

TNO report

| Final report

**Legal analysis for amendment of the
Occupational Health and Safety Act in Estonia**

Healthy Living

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Adressed to	Ministry of Social Affairs of Estonia
Number of pages	152 (incl. appendices)
Number of appendices	5

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Acknowledgements

This research was produced by TNO in close collaboration with the Estonian Center for Applied Research CentAR in 2010 and 2011. The TNO team consisted of Wolfgang von Richthoven (International Consultant on Labour Inspection/Protection, Technical Adviser to IALI, Consultant for the World Bank, former ILO senior specialist), Jan Harmen Kwantes (legal specialist) and Jan Michiel Meeuwssen (senior consultant and team leader).

The research team was strengthened with the valuable expertise of Janno Järve, who has worked for the Estonian Government for a long time (2001-2008), first at the Ministry of Economic Affairs and Communication and then at the Ministry of Social Affairs (2005-2008) as Deputy Secretary General on Labour Policy.

The progress and intermediate results of the research were monitored by a ministerial working group consisting of representatives from the Ministry of Social Affairs. Its members were: Pille Strauss-Raats, Mariliis Proos, Ester Rünkla, Rauno Piirsalu, Tiit Kaadu and Ivar Raik.

Without their valuable support and suggestions the project results would not have been realized.

A special word of thanks must go to Mrs. Pille Strauss-Raats who chaired the working group most of the time. We would also like to thank Mrs. Egle Käärats, who allowed her team at the ministry to devote substantial time and support to the project team. Furthermore, Mrs. Katrin Kaarma, head of the Estonian Labour Inspectorate, should be mentioned for her valuable support to the project team and the time she invested into discussions with the researchers.

Also, all the participants of the two stakeholder seminars should be thanked for their contributions in the discussions.

Summary

Justification

In 2010 and 2011 TNO performed a research project for the Estonian Ministry of Social Affairs. The objective of this project was to assist the Estonian government with an analysis which should assess the body of provisions and practice in force in Estonia on health and safety at work and the compliance thereof with international law, EU directives, the practice of other member states and good practice. Also attention was paid to the structure of the entire area of the occupational health and safety 'infrastructure' in Estonia, whereby the result of the work took into account the characteristics of the Estonian state.

In order to draw up an analysis and make recommendations for modernization and improvement of the Estonian legislation and its implementation the approach and methodology comprised the following:

- Gap analysis between Estonian legislation and international and EU legislation, cf. Appendix A
- Individual interviews and joint meetings with several Estonian stakeholders, cf. Appendix B
- Selection of EU good practices which could solve identified Estonian shortcomings, cf. Annex C
- A survey amongst a larger group of stakeholders, cf. Appendix D
- Desk study and research on Estonian documents, cf. Appendix E
- Report with recommendations

Our vision in this analysis was firmly based on the believe that not only the "producers" of legislation but also the parties (stakeholders) in the Estonian OHS-infrastructure need to have a say in the whole process of changing, consequently improving the Estonian Act.

Results

The analysis produced results which were ordered in respectively findings, conclusions and recommendations under these four headings:

- OHS policy
- OHS legislative frame
- Enforcement policy
- OHS infrastructure.

Additionally, the TNO research team dealt extensively with more than 40 questions and sub questions mounting to more than 100 crucial issues from the Ministry of Social Affairs. In Appendix C these questions and answers can be read. They deal with a vast area of interpretation and implementation of EU and ILO international law in the field of health and safety specifically related to the Estonian situation. Also several good practices on these issues elsewhere in the European Union or the world are given here. Moreover, in Appendix D one can read an extensive analysis of a survey that was held amongst stakeholder representatives in Estonia. This analysis reveals an interesting insight in how stakeholders perceive the

present OHS legislation and policy in Estonia. The overall attitude of the stakeholders is quite critical towards the Estonian national OHS policy.

Estonian OHS policy

In February 2010 the Ministry of Social Affairs adopted a new Occupational Health and Safety Strategy for 2010-2013. There is also a detailed action plan for the implementation of the strategy. However, no quantitative targets on very important figures like the numbers of occupational accidents and occupational diseases are mentioned. This strategy is not a document for a wider audience. It is a vision and an action plan for civil servants in conducting their everyday activities, to ensure that they do not lose focus over the longer term. Preferably, each country should formulate, implement and periodically review a coherent national policy on Occupational Safety, Health and the Working Environment in consultation with the most representative organisations of employers and workers (in accordance with Art. 4 of ILO Convention Nr. 155).

The ILO Framework OHS Promotion Convention, No. 187 (not yet ratified by Estonia), requires also a national programme on occupational safety and health to be set up, which should include “objectives to be achieved in a pre-determined time-frame”, priorities and means of action to be formulated to improve OHS, and means to continuously assess progress made in this context to be developed and applied. These elements and tools are as yet missing in the Estonian OHS policy system and should be introduced.

OHS legislative frame

The full text of the - currently in force - Occupational Health and Safety Act (OHS Act) was first published in 1999. Before that the OHS issues were mainly regulated by the Work Protection Act of the Republic of Estonia (adopted in 1992)¹ and chapter 11 of the Labour Code of the Soviet Socialist Republic of Estonia. Since passing the law in 1999 there have been 21 amendments to the Act. Despite the large number of amendments, only few of them have changed the Act substantially. The ones that brought about large changes were adopted in 2003 and 2007. A large part of the amendments was motivated by the need to comply with EU directives. In addition to this OHS Act there is a large number of Regulations stemming from the OHS Act. The complexity of the text of the OHS Act as well as the long list of Regulations growing out of the OHS Act is vast.

Looking at the EU Framework Directive and comparing it with the text of the Estonian OHS Act, the general remark is: Estonia has implemented the Framework Directive very well. Not only literally, but also the ‘spirit’ of the EU legislative framework on OHS has been written down quite good. The analysis found only a few clear gaps (clear and obvious disparities). In some other cases comments and suggestions are given in this report for improving the implementation of the Framework Directive into the Estonian OHS Act.

While the gap analysis showed that the Framework Directive (FD) has been more or less completely transposed, the structure of the OHS Act (1999) could be considerably improved and made more logical, more coherent, more user-friendly.

¹ In Estonia: Eesti Vabariigi töökaitseadus

Modern OHS legislation starts with stating policy objectives and contains special sections on definitions, missing in the present OHS Act. Then, it identifies the main duty holders (Estonia could introduce a much wider range of “duty-holders” into its OHS Act) for which the Act has been made and assigns sets of rights and duties to each of these actors. Furthermore, it contains a legal empowerment clause authorizing the minister to make special regulations if needed. The detailed regulations presently contained e.g. in Chapter 2 can be relegated to subsidiary legislation under this clause.

If Estonia also makes one OHS regulation, this regulation can be the base of transposition of all EU daughter directives. As a best practice example we refer to the Dutch OHS regulation where several chapters can be found referring to the EU daughter directives.

While according to the ILO’s Constitution all Conventions, once ratified, have the same legal quality, a distinction has nevertheless been made since some 10 years between the so-called 8 Core (fundamental human rights at work) Conventions, a further 4 Priority Conventions and the rest. The two ILO Labour Inspection Conventions, covering Industry and Commerce, and Agriculture respectively, belong to the 4 Priority or “Good Governance” Conventions. Estonia has ratified all the 8 Core, and 4 Priority Conventions. That leaves 2 ratified Conventions, No. 81 of 1947 on Labour Inspection in Industry and Commerce, and No. 129 of 1969, on Labour Inspection in Agriculture, which have been subjected to comparative analysis of these standards with the Estonian OHS Act and relevant subsidiary regulations. Overall, it is fair to summarize that the level of application of the provisions of Conventions Nos. 81 and 129 is fairly high, but that certain clauses of C. No. 81 (and their corresponding provisions in C. No. 129) need to be addressed in any future revision of the Estonian OHS and labour inspection legal frame.

The most important international ILO OHS Standards are C. No 155 of 1981 and its Protocol of 2002, and the OHS Promotional Framework Convention No. 187 of 2006. Together with C. No. 161 on Occupational Health (OH) Services they constitute the four ILO OHS “Framework” standards. These “Framework” instruments are not yet ratified by Estonia. However, our GAP analysis concentrated also on these four “Framework” OHS standards, because, even if not ratified, - ratification is not necessarily an objective in itself, rather it is the full implementation of these standards in national law and practice - they thus can serve a most useful purpose as international best practice benchmarks and reference for national legislators, policy makers and, as such, should be kept in mind in any future revision of the Estonian OHS policy and legal frame.

Based on the analysis of these four “Framework” OHS standards, - it can be seen that Estonia has already begun to implement – coincidentally as well as deliberately – many elements of the provisions of this promotional OHS Convention. But there are still considerable gaps: all provisions call for continuous, institutional, structured consultations with the most representative organizations of employers and workers. Aspects of the requisite infrastructure, for instance sufficient specialists in the Labour Inspectorate, or mechanisms for periodical reviews, are still missing. The cooperation arrangements between management, workers and their representatives at the level of the undertaking, as an essential element of workplace-related prevention measures, also need to be further strengthened. The

development of a national preventative safety and health culture is still in its early stages.

The comparative analysis, (For details, see Appendix A), in particular of the provisions of Convention No. 81 (Labour Inspection in Industry and Commerce) has shown there are some – though not many – serious gaps in need of redress. One prior issue seems to be whether these gaps in law and practice can be corrected by merely amending the present OHS Act (1999, already amended many times since) and the Statute of the Labour Inspectorate (2007), or whether it would not be better to redress the identified deficits firstly as part and parcel of a revision of the entire OHS legal frame, and secondly by adopting a comprehensive new national labour inspection enforcement policy (we would advocate the latter process, also because the State Labour Inspectorate has already begun to go in this direction). That said, if this is considered too time-consuming, certain amendments to the existing legislation, on the basis of our comparative analysis could nevertheless be envisaged at short notice to give better effect to important provisions of C. No. 81.

