requirements for the number, qualifications, abilities, personal and professional qualities of the assigned employees and third-party service providers.	Partial conformity

⁷⁷ See ILO Employment Relationship Recommendation, 2006 (No. 198)

⁷⁸ Such restrictions are stipulated by the Law of Ukraine „On Basic Principles of State Supervision (Control) in the Field of Economic Activity“ No. 877-V of 5 April 2007; the Procedure for Exercising State Control over the Observance of Labour Law, approved by Cabinet of Ministers Resolution No. 295 of 26 April 2017); and, the Law on Temporary Issues of Implementing State Supervision (Control) Measures in the Field of Economic Activity No. 1728- VIII of 3 November 2016 which introduced moratoriums for inspection activities.

⁷⁹ Order of the Ministry of Emergencies of Ukraine "On the Approval of the General Requirements on Securing Workers' Labour Protection by Employers" No. 67 of 25.01.2012 (Ofizijnyi Visnyk Ukrainy, 2012, No. 19, p. 37, para. 716).

Articles of Directive 89/391/EEC	Implementing National Legislation	Level of Conformity
Art. 8 First aid, fire-fighting and evacuation of workers, serious and imminent danger	Art. 8 (4) of the Directive, which allows workers to leave their workstation in the event of serious danger, is reflected in Article 6, part. 2 and 3 of the Law "On Labour Protection" No. 2694-XII of 1992; Article 20, para. 4 of the Code of the Civil Protection of Ukraine of 2012 contains the requirements for employers to organize the evacuation of workers in case of emergencies. ⁸⁰	General conformity
	Art. 8 (2) of the Directive on the employers' obligation to designate workers for first aid, firefighting and the evacuation of workers is reflected in national legislation to the extent that this obligation is only imposed on the management of a special category of enterprises that are exposed to the risks of fire or explosion.	Partial conformity
	Not foreseen in national legislation is Art. 8 (3) (c) of the Directive on employers' obligation to "refrain from asking workers to resume work in a working situation where there is still a serious and imminent danger."	Low conformity
	National legislation contradicts Arts. 8 (3) (b), (c), 8 (4) and 8 (5) of the Directive. Employees should be entitled (and not obliged) to intervene in the absence of a direct supervisor (see Art. 8 (5)); these actions should not lead to any adverse effect on them unless their actions were not reckless or negligent.	Contradictory provisions
Art. 9 Various obligations on employers	Not foreseen in national legislation are the provisions of the Directive on possession of risk assessment; determining the precautionary measures to be taken and the necessary remedies; accident recording and reporting.	Low conformity
Art. 10 Worker information	Article 10 (3) of the Directive on the access of workers with specific functions to risk assessment and protective measures is generally considered in Law "On Labour Protection" No. 2694-XII, 1992, Art. 41 on public control over the observance of labour protection legislation by professional unions and associations through their elected officials and representatives and Art. 42 as regards the right of workers' representatives on labour protection to oversee the fulfilment of labour protection legislation requirements at enterprises and to submit proposals to the employers for the rectification of violations of labour protection legislation.	General conformity
	No foreseen legislation on directive Art. 10 (2): obligation of employers to take appropriate measures to provide adequate information concerning certain safety and health risks to workers from any outside undertakings and/or establishments engaged in work at his undertaking.	Low conformity
Art. 11 Consultation and participation of workers	Art.11 of the Directive on employers' obligation to consult workers and allow them to take part in discussions on issues relating to safety and health at work is partially reflected in Arts. 12 and 13 of the Law "On Labour Protection" No. 2694-XII of 1992.	Partial conformity
Art. 12 Training of workers	Art. 12 of the Directive is partially considered in Art. 18 of the Law "On Labour Protection" No. 2694-XII of 1992.	Partial conformity
	Not foreseen in national legislation is the obligation of an employer to adapt workers' training taking into account new or changed risks.	Low conformity
Art. 13 Workers' obligations	Art.13 of the Directive on workers' obligations is partially reflected in Art. 14 of the Law "On Labour Protection" No. 2694-XII of 1992. However, it is not consistent with the respective provisions of the Directive.	Partial conformity
	National legislation contradicts the provision of Art. 13 (1) of the Directive, while national law imposes such duties on workers as "to monitor the safe working place"; "to take personal steps to remedy any industrial situation which creates a threat" that goes far beyond the requirements of the Directive.	Contradictory provisions
Art. 14 Health surveillance	Art. 14 of the Directive is generally reflected in Art.17 of Law "On Labour Protection" No. 2694-XII of 1992 as for mandatory medical examinations of certain categories of workers at the employer's cost.	General conformity
	National legislation provides for medical examinations on recruitment and periodic medical examinations only for workers engaged in heavy work, work with harmful or dangerous working conditions or those in need of professional selection, and persons under 21 years of age.	Partial conformity

