



Business  
**OMBUDSMAN**  
Council

# SYSTEMIC REPORT

**BUSINESS FOCUS**

**ON LABOR-RELATED ISSUES**





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## LIST OF ABBREVIATIONS AND SHORTENINGS

Abbreviations	Definition
<b>BOC</b>	Business Ombudsman Council
<b>CMU</b>	Cabinet of Ministers of Ukraine
<b>ILO</b>	International Labor Organization
<b>Law No. 5067-VI</b>	Law of Ukraine "On Employment of Population"
<b>Law No. 2058-VIII</b>	Law of Ukraine "On Amendments to Certain Laws of Ukraine Concerning Elimination of Barriers to Attract Foreign Investments"
<b>Law No. 2694-XII</b>	Law of Ukraine "On Occupational Safety"
<b>Model Regulation No. 15</b>	Model Regulation on the Procedure for Training and Knowledge Assessment on Occupational Safety Issues, approved with the Order of the State Committee of Ukraine on Supervision of Labor Protection No. 15 dated January 26, 2005
<b>MTMC</b>	State Enterprise "Main Training Methodical Center"
<b>Procedure No. 295</b>	Procedure for Exercising the State Control over Compliance with Labor Legislation, approved with the Resolution of the CMU No. 295 dated April 26, 2017
<b>Procedure No. 1107</b>	Procedure for Issuance of Permits for Carrying Out Hazardous Works and Exploitation (Application) of Hazardous Machines, Mechanisms, Equipment, approved with the Resolution of the CMU No. 1107 dated October 26, 2011
<b>Regulation No. 96</b>	Regulation on the State Service of Ukraine for Labor Issues, approved with the Resolution of the CMU No. 96 dated February 11, 2015
<b>SES</b>	State Employment Service of Ukraine
<b>SFS</b>	State Fiscal Service of Ukraine
<b>SLS</b>	State Labor Service of Ukraine
<b>SMS</b>	State Migration Service of Ukraine
<b>SSS</b>	State Statistics Service of Ukraine

## FOREWORD

The Ukrainian labor market has greatly changed in the last few years. These changes are associated not only with the configuration of employment and the level of migration of working-age people, but also with the need to introduce modern approaches to the state supervision of the labor-related issues.

This systemic report of the Business Ombudsman Council (the “BOC”) is devoted to the analysis of current labor-relations issues and interaction between businesses and respective state authorities. It is noteworthy that among the most problematic factors for doing business in Ukraine provided by the Global Competitiveness Report Index, the indicators “Restrictive labor regulations” and “Poor work ethic in national labor force” have approximately the same level as the “Insufficient capacity to innovate” and the “Inadequate supply of infrastructure” indicators.

We have identified the following areas related to labor issues which require, in the BOC’s opinion, systemic improvements:

- Efficiency of the state labor regulation and supervision;
- Prevention and identification of illegal (informal) employment;

- Some aspects of issuing permitting documents;
- The use of foreign labor;
- Educational services in the field of occupational and industrial safety;
- Labor law compliance and prevention.

**Improvement of the state labor regulation and supervision effectiveness** requires strengthening the institutional capacity of the State Labor Service of Ukraine through the introduction of a web-platform for the supervision (inspection) activity, risk-based supervision approach, and better interaction between the relevant state authorities. The BOC also recommends to improve a number of specific procedures related to mining operations and hazardous work.

**Development of the rules** for interaction and strengthening of cooperation between the State Labor Service of Ukraine and other executive authorities **would lead to more efficient prevention and detection of illegal (informal) employment.**

**Improvement of the procedures related to foreign specialists’ employment** should help to increase the investment attractiveness of Ukraine. In particular, the BOC recommends to simplify procedures for obtaining

an employment permit and its duplicate for foreigners, to establish a preferential regime for foreigners who have graduated from Ukrainian educational institutions.

The BOC paid special attention to **redesigning the process of occupational safety education**, as a significant market for such educational services has already been formed in Ukraine. The main idea

of the proposed changes is to prevent conflicts of interest and increase transparency of the educational process.

An important avenue for the BOC is **building capacity on compliance with labor legislation of the state authorities as well as businesses** by training their staff. This is an issue to which the BOC paid special attention in this report.

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*The BOC wishes to express its gratitude for important and valuable input in the form of comments and information from the Ministry of Social Policy, the State Labor Service, the State Employment Service, the State Regulatory Service, and the State Fiscal Service.*

*While working on this report, the BOC has also consulted the Federation of Ukrainian Employers, the American Chamber of Commerce in Ukraine, the European Business Association, the Ukrainian Chamber of Trade and Commerce, the Union of Ukrainian Entrepreneurs, other business associations, and the EU-ILO Project "Enhancing the labour administration capacity to improve working conditions and tackle undeclared work".*

*On a separate note, we would like to show appreciation to the significant personal contribution of Ms. Olha Krentovska, Ms. Kseniia Liapina, Mr. Roman Cherneha, Ms. Olha Makohon, Ms. Natalia Gosteva, Mr. Oleg Vachaev, Mr. Igor Gotsyk, Ms. Sofia Lytvyn, Mr. Yurii Kuzovoy, Ms. Hanna Chub, Ms. Mariana Kuts, Mr. Ihor Dehnera, Mr. Oleksandr Antoniuk, Mr. Oleksandr Hetman, Ms. Olha Kokosha, Ms. Zarina Demianenko, and Mr. Yevhenii Skulskyi.*

## 1 CHANGES SHAPING THE UKRAINIAN LABOR MARKET

Ukraine is dynamically integrating into the world economic environment. The most significant preconditions for this are the implementation of the EU – Ukraine Association Agreement, the Deep and Comprehensive Free Trade Areas (DCFTA) and the use of the advantages of 16 existing free trade agreements, which cover 45 countries and open up access to 800 million potential consumers. The transformations that accompany Ukraine's international economic integration are also reflected in macroeconomic and labor market indicators. The recent EBRD Transition report 2018-19<sup>1</sup> indicates that the Ukrainian economy moderately paces to recovery path. Economic output expanded by 2.5 per cent in 2017, with domestic demand as the main driver, and the pace of growth has picked up so far in 2018.

### Ukrainian labor market information.

As of January 01, 2018, the existing population of Ukraine was 42.4 M people according to the State Statistics Service of Ukraine

(the "SSS")<sup>2</sup>. The urban population comprised approximately 29.4 M people (69.3%), 13.1 M people (30.7%) lived in the rural area. The number of persons aged 0-15 years was 16.3% of the total population, at the age of 60 years and older – 22.9%, at the age of 16-59 years – 60.8%. In 2017, the population of Ukraine decreased by 198.1 thousand people.

The composition of the Ukrainian population is characterized by significant gender imbalance. Predominance of the female population over the male population in Ukraine has been observed starting from 36 years old and increases with age.

The main indicators of the Ukrainian labor market show a slight decrease of the number of economically active population (at the age of 15-70) from 17.95 M in 2016 to 17.85 M people in 2017. The dynamics of key labor market indicators is given below.

### The main indicators of the Ukrainian labor market (Chart 1)<sup>3</sup>

	Economically active population			
	Age 15-70		Working age	
	On average, thousand people	In % to the given age group	On average, thousand people	In % to the given age group
2014	19,920.9	62.4	19,035.2	71.4
2015	18,097.9	62.4	17,396.0	71.5
2016	17,955.1	62.2	17,303.6	71.1
2017	17,854.4	62.0	17,193.2	71.5

The employment rate of the population (aged 15-70) decreased from 56.3% to 56.1% in the period

of 2016-2017, and on the contrary, among the working-age population, it increased from 64.2% to 64.5%.

<sup>1</sup> Available at: <https://2018.tr-ebd.com/countries/>

<sup>2</sup> Available at: <http://www.ukrstat.gov.ua/>

<sup>3</sup> Available at: <http://www.ukrstat.gov.ua/>



## Employment level of the population (Chart 2)<sup>4</sup>

	Employed population				Unemployed population (according to the ILO methodology)			
	Age 15-70		Working age		Age 15-70		Working age	
	On average, thousand people	In % to the given age group	On average, thousand people	In % to the given age group	On average, thousand people	In % to the given age group	On average, thousand people	In % to the given age group
2014	18,073.3	56.6	17,188.1	64.5	64.5	9.3	1,847.1	9.7
2015	16,443.2	56.7	15,742.0	64.7	64.7	9.1	1,654.0	9.5
2016	16,276.9	56.3	15,626.1	64.2	64.2	9.3	1,677.5	9.7
2017	16,156.4	56.1	15 495,9	64.5	64.5	9.5	1,697.3	9.9

**Unemployment rate of the economically active population.** After a period of rising unemployment during 2014-2017, in the Q1 and the Q2 of 2018 the unemployment rate in Ukraine started to decline and was 9.7% (1.7M people)<sup>5</sup>, and 8,9% (1.6 M people) respectively<sup>6</sup>.

2016 marked a dividing line for the Ukrainian labor market: compared with 2015, the number of vacancies increased threefold<sup>7</sup>. Demand for labor kept increasing the following years as well. Thus, as of September 01, 2018, there were 30% more vacancies than at the end of 2017<sup>8</sup>.

According to the EY Express Market Reviews, the Ukrainian labor market is also relatively stable and demonstrates positive tendencies. Fewer

companies face the need to implement anti-crisis measures. In 2015, anti-crisis measures were implemented by 62% of companies, while in 2017 only 22% of companies implemented or planned to implement them<sup>9</sup>.

Positive market trends can also be seen in decrease of planned massive layoffs (by 17% – 23.7 thousand people) during January-August 2018 comparing to the same period in 2017<sup>10</sup>. It is worth noting that the situation significantly depends on relevant economy sectors. The most active anti-crisis measures in 2017 were introduced by the household equipment, electronics, and telecommunications business sectors.

<sup>4</sup> Available at: <http://www.ukrstat.gov.ua/>

<sup>5</sup> Available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=2ahUKewjE0emuuYbfAhXlksKHZjGAtMQFjAFegQICRAC&url=http%3A%2F%2Fwww.ukrstat.gov.ua%2Fexpress%2Fexpr2018%2F06%2F109.docx&usq=A0vVaw2N bBuFiarW0AXPLs9j0jnE>

<sup>6</sup> Available at: [http://www.ukrstat.gov.ua/operativ/operativ2018/rp/rp\\_reg/reg\\_u/rbn\\_2018\\_u.htm](http://www.ukrstat.gov.ua/operativ/operativ2018/rp/rp_reg/reg_u/rbn_2018_u.htm)

<sup>7</sup> Available at: <https://prohr.rabota.ua/ukrainskiy-ryinok-truda-2017-top-6-klyuchevyih-tendentsiy/>

<sup>8</sup> The situation on the labor market. 2018. State Employment Service. Infographics. Available at: <https://www.dcz.gov.ua/analytics/68>

<sup>9</sup> Available at: [https://prohr.rabota.ua/ryinok-truda-ukrainyi-tendentsii-ey-ukraine/?utm\\_source=google\\_search&utm\\_medium=cpc&utm\\_campaign=exact\\_164889955&utm\\_content=exact\\_59072443878&utm\\_term=exact\\_dsa-19959388920&gclid=EAlalQobChMIhNyfm83d3QIVDsQyCh1bYglaEAMYASAAEgKCNfD\\_BwE](https://prohr.rabota.ua/ryinok-truda-ukrainyi-tendentsii-ey-ukraine/?utm_source=google_search&utm_medium=cpc&utm_campaign=exact_164889955&utm_content=exact_59072443878&utm_term=exact_dsa-19959388920&gclid=EAlalQobChMIhNyfm83d3QIVDsQyCh1bYglaEAMYASAAEgKCNfD_BwE)

<sup>10</sup> The situation on the labor market. 2018. State Employment Service. Infographics. Available at: <https://www.dcz.gov.ua/analytics/68>

**Trends that have been noted in illegal (informal) employment.** According to the SSS<sup>11</sup>, the number of illegally (informally) employed people in the formal and informal economic sectors decreased by 6.7% comparing to 2016 and amounted to 3.7 M people in 2017, or 22.9% of the total employed population.

The high level of illegal (informal) employment also reflects the other side of the problem – illegal entrepreneurship, which distorts business competition and is connected with systemic corruption, violation of workers' rights and tax evasion. Despite the fact that shadow economy in Ukraine dropped by 4% in 2017, to 31% of GDP<sup>12</sup>, that rate remains relatively high. There are several business sectors in which the "shadow economy" is widespread, in particular, agriculture (42.0%), market trade and repair services (19.4%), and construction (15.0%)<sup>13</sup>.

**The emigration of working-age people has intensified.** This has led to labor market pressures and is dragging down industrial output growth. At the same time, outward labor migration has led to increased inflow of remittances from abroad. According to the recently revised methodology of the National Bank of Ukraine, personal remittances are estimated to have increased from US\$ 7.0 billion (approximately 7.6% of GDP) in 2015 to US\$ 9.3 billion (8.3 % of GDP) in 2017.