Our principal recommendation in this regard, however, is to collect and combine all Labour inspection relevant issues into a single text, preferable a Labour Inspection Law or, failing that, a new, comprehensive Labour Inspection Regulation.

We also retain our recommendation to re-examine the possibility and utility, in the light of it's conclusions on this issue, of ratifying the four OHS instruments considered most important for the re-vitalization of OHS at both international and national levels, (as postulated in the ILO global OHS Action Plan 2010 – 2016): namely Conventions Nos. 155, 161 and 187, as well as the Protocol of 2002 to C. No. 155.

Additionally, Estonia could develop a comprehensive national policy on Occupational Health (OH) Services as required by Articles 2 and 4 of ILO C. No. 161.

Finally, the application of the Protocol of 2002 to Convention No. 155, in Art. 1 requires not only the recording of occupational accidents and diseases, but also of “dangerous occurrences, commuting accidents and suspected cases of occupational diseases”. Such provisions are not contained in the relevant Estonian regulations. These deficits should be addressed when revising the 1999 OHS Act or drafting a new, modern, comprehensive OHS Law.

Enforcement policy

The State Labour Inspectorate of Estonia has begun to develop elements of a national labour inspection enforcement policy for OHS in consultation with the social partners, but not yet published it to a wider stakeholder audience. The point of departure is as follows: Chapter 6 of the OHS Act, in §§ 25 to 27, contains provisions on “State Supervision”. Additionally, there are the Labour Inspection Statutes (MoSA Regulation No. 26 of 17.10.2007) and the Decree No. 48 of 19.12.2007 entitled: “Inspection Instruction on Work Environment”. Lastly, there are some enforcement tools in the wider sense, such as “OTT”, an (apparently as yet little used) digital risk assessment instrument, available on the website of the Labour Inspectorate. However, none of these legal texts and OHS implementation

tools, whether individually or together, constitute what in many EU member states (both old and new) has been developed as a national labour inspection enforcement policy.

Our consultations have shown that, on the one hand, there is as yet no comprehensive, modern national labour inspection enforcement policy; and on the other hand, representatives of both the Ministry of Social Affairs and the Labour Inspectorate have indicated a strong need for such a policy. Therefore, we recommend to develop a new, clear, considered, comprehensive, coherent and consistent National Labour Inspection Enforcement Policy through tri- or, preferably, multi-partite social dialogue

Even a relatively small Labour Inspectorate such as that of Estonia should then also have a Human Resource Development (HRD) policy – in fact, that would be a functional “derivate” of the suggested national labour inspection enforcement policy: namely what is needed in terms of qualified human resources for optimal policy implementation. There appears at present to be no such HRD policy and we strongly recommend to develop one.

OHS infrastructure

The analysis found that there is an overall cautious attitude amongst stakeholders active in the OHS infrastructure in Estonia. Social partners are waiting for the government and each other to come up with an initiative and meanwhile criticise the little progress that has been made so far in the field of health and safety in Estonia. A precondition for a well working OHS infrastructure is a goal setting government which consults social partners to participate in reaching these goals which can be laid down in a national programme. Some stakeholders argued that, although there is a tripartite Working Environment Committee, there is a lack of topics to be discussed.

Our analysis shows the absence of effective, functional, institutionalized social dialogue on OHS and Labour Inspection in Estonia – in spite of the fact that legal provisions of the 1999 OHS Act require it. That said, there is a well established social dialogue process on other issues, both institutionalized, in the ILO/Estonia Tripartite Committee, as well as ad-hoc, even multi-partite, for instance at present to discuss implementation of the new ILO Maritime Labour Convention (MLC).

We understand that the former way in which tri-partite social dialogue on OHS under the OHS Act was organized did not produce – in the specific context of Estonia – the results expected, i.e. to add value to the policy and legislative development process by expertise from outside the Ministry of Social Affairs. Besides, the representatives of the Labour Inspectorate were not, or not sufficiently involved, although they would also be affected and would have a major contribution to make, not only on policy but in particular on operational issues which, as the example of many other EU member States shows, are also usefully the subject of such national or sectoral social dialogue. Similarly, the very considerable – both in quantity and in quality – expertise available from many non-governmental sources has so far not, at least not sufficiently, been tapped for the purpose of developing an OHS prevention culture in Estonia.

Therefore, we recommend that a new OHS consultative body be set up – if necessary by revising the relevant section of the OHS Act, or by adopting separate Statutes for this new institution under a new ministerial Regulation – in the form of a multi-partite national OHS Council or Advisory Board or Committee.

As agreed during the stakeholder meeting in April 2011 core topics to improve a well working Estonian OHS infrastructure comprise:

- Legislative frame
- Tri partite social dialogue
- Accident insurance
- Risk assessment
- Labour inspection enforcement policy
- Occupational health services

Concerning the legislative frame in this respect the stakeholders recommend the following:

- The OHS Act is a mixture of general policy principles and detailed prescriptions; restructuring of the OHS legislation is needed into a logic organisation of topics
- Example: specific issues such as the risk assessment process or labour inspection enforcement policy should be structured in one chapter or regulation
- Many important issues within the OHS legal frame are scattered in different texts; making their application problematic, this should be improved
- Principal actors should be encouraged to make more use of soft regulatory tools; which allow for a higher degree of flexibility

Concerning the tri partite dialogue in this respect the stakeholders recommend the following:

- There are many shortcomings on bipartite and tripartite OHS social dialogues on national and enterprise level which need to be overcome
- There seems to be some room for such bipartite dialogue and social partners can take the initiative
- Collective labour agreements could be used on sector level
- The legally envisaged tripartite body – the work environment council – must be reformed, rephrase some ideas and goals of this body; we need special brainstorm sessions to revive this; today's model does not work

Concerning accident insurance in this respect the stakeholders recommend the following:

- The important prevention stimulus provided by a modern work accident and disease insurance system, as an essential part of the overall OHS system, should become available
- Ideally, the three main functions of such a system (prevention, rehabilitation and compensation) should come within one organisation
- The 'polluter pays' principle should be one important element of such a new system; consideration could therefore be given to a performance based rating system of contributions that rewards good performance and sanctions poor OHS performance
- Experience from other CEECs shows that such a system can be introduced on a cost neutral base

Concerning risk assessment in this respect the stakeholders recommend the following:

- Policies and procedures regarding risk assessment should be sufficiently well defined
- Responsibilities for undertaking, assisting with and controlling the quality of risk assessment should become clear
- Expertise both within and outside the enterprise should become available
- User friendly risk assessment instruments and guidance materials, as available in the EU, should become more available

Concerning labour inspection enforcement policy in this respect the stakeholders recommend the following:

- there should be a national labour inspection enforcement policy
- active participation from the social partners, also at sector levels, should be encouraged and guaranteed
- such national policy should include objectives, principles and procedures of Labour Inspection
- in particular it should also be clear on the strategic use of sanctions

Concerning occupational health services in this respect the stakeholders recommend the following:

- a national policy should be developed regarding the role, scope and function of modern OH Services (e.g. as in ILO C. 161)
- In particular multidisciplinary within the OH service should be introduced
- The role of OH services in the risk assessment process should become clear
- There should be clear procedures regarding responsibility and cooperation between internal (working environment specialist) and external OH service

1 Project justification

1.1 Introduction

In 2010 and 2011 TNO performed a research project for the Estonian Ministry of Social Affairs. The objective of this project was to assist the Estonian government with an analysis which should assess the body of provisions and practice in force in Estonia on health and safety at work and the compliance thereof with international law, EU directives, the practice of other member states and good practice. Also attention was paid to the structure of the entire area of the occupational health and safety 'infrastructure' in Estonia, whereby the result of the work took into account the characteristics of the Estonian state.

Our vision in this analysis was firmly based on the believe that not only the "producers" of legislation but also the parties (stakeholders) in the Estonian OHS-infrastructure need to have a say in the whole process of changing, consequently improving the Estonian Act.

1.2 Background

Applicant countries for the European Union in the nineties of the last century were heavily involved in implementing the so called 'acquis communautaire' into their national legislative systems. The *acquis communautaire* can be described as the whole body of EU-legislation and the norms and standards that derive from it. In the field of Occupational Safety and Health (OSH) the so called 'Framework Directive on safety and health at the workplace' (No. 89/391/EEC) and its related individual directives was an important part of the *acquis* in health and safety at the workplace.

Activities most often seen were the fast transposition of the EU-rules and regulations in the existing legislative framework of the applicant country; an activity most commonly undertaken by lawyers and expert civil servants in governmental organisations. Critical pitfalls in this, in essence comprehensible, approach were:

- There were no authorized translations of the original texts; experts worked often, not always, with wrongly translated and interpreted texts
- Frequent amendments to the legislation distorted the structural logic of legal acts
- Because of these incorrect interpretations and translations, legislation had to be adapted frequently and this frustrated the enforcement agencies
- Other stakeholders in the OHS infrastructure (e.g. employers and workers) were not really involved and their interests were not looked after properly
- The enforcement agencies received an unrealistic extra of enforcement tasks without receiving the necessary extra resources in man power and equipment

The transition period was characterised by relatively fast implementation of the whole body of the '*acquis communautaire*'. The transposition on paper could be done relatively fast, but the concrete implementation in practice and the compliance thereof in the field is much more problematic. This reality not only applies to Estonia, but to most of the new member states of the European Union. The high speed of transition in some member states resulted in making legislation even more

prescriptive than actually was needed (when relying solely on the *acquis*), in other words this might have resulted in overregulation.

Therefore, an assessment, evaluation and subsequent update of the Estonian Act is necessary. Analysing the Act in a pure judicial way is necessary, but not enough. Every new act or changes in legislation require (full) commitment or at least acceptance of all parties involved in the process of the implementation of OSH-requirements.

Besides the EU directives, also the ILO conventions are important in the field of a *national policy* regarding health and safety at work, not only because of obligations taken before the international community by ratifying the OHS related conventions, but also because ILO conventions often incorporate best practice drawn from countries whose wider OHS framework could be considered the cutting edge of OSH.