⁸⁰ Code of Civil Protection of Ukraine, Law No. 5403-VI of 02.10.2012 (Vidomosti Verkhovnoyi Rady (VVR), 2013, No. 34-35, p. 458).

Articles of Directive 89/391/EEC	Implementing National Legislation	Level of Conformity
Art. 15 Risk groups	Provisions of national legislation (Art. 10 of the Law "On Labour Protection, 1992; Art. 174 of the Labour Code of Ukraine, 1972, as regards the types of work from which women's labour is prohibited, and Art. 175, regarding restriction of women's labour at night, contradict the Directive, because any specific preventive or protective measures directed at a particular gender should take place only in cases where a specific situation related to gender characteristics (e.g. pregnancy) may objectively justify discrimination by one gender against another. ⁸¹	Contradictory provisions
Art. 16	No legislation fully extends to the areas covered by specific OSH directives (such as work areas, screen work, manual handling of goods, temporary or mobile construction sites, fishing vessels, agriculture). ⁸²	Low conformity

At the moment, the approximation of national legislation to the EU standards on OSH is being done according to the Action Plan for Implementation of the Technical Regulation System Development Strategy until 2020⁸³ and the Action Plan for Implementation of the EU-Ukraine Association Agreement.⁸⁴ Meanwhile, it is necessary to identify the EU provisions that are already fully complied with, those partially in compliance (and thus require additional attention), those not provided (and therefore need to be legislated in full) and those that contradict EU law (and, as such, need to be amended or repealed).⁸⁵

Some provisions of EU directives have been introduced to national legislation by means of approval of technical regu-

lations and regulatory legal acts on OSH. Also, some draft regulatory acts adapted to the provisions of EU directives are being prepared for approval by the central executive agencies responsible for state policymaking in the field of OSH.⁸⁶

In general, the process of approximation to EU acquis covers only the regulatory legal acts developed under the respective approximation plans. Other current regulatory acts laying down OSH requirements are actually outside the scope of the approximation process and only formally undergo legal expert examination for compliance with EU acquis if reviewed. At present, the level of approximation of the Ukrainian OSH legislation with the provisions of the EU OSH directives is still too low.

⁸¹ ILO, Стислі нотатки з основних аспектів узгодженості між українським національним законодавством і вибраними директивами ЄС [Brief notes on the main aspects of coherence between Ukrainian national legislation and selected EU directives], Working Paper, 24 May 2018, p. 19, https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/meetingdocument/wcms_633190.pdf.

⁸² Ibid.

⁸³ Approved by the Order of the Cabinet of Ministers of Ukraine No. 844 from 19.08.2015.

⁸⁴ Approved by the Order of the Cabinet of Ministers of Ukraine No. 1106 from 25.10.2017.

⁸⁵ ILO, Стислі нотатки з основних аспектів узгодженості між українським національним законодавством і вибраними директивами ЄС [Brief notes on the main aspects of coherence between Ukrainian national legislation and selected EU directives], Working paper of 24 May 2018, https://www.ilo.org/budapest/what-we-do/projects/enhancing-labadmin-ukraine/events/WCMS_633190/lang--en/index.htm.

⁸⁶ Ibid.

CONCLUSIONS AND RECOMMENDATIONS

In recent years, the approximation of Ukraine's national legislation to EU *acquis* has gained increasing attention due to the country's movement toward closer integration with the European Union.

