



ANTÓNIO SANTOS, Manager of the EU-ILO Project “Towards safe, healthy and declared work in Ukraine”:

” *We have done a lot to support national partners, and Ukraine should do its part!*”

During 18 months of implementation of the [EU-ILO Project “Towards safe, healthy and declared work in Ukraine”](#), a great amount of work has been done for the reform of the occupational safety and health legal framework and to bring it closer to the International and European Labour Standards. Here’s how António Santos, the Project Manager, assesses its results, what hinders the reform, what can be expected from the transitional period, and why it is so important to launch the mechanism of changes as soon as today.

– **Emil Krstanovski, the EU-ILO Project internal evaluator, visited Kyiv in July. Interim findings by the evaluator and the Project partners are quite favourable. António, in your opinion, what is the greatest achievement of the Project you are leading?**

– There are very obvious changes in the way our Ukrainian partners see and understand occupational safety and health (**OSH**) and in what this concept means

to them. In the context of the Ukrainian OSH legislation’s approximation to the international standards and EU acquis, one can observe a shift in the paradigm, mentality and understanding of what the approaches to OSH should be like. Large-scale realization of the need to shift from a reactive to proactive approach based on preventive measures and on assessment and control of risks for workers is going on. Such a “tectonic shift” in consciousness is of paramount importance, as it’s a precondition for practical actions.

It’s a great pleasure to me to hear from the politicians, legislation drafters, specialists and social partners the messages that I’ve repeated during the recent years and that they are now starting to transmit from themselves because the messages have become their own beliefs. It means that my messages have been heard, realized, accepted and are becoming part of the social partners’ thinking, and their stance. ***The level of the Ukrainian specialists’ knowledge of the international and European standards not only on OSH but on labour relations and labour inspection has grown substantially and improved qualitatively.***



Meeting with Emil Krstanovski, the EU-ILO Project evaluator

Legislation drafters, politicians, decision-makers, representatives of the government, and representatives of employers and workers understand the philosophy and logic of the standards and their requirements, hence they can apply that knowledge when drafting laws and other legal acts. It is also important that the Project topics have become visible in the information space. For example, the information about undeclared work was communicated, by the end of 2020, to more than 3.7 million people in Ukraine, in particular to workers and employers. The project topics are now on the national partners' agenda.

The main point of concern to me is how Ukraine will be dealing with the Project's gifts. We have done very much to support national partners, and now Ukraine should do its part! The question is whether the Ukrainian partners will have enough courage and political will for that, or whether they will be looking for excuses and explanations of why that has not been done.

One of the excuses I often hear is that Ukraine is so specific and has so much peculiarities that it is impossible to implement the EU standards. My answer to that is: "However, each of the 27 European Union countries is specific too, with its different national features, culture, resources, means and character, but all of them managed to harmonize their legislation and live in a common legal environment. Hence, Ukraine should clearly demonstrate that it's ready to travel this hard road of approximating its national standards to the ILO and EU standards rather than to choose the primitive way of excuses".

THE MOMENT OF TRUTH HAS COME

– In your opinion, how ready is Ukraine to change?

– Right now is the moment of truth. Ukraine should answer the question on which way it will go. The Ministry of Economy and the VRU have drafted a number of laws on employment relationship, its indicators, non-standard forms of employment, and deregulation. All of them have been registered with the VRU and are being worked on. Coming soon is the draft Law "On Occupational Safety and Health of Workers" (**the draft OSH law**) as well as a draft law amending the current Labour Code in terms of state control of compliance with the labour legislation.

Besides, SLS has been developing draft regulatory acts transposing the individual European Union OSH Directives. That is, **a number of legislative initiatives will be either materialized as documents taking effect or will just remain intentions.**

The EU-ILO Project has repeatedly provided detailed recommendations actually on every article of the above-mentioned draft laws as well as rationale of why the provisions should be formulated in the way we suggest. We have provided all the necessary information and explanations concerning standards, and have delivered a pile of



Social dialogue parties discussing interim results of the EU-ILO Project

trainings and other activities across the country. Therefore, the Ukrainian partners' arguments concerning unawareness and unreadiness will not be able to stand up to any criticism.

It is now that we will see what Ukraine's stance really is: does it really want to implement the international and European standards or do we deal with declarations only. I realize that changing and implementing novelties is always hard and painful but 27 EU countries have done that and benefited from that. There is a very simple saying well-known both in Portugal and in Ukraine: "One who wants to do finds the way; one who doesn't finds excuses".

– You have told about the Project's achievements and about the need to act decisively. In your opinion, what failed to be implemented?