1.3 Approach and methodology

In order to draw up an analysis and make recommendations for modernization and improvement of the Estonian legislation and its implementation our approach and methodology comprised the following:

- Gap analysis between Estonian legislation and international and EU legislation, cf. Appendix A
- Individual interviews and joint meetings with several Estonian stakeholders, cf. Appendix B
- Selection of EU good practices which could solve identified Estonian shortcomings, cf. Annex C
- A survey amongst a larger group of stakeholders, cf. Appendix D
- Desk study and research on Estonian documents, cf. Appendix E
- Report with recommendations.

1.4 International legal environment

The national law(s) on OHS can be influenced by the ILO and the EU. Both entities have made, and are still making, ILO Conventions, ILO Recommendations, EU regulations and EU directives. A difference between the ILO Conventions and the EU-legal framework is that the ILO Conventions are not binding until the national parliament has ratified them. ILO Recommendations can be seen as non-binding guidelines on how to give effect to the Conventions. EU-directives are binding for the national law-maker. Therefore it is possible to refrain from ratifying ILO Conventions, but if a country is a member of the European Union the directives are binding and cannot be ignored.

There are no formal ties between the ILO and EU legislative framework, but of course these bodies influence each other, and their contents are coordinated in advance of adoption. If one takes a look at the topic of OSH, one can say that the ILO Conventions cover a wide range of topics related to OHS (see subchapter 1.4.2 below). Sometimes specifically related to certain high risk branches (dock work) or to certain aspects of work conditions (night work). But also Conventions have been made regarding Labour Inspection and Occupational Health Services.

The EU has made 20 social directives all explicitly related to OSH. These 20 directives together can be seen as an OHS act on the EU level. There are no specific OHS directives related to OHS services, workers' consultation and participation or Labour Inspection. All these 20 directives consist of so-called 'minimum provisions'. This means each Member State of the EU is allowed to set out more stringent rules than the minimum provisions within each Directive. At the end it means the OHS legislation throughout the EU has the same minimum level. All these OHS directives have been implemented by Estonia through the Occupational Safety and Health Act and several Regulations based on the OSH-Act.

1.4.1 EU-directives related to OHS

As set out in the previous subchapter, the EU has 20 OHS directives. There are of course other directives which affect OHS as well but these directives do have another background and are based on other articles of the EU-Treaty. Examples are the so-called product safety directives, their main objective is to make a free movement of products within the EU possible. But another objective of these product safety directives is to develop and create safe products, such as the Machinery directive (2006/42/EC).

The main OHS directive is the Framework Directive (Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work). This Framework Directive forms the organizational basis of all other 19 directives, sometimes labelled as the 'daughter-directives'. Subject of every OHS 'daughter' directive is a (group of) risk(s) (e.g. noise, vibration), an activity (e.g. manual handling of loads), a specific branch (e.g. mineral extracting industry) or certain employees (e.g. pregnant workers).

The 'structure' of this Framework Directive can be compared with an OSH-management system. It sets out some basic general OHS rules for every employer and worker to comply with. The main elements of this Framework directive are:

- Make an inventory of risks
- Make a prevention policy
- Combat the risks at source
- Organize preventive/protective services
- Organize first aid, fire-fighting etc.
- Inform and train the workers
- Consult the workers
- Obligations of workers
- Health surveillance

Most of these elements re-appear, when relevant, in the OHS 'daughter' directives. This approach of the 20 EU OHS directives leads to a comprehensive but coherent OHS system, useful for every company where employees are active.

1.4.2 ILO Conventions in OHS

About half of the almost 200 ILO Conventions and Protocols, and their accompanying Recommendations, are either wholly or partly concerned with issues related to occupational health and safety (OHS). In fact, the right to decent, safe and healthy working conditions and environment has been a central issue for the ILO since its creation over 90 years ago. Yet there is general agreement that further sustained and coordinated action is needed at both international and national levels to reinforce mechanisms for continued improvement of national OHS systems. Thus, the ILO's Governing Body in March 2010 adopted a Plan of Action (2010 – 2016) to achieve widespread ratification and effective implementation of the Organisation's occupational health and safety instruments. These instruments (Conventions and Protocols, which are ratifiable, and Recommendations, which are not ratifiable but promote best practice on how to implement ratified instruments) together constitute a systemic approach to international standards in this important field.

In the wider sense these standards comprise also the two Labour Inspection Conventions (Nos. 81 and 129, of 1947 and 1969 respectively) and one Protocol, (of 1995 to C. No. 81). While according to the ILO's Constitution all Conventions, once ratified, have the same legal quality, a distinction has nevertheless been made since some 10 years between the so-called 8 Core (fundamental human rights at work) Conventions, a further 4 Priority Conventions and the rest. The two ILO Labour Inspection Conventions, covering Industry and Commerce, and Agriculture respectively, belong to the 4 Priority or "Good Governance" Conventions. Estonia has ratified all the 8 Core, and 4 Priority Conventions, but besides that only 2 more OHS Conventions in the strict sense, namely Convention No. 13 of 1921 on White Lead in Painting, and Convention No. 174 of 1993 on the Prevention of Major Industrial Accidents. (Convention No. 13 is in the process of being revised and no longer considered relevant by the ILO itself).

The system of ILO OHS Conventions is, furthermore, in itself unofficially divided into several categories, besides the already mentioned Labour Inspection standards: firstly, 4 "framework" instruments, namely Convention No. 155 of 1981 on Occupational Safety and Health and the Working Environment; the Protocol of 2002 to Convention 155; Convention No. 161 of 1985 on Occupational Health Services; and the Promotional Framework for Occupational Safety and Health Convention No. 187 of 2006.

Secondly, several Conventions deal with OHS in specific sectors, such as Dock Work (No. 152 of 1979), Construction (No. 167 of 1988), Mines (No. 176 of 1995) or Agriculture (No. 184 of 2001). Most others deal with specific hazards (such as the already mentioned Convention No. 13), e.g. No. 115 (1960) on Radiation Protection, No. 139 (1974) on Occupational Cancer, No. 162 (1986), on the Working Environment (Air Pollution, Noise and Vibration, No. 148 of 1978), on Asbestos, (No. 162 of 1986), or No. 170 (1990) on Chemicals. A roughly corresponding number of Recommendations complement these Conventions.

All ILO OHS Conventions adopted after 1985 are considered up-to-date and relevant; several older ones have been identified as needing revision (such as Convention No. 13). Thus, today, according to the "Annex to the Promotional

Framework for Occupational Safety and Health Recommendation, 2006 (No. 197)", in all some 14 OHS Conventions and 1 Protocol, (to C. No. 155), as well as 2 Labour Inspection Conventions and a further Protocol, (to C. No. 81), are considered as comprising the bulk of ILO standards relevant to a modern OHS system. (However, of these, only one Convention has received more than 100 ratifications so far, namely the Labour Inspection Convention, No. 81).

According to the ILO OHS 2010 – 2016 Plan of Action, widespread ratification and implementation, in particular of ILO Convention No. 155, its 2002 Protocol and the OHS Promotional Framework Convention No. 187, is considered as being of particular strategic importance, as it is expected to trigger a potentially crucial process not only for an overall improvement in OHS, but also to boost the ratification of other OHS instruments. Convention No. 187 specifically provides that ratifying parties shall carry out a periodical review of what measures could be taken to ratify other relevant OHS Conventions. The basic rationale of this comprehensive set of international instruments is therefore to promote a systems approach to OHS at national levels, which will help governments, social partners and other stakeholders work together to develop national strategies for continuous improvement of OHS infrastructure and conditions.

The ultimate aim of such national OHS strategies and other actions taken at the national level is, of course, to impact on improving OHS at the workplace. These considerations lead back to the ILO OHS "Framework" Convention, No. 155 which, besides policy requirements, contains important provisions directed at the enterprise levels. The ratification of this Convention (not yet undertaken by Estonia) and its continuous implementation is considered crucial for successful international and national-level action aiming at the development of an OHS Prevention Culture. (ILO OHS Plan of Action 2010-2016, point 23).

1.4.3 OHS infrastructure

Consultation of stakeholders after the publication of new legislation is not effective. It should be done preferably during the legislative design process of every act, because it stimulates the acceptance and future compliance of especially employers and employees. Consequently, consultation of social partners in particular when revising the OHS legislative framework is of great importance.

Union membership is quite low in Estonia (7%), and we would like to stress, that it is the government, that makes labour market policy, and social partners do not have veto rights over changes in legislation. However, consultation of the Estonian social partners is valuable (unions - EAKL, TALO, employers – ETTK). The most important objective regarding this stakeholders' consultation is to gain insight on the applicability and comprehensibility of Estonian OHS regulation.

All stakeholders involved in the implementation of the requirements of the Estonian Act and there interconnections, we call the Estonian *occupational safety and health (OSH) infrastructure*. We would define an OHS infrastructure as the compilation of players in a country plus their network relations contributing to and influencing the state of occupational safety and health at shop floors in the organisations where people work.

Under players or actors one can think of e.g.:

- The national government; respective ministries
- The inspections authorities (either safety or health)
- Employers' organisations
- Trade unions
- Occupational safety and health services
- Research institutes
- Educational or training institutes
- Certifying bodies
- Consultancy firms
- Suppliers of tools and machines
- Publishers
- Insurance companies

Let us focus on an important player like the government and consider how it can influence health and safety at the workplace not merely through enforcement of legislation. The following figure shows some network relations between the government and other relevant players in an OHS infrastructure which may possibly be found in a member state of the European Union, such as Estonia.

We consider an OHS infrastructure as a national system with system elements that are connected in network relations and that helps to develop and implement national policies on OHS in a more effective and smart way.