External labor migration issues are becoming increasingly relevant. According to the official statistics, 1.3 M people (4.5% of the population) migrated from Ukraine in 2015-2017, and only 43% of them came back. The total share of labor

migrants in the total number of working-age population amounts to 4.5%<sup>14</sup>.

The current situation is well described by a chairman of one leading business association in Ukraine, who refers to the fact that member companies report challenges they face in retaining and recruiting staff, both blue and white collar personnel. Some are flagging this as a risk in their business strategies and budgets, as the matter could impact their future operations in Ukraine. While Ukraine's economy continues to grow, it is becoming more grueling to find skilled employees<sup>15</sup>.

According to the research conducted by the Center for Economic Policy<sup>16</sup>, the negative effects of external migration are: the unbalanced labor market, staff shortages in blue-collar jobs; increasing wage expectations regardless of labor productivity, lack of state tax revenues and social contributions, which complicates the financial support of the pension system, etc. A shortage of labor force could be a limiting factor for further economic development.

**International ratings and investment attractiveness indexes** also illustrate how the government and the business interact on labor-related issues in the country. It is noteworthy that among the most problematic factors for doing business in Ukraine provided by the Global Competitiveness Report<sup>17</sup> Index, the indicators "Restrictive labor regulations" and "Poor work ethic in national labor force" have approximately the same level as the "Insufficient capacity to innovate" and the "Inadequate supply of infrastructure" indicators.

<sup>11</sup> Statistical review of the labor market in 2017. Available at: <http://www.ukrstat.gov.ua/>

<sup>12</sup> Available at: <https://financialtribune.com/articles/world-economy/88456/ukraine-shadow-economy-drops-to-31-of-gdp>

<sup>13</sup> The situation on the labor market. 2018. State Employment Service. Infographics. Available at: <https://www.dcz.gov.ua/analytics/68>

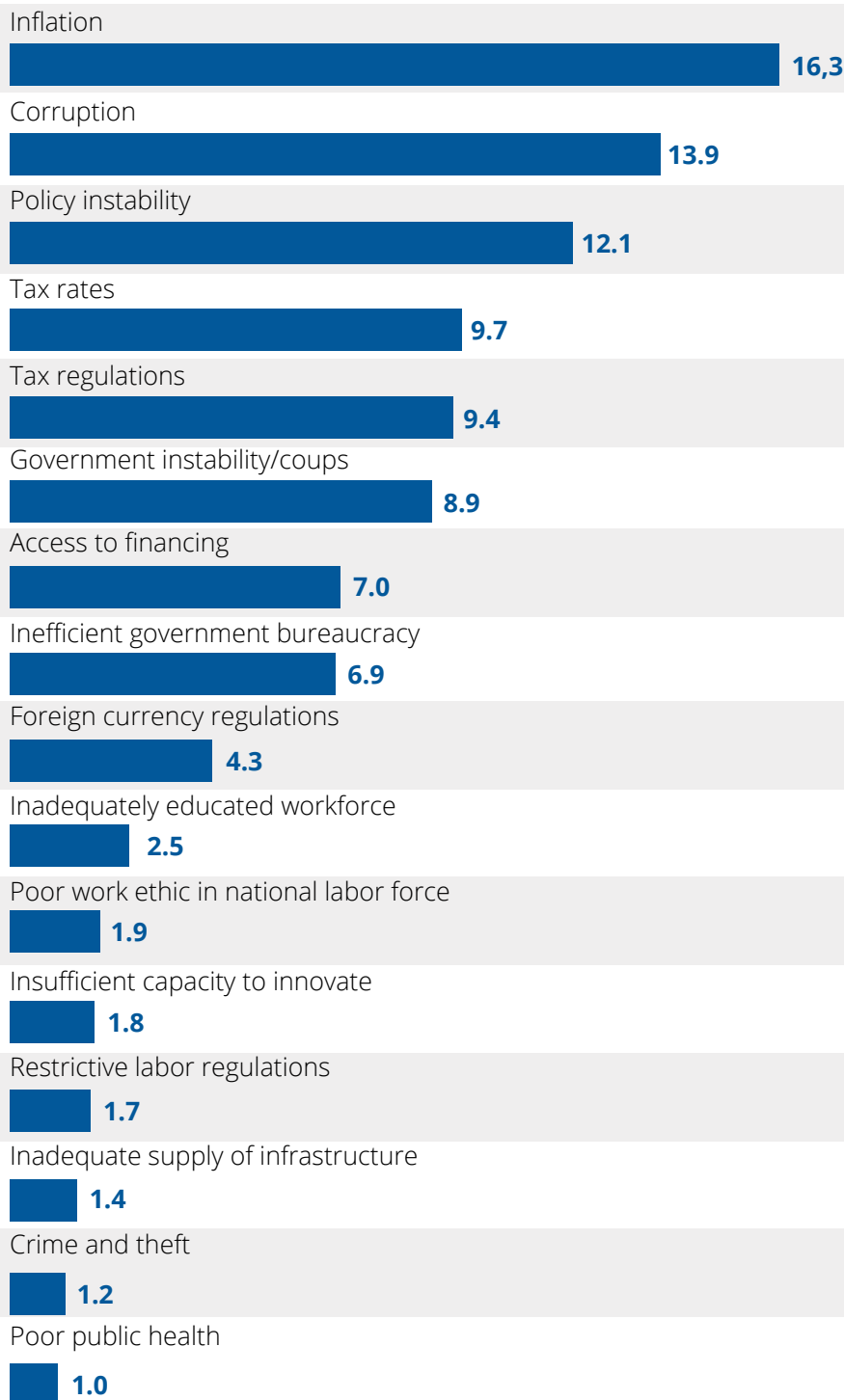
<sup>14</sup> Statistical bulletin "External labor migration of the Ukrainian population of Ukraine 2015-2017". Available at: [http://www.ukrstat.gov.ua/druk/publicat/kat\\_u/publ11\\_u.htm](http://www.ukrstat.gov.ua/druk/publicat/kat_u/publ11_u.htm)

<sup>15</sup> Available at: <http://www.atlanticcouncil.org/blogs/ukrainealert/five-ways-to-entice-ukrainians-to-come-home?fbclid=IwAR1p39ehGngmlplyfK3bWnRjqu9yKSo0O-r9waaAOcYXEockYQfdY1jcw>

<sup>16</sup> How many Ukrainians migrated over the border and what the state should do about it. Analytical note. 2018. Available at: [www.ces.org.ua](http://www.ces.org.ua)

<sup>17</sup> Available at: <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf>

### Most problematic factors for doing business in Ukraine (Chart 3)<sup>18</sup>



Source: World Economic Forum, Executive Opinion Survey 2017

<sup>18</sup> World Economic Forum, Executive Opinion Survey 2017. Available at: [http://www3.weforum.org/docs/GCR2017-2018/03CountryProfiles/Standalone2-pagerprofiles/WEF\\_GCI\\_2017\\_2018\\_Profile\\_Ukraine.pdf](http://www3.weforum.org/docs/GCR2017-2018/03CountryProfiles/Standalone2-pagerprofiles/WEF_GCI_2017_2018_Profile_Ukraine.pdf)

Simultaneously Ukraine has improved its position in 2018 according to the Global Competitiveness Index Report (83/140) comparing with 2017 (89/135). According to the "Labour Market" indicator, Ukraine occupies 66th position out of 140. The main components of this indicator

such as "Cooperation in labour-employer relations", "Ease of hiring of foreign labour", "Workers' rights" improved, while the components "Active labour policy", "Internal labour mobility" and "Female participation in labour force" worsened in comparison with 2017.

## Ukraine: Performance overview 2018 (Chart 4)<sup>19</sup>

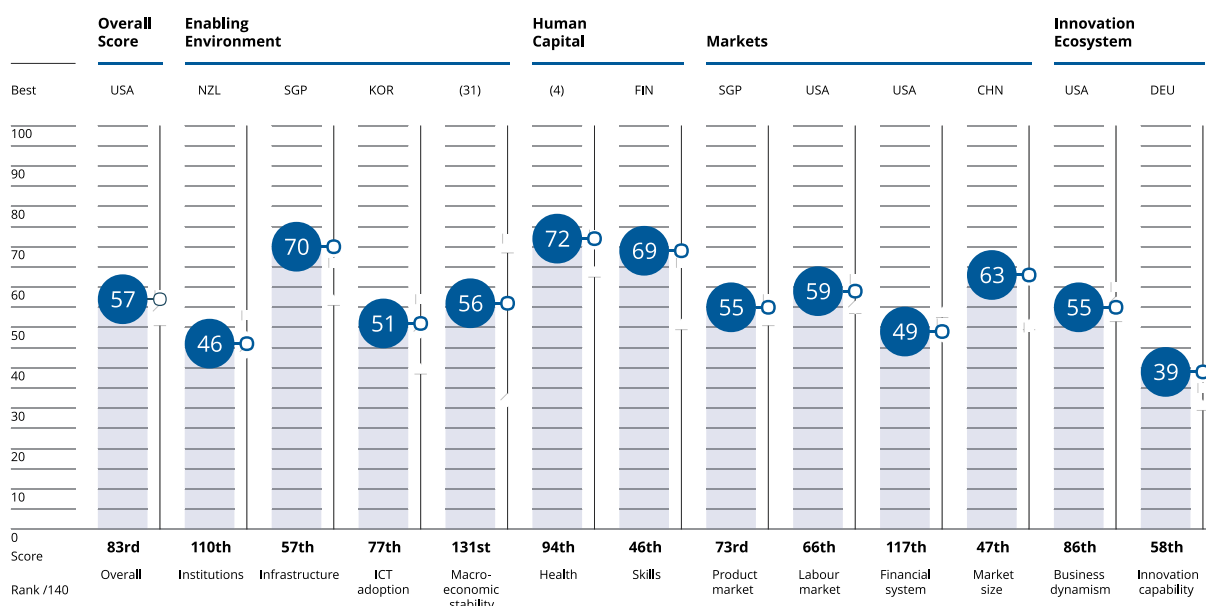
# Ukraine

# 83rd /140

Global Competitiveness Index 4.0 2018 edition

Rank in 2017 edition: 89th /135

**Performance Overview 2018** Key ◊ Previous edition ▲ Lower middle income group average ◻ Eurasia average



### Selected contextual indicators

Population millions	42.3	GDP (PPP) % world GDP	0.29
GDP per capita us\$	2,582.8	Unemployment rate %	9.5
10-year average annual GDP growth %	-2.1	5-year average FDI inward flow % GDP	2.7

<sup>19</sup> Global Competitiveness Index 4.0 2018 edition.  
Available at: <http://www3.weforum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2018.pdf>

## The Global Competitiveness index in detail: Labour market (Chart 5)<sup>20</sup>

Index Component	Value	Score *	Rank/140	Best Performer
Pillar 8: Labour market 0-100 (best)	-	59.5 ↑	66	United States
Redundancy costs weeks of salary	13.0	81.3 =	47	Multiple (8)
Hiring and firing practices 1-7 (best)	4.3	54.4 ↑	36	Hong Kong SAR
Cooperation in Labour-employer relations 1-7 (best)	4.3	54.5 ↑	79	Switzerland
Flexibility of wage determination 1-7 (best)	3.8	47.4 =	130	Hong Kong SAR
Active Labour policies 1-7 (best)	3.6	43.1 ↓	59	Switzerland
Workers' rights0-100 (best)	61.9	61.9 ↑	97	Multiple (4)
Ease of hiring foreign labour 1-7 (best)	4.1	51.0 ↑	73	Albania
Internal Labour mobility 1-7 (best)	4.2	54.0 ↓	91	Guinea
Reliance on professional management 1-7 (best)	3.6	42.9 ↑	108	Finland
Pay and productivity 1-7 (best)	4.2	53.3 ↑	53	United States
Female participation in Labour force ratio	0.83	79.4 ↓	47	Multiple (4)
Labour tax rate %	24.8	76.7 ↑	106	Multiple (26)

### The state labor market regulation and supervision

in Ukraine is performed by the Ministry of Social Policy and four subordinated public authorities: the State Labor Service of Ukraine (the "SLS"), the State Employment Service (the "SES"), the Social Protection Fund, and the State Service for Veterans and Anti-Terrorist Operation participants.

General legal framework in the labor sphere, that directly relates to the subject of this report, consists of the Labor Code, the Law of Ukraine "On Labor Remuneration", and Conventions of the International Labor Organization (the "ILO"). Ukraine ratified the ILO's Labour Inspection Convention, 1947 (No. 81)<sup>21</sup> and Labour Inspection (Agriculture) Convention, 1969 (No. 129)<sup>22</sup>, which define the general principles for labour organization of labor inspection systems and regulations on workers' protection. Other legislation covers social, pension and disability provision. The state labor

market regulation and supervision is subject to modernization and reform. This is evidenced by the obsolete legislation, dynamic changes in business environment, and Ukraine's commitments to the international community.