Yet, implementation of EU *acquis* in national legislation on social issues poses a problem, while a number of standards have not been adapted to EU requirements. There is also a lack of direct enforceability of international treaties in Ukraine's national legal order. In fact, the necessity to apply binding decisions of institutions established under the framework of an international agreement, as in the case of the Association Council envisaged by the EU-Ukraine Association Agreement, had not previously been known in the country. Therefore, it is crucial that a special implementation law for the application of the EU-Ukraine AA is adopted. Furthermore, "Euro-friendly interpretation" of national legislation in light of EU law is also essential for the effective implementation of the Association Agreement.⁸⁷

Based on the analysis of national legislation provisions as regards their conformity to EU directives in pursuance to the obligation of Ukraine under the EU-Ukraine AA, the following issues can be observed in three different areas under consideration:

1. LABOUR LAW

The main hindrances in the area of labour in Ukraine include the outdated, often *de facto* not applicable legislation; lack of flexibility in current labour legislation; high numbers of illegal or undeclared workforce; lack of legal regulation of new forms of employment (such as home work, distance work etc.). These all leave workers outside the scope of employment relations.

Although the Labour Code adopted in 1971 has undergone numerous amendments in recent years, its provisions concerning equality at work, and especially OSH, remain largely outdated. In fact, the technical regulations on OSH in Ukraine, many of them adopted during the Soviet era, con-

sist of more than two thousand bylaws and more than a hundred laws, many of them duplicative.

There are several EU directives in the area of non-standard employment, among them Council Directive 97/81/EC of 15 December 1997 on part-time work, Council Directive 1999/70/EU of 28 June 1999 on fixed-term work, as well as Council Directive 2008/104/EC of 19 November 2008 on temporary employment agencies. Ukraine has not, however, implemented respective EU directives and has not ratified ILO instruments in this area. Nevertheless, at the current stage in the development of post-industrial society — with the rapid spread of information technology, processes of globalisation and European integration — Ukrainian legislators will sooner or later be forced to agree on appropriate ways to increase flexibility in the labour market, including legal regulation of new forms of work organization.⁸⁸

Thus, the approximation of national legislation to the EU *acquis* in the area of labour under the Association Agreement is vital for tackling the above-mentioned problems. This obligation requires Ukraine to not only develop and adopt implementing normative instruments, but also to carry out related reforms. Due to the rapid development of new forms of employment relations, there is a crucial need for a more flexible approach to the regulation of labour relations in Ukraine's domestic legislation in line with EU law.

In the process of European integration, reforming national labour legislation must be aimed at compliance with international and European labour standards not only in law, but also in practice; strengthening labour inspection institution in the country; reducing illegal employment; ensuring decent work and fair pay for all workers without discrimination; and avoiding deterioration of internationally recognized workers' rights. In any case, the consistent application of ILO Conventions and EU directives in the labour arena by domestic courts should prompt the efficient implementation of the EU-Ukraine Association Agreement and prevent the deterioration of the workers' rights.

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⁸⁸ Simutina, Yana "Current Challenges of the Labour Law of Ukraine: On the Way to European Integration": <https://doi.org/10.12697/JI.2018.27.09>

⁸⁷ Van der Loo, G., P. Van Elsuwege and R. Petrov, 2014, pp. 24, 25.

2. ANTI-DISCRIMINATION AND GENDER EQUALITY

The first seven anti-discrimination directives identified by the EU-Ukraine Association Agreement concern equality of access to labour and social security, and five of them — Nos. 92/85 / EEC, 96/34 / EC, 2004/113 / EC, 79/7/EEC and 2006/54/EC — directly regulate gender equality issues in regard to the safety and health of pregnant workers, childbirth or nursing workers, parental leave, access to and supplies of goods and services as well as social security and employment. Thus, equally favorable conditions for access to services for women and men in Ukraine are a vital requirement and integral part of the AA's implementation.