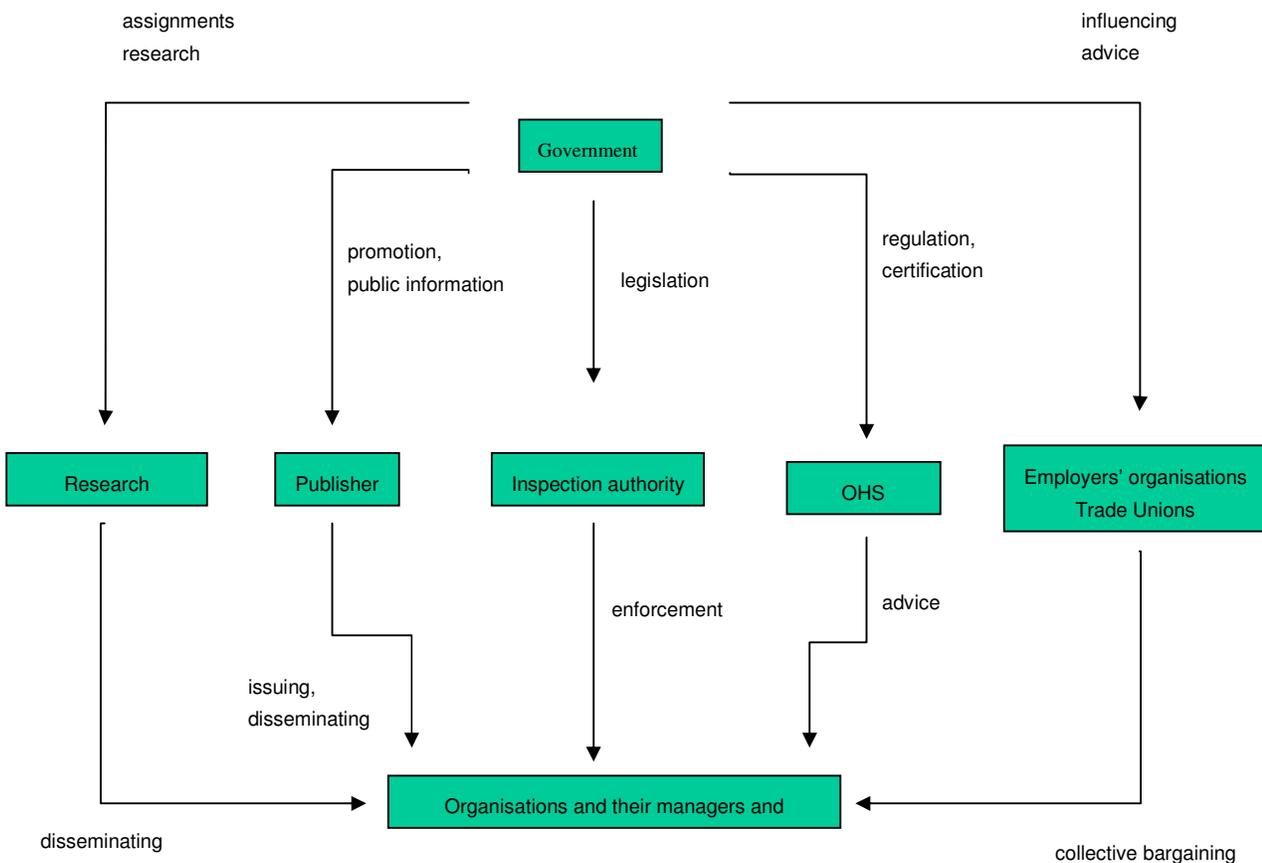


Figure 1.1: possible network relations in an OHS infrastructure

The government develops legislation and this is enforced by inspection authorities. Legislation and enforcement are important instruments for improving working conditions in organisations. To rely fully on these instruments would limit other possible powers in society that could improve the state of OHS in organisations. The government can for instance influence social partners to include measures and agreements on working conditions into their collective bargaining processes. Hence, organisations have to comply with the collective agreements. A government can come to regulations under which OHS services can operate. It can realise a system of certification of OHS services to ensure that they are professional enough to give advice on working conditions to organisations. Government can develop concrete and pragmatic information on OHS for different target groups in society. It could convince and support publishers to issue and disseminate this information in booklets or magazines to the respective target groups. Finally, a national government can develop a national research programme and invite contractors to undertake this research. The research institutes, as part of their assignment, could think of an effective way to disseminate the results of their research to the other players in an OHS infrastructure who might benefit from it.

2 Findings

2.1 Estonian OHS policy in general

In the paragraphs below we describe our findings regarding the present Estonian OHS policy.

2.1.1 Findings on Estonian OHS policy

For a long time there was no separate OHS policy for Estonia. OHS goals were mostly stated in the Strategy of the Ministry of Social Affairs. This is a document with 4 year perspective that is renewed on a yearly base and is meant as an input for state budget planning.

In February 2010 the Ministry of Social Affairs adopted a new **Occupational Health and Safety Strategy** for 2010-2013. The strategy states a lot of goals:

- Legal environment:
 - The legislative framework of OHS issues is up to date and effective;
 - Employers have access to well functioning tools that help to comply with legislation.
- Awareness raising:
 - The awareness of different stake holders has increased;
 - At different levels there are well functioning OHS networks;
 - There is a mechanism that simulates the OHS related prevention.
- Training:
 - The base and continuous training system of work environment specialists is effective;
 - There are sufficient occupational health specialists providing preventive OHS services;
 - The continuous training of specialists is well functioning.
- Occupational health services as a part of health service system
 - There is a well organized system for early identification of occupational and work related diseases and this system is integral part of health care system;
 - The qualification requirements of OHS specialists are clear and there is a well organized surveillance over the provision of OHS services².
- New risks in work environment
 - There is a system for identifying and addressing new risks in the work environment;
 - Services providing measurements of parameters of risk factors in work environment are well accessible to employers.
- Knowledge-based and administratively effective policy design and implementation
 - Policy decisions in the area of OHS are knowledge-based;
 - The OHS statistics are reliable;

² Today there is no surveillance over the quality of non-medical OHS services. One of the aims of the strategy is to create such a system.

- The Labour Inspectorate is administered effectively and is a good partner for workers, employers and government institutions.
- OHS related research
 - OHS related competences are available;
 - The sustainability of OHS research is ensured.
- Internal and international cooperation
 - Social partners are involved in the design of OHS policy through Work Environment Council (WEC). The work principles of WEC are renewed;
 - OHS issues are an integral part of other government activities;
 - Estonian interests are actively represented at the international institutions.

In addition to the goals, the strategy also lists broader groups of activities. There is also a detailed action plan for the implementation of the strategy.

The list of topics that are addressed in the strategy are important (e.g. in the action plan you can see activities like development of OHS Insurance, establishing fringe benefits tax exemptions to employers covering costs that promote employees health, development of several information materials, tool kits for employers, reforming the legislative environment (OHS Act) and so one). Interestingly, however, no quantitative targets on very important figures like the numbers of occupational accidents and occupational diseases are mentioned³.

This strategy is not a document for a wider audience – it's a document for the government officials. It is a vision and an action plan for civil servants in conducting their everyday activities, to ensure that they do not lose focus over the longer term.

However, an OHS policy could also address a wider audience. Other stakeholders in OHS matters (employers, employees, OHS services etc.) must feel that the government actually has a vision on how OHS situations will be improved. This means that each group of stake holders should be aware of general targets in the field of OHS that the government wants to achieve, have a clear cut understanding of their role in achieving these targets and also receive advice and support for being able to perform their role adequately. This kind of “management style” is missing.

2.1.2 *Towards a new coherent policy framework*

The four ILO “Framework” OHS instruments mentioned in paragraph 1.4.2 above all contain important provisions on OHS policy. For instance, C. No. 155, in Part II, Articles 4 - 7, deals with “Principles of National Policy”. Likewise, C. No.161, in Part I, Articles 1 - 4, deals with precisely the same issue. The Promotional Framework Convention, No.187, in Part I, Article 3, again refers to the need to formulate a national OHS policy. However, a coherent policy framework has to be seen, on the one hand in a larger, and on the other hand in a more detailed policy context.

³ The reason might be that, the numbers of occupational accidents and diseases in Estonia are strongly underreported (with an exception of fatal accidents) and are not considered to be a good indicator for the actual OHS situation in Estonia.

Firstly, a national OHS policy should be part, or a derivative, of an overall national socio-economic development policy or strategy. As such, it should meet the so-called 5 “C” criteria: it should be Clear, Considered, Comprehensive, Coherent and Consistent. Clear means “user-friendly”, thus applicable; Considered means developed and adopted through tripartite social dialogue; Comprehensive implies it covers all sectors of activity, all kinds of workpeople and all manner of risk; Coherent means that the different elements of the policy framework and the laws and regulations that give effect to it should be logical, fit together to form a system and be free of contradictions; and Consistency refers to a policy design aiming at dealing with similar cases in similar fashion through equitable and transparent implementation.

In practice this should lead to a quasi policy hierarchy, with national socio-economic policy at the top, from which a national OHS policy is developed. On the basis of this policy (or strategy), a comprehensive national OHS legal frame is adopted, which in turn leads to the development of functional, effective implementation structures, notably a modern Labour Inspection (LI) system. This then requires a national LI enforcement policy and finally, a human resource development (HRD) policy that identifies the capacity building needs and activities to efficiently implement this policy structure.

As detailed in the ILO Framework OHS Convention No. 155, Article 4, each country should formulate, implement and periodically review a coherent national policy on Occupational Safety, Health and the Working Environment in consultation with the most representative organisations of employers and workers. Effective policy formulation therefore also requires effective and operational infrastructure for continuous tri-partite (as a minimum, but it can also be multi-partite) social dialogue with all stakeholders in the system that are willing and committed to collaborate. Such tri-partite consultations are also required, for instance, in Convention No. 161 (Articles 2, 3 and 4) and Article 2 of the Protocol of 2002 to Convention No. 155. Similar requirements for tri-partite social dialogue on OHS are contained in other ILO OHS standards. (Interestingly, Estonia has ratified ILO Convention No. 144 of 1976 on Tri-partite Consultation regarding ILO Standards).