– The Project has had no failures, as confirmed both by the evaluator and the national stakeholders. We have delivered more than 80% of a 3-years project outputs in just one year and a half. In addition, the project also carried out several activities and provided a number of outputs which were not initially foreseen. As a response to the global coronavirus outbreak, we have delivered a series of webinars on occupational safety and health in the context of the COVID-19 pandemic, and have provided information and guidance materials to workers, health workers, employers and labour inspectors.

The Project continues, with another year and a half ahead, that is, we have just crossed the equator mark. We have clear plans and tasks and a vision of how to implement them. We are guided by the *Logical Framework* describing outcomes, outputs, activities for each of them, ways of achieving them, time limits, and indicators to evaluate attainment of such objectives.

A potential failure could be the adoption by Ukraine of draft legal acts which are not properly aligned with the International and European Labor Standards, ignoring the EU-ILO Project's recommendations, or the draft of high-quality legal acts, properly aligned but which would not be adopted. **In any case, they would be more a Ukraine's failure than a Project's failure.**

Topical interview



During a training organized by the EU-ILO Project

The Ministry of Economy has sent a refined version of the draft OSH law to all the parties concerned for endorsement a few days ago. Given favourable circumstances, it can submit it to the CMU for endorsement in September and to the Verkhovna Rada by the end of the year. We have no leverage to influence this process, so we can only observe how it's going on. It will be a pity if the OSH law is not adopted within our Project implementation period or if the adopted version is not properly aligned with the International Labour Standards and EU Acquis. We want to see that fundamental result during the Project's life span. I am sure that we are on the right track and that the train is moving on the right direction.

ASSOCIATION AGREEMENT IS NOT A MENU FROM WHICH YOU MAY CHOOSE A DISH YOU LIKE

– **A neat comparison with a train. However, there's really a concern whether the carriage attendants and passengers jump from the train halfway or arrive to its destination. Which obstacles, difficulties and risks in promotion of major changes do you see?**

– Three or four years ago I would say that lack of knowledge was such an obstacle. Now, the national experts have enough information about international and European standards and they know where to find them in the open sources. I think **that two things are important today: first, the political will; second, the quality of draft legal acts. Another obstacle that might put at risk the success of the alignment of national legislation with the International Labour Standards and EU Acquis is the fact that the technical experts (whose task is to draft the legal acts and ensure its compliance with provisions of the EU Directives), tend to assume the politician roles.** That is, they draft the legal acts with account of what may please politicians and what may not, which provisions of a draft law may not be accepted by some or other government officials, or whether the document definitions meet political trends, instead of ensuring that the draft legal act is properly aligned with the International and European Labour Standards.

Due to political partiality, they put a sort of “make-up” on the draft law and break its distinct alignment with international norms. Then, the “powdered” draft law with a gentle political tinge goes to a minister for signing. However, the minister is not an expert well-versed in the matters written in the legal act drafts; he signs it because he relies on professionalism of the specialists who drafted it. They reassure that the document is aligned with international standards, and the minister believes them. Then, the draft law signed by the minister is submitted to the office of the Vice Prime Minister for European and Euro-Atlantic integration. There, it must be checked for compliance with the EU standards. Unfortunately, this is not being done properly (either because of consideration of other political interests or simply

because the Vice Prime Minister for European and Euro-Atlantic integration trusts in the competence of the technical experts that drafted the legal act or in the Minister that signed it) and, usually, the submitted draft is approved with deviations from international standards and submitted to the VRU Committee on Social Policy and Protection of Veterans' Rights and the VRU Committee on Ukraine's Integration into the European Union.

The latter, in fact remains the only effective safeguard. I attended a few meetings where draft laws were discussed, and the Committee chairlady stated quite clearly that submitting to the Committee low-quality draft laws, not aligned with the EU standards, is a great shame to the government. Such actions contravene Ukraine's commitments under the *Association Agreement between the EU and Ukraine*. It should be realized that the agreement and the draft laws provided for thereby are an integral package of commitments rather than a menu from which one may choose the dish one likes.

Unfortunately, politicians forget about the Constitution of Ukraine that states that the international treaties and agreements ratified by Ukraine are part of its national legislation. It affects the situation in Ukraine quite adversely. For example, the legislation on labour inspection is not aligned with ILO Convention concerning Labour Inspec-



António Santos, Manager of the EU-ILO Project “Towards safe, healthy and declared work in Ukraine”, and Yuri Kuzovoi, Deputy Director-General of the ME Directorate for Development of Labour Market and Labour Remuneration Conditions

tion in Industry and Commerce, 1947 (No. 81) and with ILO Convention concerning Labour Inspection in Agriculture, 1969 (No. 129), both ratified by Ukraine, although these Conventions are on the list of the ILO Priority Conventions.