The legislative path was chosen as Ukraine's main route towards implementation of EU directives, and the number of implementing laws was selected as the main indicator. Despite this, whether the country has implemented EU directives should be statistically or sociologically documented through changes in the actual state of affairs, not just the number of laws or regulations developed.

One of the main obstacles to the implementation of gender equality standards in Ukraine is the persistent belief that gender equality had been achieved under the communist regime while factual analysis shows this not to be the case. Labour laws inherited from the Soviet era still contain a number of rules that directly discriminate against women. In cases of pregnancy or the birth of a child, legislation motivated female employees to quit working rather than requiring suitable working conditions for her to remain in the workplace.

The large number of standards for indirect discrimination on the basis of gender suggests disappointing statistics on the access of women and girls to work and social welfare services. Despite the current legal guarantees that would provide women equal opportunities and wages with men, Ukraine stands among countries with a high level of gender differentiation. Equal access for men and women to paid work, and the equal opportunity to combine family responsibilities with work for women in Ukraine remains unattainable.

The situation of gender equality in the area of social security and social services is even more complex in terms of implementation. There are a large number of standards on indirect discrimination based on gender related issues, as indicated by the huge number of consumer complaints. These situations have not yet been studied, and therefore lack legal regulation. The implementation of Directives 79/7/EEC on the gradual implementation of the principle of equal treatment for men and women in matters of social security, and Directive 2004/113/EC on the implementation of the principle of equal treatment for men and women as regards access to and supply of goods and services faces a large number of cases of discrimination on the

basis of sex and other attributes in the service sector (in particular, limited physical and mental capabilities, language and age). These issues are neglected as regards their regulation in legislation.

The legislature chose the easiest path in the absence of existing anti-discrimination provisions in social security legislation that could be harmonized with EU standards, in the absence of mechanisms for recognizing and fixing indirect discrimination in these areas, and lack of segmented statistics and administrative data. It simply claimed that the related provisions of these implementation directives were not needed. To the contrary, the mechanisms of legal regulation in this area obviously must be strengthened, and industry itself needs critical examination of gender and statistical data to help develop the relevant legal framework.

Lastly, Ukraine, as well as some other countries of the former Soviet Union, generally have had low levels of implementing international standards, even if they were formally brought into line with EU directives and ILO conventions. This applies to both long-standing and newly adopted anti-discrimination legislation. This problem needs to be addressed by strengthening and funding responsible institutions, conducting information campaigns highlighting the provisions of the newly adopted legislation and creating gender justice precedents through domestic judiciary.

3. OCCUPATIONAL SAFETY AND HEALTH

Ukraine is gradually improving its regulatory legal acts on OSH and progressively aligning them with the requirements of the ILO conventions and EU directives. The process, however, is slow and sometimes inconsistent. Thus, national legislation lacks a comprehensive legal act that would set minimum requirements for health and safety at work, which is not in line with Directive 89/391/EEC. In addition, there is no comprehensive national legal act on work equipment and its use although several regulations cover the issue. Amendments to current national legislation are required to bring them in line with the requirements of the OSH Framework Directive.

Where there is conformity with EU OSH standards, it appears to be mostly formal, with the national laws containing overly general formulations compared to the detailed requirements of the EU directives. Therefore, it would be necessary to adopt uniform national laws and regulations fully addressing all the issues envisaged in the OSH Framework Directive and drafted in line with other individual EU directives in the field.

To facilitate the approximation process of national legislation involving OSH, a Ukrainian national strategy for the promotion of safety and health at work needs to be formulated. This strategy should guide efforts for developing a

nationwide system for the promotion of OSH, establishing objectives, indicators and targets to be attained.⁸⁹

The approximation process should also be based on an approximation road map identifying the international and European standards with which national legislation will be aligned and those national regulations to be amended, repealed or approved. In addition, such road map should provide guidance on priorities, identify the officials and authorities in charge of the approximation of legislation and define the various phases of the process and respective deadlines.