2.2 Estonian OHS legislative frame

2.2.1 *History and structure of Estonian OHS legislative developments since independence.*

The full text of the - currently in force - Occupational Health and Safety Act (OHS Act) was first published in 1999. Before that the OHS issues were mainly regulated by the Work Protection Act of the Republic of Estonia (adopted in 1992)⁴ and chapter 11 of the Labour Code of the Soviet Socialist Republic of Estonia.

The OHS Act (adopted in 1999) had eight chapters and was structured as follows:

1. **General Provisions** – stated the scope of application of the act and provided a definition for occupational health and safety;
2. **Working Environment** – provided definitions for work environment and its elements, listed and defined categories of risk factors and obliged the

⁴ In Estonia: Eesti Vabariigi töökaitse seadus

employer to conduct business in the manner that does not harm the health of people working in that environment. It also gave provisions for regulating more detailed norms of work environment in Regulations;

3. **Obligations and Rights of Employers and Employees** – as the heading states, this chapter listed the rights and responsibilities of Employers and Employees. Concerning preventive activities, it should be noted that it is this chapter which obliges employer to (§13 3-6):
 - conduct risk assessment of the working environment to ascertain the risk factors present in the working environment;
 - based on the risk assessment of the working environment, prepare a written action plan;
 - conduct a new risk assessment of the working environment if the working conditions have changed;
 - notify the employees of the risk factors, the results of risk assessments and of the measures to be implemented.
4. **Organization of Occupational Health and Safety** – defined the responsibilities of work environment specialist, work environment representative, work environment council and occupational health service providers. It also gave the legal basis for the Advisory Committee on Working Environment;
5. **Occupational Accidents and Occupational Diseases** – defined occupational accidents and occupational diseases and also the procedures that have to be followed in case there was a work accident;
6. **State Supervision** – defined the rights and responsibilities of Labour Inspectorate and Labour Inspector;
7. **Dispute resolution and Liability** – provided the framework for dispute settlement and listed the means for making the violators of the Act accountable for their improper behaviour;
8. **Implementing Provisions.**

Since passing the law in 1999 there have been 21 amendments to the Act. Despite the large number of amendments, only few of them have changed the Act substantially (see table below). The ones that brought about large changes were adopted in 2003 and 2007.

Table 2.1 Amendments to the OHS Act

Nr	Publication citation of the amendment in State Gazette	Number of § or sub§ that changed the OHS Act
1	RT I 2000, 55, 362	1
2	RT I 2001, 17, 78	2
3	RT I 2002, 47, 297	1
4	RT I 2002, 63, 387	3
5	RT I 2003, 20, 120	47
6	RT I 2004, 54, 389	6
7	RT I 2004, 86, 584	2
8	RT I 2004, 89, 612	1
9	RT I 2005, 39, 308	1
10	RT I 2007, 3, 11	50
11	RT I 2007, 12, 66	0
12	RT I 2007, 59, 381	1
13	RT I 2008, 56, 313	1
14	RT I 2009, 5, 35	12
15	RT I 2009, 15, 93	3
16	RT I 2009, 29, 176	2
17	RT I 2009, 35, 232	2
18	RT I 2009, 49, 331	1
19	RT I 2009, 62, 405	1
20	RT I 2010, 22, 108	1
21	RT I 2010, 31, 158	1

Source: State Gazette, authors calculations

Most of the amendments clarified the wording of the act and had an aim of giving more concrete instructions to the employer in conducting the OHS activities (e.g. the amendments in 2003 made more explicit the circle of people to whom the OHS Act applies; elaborated in more detail what are physical risk factors; stated that even if the enterprise is smaller than 10 people, and there is no obligation to elect an OHS representative, the employer still has to consult employees on OHS issues; chapter 7 was renamed to Liability and paragraphs regulating the Dispute resolution were abolished (these issues were regulated under different Acts due to more general reforms in the Estonian Legislative system); the amendments in 2007 clarified the definition of dangerous areas, working tools, biological risk factors, definitions and procedures related to work accidents and so on).

Concerning more concretely the OHS management, among other issues they also clarified the meaning of OHS related internal control (2003) and introduced a list of prevention activities obligatory to employers (2007).

A large part of the amendments was motivated by the need to comply with EU directives.

In addition to this OHS Act there is a large number of Regulations stemming from the OHS Act:

1. Procedure for selection and use of personal protective equipment ((RT I 2000, 4, 29)
2. Procedure for training and in-service training regarding occupational health and safety (RTL 2000, 136, 2157)
3. The procedure of medical examination of workers (RTL 2003, 56, 816)
4. The provision of the first aid in enterprises (RTL 2000, 6, 63)
5. Procedure for Registration, Notification and Investigation of Occupational Accidents and Diseases (RT I 2008, 17, 120)
6. Requirements for the use of safety and/or health signs at work (RTL 2000, 12, 117)
7. Occupational Health and Safety Requirements for Workplaces (RT I 2007, 42, 305)
8. Occupational Health and Safety Requirements at Construction Sites (RT I 1999, 94, 838)
9. Occupational health and safety requirements for use of work equipment (RT I 2000, 4, 30)
10. Occupational health and safety requirements for manual handling of loads (RTL 2001, 35, 468)
11. Occupational health and safety requirements for work with display screen equipment (RT I 2000, 86, 556)
12. Limit values for Physical Hazards in Working Environment and Procedure for Measuring of Parameters of Hazards (RT I 2002, 15, 83)
13. Health and safety requirements for the working environments affected by vibration, maximum vibration limits for the working environments and the vibration measurement procedure (RT I 2007, 34, 215)
14. Health and safety requirements for the working environments affected by noise, maximum noise limits for the working environments and the noise measurement procedure (RT I 2007, 34, 214)
15. Occupational health and safety requirements for using hazardous chemicals and materials containing the latter (RT I 2001, 30, 166)
16. Limit values for chemical hazards in the working environment (RT I 2001, 77, 460)
17. Occupational health and safety requirements for work with asbestos (RT I 2007, 55, 370)
18. Requirements for using carcinogenic and mutagenic substances at workplace (RT I 2005, 69, 539)
19. Occupational health and safety requirements for the working environment affected by biological risk factors (RT I 2000, 38, 234)
20. Occupational health and safety requirements for the use of lead and its ionic compounds (RT I 2000, 49, 309)
21. Occupational health and safety requirements for fishing vessels (RT I 2001, 47, 263)
22. Occupational health and safety requirements at explosive atmosphere (RT I 2003, 54, 368)
23. Occupational health and safety requirements for work of pregnant and breastfeeding women (RT I 2009, 31, 197)
24. Occupational Health and Safety Requirements for Extraction of Mineral Resources (RT I 2004, 51, 358)

- 25. Occupational Health and Safety Requirements in Working Environment Affected by Artificial Optical Radiation, Maximum Levels of Artificial Optical Radiation and Procedure for Measuring Radiation (RT I 2010, 16, 84)
- 26. List of occupational diseases RTL 2005, 51, 722

Despite the fact that usually the changes made to the legislation during amendments are not substantial, the number of amendments is still large and some of them have changed the law significantly. If the legislative environment is constantly changing, then it is difficult to guarantee good compliance because even if employers (and employees) are willing to comply, they lack the proper knowledge on what they are supposed to do.

This point is even more emphasized by the complexity of the text of the OHS Act as well as by the long list of Regulations growing out of the OHS Act. For employers, especially for an SME, who does not have enough resources for hiring somebody, who is solely responsible for OHS issues, the list of tasks presented on the OHS Act is probably not intuitive and clear cut enough. Although the elements of an OHS management system are also present in the current version of the OHS Act, they are “hidden” between other paragraphs. So – despite the presence of paragraphs describing the preventive activities as well as the need to conduct a risk assessment, action plan and their constant evaluation, the OHS management system as a concept probably remains a bit unclear.

2.2.2 *Disparities between Estonian OHS Act and EU directives*

Looking at the EU Framework Directive and comparing it with the text of the Estonian OHS Act, the general remark is: Estonia has implemented the Framework Directive very well. Not only literally, but also the ‘spirit’ of the EU legislative framework on OHS has been written down quite good.

Of course there always remain some remarks to be made. Fortunately, we have found only a few clear gaps (clear and obvious disparities). In some other cases we can give comments and suggestions for improving the implementation of the Framework Directive into the Estonian OHS Act.

In Annex A one will find a detailed overview of all gaps, points for consideration and other comments/suggestions. In this paragraph we will describe the main disparities between the EU Framework Directive and the OHS Act.

Article 6 Framework Directive (General obligations on employers)

This article describes the heart of each OHS policy within a company: making a risk inventory and assessment, describing the OHS policy and combating the risks at source. Article 6 of the Framework Directive (FD) has been implemented in articles 12 and 13 in Chapter 3 of the Estonian OHS Act (OHS Act).

No gaps were found, but some points for consideration are:

1. The preventive measures, which have to be taken by the employer, should be adapted to technical (scientific, societal) progress (Article 6, para.2, e. FD). This part of article 6 FD has been implemented in § 12¹, (2), 6. of the OHS Act. In the OHS Act this adaption of preventive measures to

technical progress is, unfortunately, narrowed to work equipment and working methods.

2. As a result of the risk assessment the preventive measures to be taken by the employer should improve the level of protection of the workers (Article 6, para.3, a), 1st line FD). This part of article 6 FD has been implemented in § 13, (1), 2 of the OHS Act. But there's not any mentioning of this obligation to improve the level of protective and preventive measures.

Article 7 Framework Directive (Protective and preventive services)

Related to this article in the FD we found 2 gaps:

1. Article 7, para.2 FD is quite clear in its wording: "Designated workers may not be placed at any disadvantage because of their activities....". We found no clear implementation of this part of Article 7 FD in Article §16 of OHS Act or elsewhere. This is judicially spoken quite important for the designated worker/working environment specialist, because this gives him/her a legal basis for the protection against unacceptable pressure from the employer.
2. Article 7, para.2 FD describes the obligation to give the designated worker or the working environment specialist "adequate time to enable him/her (them) to fulfil their obligations...". We found no explicit mentioning of the obligation of the employer to give the designated worker or working environment specialist "adequate time" in §12 of the OHS Act or elsewhere. This gap is important because of this lack in the OHS Act the designated worker / working environment specialist cannot fulfil his/her tasks ultimately.