Nobody recalls that these two Conventions are actually part of the national legislation and take precedence over a law contravening them. This has been repeatedly insisted by me and by the ILO Committee of Experts on the Application of Conventions and Recommendations that urged Ukraine to align its national legislation with international standards.

It is also worth reminding the recently adopted European Parliament's resolution concerning Articles 291 and 296 of the EU-Ukraine Association Agreement. The resolution reminds Ukraine's commitments not to reduce the workers protection standards. Besides, Ukraine must ensure effectiveness and efficiency of the bodies exercising control of compliance with legislation to prevent creation of conditions for unfair competition between Ukrainian and European enterprises. At present, these articles of the Agreement are violated.

The ultraliberal approach to the labour market, where Ukraine wants to "jump" from heavy regulation inherited from the Soviet times to total deregulation and lack of control, is an alarming tendency. ***Under the fine slogans of reducing pressure on business and promoting an investment climate, the ideas of abandonment of control on the part of the state are being pushed into the Labour Code provisions,*** messages stating that workers and employers allegedly have equal bargaining powers are being thrown into them, etc.

These tendencies are not only alarming but also very dangerous because Ukraine might be left with neither labour force nor labour market as a result. That is a straight road to poverty, lower purchasing power, and lack of demand for goods and services in the domestic market. Promoting such ideas, employers shoot themselves in the foot.

ONE OF THE MAIN TASKS IS TO TRAIN AN ARMY OF OSH SPECIALISTS

– How do you see a period of transition from the outdated, rudimentary labour protection management system to a modern European OSH system? What should Ukraine expect on this path?

– I think you'd better ask government officials, employers, trade union representatives, and other process actors about that. Once the OSH law takes effect, it is necessary to

create a system with all components properly functioning. For example, an OSH specialist training system, certification of training centres, delivery of services for provision of efficient collective and personal protective equipment must be established. Everybody must adapt themselves to new rules and obligations, carry out reorganization and restructuring, etc.

High-quality OSH legislation is just a part of the job; the main point is to make it start working in practice and being put into action. For that purpose, ***it is necessary to create an efficient system of state control of compliance with legislative requirements and an effective labour inspection.*** I don't mean only checks and fines. It must be comprehensive efforts: conducting information campaigns,



Among friends and like-minded ones

providing advice and recommendations, finding out which legal provisions should be adjusted, and submitting proposals on how to improve them. Applying sanctions to those who deliberately fail to meet the legislative requirements should be only the very last thing to do.

– How do you think, who is mentally more ready for such systemic changes – employers, workers, trade unions, labour inspectors?

– I am not sure that someone can be singled out. Everybody needs to prepare, particularly workers. It is essential that they express their opinion concerning the occupational safety and health situation and the measures taken by employers, and that they be involved in reforming.

Clearly not ready for changes are the persons who, out of the old Soviet habit, believe that everything down to the every last detail must be written in legislative and regulatory acts – maybe even the colour of the pen used to write instructions. Or who seriously intend to write an universal guide on how to carry out risk assessment, having no clue that it's impossible to do because there are hundreds of risk assessment methods and none of them will be ideal,

Topical interview



During the online interview organized by the OSH magazine

better or worse. Therefore, the methods must be chosen with due regard for particulars of production, present occupational risks, technical support, workstations, resources available to an employer, knowledge level of employers and staff, and a great number of other factors.

It is also important to **provide accessible, comprehensive, nationwide training of OSH specialists, labour inspectors, employers, and workers' representatives** – to let them understand how to assess and control occupational risks.

Along with the training of professional OSH specialists, the creation of their certification system is also imperative. Ukraine should obtain a well-trained army of professionals who will be implementing all measures concerning risk assessment and creation of risk-oriented systems at the workplace level. Although labour inspectors should not be expected to conduct risk assessments for employers, they should be knowledgeable in the risk assessment and management system, and being able to explain the employers its operation mechanism and verify results of the risk assessment undertaken by the employers to find out whether the risk management system actually works or exists just for fiction.

It should also be remembered that creation of a risk management system is solely an employer's obligation and if the employer is unable to organize it by himself he can enlist services of specialists.

The ball is in the court of the Ukrainian authorities and the social dialogue parties

All the stakeholders – representatives of authorities, workers, employers and mass media – had an opportunity to share their opinions concerning the work of the **EU-ILO Project "Towards safe, healthy and declared work in Ukraine" (the EU-ILO Project)** – during bilateral working meetings and a final multilateral working meeting with the EU-ILO Project evaluator **Emil Krstanovski**.