In particular, the effective Labor Code was adopted in the Soviet Union time (back in 1971), and Ukraine has long required new labor legislation that defines the legal framework of modern labor issues. Since the Soviet time this Code and the respective legislation have been amended multiple times. The draft of a new Labor Code was introduced to the Verkhovna Rada in 2014 (Draft Law No. 1658<sup>23</sup>) and adopted in the first reading by the Parliament. However, there has been no progress in the final adoption of the Code since then. There are several problems remaining for employers, employees, and trade unions such as using technical means of employees' controlling (e.g. video surveillance), positive discrimination issues, employment contract details, etc. Hence,

<sup>20</sup> Global Competitiveness Index 4.0 2018 edition. Available at: <http://www3.weforum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2018.pdf>

<sup>21</sup> Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312226](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312226)

<sup>22</sup> Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C129](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C129)

<sup>23</sup> Available at: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=53221](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53221)

the situation with the legal regulation of labor issues in Ukraine requires reform. The implementation of the EU – Ukraine Association Agreement and the Deep and Comprehensive Free Trade Areas (DCFTA) should also affect the adaptation of Ukraine's employment policy and labor

market supervision to the European standards and the ILO's core and priority conventions that have been ratified by Ukraine, as well as to the ILO Declaration on Fundamental Principles and Rights at Work, adopted on June 18, 1998, in Geneva.



## 2 EFFICIENCY OF THE STATE CONTROL IN LABOR-RELATED DOMAIN

### 2.1 Inspection of labor relations: authorities, powers

Efficiency of the state control (supervision) measures in labor relations sphere is directly associated with their transparent and unambiguous regulation by legislation and setting uniform rules for doing business both in terms of responsibility and economic incentives. That is why issues related to labor relations are among the priorities of the Association Agreement with the European Union<sup>24</sup>.

In 2014, the structure of the State Inspection on Labor Issues and the State Service for Mining Supervision and Industrial Safety were rationalized and reorganized into the SLS. As of today, the new body has been operating for more than three years. The main idea behind this reorganization was to reduce the number of controlling authorities, to optimize the number of civil servants and to enhance their expertise. It is expected that as a result of this reform,

in addition to the increasing efficiency of traditional control functions, indicators of the illegal (informal) employment will also be improved.

In addition to the reorganization that took place in the structure of the SLS, some changes have also been made at the level of local authorities. In particular, powers to monitor labor legislation and to impose fines for violations have been delegated to local governance. These changes were intended to strengthen control over the informal (illegal) employment at the local level. This coincided with the reorganization of the SLS and the development of a better supervisory process.

With the aim of improving regulation in the labor sphere, we analyzed the results of the SLS's activity and made some suggestions for improving its efficiency.

#### 2.1.1. Authorities and forms of the state control

The Procedure No. 295<sup>25</sup> provides that the state control is carried out by ("Controlling authorities"):

- The SLS and its territorial bodies;
- Executive bodies of city councils of oblast subordination cities and villages, city councils

of united territorial communities ("Labor commissions under local governance").

Measures of state control in the field of economic activity are envisaged by the Law of Ukraine "On Basic Principles of State Supervision (Control) in the Field of Economic Activity"<sup>26</sup>, in particular, they include scheduled and unscheduled inspections.

<sup>24</sup> The Association Agreement between Ukraine on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand (ratified by the Law of Ukraine № 1678-VII dated September 16, 2014). Available at: [http://zakon.rada.gov.ua/laws/show/984\\_011](http://zakon.rada.gov.ua/laws/show/984_011)

<sup>25</sup> Procedure for Exercising State Control over Compliance with Labor Legislation, approved with the Resolution of the CMU No. 295 dated April 26, 2017. Available at: <http://zakon.rada.gov.ua/laws/show/295-2017-%D0%BF>

<sup>26</sup> Available at: <http://zakon.rada.gov.ua/laws/show/877-16>

The state control over compliance with labor legislation is carried out in the form of:

- onsite<sup>27</sup> inspections;
- offsite<sup>28</sup> inspections;
- explanatory measures on the most effective ways to comply with labor legislation.

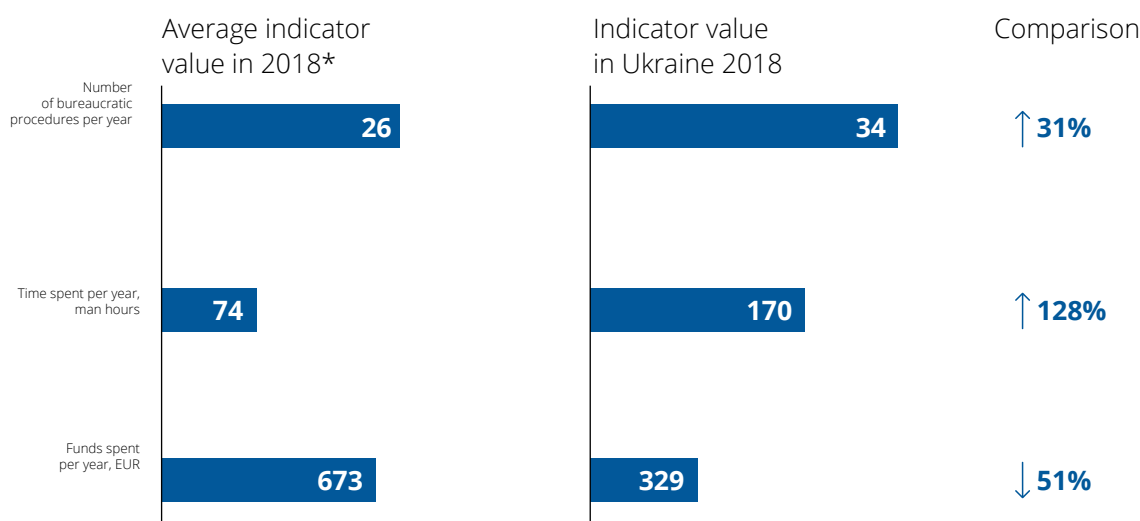
According to the SLS information<sup>29</sup> for the period from May 01, 2017, to August 01, 2018, Controlling authorities conducted: onsite inspections – 15,837; offsite inspections – 293; onsite inspections concerning observance of legislation in the field of compulsory state social insurance – 5,161. Requirements and claims made by labor inspectors that were challenged to a senior official – 134 (out of which 17 were cancelled), appealed to court – 63 (out of which 24 were cancelled by court with the entry of a decision into force).

According to the data obtained from the State Regulatory Service of Ukraine, for the period since the beginning of 2018 it has received only 10 complaints regarding actions of the Controlling authorities.

A relatively small number of challenged decisions, actions (inactivity) of the Controlling authorities might suggest the following: either the Controlling authorities do perform their powers effectively and within the legal framework, or business does not consider this tool effective and efficient.

The status of the state control and regulation in the labor sphere is visually demonstrated by the results of the EasyBusiness analytical center research, the so-called “Bureaucracy index”, according to which “the labor sphere in Ukraine is bureaucratized<sup>30</sup> (see the chart below).

### Results of Bureaucracy Index 2018: Employment of population (Chart 6)<sup>31</sup>



\*Average indicator values calculated for Slovakia, the Czech Republic and Lithuania

Source: EasyBusiness

<sup>27</sup> The term “onsite” means that the inspection takes place wherever the subject of the inspection happens to be located (Hafeman, Michael; Randle, Tony. 2009. On and offsite inspections (English). Primer series on insurance; issue no. 13. Washington, DC: World Bank). Available at: <http://documents.worldbank.org/curated/en/110531468162291987/pdf/625130NWP0On0a00Box0361486B0PUBLIC0.pdf>

<sup>28</sup> Offsite inspection is an important part of the supervisory process, it provides supervisors with information about both current and impending issues within an insurer that may not have been otherwise detected until the next onsite inspection (Hafeman, Michael; Randle, Tony. 2009. On and offsite inspections (English). Primer series on insurance; issue no. 13. Washington, DC: World Bank). Available at: <http://documents.worldbank.org/curated/en/110531468162291987/pdf/625130NWP0On0a00Box0361486B0PUBLIC0.pdf>.

<sup>29</sup> The SLS’s letter No. 7299/3/4.7-OP-18 dated September 14, 2018

<sup>30</sup> Available at: <http://bureaucracyindex.in.ua/>, Bureaucracy Index is calculated by examining a modeling company, which: produces metal products, employs 4 people, has €100 000 of annual turnover, is a VAT payer.

<sup>31</sup> Bureaucracy Index 2018 in Ukraine. Available at: <http://bureaucracyindex.in.ua/en>



As shown in the chart, the average number of bureaucratic procedures and timing for their execution in Ukraine is much higher than in such countries as the Slovak Republic, the Czech Republic, and Lithuania (by 31% and 128% respectively). In the view of business, this is mostly due to lack of business processes digitalization.

In addition to the over-bureaucratized procedures, the activity of Labor commissions under local governance is also criticized by businesses. The BOC is aware of cases when officials of such Labor commissions abused their powers during labor inspections, in particular, requested documents from business entities, that are not labor-related, for example, permits for certain types of economic activities subject to licensing<sup>32</sup>.

The BOC considers that one of the reasons for the lack of Controlling authorities' effectiveness is absence of a modern informational and communication platform. As of today, the SLS carries out inspection activities in the labor sphere without a specially designed web-based information system

(application), that leads to poor information management related to the labor supervision process. Given a large number of the carried out inspections, as well as the activities of the Labor commissions under local governance, such a system would provide additional transparency and balance of interests.

For example, at present the biggest share of processes is arranged in paper form, which also includes information exchange with tax and other authorities. This factor extends the time of communications and decreases the efficiency of inspection activities. Hence, there is an actual necessity to develop a specially designed and web-based information system (application), which would support the inspection activities and enable the inspection activities to be carried out online.

Based on the aforementioned analysis, it should be noted that the Controlling authorities provide full operational activity according to the granted powers, and there is a relatively small number of complaints on their actions. However, there are significant possibilities to bolster the institutional capacity of the SLS.

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<sup>32</sup> The BOC considered a complaint No.1712051201430 from Patriot Podillia NGO regarding the illegality of the Decision No. 33 of February 23, 2017 "On Establishment of a Permanent Working Group on Monitoring and Inspecting Business Entities Activities in Mogilev-Podilskyi city", adopted by the Executive Committee of Mogilev-Podilskyi City Council of Vinnytsia Region.

## Case

An enterprise with foreign investments, which operates in sales of footwear and accessories, filed a complaint to the BOC in respect of unlawful behavior of officials of the SLS Main Department in Lviv Region.

Thus, the complaint was filed, in particular, with regard to certain procedural violations committed by the SLS's inspector, which consisted in the following:

- Having arrived at the Complainant's premises in the morning, the SLS's inspector refused to enter a record in the inspection register of state supervision (control) measures of the enterprise, as well as indicate the reason for and subject of the inspection and to provide supporting documents.
- Alongside this, before leaving, the SLS's inspector handed over a request for documents lacking date, reference number, and legal basis of such a request. The said document required the Complainant to provide the SLS with a number of documents, including those with financial information forming commercial secret, for the onsite inspection on the same day by 3 p. m.
- Having returned to the Complainant's premises in the evening, the SLS's inspectors failed to enter a record in the register in due manner despite remarks of the Complainant's attorney, and soon left again.
- After a while, the Complainant received an statement on inability to conduct onsite inspection and a new request to provide documents, drawn up inaccurately – the statement contained wrong address and dates, incorrect reference to the Complainant's CEO, and other substantial features of non-compliance with the requirements of statement content.

The BOC's investigator analyzed the complaint substance and arranged negotiations with the SLS's officials. The course of negotiations, the BOC's investigator pointed out the detected violations, which correlate with the requirements set out in paras. 10, 12, 15 of Art. 4, para. 3 of Art. 6 and paras. 2, 5 of Art. 7 of the Law of Ukraine "On Basic Principles of State Supervision (Control) in the Field of Economic Activity", Clauses 5, 8-9, 26 of the Procedure No. 295, as well as in the Order of the Ministry of Social Policy No. 1338 dated August 18, 2017.

As a result, the Complainant informed the BOC of successful resolution of the complaint subject by eliminating SLS's violations and thanked for support.

## BOC's recommendation:

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**The SLS** – to develop a specially designed and web-based information system (desktop application) to support the inspection activity; such a system should enable labor inspectors to register inspection procedures, as well as grant real-time remote access to the relevant information for business, including a possibility to check the status of consideration of requests/applications lodged with the SLS in an accessible and searchable form.

## 2.1.2 Powers of the state supervision bodies in the field of illegal (informal) employment

In the previous chapters it was pointed out that the illegal (informal) employment poses a serious problem. In this regard, it seems expedient to analyze the composition and adequacy of the relevant Controlling authorities' powers.