Points for consideration related to article 7 of the FD are:

1. §16, (2¹) and (4) describes quite explicitly what kind of knowledge the working environment specialist should have. What cannot be found in the OHS Act are the more general aspects which should be given to the working environment specialist by the employer. Article 7, para. 5, 2nd point FD says every working environment specialist must have ... "the necessary aptitudes and the necessary personal and professional means".
2. Article 7, para.7 FD offers the possibility of giving tasks of the working environment specialist to the employer him- of herself. Of course the employer should be competent. Size of companies, nature of activities or categories of companies are criteria which can be used for defining which kind of employer (SME's) has the right to perform the tasks of the working environment specialist by him- or herself. No such criteria exist in the OSHA.

Article 8 Framework Directive (First aid, fire-fighting and evacuation of workers, serious and imminent danger)

This article of the FD deals with measures how to act in a case of an emergency.

Related to article 8 of the FD we have found three gaps:

1. No explicit mentioning in the OHS Act of the obligation of Article 8, para. 1, 2nd point FD that there should be a contact with the fire-brigade.
2. There is no explicit obligation found in the OSHA where a more active role of the employer regarding contacts with external services such as the fire-brigade. Only the organisation of the connection to emergency call number 112 is mentioned in §15, (2), 1 OSHA.

3. §13, (8) of the OHS Act obliges employers to designate workers for first-aid activities. §15, (2) of the OHS Act has the same obligation but then related to evacuation and rescue work. But there is no mentioning of designated workers with fire-fighting tasks.

One point of consideration related to Article 8 FD is:

1. No explicit mentioning of informing all workers before an incident occurs. This is an obligation for an employer based on Article 8, para. 3, (a) FD and Article 10, para. 1, (b) FD.

Article 10 Framework Directive (Worker information)

We detected one point for consideration:

1. Article 10, para. 3 FD describes the accessibility of information for the OSH-specialized workers. Some of these items are very specific. Such items are the risk assessment and information of the Labour Inspection. These items cannot be found in the OHS Act.

Article 11 Framework Directive (Consultation and participation of workers)

Here we identified 1 gap:

1. The members of the working environment council (§18 of the OHS Act) do not have the protection against possible disadvantages of the employer because of their activities (as stated in Article 11, para. 4 FD).

Two points for consideration are:

1. Some of the items of Article 11, para. 2 FD, such as protective and preventive services, do not seem to be covered by § 12, (5) of the OHS Act.
2. It looks like two items of Article 11, para. 6 FD are not mentioned in the OHS Act. These items are rights for the (members of the) working environment council: 1. appeal to the Labour Inspection, and 2. possibility to submit observations to the Labour Inspection during inspection visits.

Article 14 Framework Directive (Health surveillance)

Here we have found one point for consideration:

1. In §13, (7) and (7¹) of the OHS Act the right for the employee to receive health surveillance "at regular intervals" is not mentioned in the OHS Act, but in the Procedure for medical examinations for workers (Article 14, para. 2 FD)

2.2.3 *Disparities between the Estonian OHS Act and ratified ILO Conventions*

As already mentioned, Estonia has ratified only four ILO OHS Conventions (in the wider sense), of which Convention No.13 (White Lead in Painting, 1921) is to be revised and therefore presently not considered relevant by the ILO, and thus not retained in the list of Conventions annexed to the Promotional Framework for Occupational Safety and Health Recommendation (No. 197 of 2006, which lists the

ILO OHS instruments relevant to the Promotional Framework for OHS Convention, No. 187 of 2006).

Furthermore, the Prevention of Major Industrial Accidents Convention, No. 174 of 1993, (as agreed in discussions during the Mission's first visit to Tallinn in October 2010), does not fall within the terms of reference of this project. That leaves 2 ratified Conventions, No. 81 of 1947 on Labour Inspection in Industry and Commerce, and No. 129 of 1969, on Labour Inspection in Agriculture, which have been subjected to a detailed, Article by Article comparative analysis of these standards with the Estonian OHS Act and relevant subsidiary regulations, notably the Statute of the Labour Inspectorate (Regulation No. 26 of the Minister of Social Affairs, 17.10.2007) and Decree No. 48 of 19.12.2007 entitled "Inspection Instruction on Work Environment."

Following is a summary of the results of this comparative analysis with regard to the material provisions of Convention No. 81 (similar and, indeed, largely identical with those of Convention No. 129, except for some very sector-specific technicalities).

Articles 1, 2 and 3, para.1, of the Convention have been applied. Application of Article 3, para. 2, which stipulates that any other duties incumbent upon inspectors besides their primary functions listed in Article. 3, para 1, possibly raises questions. As labour inspectors operate as fee-charging "trainers" and carry out "market surveillance" responsibilities, the volume of work these additional functions carry with them may impact on the effective discharge of inspectors' primary responsibilities. MoSA officials have confirmed that some inspectors play quite an important role as OHS lecturers or trainers. However, these duties are being limited today by the administration of the LI (Labour Inspectorate), and besides, this group of inspectors is apparently not very large.

Article 4 is applied. Application of Article 5, which requires the responsible authority to ensure functional cooperation agreements between the Labour Inspectorate and a range of both public and private stakeholders, is questionable insofar as there seem to be no formal ("Agency") agreements with other government services, notably the police and other relevant public/private institutions. Concerning specifically Article 5, line b – a formal agreement between the LI and the Confederation of Estonian Trade Unions used to exist some 9 -10 years ago, but no longer. While it is correct that C. No. 81 does not require „formal" agreements, rather mere (but functional) collaboration, good practice in many EU member States (eg. UK, many others) shows that such formal agreements are not just useful but necessary to ensure, e.g. effective cooperation between the LI and the police, the health services, education services and many others. As for the indispensable close cooperation between the LI and the organized Social Partners, according to MoSA representatives, some usually informal collaboration between the LI and workers (for example via telephone counselling) and between the LI and workers' and employers' organisations of course exists. However, this collaboration is not, unfortunately, very close, nor very effective.

Articles 6 - 9 are applied, in particular also through the 2008 "Competency Model" for labour inspectors (§7, (3)). Article 10 of the Convention requires that the number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the Inspectorate with due regard for, e.g., the number, nature, size and situation

of workplaces subject to inspection; the number and classes of workers employed; and the material means placed at the disposal of the inspectors. Full application of this Article, according to information received, is doubtful, in particular as concerns the number of inspectors and the means at their disposal.

Article 11 is applied, but application of Article 12, para.1, line a, raises serious questions insofar as the right of labour inspectors to enter any workplace “freely...at any hour of the day or night” is concerned. This important prerogative is not specifically mentioned in § 26, (4) of the 1999 OHS Act in its present form. The Mission was informed that it was contained in an earlier version of the Act but removed at the behest of the employers. However, this is a quite crucial provision of the Convention and the Mission will provide further comment under 3.2.2, “Conclusions” and 4.2, “Recommendations”. As regards the carrying out of examinations, tests, taking of samples, etc., MoSA officials have informed the Mission that **in practice** there are no problems if such measures are considered appropriate. Lastly, the clause in Article 12, para.1, c, on posting of notices required by legal provisions, is not contained in § 26 of the OHS Act or the Labour Inspection Statute.

Article 12, para. 2 gives inspectors the right to conduct an inspection without beforehand informing the employer of their intention or their presence in the enterprise; but § 26, (4), 5 of the OHS Act requires labour inspectors to enter workplaces “in coordination with the employer”; this appears problematic. There are many instances when inspectors need to make use of the element of surprise. Unannounced inspection visits are possible under the OHS Act, but only if this is deemed “necessary”. While this seems a minor issue, it could in practice impede the unhindered exercise of inspectors’ duties, since the burden of proof would be upon them, possibly resulting in long arguments with employers/managers whether the surprise visit was in fact necessary. This is exactly the kind of situation that the Convention wants to avoid, and while such instances of obstruction may have been few and far between in the past, the experience in other CEECs and elsewhere shows that they are on the increase, that inspectors increasingly have to deal with recalcitrant and uncooperative managers and employers. Again, this will be the subject of further comment below.

Articles 13 and 14 are applied, but the OHS Act contains no provisions equivalent to Article 15, line a), which forbids inspectors from having any direct (material) interest in enterprises they must inspect. Such prohibitions are possibly contained in other legal documents regarding civil servants’ conduct in general, or the new Regulations for government inspectors in particular, but for many different important reasons (accessibility, transparency, user-friendliness, etc) it would in any case be advisable to concentrate these different rights and duties of **labour** inspectors in one single legal document. Finally, lines b) and c) of this Article are applied by virtue of § 26, (3), (4) and (5) of the OHS Act.

Article 16 requires all enterprises under the purview of the Labour Inspectorate to be inspected “as often and as thoroughly as necessary” to ensure the effective application of relevant legal provisions; but no provision in the OHS Act or Labour Inspection regulations expressly give effect to this clause. Nor do they contain any specific provisions on inspectors’ right to use discretion, as envisaged in Article 17,

paras. 1 and 2 of the Convention. This complex issue is best regulated in specific LI Statutes or a national LI Enforcement Policy.

Application of Article 18, on penalties for obstruction of inspectors in the course of legal exercise of their duties, also appears problematic: § 27, (1) – (3) of the OHS Act contain penalties for violations of the Act itself, but none for obstructing labour inspectors in the performance of their duties. The Mission was informed that these are contained, in a general manner - i.e. not addressing the often quite specific situation of labour inspectors - in §§ 274 to 276 of the Penal Code of Estonia. Whether this is the best solution to protect the legitimate actions, interests and integrity of labour inspectors in an increasingly contentious world of work is up to debate. The Mission will make relevant recommendations further on. Lastly, while Articles 19 and 20 are applied, the minimum content of Annual Reports of the Labour Inspectorate, as prescribed by Article 21 of the Convention, is not listed in any available regulations. Such a list needs to be established by means of tripartite consultations.