Emil Krstanovski

Internal evaluation of 18 months of the Project implementation has been conducted, and a relevant report, according to E. Krstanovski, will be prepared in the immediate future and submitted to all the Project stakeholders for comments. As António Santos pointed out, the Project is not a project for the EU or ILO, it is for Ukraine, and it should benefit as much as possible from it.

A common view of all the meeting participants is that the Project has become a driver of pro-European changes in Ukraine, helped understand European and international standards on OSH and employment relationship better/deeper, and influenced quality of the law-making process and social dialogue.

"Indeed, the team led by António Santos has been doing everything to raise occupational safety and health in our country to a new level, and they are thanked a lot for that..."; "The Project led by António Santos and Sofia Lytvyn has become an organic component of Ukraine's prolonged and non-painless moves towards changes in the labour

protection domain. We hope that the knowledge acquired will be converted into new actions for transition from reactive to proactive methods and preventive measures for preservation of life and health of workers at work, and will speed up necessary processes..." – these are quotations from the meeting participants' feedback on Facebook

The EU-ILO Project activities per se - counselling, training and expert analysis of draft laws – have been implemented in two areas:

- alignment of the Ukrainian legislation on labour relations and OSH with the EU standards;
- creation of effective labour inspection with powers according to the ILO Conventions and Recommendations.

What's at the output? Apart from the already implemented activities (of which the magazine was informing its readers all the time), another package of recommendations for Ukraine has been elaborated by the Project. And now, the ball is in the court of the Ukrainian authorities and the social dialogue parties – which of the proposals are to be put into action.

First of all, the experts advise to resume the work of the National Tripartite Social and Economic Council and use it as a platform for social dialogue concerning the two above-mentioned reform areas. Indeed, the EU-ILO Project team has served as such a platform for dialogue lately, which is not a normal practice.

NO-ONE HAS CANCELLED A MAGIC KICK YET

– You emphasized the role of state control in OSH. SLS has recently become a member of the International Association of Labour Inspection (IALI). What benefits can Ukraine's labour inspectorate obtain from that?

– IALI is an authoritative global professional association for labour inspections that has more than 100 members worldwide. Membership in such a professional society brings many benefits and opportunities. They include access to hefty information resources, best practices, experience sharing, fruitful cooperation among the association members, and establishment of contacts with inspectorates of other countries. Being in such a highly professional circle of colleagues is extremely important from the professional development perspective.

– Now back to Ukraine. There is an impression that public authorities are in no haste to engage in the preparatory efforts which should precede a shift to the new OSH management system. For example, the Oc-



cupational Safety and Health magazine implements a project on risk management training of labour protection specialists in forestry. However, nothing like that is happening at the state level.

– Both me and you have children. And we know that, before giving birth to a baby, it would be ideal to acquire good education, make a brilliant career, get stronger finan-

The second recommendation is to support the State Labour Service of Ukraine to improve its image and communication with employers and workers.

The third recommendation is to develop a sort of a plan for informing the supreme public authorities about the Project's recommendations in order to "consolidate" reforms in employment relationship and in the OSH legislation already at the political decision level as well as to improve the Project's visibility and its results in society.

Another recommendation: create, with support from the EU and ILO, a pool of trainers who would be bringing risk management ideas to the masses and training new OSH specialists at enterprises (managers, OSH specialists, trade union leaders, workers) and in supervisory bodies (labour inspectors, insurance experts, etc.). The latter initiative of the experts has found a very positive echo in the hears of all the EU-ILO Project stakeholders because the shortage of knowledge and skills for creation of risk-oriented OSH management systems is the acutest problem to Ukraine.



Olha Bohdanova

The low level of social dialogue is no less painful/problematic. "If national partners fail to reach an understanding inside the country, no project will help us. It should be recognized that social dialogues are not our strength so far, perhaps because the Soviet directive style was oppressing discussions with

authorities for years. However, 30 years have gone by, 40 Mosaic years are not far off, so the time to "force a slave out of oneself" is approaching", - this is an opinion by **Olha Bohdanova**, Chairperson of the Board, the European Society of Occupational Safety and Health (ESOSH).

The low level of social dialogue negatively affects both the Project's performance and the course of national reform. According to **Sergiy Savchuk**, ILO National Coordinator for Ukraine, the EU-ILO Project may not substitute for the national social dialogue platform. A unique situation is seen in Ukraine – international experts assess, and give comments to, all the alternative draft laws suggested for adoption. However, they should assess a single document jointly chosen and agreed upon by all the social dialogue parties. So, the current situation needs to be changed.