Thus, officials of the Controlling authorities have the following rights in the sphere of illegal (informal) employment supervision<sup>33</sup>:

- to identify unregistered labor relations during an onsite inspection in the presence of grounds established by the Procedure No. 295, independently and at any time of the day, taking into account requirements of the labor protection legislation;
- to enter any production, office, administrative premises of the visited facility where hired labor is used;
- to familiarize with any books, registers and documents record, keeping of which is required by the labor legislation and contain information/data on issues subject to the onsite inspection, offsite inspection, to verify compliance with the law and receive copies or extracts, certified by the visited facility;
- to question the head and/or employees of the visited facility alone or in presence of witnesses concerning labor legislation; to receive oral and/or written explanations on the said issues alone or in the presence of witnesses;
- to engage law enforcement officers in case of signs of a criminal offense and/or a threat to safety of a labor inspector;
- to be provided with a workplace, ensuring possibility to conduct confidential interviews with employees regarding the subject of an onsite inspection;

- to record an onsite inspection by means of audio-, photo- and video-equipment while identifying features of unregistered labor relations;
- to obtain information from government agencies, necessary for onsite inspections.

It is also necessary to mention powers of control over the illegal (informal) employment, which tax and law enforcement agencies are endowed with:

- The State Fiscal Service of Ukraine (the "SFS") has a right to carry out actual inspections in terms of employer's compliance with legislation on conclusion of employment contracts, formalizing labor relations with employees (hired persons) based on para. 80.6. of Art. 80 of the Tax Code of Ukraine<sup>34</sup>. The results of such inspections are reflected in reports, that might serve as a basis for application of sanctions by the Controlling authorities in case of violations.
- Law enforcement officers might be engaged by labor inspectors, who carry out inspection activities, in case of signs of a criminal offense and/or a threat to safety of a labor inspector (Sub-clause. 4 of Clause 11 of the Procedure No. 295<sup>35</sup>).
- The investigating authorities of the National Police of Ukraine are empowered to carry out pre-trial investigation of criminal offenses related to the labor relations sphere.

In case of violations of the labor legislation, which are established based on inspection conclusions, the Head of the SLS, his deputies, heads of directorates and departments of the SLS and their deputies (regarding issues within their competence), heads of territorial bodies of the SLS and their deputies, heads of executive

<sup>33</sup> Available at: <http://zakon.rada.gov.ua/laws/show/295-2017-%D0%BF>

<sup>34</sup> Available at: <http://zakon.rada.gov.ua/laws/show/2755-17>

<sup>35</sup> Available at: <http://zakon.rada.gov.ua/laws/show/295-2017-%D0%BF>

bodies of city councils of cities of oblast subordination, village, city councils of united territorial communities and their deputies (“Authorized officials”) are authorized to impose fines as provided by Art. 265 of the Labor Code<sup>36</sup> and Clause 2 of the Procedure for imposing fines for violation of labor legislation and employment, approved with the Resolution of the Cabinet of Ministers of Ukraine (the “CMU”) No. 509 dated July 17, 2013<sup>37</sup>.

It is necessary to emphasize that moratorium on inspections (was set till December 31, 2018) did not cover Controlling authorities and the SFS. The BOC considers that the absence of the moratorium on labor inspections is justified and contributes to overcoming illegal (informal) employment<sup>38</sup>.

Currently, there is no regulatory procedure for interaction between the SLS, the SFS, and the National Police during the inspection activities. The need for its adoption is stipulated by the fact that the powers to impose

fines in the field of labor are vested only in the Controlling authorities, while the SFS and the National police don't have such powers. The SFS has a right to draw up labor inspection reports that fall within its competence and to record the fact of violation, then forward them for consideration to the Controlling authorities.

Involvement of the National Police when conducting inspection activities is possible in case of signs of a criminal offense and/or a threat to safety of a labor inspector. However, the effective legislation does not regulate in what order such involvement should be carried out.

Critically assessing the abovementioned powers of supervision bodies, we consider them sufficient to carry out control activities in the labor relations sphere. However, to optimize and increase the efficiency of the control activities, the procedure for interaction between the Controlling authorities, the SFS, and the law enforcement agencies needs to be regulated.

## BOC's recommendation:

### The SLS:

- Together with **the SFS** – to develop and submit for respective approval the procedure for interaction between the SLS, the Labor commissions under local governance, and the SFS, when carrying out the state supervision in the labor relations sphere.
- Together with **the National Police of Ukraine** – to develop and submit for respective approval the procedure for interaction between the SLS, the Labor commissions under local governance, and the National Police of Ukraine, when carrying out the state supervision in the labor relations sphere.

<sup>36</sup> Available at: <http://zakon.rada.gov.ua/laws/show/322-08>

<sup>37</sup> Available at: <http://zakon.rada.gov.ua/laws/show/509-2013-%D0%BF>

<sup>38</sup> According to the SLS, the number of insured persons since the beginning of 2018 has increased by approximately 200 thousand individuals. Available at: <http://dsp.gov.ua/holova-derzhavnoi-sluzhby-ukrainy-z-pytan-pratsi-naholosyv-na-efektyvnosti-kontrolnykh-ta-preventyvykh-zakhodiv-derzhavnoho-nahliadu-iaki-daly-pozytyvni-rezultaty-dlia-rostu-ekonomiky/>

## 2.2. Risk-based supervision (inspections)

Creating favorable conditions for doing business in Ukraine directly depends on the establishment of clear and transparent rules of the state control (supervision). At this stage, the controlling authorities' reform is being implemented in Ukraine<sup>39</sup>. One of the key elements of this reform is transition to a risk-based supervision. The SLS, along with other supervisory authorities, is obliged to develop criteria for assessing a risk degree from conducting business activities ("Criteria"), the list of issues that can be subject of inspection during the state control ("check-list"), and to determine the frequency of planned state control measures as regards compliance with the labor legislation.

At present, the Criteria's draft is developed by the SLS and published on its web-site<sup>40</sup>, but hasn't been approved by the CMU yet. Particularly, the Criteria's draft also provides a comprehensive list thereof, description of their parameters, scores by each parameter to determine frequency of the planned measures of state supervision (control), goals of the state supervision, a list of events including

the risk of adverse effects' occurrence, and a list of negative consequences that can lead to these events, etc.

In general, the Criteria's draft content is in line with provisions of the effective legislation of Ukraine and the Strategy of Reforming the System of State Supervision (Control), approved with the Resolution of the CMU No.1020-p dated December 18, 2017<sup>41</sup>. Criteria approval is necessary to optimize scheduled activities of the state supervision (control) over the labor legislation compliance, and will contribute to a common approach to inspections planning, improve quality and transparency of the state supervision. Absence of the adopted Criteria leads to the situations described in the Case (see below).

The check-list of issues that can be subject to inspection during the state control in the labor relations sphere has already been defined by the Order of the Ministry of Social Policy of Ukraine No. 1338 dated August 18, 2017.

<sup>39</sup> See the BOC's Systemic Report "Control over Controllers: Status of Control Bodies Reform Implementation" (January 2018). Available at: <https://boi.org.ua/publications/systemicreports/1137-systemic-report-control-over-controllers-status-of/>

<sup>40</sup> Available at: <http://dsp.gov.ua/povidomlennia-pro-opryliudnennia-proektu-postanovy-kabinetu-ministriv-ukrainy-pro-zatverd-zhen-nia-kryteriiv-za-iaakymy-otsiniuietsia-stupin-ryzyku-vid-provadhennia-hospodarskoi-diialnosti-ta-vyznacha-ie/>

<sup>41</sup> Available at: <http://zakon.rada.gov.ua/laws/show/1020-2017-%D1%80>

## Case

A company operating in the industry of gas storage and transportation addressed the BOC with a complaint regarding unlawfulness of a prescriptive notice issued by a state inspector of the SLS Department in Ivano-Frankivsk Region.

As a result of the onsite inspection of the Complainant related to compliance with labor legislation and mandatory state social insurance, Inspection Report and the prescriptive notice were drawn up, which subsequently were appealed to the SLS.

Among other things, the appeal subject consisted of the conclusions of the controlling authority regarding:

- Violation of the procedure for paying remuneration to employees on holidays/ non-working days, for working overtime, in the evening and at night time;
- Violation of terms for paying wages to dismissed employees;
- Civil contracts concluded between the Complainant and individuals, which were claimed as hidden employment, alleging from the content that factual employment relationship could be discerned.

During the investigation, the BOC provided its own position on the appeal subject, which referred to the following:

- Alongside the disputable substantial conclusions of the Complaine, the Complainant was deprived of a possibility to provide remarks and objections to the Inspection Report for the reason that the prescriptive notice had been issued simultaneously with this Report, which can be considered as a violation of Clause 24 of the Procedure No. 295.
- As regards the conclusion on informal (illegal) employment, it should be kept in mind that the current legislation does not contain mandatory regulations, when parties are obliged to conclude labor contracts, and when – civil contracts for performance of certain works.
- The SLS should scrupulously test the criteria developed by case-law, namely specification, location, volume and systematic nature of the work performed, procedure for its payment, internal rules, etc.

The BOC's investigators also participated in the consideration of the appeal materials at the SLS. It is worth mentioning that the SLS demonstrated high involvement and acute focus on details which were not properly considered by the inspector of the SLS Department in Ivano-Frankivsk Region. To exemplify, it appeared that the additional charges were accrued due to the technical mistake which happened in the course of de-digitization of information for the purpose of audit.

As a result, the SLS satisfied the Complainant's appeal and cancelled disputed clauses of the prescriptive notice.

## **BOC's recommendation:**

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**The Ministry of Social Policy of Ukraine** – to submit the Criteria's draft to the CMU for approval.

**The SLS** – to publish information on practical application of the Criteria on its web-site after approval by the CMU.



### 3 PARTICULAR ASPECTS OF ISSUING PERMITTING DOCUMENTS

Traditionally, matters related to permitting documents remain the most topical ones in the sphere of state regulatory activities. The BOC considers that in our technological era, when business becomes more technology-dependent, compliance with the respective legislation is particularly important, whereas the labor safety of employees should be a top priority in any business.

For that very reason, the regulatory and controlling activities of the SLS should ensure balance between labor safety and complexity of a relevant procedure. Thus, issuance of any permitting documents should be in line with the best international practices of administrative procedures.

As you could see from Chapter 2 of this report, the SLS has fairly wide powers in the area of the state control in the labor-related domain. In addition to the abovementioned, the SLS is an authorized body for issuing a number of permitting documents (e.g. licenses, permits, and certificates). In particular, according to the current legislation the SLS issues the following documents:

- licenses for manufacturing explosives (for industrial use);
- certificates for purchase and storage of explosives (for industrial use);
- permits for blasting operations;
- permits for execution of hazardous works and operation (use) of hazardous machines;
- mining allotments for development of mineral deposits.

It is noteworthy, that detailed information regarding all granted licenses and permits is available online free of charge. So, there is a possibility for users to check validity of a certain permitting document and to obtain general information regarding a particular company that received a relevant permitting document<sup>42</sup>. Information on certificates and allotments is not available online.

According to the legislation, the SLS is also authorized to inspect companies' compliance with the licensing and permitting requirements. Failure to comply with such requirements may lead to cancellation (revocation) of the relevant permitting documents. In addition, the SLS is involved in the process of approving other documents essential for business, namely: technical specifications for equipment, mining works development plans, labor safety training programs, etc.

In 2018, the BOC considered several complaints related to the SLS's authority in this sphere. Complaints' topics concerned approval of mining operation development plan, and the other one concerned a permit for hazardous works execution.

Considering that the scope of the received complaints, on the one hand, concerns the strategic extractive industry of Ukraine, and on the other hand, relates to almost all types of businesses that use complex machines and mechanisms, the BOC decided to highlight these issues.

<sup>42</sup> Available at: <http://dozvil.ndiop.kiev.ua/>



### 3.1. Approval of mining operations development plans

According to the legislation, all mining companies must obtain approval of a mining operations development plan from the SLS. Thus, the mining operations development plan for companies is reviewed annually and approved by mining supervisory authorities. Specific requirements as for the substance of the mining operations development plan, are defined by the labor safety legislation.

However, the legislation does not provide an explicit administrative procedure for approval of the mining operations development plan by a territorial department of the SLS (a list of documents, terms of consideration, a procedure for eliminating identified shortcomings, decision-making process, time frames of its adoption and possibilities of appeal, etc.). At present, the relevant requirements (mostly technical) are scattered throughout various subsidiary legislation. Such legislative gaps may result in possible misuse of powers by the SLS's territorial authorities during the decision-making process. Moreover, absence of the unified regulation

of the procedure may lead to corruption risks and unfair practices.

The BOC discussed these issues with the SLS. According to the latter, it is impossible to develop one unified procedure for all types of minerals and methods of their extraction, as technological processes of extracting various minerals differ significantly. It has a major impact on technical requirements that should be implemented. In view of the SLS, it is impossible to develop a single unified approach for all kinds of mining operations. Moreover, the SLS stated that adoption of such a unified regulation could complicate the relevant procedure and have a negative regulatory impact on business.