Overall, it is fair to summarize that the level of application of the provisions of Conventions Nos. 81 and 129 is fairly high, but that certain clauses of C. No. 81 (and their corresponding provisions in C. No. 129) need to be addressed in any future revision of the OHS and LI legal frame, notably: Article 3, para. 2; Article 5, line a; Article 12, para. 1, lines a, c, (i); Article 12, para. 2; Article 15, line a; Article 17, paras. 1 and 2; Article 18; and finally, Article 21. (For more details, please refer to the GAP analysis in the Annex).

2.2.4 *Disparities between the Estonian Occupational Health and Safety Act (of 1999, as amended), and ILO OHS Conventions not yet ratified by Estonia*

According to the already-mentioned ILO OHS Plan of Action 2010 – 2016, the most important international OHS Standards are C. No 155 of 1981 and its Protocol of 2002, and the OHS Promotional Framework Convention No. 187 of 2006. Together with C. No. 161 on Occupational Health (OH) Services they constitute the four ILO OHS “Framework” standards, and it is on these, therefore, that the following analysis will concentrate. That is not to say that, for instance, the Occupational Cancer Convention (No. 139 of 1974), the Asbestos Convention (No. 162 of 1985), or in particular the OHS in Construction (No. 167 of 1988) and Chemicals (No. 170 of 1990) Conventions are less important, but in the logic of the Promotional Framework Convention, (No. 187), its corresponding Recommendation, (No. 197), and the 2010 – 2016 ILO OHS Plan of Action, if the “Framework” instruments are ratified and fully applied, this will later catalyse a process of further ratifications.

Also, the Mission feels that Estonia’s limited capacity to comply with its reporting and other obligations once Conventions have been ratified has to be taken into consideration. Therefore, the following analysis concentrates on the four “Framework” OHS standards. In this context it should also be mentioned that ILO standards, even if not ratified, serve a most useful purpose as international best practice benchmarks and reference for national legislators, policy makers and, as such, should be kept in mind in any future revision of the Estonian OHS policy and legal frame.

2.2.4.1 *Convention No. 155 of 1981*

Article 4, para.1 (Principles of National OHS Policy): While the 1999 OHS Act as amended, together with the 2010-2013 Estonian OHS Strategy, can be considered a (limited) expression of national policy as envisaged by this provision, there are no legal requirements for a periodical (i.e. annual) **review** of the national policy. Furthermore while the OHS Act contains provisions for involvement or consultation of the organized social partners, (e.g. in § 21), the Mission was informed that such **tri-partite** consultations and social dialogue on OHS in practice no longer take place. Thus, for instance, the 2010 - 2013 “policy” was not subject to any such tri-partite consultations. The Mission was informed that when the (tri-partite) consultation and advisory body established under the OHS Act, the Working Environment Council, “failed” some years ago, other forms of OHS information and consultation, namely: **written consultations with the social partners**, as well as joint seminars continued to be practiced, but these are typically **bi-partite** activities and meet neither the letter nor the spirit of this most important provision of the ILO OHS Framework Convention.

Furthermore, Article 4, para.2: promotes the important flexibility concept of “reasonable practicability”, but there are no examples of what is “reasonably practical” in the present Estonian OHS regulatory frame. And again, there are no clauses in the OHS Act or the new strategy for policy review at appropriate intervals (typically: annually) or by sectors of activity as required also by Article 7.

Article 11, line c, calls for the establishment and application of procedures for the notification of occupational accidents and diseases by employers and, when appropriate, insurance institutions and others directly concerned, and the production of annual statistics on occupational accidents and diseases. While according to the OHS Act only fatal or serious accidents are reported (§ 22,(4); occupational diseases are reported in line with § 23, (6) and (7)), the Procedure for Registration, Notification and Investigation of Occupational Accidents and Diseases Regulations” (No.75 of 2008), in § 1 only mentions serious and fatal accidents, (although labour inspectors may investigate “other accidents” as well, § 5); but in § 4, (1), employers are required to investigate any and all accidents not later than 10 days, to draw up a report and to submit it also to the Labour Inspectorate (§ 4 (5)). This wording appears, at least in part, and certainly to an outsider, contradictory.

Regarding Article 11, line e, there are no provisions in the Estonian OHS regulations requiring the publication, annually, of information on measures taken in pursuance of the national OHS policy referred to in Article 4 of the Convention. Furthermore, there is no requirement whatsoever on the reporting of “other injuries to health” which arise in the course of, or in connection with work.

Article 12 prescribes obligations on duty-holders other than the employer, such as designers, manufacturers, importers or providers of machinery, equipment or substances for occupational use. No equivalent provisions are found in the Estonian OHS Act. It only contains obligations for employers on design and manufacturing (§ 5 on Work Equipment). In fact, in modern OHS legislation the definition of duty-holder is much wider, covering many other categories, such as importers, distributors, designers, or occupiers of premises, to give just a few examples. This should be taken into consideration when the OHS Act is revised.

Article 14 requires promoting the inclusion of OHS issues at all levels of education and training. No equivalent provisions were found in the Estonian OHS laws. Article 19, line b, requires representatives of workers in the undertaking to cooperate with the employer in OHS matters. The Convention does not limit the election of workers' representatives to enterprises with 10 or more employees (as in § 17, subpara 2 of the OHS Act). Furthermore § 17 contains no duty to cooperate, as in Article 19 of the Convention. While in Estonia workers' representatives can also be elected in enterprises with less than 10 employees, which is not a legal right of employees, and not mandatory. The representatives of MoSA have emphasized that in an enterprise with less than ten employees, the employer is nevertheless required to consult with the employees in matters of occupational health and safety (§ 17, (2) of the OHS Act). The OHS Act does not actually prohibit the election of relevant representatives, but at the same time stresses that the most effective form of workers' involvement in small enterprises is not the indirect involvement via representatives but through direct contact with employees. This is debatable. Individual workers do not enjoy the same legal protection when they have to assert their rights or criticize the absence of necessary prevention measures, or indeed violations of the OHS Act, and in economically difficult times will tend to keep quiet for fear of losing their job, to the detriment of their own safety and health and that of their fellow workers. In worse cases, not uncommon in some countries, individual workers without legal protection are also more easily intimidated into connivance with employer's intent on violating legal requirements.

Finally, it has been pointed out that concerning co-operation of OHS workers' representatives with the employer, the „Employees' Trustee Act" (§ 10, (6)) prescribes this co-operation between the employees' trustees (where they exist) and the working environment committee, (in larger enterprises), and with the employer (§ 4); but again, these arrangements do not fit the SME sector.

2.2.4.2 *The Protocol of 2002 to Convention 155*

Article 1, lines c and d, Article 2, lines a and b, and Articles 4, 5 and 6 require not only the recording of occupational accidents and diseases, but, "as appropriate" also of dangerous occurrences, commuting accidents and suspected cases of occupational diseases. (These terms are defined in Article 1 of the Protocol). Neither the provisions of the OHS Act (§§ 22-24) nor the 2008 Regulations on Registration, Notification and Investigation of Occupational Accidents contain equivalent clauses.

It was mentioned to the Mission that during Soviet times, and up until 1999, commuting accidents were in fact qualified as occupational accidents in Estonia and were registered as such. However, this was subsequently deemed "inappropriate" (though no clear reasons were given for that) and abandoned.

The concept of „risk of accident" (perhaps equivalent to "dangerous occurrences") was elaborated and added as § 15 to the OHS Act in 2007 (on the basis of the Protocol to Convention No. 155).

2.2.4.3 *ILO Convention No. 161 of 1985 on Occupational Health Services*

Articles 2 and 4 of this Convention require that a national policy on occupational health services be established in consultation with the most representative organizations of employers and workers, and that this policy be periodically reviewed (Article 2). There is no national policy on occupational health services and no functioning consultation process with the most representative social partners' organizations in Estonia at present.

Article 5, line c, requires that occupational health services provide advice on planning and organization of work, including the design of workplaces, the choice, maintenance and condition of machinery and other equipment, and on substances used in work. No such provisions are contained in the OHS Act. Likewise Article 5, line d, requires OH services to participate in the development of programmes for the improvement of working practices as well as testing and evaluation of health aspects of new equipment. Again, this is not reflected in the national OHS legal base.

Article 5, line e, of C. No. 161 is only partly applied, as § 19 of the OHS Act and § 2 of the OH Regulations of 2003 envisage advice only, but not education or training in occupational health or occupational hygiene or ergonomics. Article 5, line j and k, are not applied, as by law occupational health service providers play no role in organizing first aid or emergency treatment.

Article 9 requires occupational health services to be multidisciplinary, but national regulations (§ 19 OHS Act and the 2003 OH Regulations) do not require occupational safety specialists to mandatorily be part of occupational health services. Finally, Article 15 requires that occupational health services be informed of "occurrences of ill health" amongst workers, and any absence from work for health reasons. Again, this is not specifically mentioned in the Estonian OHS Act or OH Regulations.

2.2.4.4 *Convention No. 187 of 2006 on the Promotional Framework for Occupational Safety and Health*

A comparative analysis of C. No. 187 with the Estonian regulatory frame is practically not possible. Important as this Convention is, it contains only four material provisions (plus an Article on definitions): on the overall Objectives of the Instrument (Article 2), on National OHS Policy (Article 3); on a National System for OHS (Article 4); and on a National OHS Programme and National Preventative OHS Culture (Article 5).

- The term *national policy* refers to the national policy on occupational safety and health and the working environment developed in accordance with the principles of Article 4 of the Occupational Safety and Health Convention, No. 155 of 1981 (see 2.2.4.1 above).
- The term *national system for occupational safety and health* refers to the infrastructure that provides the main framework for implementing the national policy and national programmes on occupational safety and health.