Sergiy Savchuk

The EU-ILO Project will be providing assistance to Ukraine for another 18 months. Will we manage to change ourselves during that time and use international experts' advice as much as possible, to create legislative and political conditions in our country for construction of a new, proactive system of workers' safety and health management based on responsibility and risk-oriented mentality of everyone: those organizing work and working today, and those who will be doing that tomorrow?

Liudmyla Solodchuk, Deputy Editor-in-Chief, Occupational Safety and Health magazine

Topical interview

cially, build a nice house, and take care of comfortable living conditions... It's an excellent strategy in theory. Under such conditions, a suitable time for giving birth to a baby would come somewhere at the age of sixty or so.

In reality, everything is going on mostly in a different way. Your baby comes into the world when you're just above twenty, and you must take all means to cope with the tasks: set the child on their feet quickly, think where to live and on what to provide for the child, work hard enough for two, rear, teach and learn yourself. Truth to tell, this strategy has its positive side because such a magic kick makes us move, unlock hidden reserves, assume responsibility, and, eventually, achieve success.



During E. Krstanovski's meeting with the ILO team in Ukraine

Conditions for launch of new legislation and laws themselves will never be ideal. We live at a furious rate as the world, science and technology develop and change swiftly, hence the laws, as any living organism, will also need continuous updating and development. At the same time, **even an imperfect law will certainly become a catalyst for drafting of a national programme on OSH, a national system, and all that gigantic mechanism will start moving little by little.** It will be feeding itself, however it must be kickstarted first.

– It's no secret that launch of that mechanism greatly depends on social dialogue and on the parties' ability to come to an agreement despite differences in their views and interests.

– Social dialogue in Ukraine is very weak. In particular, it is being undermined from inside by newly-minted theories stating that a worker and an employer allegedly have equal bargaining powers. And that these negotiated arrangements allegedly must be reduced to the level of an individual labour agreement. However, they must be regulated by the Labour Code and by collective agreements.

It is important to involve the parties of social dialogue in consultations at the stage when the idea of a law emerges rather than when something has already been kind of drafted. **Dialogue means negotiations, search for a com-**

promise, and arrangements. It enables generating an idea, a vision, a concept, and only then the theses agreed upon by the three parties may be presented on paper. Besides, the dialogue must be maintained continuously.

Many people complain that social dialogue is a long-lasting story. However, the final outcome of a long-term dialogue is a by an order of magnitude higher and better than a fast and ill-conceived decision not agreed upon by the three parties. There is a bit crude but neat proverb: «The she-dogs hurrying to whelp give birth to blind pups!». Hastiness can have unpleasant consequences.

It is important to hear exactly the most representative organizations of employers and workers because it is they that will be first of all affected by some or other new law. Some social partners believe that no social dialogue exists if their proposals are not 100% considered. It's an erroneous position, however, because it is impossible to consider all 100% of proposals and recommendations. At the same time, it is the dialogue that helps strike the right balance and elaborate effective solutions.

I BELIEVE IN WHAT I'M DOING!

– António, your contribution to development of Ukraine, your enthusiasm for work and your principal stance confirm your sincere interest in Ukraine's becoming successful. How has the Project influenced you, what energizes you and adds to your strength?

– I can say that four years of living in Ukraine have had a great impact on me. If talking about the "fuel" for my internal engine, it's first of all my belief in what I'm doing and being sure that I'm doing right things. They are useful and valuable to Ukraine, even if not everyone realizes that today. Time will come, rethinking will take place, and the real value of the assistance provided by the Project will become clear.

I want to transfer to my national partners my belief in Ukraine's being no less able to successfully do the same job done by the 27 EU countries. Indeed, Ukraine is by no means worse. Ukraine is blessed by the God, it has unparalleled natural resources, fertile land, and extremely industrious and enterprising people. All that needs to be done is to care for this country and provide its people with economic and legal conditions under which it will flourish. I'm sure that Ukrainians are in a position to do that.

What I see now reminds me Portugal 30 years ago, when everything was only beginning there. We travelled the same road then. A painful and difficult road that seems troublesome and partly dangerous, however the result will certainly be of use to Ukrainians.

We, in the Project, also have our joy, concerns and disappointments, but it's normal, that's the way life is arranged. We must find certain self-motivation at work, rise and keep moving along being confident that every day is a step forward.

Interviewed by

Dmytro Matviychuk and Oleksandr Fandeyev

Photo: ILO and O. Fandeyev