The BOC agrees that specific requirements for the mining operations development plan depend on the type of minerals and method of their extraction. Therefore, it is reasonable to clarify general requirements for the procedure for consideration of the mining operations development plan and the decision-making process.

## Case

Donkaolin LLC, a member of IMERYYS international French group of companies, addressed the BOC with a complaint regarding unlawful refusal of a territorial body of the SLS to approve a plan for development of mining operations.

The Complainant stated that comments provided by the territorial authority of the SLS on the mining development plan were not based on current legislation in the area of health and safety.

Thus, the Complainee referred to violations of para. 1.2 ch. 4 of Legal Acts on Occupational Safety 0.00-1.24.0 and Art.19 of the Mining Law of Ukraine. However, the Complainant insisted on irrelevance of such substantiation for the reason that mining works had been carried out in accordance with the existing working project and corresponding corrections, which were approved by the relevant executive authorities. Productive and mining-geological conditions did not change, whereas the amount of extraction, not belonging to the mining-geological conditions, did not exceed project capacity.

In addition, the Complainant stated that the territorial body of the SLS did not provide reasonable time to eliminate possible deficiencies. In particular, the decision to refuse approval of the plan for mining development operations was made on December 27, 2017 and shortcomings should have been eliminated by January 01, 2018.

Having investigated the circumstances of the complaint, the BOC's investigator in charge arranged a meeting with the Complainant and representatives of the SLS (as a higher level authority), and discussed the complaint subject. The BOC endorsed the position of the Complainant and concluded that the refusal to approve the plan had been ill-founded, whereas the granted time for correcting shortcomings had been insufficient.

According to the results of the meeting and discussion of the complaint subject, the SLS provided the territorial body with relevant recommendations. Shortly afterwards, the Complainant informed the BOC that the mining operations development plan had been successfully approved.

## BOC's recommendation:

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**The SLS** – to provide the territorial bodies with a guidance for compliance within the process of approval of mining operations development plans. Such a guidance should clearly address the following: (i) a maximum time limit for processing of submitted documents; (ii) an exhaustive list of grounds for refusal of approval; (iii) a minimum time limit for correction of weaknesses in the mining operations development plan (if any).

## 3.2. Revocation of permits for hazardous works

Activities of industrial enterprises require obtaining a number of permitting documents and compliance with the labor safety legislation. One of these documents is a permit for hazardous works and operation (use) of hazardous machines, mechanisms, and equipment ("permit"). Each separate type of activity and machine require obtaining a separate permit.

The procedure for issuance, extension and revocation of permits is regulated by the Procedure No. 1107<sup>43</sup>. The permit may be granted only if a relevant company complies with the labor safety legislation and fulfils a number of requirements. According to the Procedure, an essential requirement is positive results of a labor safety audit (confirmed by the relevant report). The permit validity period is five years and it may be extended.

### Licenses for execution of hazardous works and operation (usage) of hazardous machines, mechanisms, and equipment in 2018 (Chart 7)<sup>44</sup>

Issued licenses	Cancelled licenses	Decisions on cancellation of licenses revoked in court
17,024	70	2

It should be noted that the SLS granted 17,024 permits in 2018. Only 70 permits were cancelled and only 2 of these decisions on permits cancellation were overturned by courts.

An extension of the permit can be exercised in two ways:

- (i) an employer can apply for extension **without any additional documents** (if during the validity period of the permit there were no labor safety accidents); and
- (ii) an employer can apply for extension **with a positive report on labor safety compliance** (if during the validity period of the permit there was a labor safety accident).

During some hazardous activities or use of hazardous machines a situation may arise when workers get injured. Consequently, non-compliance with the labor safety, bars an employer from extending the relevant permit without a new labor safety audit (de facto a simplified procedure). Generally, an industrial company

may have a substantial number of permits (a separate permit for each type of activities). For instance, a company has 10 items of industrial equipment (e.g. a heavy pressing machine) and labor safety accident happened in respect of only one machine. According to the current practice of the SLS, in this hypothetical case a company is not entitled to extend the rest part of permits through a simplified procedure (following the application and without a labor safety audit). In such a situation, the SLS requested to conduct a labor safety audit regarding all types of hazardous works and machines. However, such an audit is very expensive and time-consuming.

In the BOC's view, this approach is obviously disproportional and it does not meet the best standards of the administrative procedure. In particular, every decision of a state body should be taken proportionally. Such proportionality implies maintaining necessary balance between goals which this decision addresses and any adverse consequences for the rights and freedoms of a person.

<sup>43</sup> Available at: <http://zakon.rada.gov.ua/laws/show/1107-2011-%D0%BF>

<sup>44</sup> According to the SLS

In the BOC's opinion, this practice exists as a result of misinterpretation of the Procedure No. 1107. In order to stop the mistaken practice

of interpreting the abovementioned norm of the Procedure No. 1107, the BOC finds it necessary to specify its provisions.

## Case

The BOC received a complaint from Knauf Gips Donbas LLC related to allegedly illicit misconduct of the Main Department of SLS in Donetsk Region and the SLS itself, which consisted in groundless refusal to extend validity period of permits for execution of hazardous works and operation (use) of hazardous machines, mechanisms, and equipment.

The Complainant reported that it had received 49 permits with terms of validity for 2017-2018. The validity of the mentioned permits may be extended for 5 years. The Complainant addressed the Main Department of the SLS in Donetsk Region with applications for extension of the relevant permits.

The Main Department of the SLS in Donetsk Region refused to extend the validity of the permits. Reason: during operation on a front loader (subject of one of the permits) an accident occurred (the worker twisted his ankle).

Disagreeing with the Department's decision, the Complainant addressed the SLS, as a higher-level authority, with a claim for cancellation of refusal to extend the permits. The BOC's representative took part in consideration of the complaint. In the course of consideration, the BOC's investigator stressed out that nature of the taken decisions was disproportional and did not correlate with an extent of the said accident. Eventually, the SLS refused to satisfy the complaint.

The mentioned decision is final and the Ukrainian legislation does not provide its further pre-trial appeal (extrajudicial procedure), herewith consideration of complaints subject to court proceedings goes beyond the BOC's investigative remit. In such circumstances, the BOC discontinued the case.

## BOC's recommendation:

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### The SLS:

- to amend Sub-clause 4 of Clause 15 of the Procedure No. 1107<sup>45</sup>. In particular, the relevant amendments should clearly specify that violation of labor safety entails refusal to extend the validity period of that specific permit, requirements of which were breached due to a labor safety accident.
- to provide the territorial bodies with a clarification letter ensuring correct application of the relevant regulation.

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<sup>45</sup> Available at: <http://zakon.rada.gov.ua/laws/show/1107-2011-%D0%BF>

## 4 USE OF FOREIGN LABOR IN UKRAINE

### 4.1 General overview of the legal regulation and the latest legislative changes

In the BOC's opinion, a possibility of recruiting foreign staff is an important element of investment attractiveness for any country. As a rule, companies which are registered in the Ukrainian jurisdiction and wish to employ foreign staff must obtain a work permit for relevant individuals. Each foreign employee should have an individual work permit.

The legal basis for employment of foreigners in Ukraine is set forth in the Law of Ukraine "On Employment" No. 5067-VI (the "Law No. 5067-VI")<sup>46</sup>.

It should be noted, that use of foreign labor in Ukraine is a complex matter. It involves two components: (i) obtaining the individual work permit for each foreign employee by a company and (ii) obtaining a residence permit by the foreigners. It requires efficient coordination between the SES and the State Migration Service of Ukraine (the "SMS").

Until recently, employment regulation of foreign staff members has been rather complicated and time-consuming. In particular, a procedure for obtaining the work permit required submission of a fairly wide range of documents and information to a territorial office of the SES **(e.g. a written explanation of necessity to hire foreign staff, special medical certificates etc.)** that was extremely ineffective and time-consuming.

Provisions of the Law No. 5067-VI have been substantially improved with adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Eliminating Barriers

to Foreign Investments" No. 2058- VIII (the "Law No. 2058-VIII")<sup>47</sup>. Summarizing, the provisions of the Law No. 2058-VIII have significantly simplified the process of work permit obtaining and reduced a list of required documents. Moreover, after the said amendments, a number of requirements of the Law No. 5067-VI, related to work permits, do not apply to separate categories of employees: foreign highly paid professionals, IT professionals, creative professionals, founders (participants, beneficiaries (controllers) of a legal entity established in Ukraine).

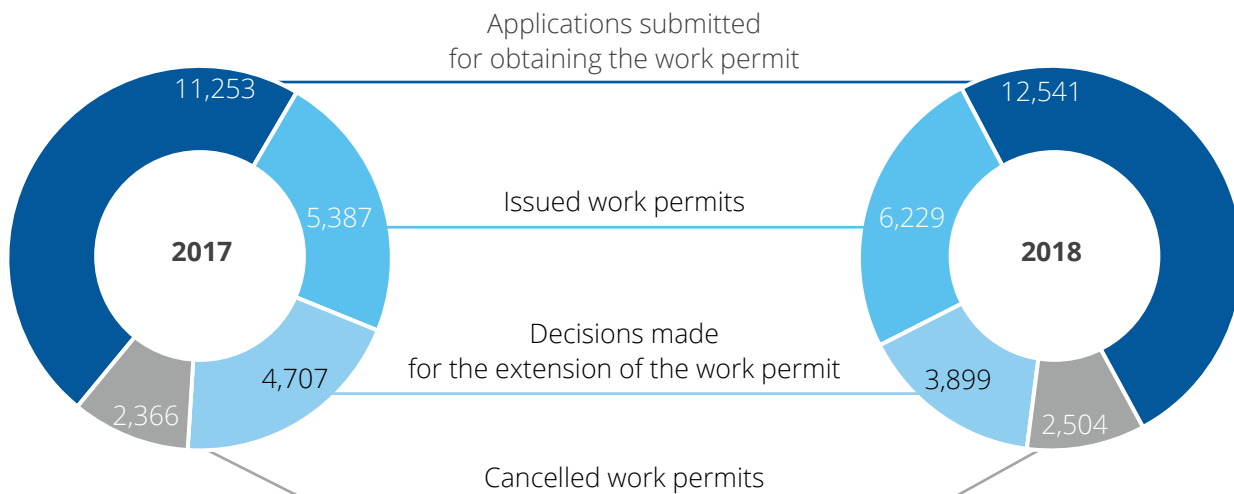
According to the Law No. 2058-VIII the labor of foreign highly paid professionals may be used without a permit for the second job, if a validity period of a second job employment contract does not exceed the primary one. Also, a foreign employee has a right to backup a temporarily absent employee for up to 60 days. A period for deciding on issuance of the work permit is 7 working days. A fee for each separate work permit for employable persons makes up 6 living wages. It is noteworthy that this permit can be prolonged an unlimited number of times, given that documents which confirm legal grounds for issuance are still valid. However, the state fee is charged for an extension of the work permit. The charge varies depending on a term the work permit is extended for and ranges from 2 to 6 living wages.

The BOC welcomes the respective legislative changes in the employment regulation for the foreigners in Ukraine, as they should lead to improvement of the investment attractiveness of Ukraine.