For the efficient implementation of the EU acquis on OSH it is highly recommended that the approximation process be conducted in particular stages. An assessment of the approximation process undertaken by ILO in Ukraine suggests the following:

- In the first stage of approximation, the transposition of the EU OSH Framework Directive 89/391/EEC should be ensured, because it is the “umbrella directive” establishing the OSH architecture according to which other specific individual directives are adopted and defining the main building blocks of the EU OSH legal framework.⁹⁰ The OSH Framework Directive stipulates the general provisions applicable to all employers (for all economic activities in the public and private sectors), to all types of workers and workplaces, to all aspects of work, and to exposure to all types of risks without prejudice to more stringent or specific provisions contained in other individual directives.
- The second stage should involve the transposition of directives that concern all types of workers and industries, such as Directive No. 89/654/EEC on the minimum safety and health requirements for the workplace; Directive No. 2009/104/EC on the minimum safety and health requirements for the use of work equipment by workers at work; Directive No. 89/656/EEC on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace; and Directive No. 2003/88/EC concerning certain aspects of the organization of working time and other individual directives in this area.
- The third stage of the approximation process should focus on the transposition of individual directives concerning specific types of workers, exposure to specific risks, and risks arising from work in specific sectors of activity. It is also important that for each EU directive to be transposed into national legislation there is only one legal act, to avoid duplication and inconsistency.

Finally, to improve the OSH situation, Ukraine must also facilitate the preparation of the ratification process of ILO Conventions Nos. 121, 152, 167 and 187 as well as giving priority to further implementation of ILO Conventions Nos. 81 and 129, with a view towards enhancing the effectiveness of the labour inspection system and ensuring compliance with international and EU standards.

⁸⁹ ILO, Стислі нотатки з основних аспектів узгодженості між українським національним законодавством і вибраними директивами ЄС // Brief notes on the main aspects of coherence between Ukrainian national legislation and selected EU directives, Working paper from 24 May 2018: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/meetingdocument/wcms_633190.pdf

⁹⁰ ILO, Стислі нотатки з основних аспектів узгодженості між українським національним законодавством і вибраними директивами ЄС // Brief notes on the main aspects of coherence between Ukrainian national legislation and selected EU directives, Working paper from 24 May 2018, available at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/meetingdocument/wcms_633190.pdf

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LIST OF ABBREVIATIONS

AA	Association Agreement
CEEP	European Centre of Employers and Enterprises
CSP	Civil Society Platform
EC	European Commission
EEC	European Economic Community
EESC	European Economic and Social Committee (EESC)
ETUC	European Trade Union Confederation
EU	European Union
ILO	International Labour Organization
OSH	Occupational Safety and Health
PCA	Partnership and Cooperation Agreement
UNICE	Union of Industrial and Employers' Confederations of Europe

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IMPLEMENTATION OF THE EU-UKRAINE ASSOCIATION AGREEMENT:

Labour Law, Gender Equality and Occupational Safety and Health



The signing of the EU-Ukraine Association Agreement in 2014 marked a new era in legal relations between Ukraine and the European Union. Ukraine has now the obligation to gradually approximate its national legislation with EU directives in the areas of labour law, anti-discrimination and gender equality and occupational safety and health. However, the social aspects of the Agreement are rarely addressed by the stakeholders and the monitoring of its implementation has been rather poor.



The implementation of the EU acquis in domestic legislation also lags behind, while a number of standards have not been adapted to EU requirements. Although Ukraine's Labour Code of 1971 has undergone numerous amendments in recent years, a number of its provisions remains largely outdated. The adoption of a much-debated new labour code is pending. Meanwhile, Ukraine has a high degree of gender differentiation. According to the 2018 gender gap index, Ukraine ranked 65th out of 149 countries. The provisions of the seven anti-discrimination EU directives have not been efficiently implemented yet.



The prevalence of undeclared work in Ukraine and disregard for international and EU labour standards have resulted in a high number of work-related accidents, especially in mining and construction. During 2019, there were 2,948 work-related accidents documented across the country, 319 of them with fatal consequences. In addition, a weak labour inspection, which is legally restricted in Ukraine as for the right to freely conduct inspections in pursuance of the ILO Convention No. 81, hinders effective implementation of the Association Agreement.