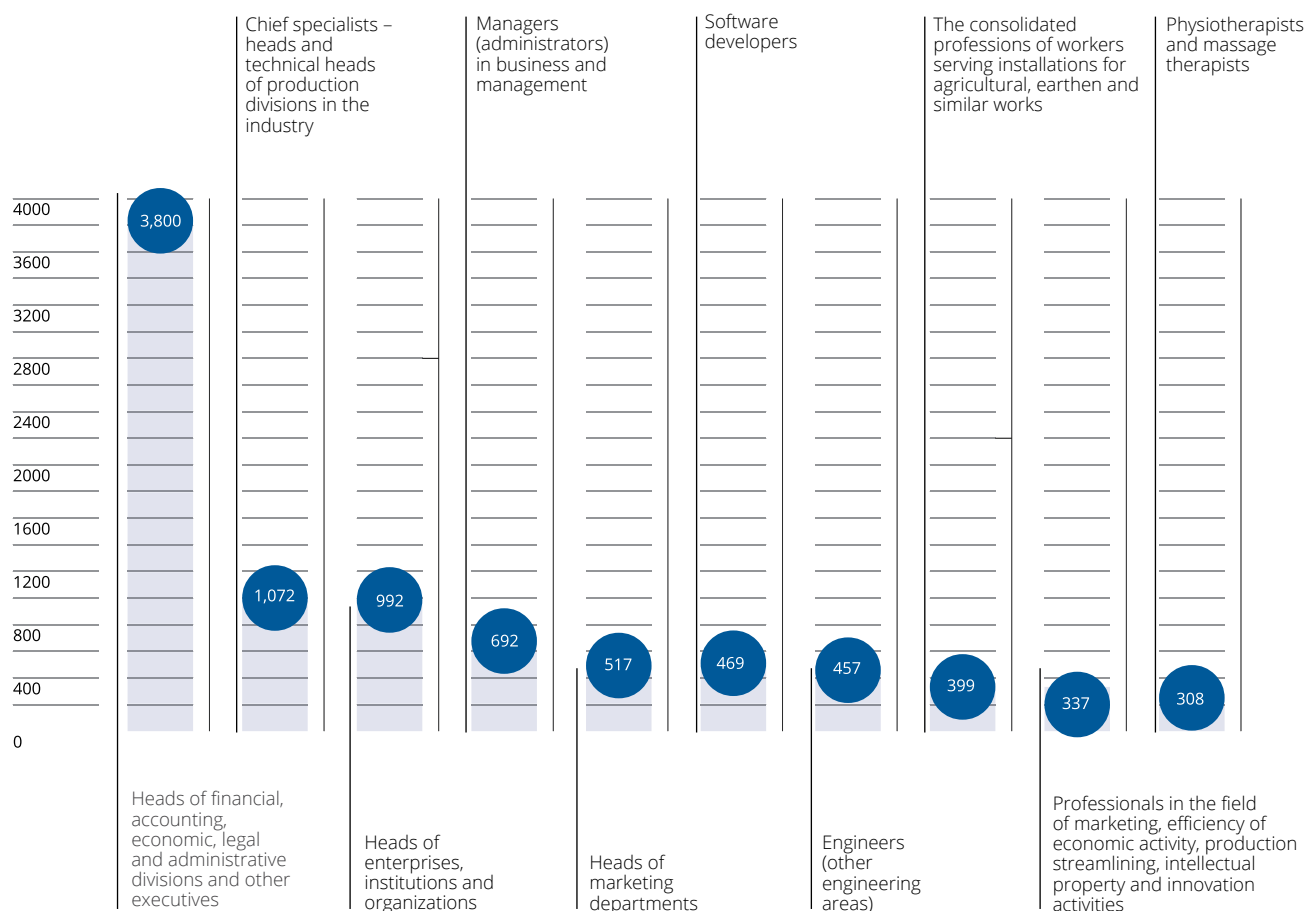
<sup>46</sup> Available at: <http://zakon.rada.gov.ua/laws/show/5067-17>

<sup>47</sup> Available at: <http://zakon.rada.gov.ua/laws/show/2058-19>

### General statistics on recent recruitment of foreigners and stateless persons in Ukraine (Chart 8)<sup>48</sup>



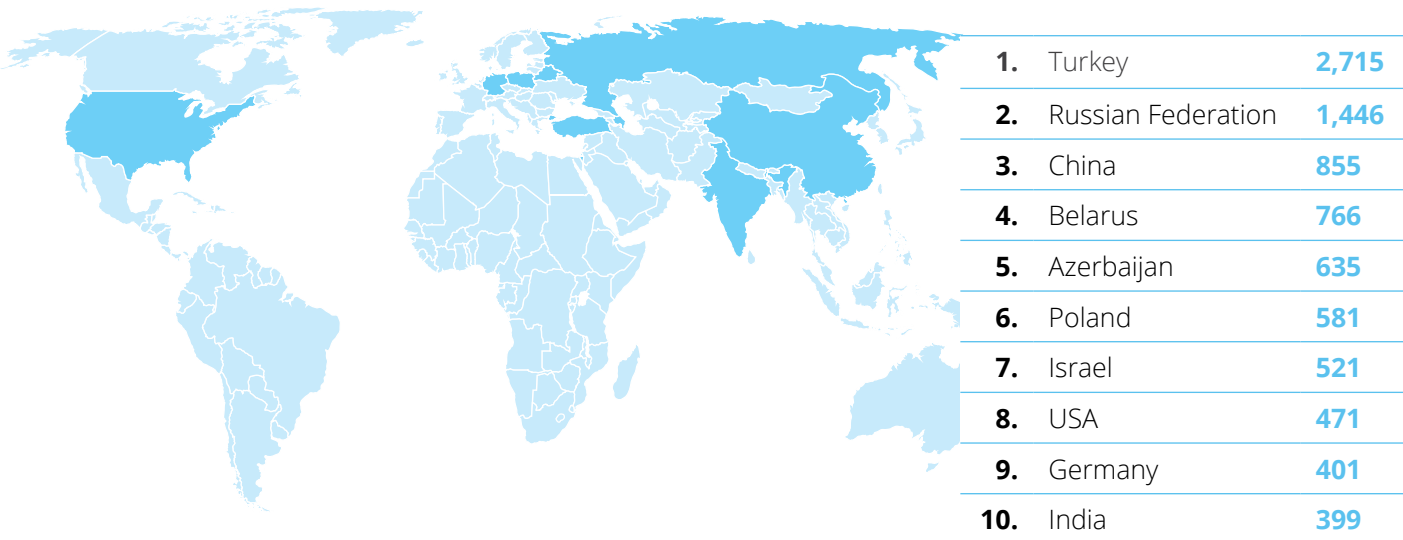
### Top-10 occupations of foreigners who have received work permits in Ukraine in 2018 (Chart 9)<sup>49</sup>



<sup>48</sup> According to the SES

<sup>49</sup> According to the SES

### Top-10 countries whose citizens received the largest number of work permits in Ukraine in 2018 (Chart 10)<sup>50</sup>



- As we can see from the Chart 8, 6,229 work permits were granted in 2018, which is 842 permits more compared to 2017.
- A similar trend is observed regarding a total number of submitted applications. In 2018, they increased by 1,288 compared to 2017.
- Notably, that only a half of the submitted applications were satisfied and on that basis the relevant permits were granted.
- Statistics show that approximately a half of the total number of granted permits were cancelled throughout the year. This may be due to breaches of legislation within the duration of a permit.
- Traditionally, the largest number of work permits were granted to positions of heads of different departments and chief specialists (4,074 work permits in 2018) and only 457 work permits were granted to workers.
- The citizens of Turkey, Russian Federation and China are the main labor immigrants compared to other countries.
- However, the number of issued work permits remains low compared to the domestic labor market described in Chapter 1 of this report.

<sup>50</sup> According to the SES

## 4.2 Possible ways to improve legislation in the area of foreign staff recruitment

According to the State Strategy of Migration Policy of Ukraine for the period up to 2025 (the "Strategy")<sup>51</sup>, free movement of foreign staff, as well as obtaining a work permit and other relevant documents, should not be subject to unreasonable bureaucratic and discriminatory restrictions. To accomplish these international standards and the best European practices the relevant procedures should be implemented. One of the most prominent reshaping must be implementation of e-governance approach in the procedure. Shifting communication between the SES, the SMS and applicants (both companies and foreign employees) to electronic form would be a significant change of the actual procedure for obtaining the work permit.

Using modern communication technologies is a good trend among Ukrainian state authorities. At present, there are many administrative services that could be provided online from the beginning to the end. An area of the labor regulation can also be included in the list. Creation of an online "E-Office" for users is one of the ways to raise quality of work permission service. The BOC considers that the "E-Office" could also be a tool for information and documents exchange to ensure efficient communication between the SES, the SMS, and companies. Moreover, such an electronic system would allow prompt reporting about shortcomings of submitted documents and, consequently, their timely correction.

According to the effective legislation, the work permit can be issued only in a single hard copy. At the same time, visa laws can prescribe submission of an original hard copy of the work permit in case of applying for or prolongating a relevant visa. However, issuing a duplicate is not prescribed by the legislation. In case of loss of the original hard copy, there are no options

to obtain the duplicate. In the BOC's view, this legislative gap should be filled. In addition, it would be useful to provide obtaining the work permit in an electronic form (through the "E-Office").

It should be noted, that the BOC has not received individual complaints arising from an illegal refusal to grant the work permit. However, we cannot exclude such a situation in conditions of instability and ambiguity of the legislation. Current legislation does not provide a possibility to appeal against a decision on refusal to issue the work permit administratively. For instance, if a company considers a refusal illegal, then such a decision is subject only to judicial review. However, the court procedure is very complicated, costly, and time-consuming. The institute of administrative appeal has proved its efficiency in such areas as taxation, public procurement, state registration, etc. Therefore, the BOC supports the idea of introducing an administrative appeal procedure in the sphere of granting work permits.

Obtaining a residence permit is one of the requirements for lawful residence of foreign staff in Ukraine. The procedure for obtaining the residence permit is defined in the Interim regulation on consideration of an application for the residence permit, approved with the Order No. 681 of the Ministry of Internal Affairs dated July 15, 2013<sup>52</sup>. In order to check in practice how the procedure for obtaining the residence permit works, the BOC conducted several interviews of visitors who addressed the Main Department of the SMS in Kyiv city.

Based on the received information, the BOC should state that the practical situation of applying for the residence permit requires improvement. The process of submitting

<sup>51</sup> Available at: <http://zakon.rada.gov.ua/laws/show/482-2017-%D1%80>

<sup>52</sup> The Order of the Ministry of Internal Affairs dated July 15, 2013, No. 681 "On Approval of the Temporary Procedure for Consideration of Applications for Registration of Residence Permits and Temporary Residence Permits". Available at: <http://zakon.rada.gov.ua/laws/show/z1335-13>



documents for the residence permit implies certain order, and often it involves applicants standing in line. According to the feedback given by the BOC's interviewees, the latter have been waiting for their turn to submit documents almost a whole day. Such a situation happened as only two officers register incoming documents. It demonstrates that an operational capacity of the front-office of the Main Department of the SMS in Kyiv city should be enhanced.

After obtaining the work permit, a foreign employee may apply for a long term-visa. Notably, that there are no possible options to request a visa when staying in Ukraine. Applying for a visa is possible only via a Ukrainian consulate in a relevant domestic country. The BOC considers it as a barrier which negatively affects

business processes in Ukraine.

While elaborating on these issues, the BOC identified one opportunity to attract young professionals to the Ukrainian labor market.

As of January 01, 2018, a total number of foreign students in Ukraine amounted to 66,000<sup>53</sup>. Further recruitment of these people after graduation could be one of the ways to overcome consequences of labor migration. Foreign graduates have legal grounds for staying in Ukraine and they have been adapted to local community. At present, they obtain work permits based on general grounds. In the BOC's view, it could be reasonable to develop a simplified procedure for obtaining an employment permit for such categories of professionals.

## BOC's recommendation:

**The SES** and **the SMS** – to develop a legal framework and an implementation mechanism for the “E-Office” that would meet international standards and the best European practices for the labor-related procedures (in particular, for obtaining of the work permit for foreign specialists).

### **The SES:**

- to prepare a draft law introducing a simplified procedure for obtaining the work permit for foreign students and/or the graduates.
- to prepare a draft law introducing an administrative appeal procedure against refusals to issue the work permit.
- to prepare a draft law providing issuance of the work permit duplicate as well as the one in the electronic form.

**The SMS** – to enhance an operational capacity of the Main Department of the SMS in Kyiv city (to increase a number of offices and staff members assigned to registration and consideration of incoming applications and other correspondence).

<sup>53</sup> Available at: <https://press.unian.ua/press/10144736-shchoroku-zrostaye-killist-inozemnih-studentiv-yaki-hochut-zdobuvati-vishchu-osvitu-v-ukrajini-video.html>

## 5 PROVISION OF EDUCATIONAL SERVICES IN THE FIELD OF OCCUPATIONAL AND INDUSTRIAL SAFETY

### 5.1. General overview of legal regulation and market state

Legal framework of occupational safety training is set forth by Art. 18 of the Law of Ukraine “On Occupational Safety” No. 2694-XII (the “Law No. 2694-XII”)<sup>54</sup>. Existing legislation obliges employees, engaged in hazardous jobs<sup>55</sup> or jobs, which require professional selection<sup>56</sup>, to undergo a special occupation safety training and to pass appropriate exams.

The Law No. 2694-XII stipulates that the relevant training and further examination procedure should be established by model regulations, approved by the central executive body, which ensures formation of state policy in the field of labor protection (currently the SLS).

According to the Model Regulation on the Procedure for Training and Knowledge Assessment on Occupational Safety Issues, approved with the Order of the State Committee of Ukraine on Supervision of Labor Protection No. 15 dated January 26, 2005<sup>57</sup> (the “Model Regulation No. 15”), a special training can be carried out both directly at enterprises or in a training center<sup>58</sup>. Directors of enterprises with headcount exceeding 1,000 employees, occupational safety managers and members of occupational safety examination commissions of such entities are obliged to undergo trainings in training centers.

The educational (training) services on occupational safety could be provided by private or state-owned entities, based on their compliance with formal legal requirements<sup>59</sup>. Thus, such providers shall only submit declarations on technical and institutional capacity. However, the effective legislation does not provide for any mechanism to verify data indicated in such declarations, which, in turn, creates space for unconscientious participants. Whereas licensing is required only for those entities which arrange education for professionals<sup>60</sup>, the market entry barrier for those, who aim to train solely in the field of occupational safety, is rather low.

According to the list of service providers in the field of occupational safety, administered by the SLS<sup>61</sup>, as of January 29, 2019, there are 347 state and private entities in Ukraine providing this service.

According to the expert’s opinion received by the BOC, in 2018, there were more than 40 privately-owned service providers in the field of occupational safety education in Kyiv city. However, only less than 10 of them are active market participants. It is also worth pointing out, that as of H1 2017 there were more than 110 market participants. The most notable service

<sup>54</sup> Available at: <http://zakon.rada.gov.ua/laws/show/2694-12>

<sup>55</sup> The list of hazardous jobs, approved with the Order of the State Committee of Ukraine on Supervision of Labor Protection No.15 dated January 26, 2005. Available at: <http://zakon.rada.gov.ua/laws/show/z0231-05>

<sup>56</sup> List of jobs, which require professional selection, approved with the Order of the Ministry of Health of Ukraine and the State Committee of Ukraine on Supervision of Labor Protection No. 263/121 dated September 23, 1994. Available at: <http://zakon.rada.gov.ua/laws/show/z0018-95>

<sup>57</sup> Available at: <http://zakon.rada.gov.ua/laws/show/z0231-05>

<sup>58</sup> Clause 4.2 of Model Regulation No. 15

<sup>59</sup> Clause 1.5 of Model Regulation No. 15

<sup>60</sup> Subject to licensing by the Ministry of Education and Science of Ukraine

<sup>61</sup> Available at: <http://dsp.gov.ua/wp-content/uploads/2017/01/perelik-subyektiv-hospodarjuvannja-shcho-provodjat-navchannja-z-op-1-1-5-1-1-2-3.doc>

provider is the State Enterprise “Main Training Methodical Center” (the “MTMC”) managed by the SLS. The SLS also manages regional network of 19 expert-technical centers and 4 affiliates, which provide, in particular, educational and examinational services<sup>62</sup>.

Examination of employees, who underwent special trainings, is arranged by a commission of the respective SLS's regional body and, in case of direct training at the enterprise, with an appropriate commission of such an enterprise<sup>63</sup>. The Model Regulation No. 15 also stipulates that the commission may also be complemented with trade unions' representatives and regular lecturers of the industrial training centers<sup>64</sup>. Thereby, the BOC discerns features of regulatory discrimination of lecturers from ordinary private training centers, since the latter are not allowed to such commission. Nevertheless, it should also be noted that European practice encourages the lecturers to participate in the commission to participation of lecturers in the commission, regardless of whether the training is arranged

by the state-owned or private training center. Another issue worth to be highlighted is that the Model Regulation No. 15 does not explicitly indicate the venue of arranging the knowledge assessment on occupational safety after a respective training in the private centers. As it follows from the current regulation, it can be either the SLS's or the training centers' premises.

In the course of analyzing the current state of market, the BOC was informed of cases when members of the SLS's commission arranged onsite examinations, but in fact did not actually hold the exams.

Alongside this, there were cases when training centers had to arrange an examination for a large group of attendees, however the SLS ignored requests to provide an onsite commission. Therefore, the only available option was transporting numerous attendees to the SLS's premises.

## 5.2. Potential conflict of interests

The Regulation No. 96 stipulates that the SLS is responsible for both the state supervision (control) of respective education (including special trainings) and the assessment of knowledge in the field of occupational safety<sup>65</sup>.

By means of the MTMC, the SLS is also a significant provider of educational/training services and directly competes with privately-owned training centers as mentioned above. Alongside this, the SLS simultaneously arranges knowledge assessment

in the field of occupational safety as regards employees of all training centers (including examination of members of the commissions at large enterprises).

Hence, there is a potential conflict of interests when the SLS is involved in both training and examination processes for all market participants. It might have a negative impact not only on the quality of education but also on the labor safety, as well as the competition on this market.

<sup>62</sup> Available at: <http://gnmc.kiev.ua/perelik-sub-yektiv-gospodaryuvannya-z-yakimi-spivpratsyuye-dp-gnmts-pid-chas-organizatsiyi-navchannya-z-pitan-ohoroni-pratsi-posadovih-osib-inshih-sub-yektiv-gospodaryuvannya>

<sup>63</sup> Clause 4.4 of Model Regulation No. 15

<sup>64</sup> Such industrial training centers are SLS's subordinates according to para. 1 of Clause 1.4 of the Model Regulation No. 15

<sup>65</sup> Sub-clause 16 of Clause 4 of Regulation No. 96. Available at: <http://zakon.rada.gov.ua/laws/show/96-2015-%D0%BF>

### **Risk of private educational and training centers discrimination**

In particular, there is a risk that the SLS might tend to discriminate private providers of educational services by delaying assignment of examination commissions or unequal approach to examination methodology. This assumption is supported by cases, investigated by the BOC (see Cases).

The BOC witnessed multiple documented cases of untimely appearance or delayed assignment of the examination commissions to private training centers, which negatively affects their customers' satisfaction and the centers' reputation.

According to the market participants, interviewed by the BOC, there were cases, when employees, who failed to pass the exam, received direct suggestions from the member of the examination commission to try taking an exam via the "right" training center, i.e. unofficially affiliated. The BOC should also note that it does not possess documented evidence supporting this information.

### **Risk of improper control over the process of the occupational safety education**

There is a risk that the market competition between the SLS's educational centers and the private centers could lead to discrimination or prejudice against private training centers during examination process.

### **Risk of deteriorating quality of provided educational services due to a decrease in the market competition**

The BOC has observed a significant decrease in the number of market participants since the 1H 2017. The decrease in the market competition, combined with risks of improper control over the occupational safety education and dispersed responsibility for training results increase a risk of deteriorating quality of the occupational safety trainings, and thus contributes to risks of occupational safety violations and incidents.

## 5.3. Ambiguity of examination process

According to the Model Regulation No. 15<sup>66</sup>, knowledge assessment in the field of occupational safety is performed by means of testing, pass-fail course or an exam. Testing is carried out, using technical devices (e.g. computer testing), whereas pass-fail course or an examination are held in accordance with examination cards in the form of oral or written assessment.

However, there is no described procedure for knowledge assessment and actions of the examination commission. It leaves room for wide discretion in the knowledge assessment

process. For example, commission members may decide:

- what set of examination cards to use,
- what threshold for successful passing of the exam should be set,
- whether additional questions should be asked.

Such discretion, combined with the potential conflict of interests described above, and business disruption risks for entities, whose designated employees do not pass knowledge assessment in time, creates prerequisites for misconduct (see Case 2).

<sup>66</sup> Clause 3.12 of Model Regulation No. 15

## Case 1

The BOC received a complaint from a company organizing special trainings for certain categories of employees with regard to obstacles in organization of training and knowledge assessment by officials of the Commission on Occupational Safety.

Thus, the Complainant informed that the Commission of the SLS Main Department in Kyiv Region failed to respond to requests to send the Commission to the Complainant's location for students' assessment procedure or reacted to such requests irregularly.

As a result of the preliminary investigation of the complaint circumstances, the BOC addressed the SLS Main Department in Kyiv Region and the SLS, asking to hold a joint working meeting. Following this meeting, the BOC requested additional information to check the facts of the complaint subject. This, in turn, facilitated the Ministry of Social Policy of Ukraine to charge the SLS for official investigation into the actions of the officials of the SLS Main Department in Kyiv Region. With an order of the SLS Main Department in Kyiv Region, a disciplinary proceeding was initiated and resulted in disciplinary action in the form of reprimand with regard to guilty officials.

At the same time, the BOC raised the issue of sending members of the commission for knowledge assessment on occupational safety to the Complainant's location, as, according to the Model Regulation No. 15, the place of such assessment is not clearly defined. According to the letter of the SLS dated March 23, 2013, No. 2237/3/4-DP-18, SLS Main Department in Kyiv Region, if appropriate justifications are provided, could suggest a place and time for knowledge assessment on occupational safety.

Subsequently, the SLS Main Department in Kyiv Region informed of strengthening control over the timely provision of a commission for knowledge assessment on occupational safety and drafting the Order of the Ministry of Social Policy of Ukraine on amendments to the Model Regulation No. 15, which establishes a procedure for formation and assignment of commissions for the knowledge assessment on occupational safety issues. Hence, in the BOC's opinion, setting a certain threshold of an attendees' group size when deciding on onsite assessment by the SLS might improve the situation.

## Case 2

The BOC received a complaint from a company that organizes specialized trainings of certain categories of workers as regards obstacles in a process of knowledge assessment by officials of the SLS Main Department in Kyiv Region.

Thus, according to the Complainant, after the assessment of four students, who had successfully passed an exam, they were blanked out from a protocol based on the fact that an initial letter of request for knowledge assessment, submitted by the Complainant, related only to those students, who underwent re-examination, whereas the four mentioned students passed it for the first time. Moreover, the commission did not inform these students, who could not obtain documents for this reason, regardless of actual confirmation of their knowledge during the assessment.

Having examined all the circumstances, the BOC observed malpractice in unjustified invalidation of the exam results of the students and addressed the SLS with an official request to recognize the exam results by means of signing a corresponding protocol. Additionally, the situation was further discussed with authorized SLS's officials.

Subsequently, the Complainant ensured signing of the said protocol by the relevant students and SLS's officials, what validated positive results of knowledge assessment and settled the complaint subject with the BOC's facilitation.

## BOC's recommendation:

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### The SLS:

- to redesign the process of the occupational safety education, amend Model Regulations No. 15 and other applicable acts, in particular, to:
  - grant a right to lecturers of private training centers, who trained employees, to be a part of in examination commissions;
  - provide a detailed procedure with requirements for a request with requirements for a request to assign an examination commission, as well as a concrete algorithm of actions, when such a commission does not arrive in time.
- to develop and to approve a detailed procedure for assessment of knowledge in the field of occupational safety and health, which would eliminate ambiguities and excessive discretion inherent to the existing process, in particular – regarding allowed examination cards, additional questions, and success threshold.
- to develop and to implement a confirmation system of competence and quality management of the educational institutions and training centers, which would prevent indecent participants from operating in the market, e.g. introducing a requirement of certifying compliance with recognized international standards.

## 6 LABOR LAW COMPLIANCE AND PREVENTION

### 6.1. Current state of labor law compliance in Ukraine

It is widely recognized that general labor law compliance and preventive strategies in this area are essential for ensuring sustainable economic growth<sup>67</sup>. This means that the relevant authority (in other words, the SLS in Ukraine) should be designed as an intermediary with primary responsibility to assure compliance. Such an approach was supported by the World Bank that recommended Ukraine to train labor inspectors mainly to advise employers to fulfil their obligations, whilst leaving an option of punishing grave and consistent violations<sup>68</sup>. Additionally, the recent ILO projects have demonstrated that compliance with labor laws may be facilitated when labor inspectors perform an educative role rather than a policing one. To exemplify, the ILO report on the informal economy observed that **"it may be more effective if labor inspectors are reoriented from an approach that emphasizes enforcement (which often opens up opportunities for corruption and harrasment) to a role that is educational ..., transparent and participatory"**<sup>69</sup>. As reasonably achievable, the SLS should turn from policing into information provision, advising, empowerment, and encouraging business self-assessment<sup>70</sup>.

The above corresponds with several international treaties recently signed by Ukraine. For instance, Art. 13.5(1) of the Canada – Ukraine Free Trade Agreement stipulates that **'Each Party shall promote compliance with ... its labor law, mainly through establishing and maintaining an effective labor inspection regime (including by developing responsible bodies and appointing and training inspectors) and monitoring compliance and investigating suspected violations (including through on-site inspections)**<sup>71</sup>.

The BOC supports a compliance-oriented approach referred to in its systemic reports<sup>72</sup>. Apart from encouraging the state authorities to implement a risk-based approach to performing audits effectively effectively, the BOC, being a founding initiator of the Ukrainian Network of Integrity and Compliance, facilitates strengthening a private sector's commitment to self-education and self-assessment in the context of labour law compliance labor law compliance. At the same time, some of the experts, interviewed by the BOC, have concerns that even with widespread trends to boost labor compliance, they are still not widely observed in Ukraine. It turned out that the Ukrainian labor authorities have instead shown

<sup>67</sup> Labor Administration and Inspection: Challenges and Perspectives. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_145952.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_145952.pdf)

<sup>68</sup> The World Bank – International Experiences in Reforming Labor Inspection Services. Technical Note for the Government of Ukraine. Available at: <http://siteresources.worldbank.org/UKRAINE/UKRAINIANEXTN/Resources/455680-1310372404373/UkraineLaborInspectorateEng.pdf>

<sup>69</sup> SEED Working Paper No. 81 "Labor and Labor-Related Laws in Micro and Small Enterprises: Innovative Regulatory Approaches" Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/documents/publication/wcms\\_093618.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_093618.pdf)

<sup>70</sup> Lithuania should be mentioned as a successful example of such policy of dealing with inspections under the slogan 'From Policing to Advice'. As part of the reform, the largest inspectorates were amalgamated to form a committee of experts. The committee shared best practices and other experiences between the different inspectorates.

<sup>71</sup> Available at: <http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ukraine/text-texte/13.aspx?lang=eng>

<sup>72</sup> BOC's Systemic Report 'Control over Controllers: Status of Control Bodies Reform Implementation' (January 2018). Available at: <https://boi.org.ua/publications/systemicreports/1137-systemic-report-control-over-controllers-status-of>

a preference for measures to detect and punish non-compliance<sup>73</sup>. As the SLS informs, during the period of January – October 2018, the SLS and its local branches performed more than 15 thousand inspections and identified more than 27 thousand violations by around 70% of audited enterprises. At the same time, the experts interviewed by the BOC mentioned about the SLS's strong commitment to implant compliance in its activity.

In general, the BOC appreciates both introduction of the preventive activities by the SLS as well as the first operational results, however, it observes obvious lack of proper public disclosure of the inspection results from the perspective of the labor law compliance. It is assumed that such a compliance appears not to have been implemented yet as it requires sufficient human and financial resources, as well as technical expertise.

## 6.2. Redesigning institutional framework from a compliance perspective

To the extent issues pertaining to the SLS's compliance function have already been discussed in this report, the following concentrates on labor inspections as an essential part of the labor administration system, exercising not only the fundamental function of labor law enforcement but also efficient compliance. Such a vision of the labor inspection function is in line with the Ukrainian National Action Plan to Fight Undeclared Work, where it is stated that Ukraine is no longer relying as heavily on deterrence but is expanding its policy responses to include both 'carrots and sticks'<sup>74</sup>.

The BOC is aware of rare instances when representatives of the inspectorates do overtly and explicitly discuss negative reports on minor irregularities found during inspections and agree on a time frame for follow-up. In certain cases, advice and guidance can appear to be more effective following a discussion of inspection findings, rather than resorting to enforcement actions. At the same time, the SLS reports that during 2018<sup>75</sup> more than 11 thousand notices to correct the violations were issued while only approximately 8 thousand violations were timely remedied

to restore the infringed rights of approximately 170 thousand employees. Additionally, the SLS informed the BOC that in 2018<sup>76</sup>, approximately 33 thousand enterprises were visited by territorial bodies of the SLS to detect violation of the labor legislation.

On the other hand, since the beginning of 2018, the SLS has performed more than 19 thousand events to promote the labor compliance. The BOC welcomes such an effort as this approach could ensure that companies with strong commitment to compliance obtain the best value from the enforcement regime which drives up compliance. Accordingly, companies which can demonstrate a strong track record of compliance and adherence to legislation should enjoy the so-called "earned recognition".

In the BOC's view, measures aimed at redesigning the labor inspections activity from a compliance perspective should be digitalized to the extent possible. The BOC observes that not only businesses but also international donors and partners call for capacity building of the SLS with respect to technological advances.

<sup>73</sup> The BOC acknowledges the major part of the reviewed web-sites of local branches of the SLS refers to penalties imposed on business rather than preventive or remedial actions, implementation of which is recommended by the local branches of the SLS.

<sup>74</sup> Ukrainian National Action Plan to Fight Undeclared Work – Draft Proposal. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/projectdocumentation/wcms\\_644139.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/projectdocumentation/wcms_644139.pdf)

<sup>75</sup> The figures are provided as of beginning of December 2018

<sup>76</sup> The figures are provided as of beginning of December 2018



For instance, some of the experts, interviewed by the BOC, referred to the SLS's lack of online data-exchange tools with the inspected business<sup>77</sup>. Another drawback is that important information is often released by the SLS not in a user-friendly manner. For instance, the Authorized Inspectors Register<sup>78</sup>, like all other registers maintained by the SLS<sup>79</sup>, is presented as an MS Excel/Word file. This makes the data not easily searchable.

Additionally, it appears that the only way for businesses to ascertain the status of consideration of complaints lodged with the SLS is by making direct personal contact with a responsible member of the SLS's staff. The process is, therefore, susceptible to be time-consuming, while introduction of modern software solutions can significantly alleviate the administrative burden imposed on employers and the SLS's officers.

The BOC is aware that many businesses would welcome if the SLS could introduce software, enabling applicants to check necessary information online (e.g., status of various filings

lodged with the SLS, license/permit validity, etc.). Existence of such a collaborative tool would help enhance transparency and enable quick verification as well as fast cross-ministerial and interregional data exchange.

The BOC is mindful that international experts and national partners are already in the process of reviewing the existing information systems as well as needs with regard to contents and usage of the existing information systems by the SLS's management, labor inspectors, and other relevant institutions<sup>80</sup>.

Accordingly, the BOC supports a view that an efficient institutional structure, supported by sufficient operational resources and adequate data sharing, is an essential precondition for the SLS's ability to contribute to the efficient promotion of the labor law compliance in a short time. Thus, gains in developing the SLS's capacity would need to be supported by simultaneous investments in the management information systems that collect information for monitoring, audit, inspection, and grievance resolution.

<sup>77</sup> There were instances when such technical incapacity caused misperception of the inspector of the regional labor inspection between data typed out for the audit and electronic one.

<sup>78</sup> Available at: <http://dsp.gov.ua/informatsiia-pro-sluzhbovi-posvidchennia-inspektoriv-pratsi/>

<sup>79</sup> Available at: <http://dsp.gov.ua/category/diyalnist/reistry/>

<sup>80</sup> Available at: [https://www.ilo.org/budapest/what-we-do/projects/enhancing-labadmin-ukraine/WCMS\\_618938/lang--en/index.htm](https://www.ilo.org/budapest/what-we-do/projects/enhancing-labadmin-ukraine/WCMS_618938/lang--en/index.htm)

## BOC's recommendation:

### The SLS:

- in addition to the recommendation of Chapter 2.1.1. hereof, – to build capacity on compliance by training its staff regularly to enable it for better promotion and achievement of compliance through (i) working partnerships with businesses, and (ii) conducting training of labor inspectors on subjects related to professional conduct, ethics, behavior, and communication skills. Such training should be public (to the extent possible) to disseminate a uniform understanding of issues as well as released on the SLS web-site or other official public sources.
- to develop and enforce a performance assessment system for labor inspectors which accounts not only for quantitative results of their activities but, most importantly, for a qualitative part of their performance, in terms of the measurement of the extent to which they have contributed to the improvement of workplaces that they have inspected.
- to improve an existing practice of issuing practical recommendations for business based on the best compliance practices through disclosure of inspection results from a labor compliance perspective as well as periodical reports of inspectorates addressing specific sectoral compliance issues. Such pieces of advice should contain self-explanatory illustrations of what labor compliance risk, risk factor, or counter-factor it relates to and how such a risk could be mitigated. Information is to be released on a regular basis (not less than quarterly) on the SLS web-site through a single point of reference.
- to develop and to enforce an electronic database that enables applicants to retrieve information about a status of requests/applications consideration lodged with the SLS as well as to release information from the registers administered by the SLS in an accessible and searchable form<sup>81</sup>.

## 6.3. Needs of business for effective compliance guidelines

The government has placed simplification and reduction of bureaucracy high on the agenda. This arises from the fact that the scope and the quality of the Ukrainian labor legislation often create difficulties

in the achievement of labor compliance<sup>82</sup> and lead to wide differences in policy and practice that cumulatively have become burdensome to businesses<sup>83</sup>. The experts, interviewed by the BOC, mentioned that

<sup>81</sup> The BOC is mindful that to resolve the foregoing problem, the Draft Law No. 8602 dated June 13, 2018, "On Public Electronic Registers" was registered in the Parliament, therefore implementation of the recommendation is among others to be synchronized therewith.

<sup>82</sup> For instance, 91% of surveyed businesses mentioned that compliance with the applicable local and international legislation as well as company's internal policies that regulate labor protection, employee's safety and health in the workplace are the most common areas influencing compliance. Global Compliance Survey: CIS. Available at: <https://assets.kpmg.com/content/dam/kpmg/ru/pdf/2017/07/ru-en-international-compliance-survey.pdf>

<sup>83</sup> As of 2018, according to the Ukrainian Bureaucracy Index Report, 37,416 businesses operate in the industry. Labor-related issues are named as the most bureaucracy-burdensome area. These procedures are 128% more time-consuming than in the European countries. Available at: <http://bureaucracyindex.in.ua/>

the labor legal framework is to be designed to lead to more coherent and consistent inspections framework, within which businesses, in particular, micro and small business will be able to operate, plan and execute their operations more effectively<sup>84</sup>.

Given the complexity of the labor legal framework<sup>85</sup>, it is important to provide businesses with guidance and programs that improve application of the current labor legislation. In the BOC's view, compliance-related information currently published by the SLS is not comprehensive or if so, is not widely available<sup>86</sup>.

The mentioned issue can be addressed by provision of checklists, guidelines, and other

relevant information (e.g., legally vetted FAQs) through a single point (i.e., a toolkit). Such a toolkit should explain **why it is important to follow certain procedures and not just how**, include all points to be checked by a regulator and make it clear that no action would be taken by inspectors for procedures which were not listed in the toolkit. This should trigger wider implementation of concepts of self-assessment, self-risk analysis and self-compliance in business. As such guidance and support should be adapted to the needs of different groups, in the BOC's view, there should be strong ties between the SLS and the business in the course of drafting such documents and further educational campaigns<sup>87</sup>.

<sup>84</sup> Available at: [http://fru.ua/ua/events/fru-events/detinizatsiia-rynku-pratsi-sprava-robotodavtsiv?fbclid=IwAR2JwmqKGk8eZe7GfgEhCPw-Q3yuyLCEi7RUj\\_pQcPx1mPW9qwKF3lltRk](http://fru.ua/ua/events/fru-events/detinizatsiia-rynku-pratsi-sprava-robotodavtsiv?fbclid=IwAR2JwmqKGk8eZe7GfgEhCPw-Q3yuyLCEi7RUj_pQcPx1mPW9qwKF3lltRk)

<sup>85</sup> The basis of the labor legislation of Ukraine is the Labor Code which was adopted on December 10, 1971, and came into force on June 01, 1972. It should be noted that over the past 15 years many amendments and additions have been made, in particular since 1973 the parliament of Ukraine has adopted over 60 laws on amendments to the Labor Code, as a result of which 265 articles and the preamble contained in the first edition of the Labor Code have been changed. In particular, 235 articles of the Code have been significantly changed (some of them repeatedly). Additionally, labor legislation also includes a number of laws from some of the most important institutes of labor law.

<sup>86</sup> Available at: <http://dsp.gov.ua/category/faq-2/>

<sup>87</sup> As stated in the ILO Report 'Resolution Concerning Labor Administration and Labor Inspection, International Labor Conference' the subject of "private compliance initiatives" was among numerous discussed in the Conference's Committee on Labor Administration. The Conference Committee concluded, among other things, that labor inspection must be a public prerogative, however, the past decades have seen a growth in private auditing initiatives such as the establishment of private monitoring systems. Clearly, the government and businesses have a joint responsibility to foster sustainable compliance and encourage best practices. In recent years, there has been a worldwide movement to create private, voluntary mechanisms for monitoring compliance with established public laws or regulations and private labor standards. These developments are termed "private compliance initiatives". In Ukraine, this notion is limited to Art. 7 of the Procedure No. 295. It foresees that, upon agreement by manager of facility of visit or another authorized representative, representatives of trade union organizations and their associations (represented at the facility of visit), along with the representatives of employers' organizations, may be engaged in inspections visits. Additionally, to improve cooperation with the business, the Advisory Board and Public Council at the SLS function these days, however, it appeared that the compliance is not included in their activity scope. Therefore, cooperation with businesses might appear to be not strong enough.

## BOC's recommendation:

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### The SLS:

- to create a single point for guidance to be regularly developed by the SLS so that business can comply with regulations, which are often of the technical and complex nature, and to ensure that such information reflects the law correctly, is clear and easy to follow and at no cost for the business community.
- together with business associations and compliance collective actions<sup>88</sup> – to develop and introduce interactive self-assessment toolkits with a special focus on the micro-enterprises and SMEs, and to ensure that businesses can assess themselves against the inspection criteria. Additionally, to arrange regular educational campaigns to encourage businesses to apply such toolkits and to ensure that they can contribute towards improving compliance via regular feedback forms/surveys.

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<sup>88</sup> Overall, across the world, a vast number of private compliance initiatives and activities are carried out. The consequences of self-assessment by the private compliance initiatives may also be of a promotional nature, still with the intent to improve compliance. Governments have in some cases supported public compliance initiatives directly, by actively instigating, authorizing or even enlisting such initiatives to monitor compliance with public standards. For more details see ILO: Resolution concerning labor administration and labor inspection, International Labor Conference, 100th Session, Geneva, 2011, para. 16.  
Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_162049.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_162049.pdf)

It is broadly accepted these days that uniquely sanctions-based approaches to assure compliance with labor regulation are not sufficient, while assuring compliance through self-assessment or external certification against the compliance collective action standard are more fruitful. As of now, there are no private labor compliance initiatives in Ukraine. At the same time, the interviewed businesses mentioned that the Ukrainian Network of Integrity and Compliance addresses compliance gap-reducing advice and/or training/capacity building and certification of compliance and integrity level.





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