- The term *national programme on occupational safety and health* refers to any national programme that includes objectives to be achieved in a predetermined time frame, priorities and means of action formulated to improve occupational safety and health, and means to assess progress. And finally,
- The term *national preventative safety and health culture* refers to a culture in which the right to a safe and healthy working environment is respected at all levels, where government, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, and where the principle of prevention is accorded the highest priority.

From a consideration of these terms in the light of the analyses of the main OHS and Labour Inspection Conventions above it can be seen that Estonia has already begun to implement – coincidentally as well as deliberately – many elements of the provisions of this promotional OHS Convention. But there are still considerable gaps: all provisions call for continuous, institutional, structured consultations with the most representative organizations of employers and workers; aspects of the requisite infrastructure, for instance sufficient specialists in the Labour Inspectorate, or mechanisms for periodical reviews, etc. are still missing; the cooperation arrangements between management, workers and their representatives at the level of the undertaking, as an essential element of workplace-related prevention measures, also need to be further strengthened; and the development of a national preventative safety and health culture is still in its early stages. Recommendations on how best to make use of this Convention, preferably after early ratification, will be made in Chapter 4 of this report.

2.3 Enforcement policy

There is no national labour inspection (5 “Cs”) enforcement policy for OHS in Estonia in the sense described in para. 2.1.2 above. Chapter 6 of the OHS Act, in §§ 25 to 27, contains provisions on “State Supervision”. Additionally, there are the Labour Inspection Statutes (MoSA Regulation No. 26 of 17.10.2007) and the Decree No. 48 of 19.12.2007 entitled: “Inspection Instruction on Work Environment”. Lastly, there are some enforcement tools in the wider sense, such as “OTT”, an (apparently as yet little used) digital risk assessment instrument, available on the website of the Labour Inspectorate.

None of these legal texts and OHS implementation tools, whether individually or together, constitute what in many EU MS (both old and new) has been developed as a National LI Enforcement Policy. Typically, in countries that have such a policy, adopted and refined through continuous tripartite social dialogue, the policy statement provides for:

- Uniformity of criteria for, and standards of enforcement
- Consistent implementation of legislation
- Equal protection for workers in similar situations;
- A common and consistent approach to common problems
- Logic and consistency in the selection of priorities
- Consistency in the provision of resources
- Consistency of procedures and in their application

- Clear guidance to inspectors on the use of their discretion
- Collaboration with the social partners at national, sector and enterprise levels
- Encouraging cooperation with other agencies and actors, in particular accident and work disease insurance
- Eliminating unfair advantages to employers (obtained by non-compliance)
- Being clear, transparent, coherent and manageable.

Thus, the following issues are regularly among those considered as crucial, indispensable elements of national LI policy:

- Focused priority-setting
- Prevention aspects
- Specialist support services
- Reporting procedures
- Making enterprises take responsible action
- Sanctions policy
- Transparency.

Balancing advisory and supervisory functions in a rational, defensible manner, keeping in mind the primary objective of inspection, namely to ensure compliance with the law in the best possible manner and by the best possible means, should also be a deliberate policy decision, and not left to individual inspectors to do as they prefer.

Other issues typically addressed in such an LI enforcement policy statement are:

- Specific sectors (construction, agriculture)
- Methods or intervention procedures
- Visits by appointment or unannounced
- Aiming beyond minimum standards
- Strategic (as against routine) use of sanctions
- Flexible intervention mechanisms
- Avoiding rigid „methodologies“

Much consideration will usually be given to high-risk industries on the one hand, and to the most appropriate compliance enforcement approach vis-à-vis small enterprises on the other. In particular the latter require specific policy decisions in that while the law applies to all duty-holders, its implementation may justly differ between large, capable enterprises on the one hand, and small, struggling ones on the other, just as between basically cooperative, or deliberately uncooperative employers (though these are usually only a small minority).

The ILO's Sub-regional Office for Central and Eastern Europe in Budapest some years ago has published a "Tool Kit for Labour Inspectors", specifically with the transition economies of the region in mind. This document (which has been translated into Estonian) contains a comprehensive LI Enforcement Policy model which could be suitably analysed in a tripartite social dialogue process in Estonia with a view to developing the country's own national LI policy statement.

2.4 OHS infrastructure

The mission has met with several crucial stakeholders in Estonia and spoken with them extensively. In Appendix B a complete overview is given. All stakeholders were willing and cooperative to meet with the researchers.

What we noticed, although this is difficult to substantiate with facts, is an overall cautious attitude. Social partners are waiting for the government and each other to come up with an initiative and meanwhile complain about the little progress that has been made so far in the field of health and safety in Estonia.

The open answers and statements in the survey are quite illustrative in this. Especially under topic 6 Role of Labour Inspectorate and Ministry of Social Affairs (cf. Appendix D) some critical remarks are made, such as:

- *“There’s no coordinating centre which would be responsible for the entire OHS field. No competent body to organise the OHS activities in the country, carry out applied research, work out directions to develop, communicate internationally etc. The government has no long-term OHS goals or action plan. We have to think 5 years ahead, what would be the situation then. The Ministry has to plan the actions in cooperation with service providers, summon work groups to discuss problems and try to find solution”*
- *“Since different stakeholders have different interests all OHS topics should be discussed thoroughly between them and the politicians, the decisions needed and act on them. One should value civil society more in these processes and not only in words. Accept employees’ opinions and suggestions in legislative drafting. Parliament members shouldn’t be under employers’ influence (a lot of them are also members of large companies boards), until then nothing’s going to change. Organise a roundtable for government representatives and service providers to get to see the real view of the field today”*
- *“(Re-)activate the Advisory committee on Working Environment”*
- *“Ministry of Social Affairs should do its job: develop the field, set goals, and implement them effectively”*

A precondition for a well working OHS infrastructure is a goal setting government which consults social partners to participate in reaching these goals which can be laid down in a national programme, as pointed out earlier in paragraph 2.2.4.4.

Some stakeholders argued that, although there is a tripartite Working Environment Committee, there was a lack of topics to be discussed.

3 Conclusions and Recommendations

3.1 Tripartite Social Dialogue on OHS

One of the Mission's major concerns has been the absence of effective, functional, institutionalized social dialogue on OHS and Labour Inspection in Estonia – in spite of the fact that legal provisions of the 1999 OHS Act require it. But we believe that, as the first of our project's Stakeholder Meetings has evidenced, there is ample expertise and interest in such a dialogue – and as this Mission's report has shown in all Chapters, there is a host of topics that urgently need to be addressed, and that would not only benefit additionally from such social dialogue but, in fact, depend on it for finding of appropriate, workable solutions and achieving the ultimate goal of acquired "ownership" by those stake- or duty-holders most directly affected and concerned.

We understand that the former way in which tri-partite social dialogue on OHS under the OHS Act was organized did not produce – in the specific context of Estonia – the results expected, i.e. to add value to the policy and legislative development process by expertise from outside MoSA. Besides, the representatives of the Labour Inspectorate were not, or not sufficiently involved, although they would also be affected and would have a major contribution to make, not only on policy but in particular on operational issues which, as the example of many other EU member States shows, are also usefully the subject of such national or sectoral social dialogue. Similarly, the very considerable – both in quantity and in quality – expertise available from many non-governmental sources has so far not, at least not sufficiently, been tapped for the purpose of developing an OHS prevention culture in Estonia.

These and many other considerations lead the Mission to **strongly recommend** that a new OHS consultative body be set up – if necessary by revising the relevant section of the OHS Act, or by adopting separate Statutes for this new institution under a new MoSA Regulation – in the form of a multi-partite national OHS Council or Advisory Board or Committee. Good examples concerning the mandate, composition, constitution, activities, etc. of such bodies can be found in several other (old and new) member States or accession countries.

This new body might be composed in such a way that three "groups" would have equal numerical representation (say, six representatives each): MoSA and the LI; employers and workers (both the national organizations and individual representatives from enterprises nominated by their organizations); and OHS institutes and other NGO-type institutions (such as were present at the 1st project Stakeholder Meeting in April 2011).

The new Council could be chaired by a representative of one of these three groups on an annually rotating basis. As already concluded earlier (see Point 3.4 above), it could begin with deliberations on the 6 strategic issues identified by the Mission and effectively debated – though not yet conclusively - at the 1st Stakeholder Meeting. It could meet three times a year; and it could form sub-committees or working groups with one representative from each group to tackle specific issues and prepare background papers and the like for the plenary sessions. The State Labour

Inspectorate would provide regular secretariat services for this new national OHS Council.

3.2 Conclusions Estonian OHS legislative frame

3.2.1 Conclusions regarding transposition EU directives

As already mentioned in paragraph 2.2.2 of this report our general conclusion of the implementation of the EU Framework Directive (89/391/EEC) into the Estonian Occupational Health and Safety Act is quite positive. We found no significant gaps which could have affected the working conditions of the Estonian workers negatively. Of course the identified gaps have to be bridged. The points of considerations have to be discussed, and if possible, solved as well.

While the gap analysis shows that the Framework Directive (FD) has been more or less completely transposed, the structure of the OHS Act (1999) could be considerably improved and made more logical, more coherent, more user-friendly.

Modern OHS legislation starts with stating policy objectives and contains special sections on definitions, missing in the present OHS Act. Hence, it identifies the main duty holders for which the Act has been made and assigns sets of rights and duties to each of these actors. Furthermore, it contains a legal empowerment clause authorizing the minister to make special regulations if needed. The detailed regulations presently contained e.g. in Chapter 2 of the Act can be relegated to subsidiary legislation under this clause.

If Estonia makes one OHS regulation, this regulation can be the base of transposition of all EU daughter directives. As a best practice example we refer to the Dutch OHS regulation where several chapters can be found referring to the EU daughter directives. There are mainly three levels: the OHS Act, regulations and guidelines/technical standards. The latter are not legislation, but an interpretation/explanation of the legislation.

3.2.2 Conclusions regarding application of ILO OHS Conventions

In this paragraph conclusions on ratified and not yet ratified ILO Conventions are drawn.

3.2.2.1 Regarding ratified ILO Conventions (Nos. 81 and 129)

Estonia, under the ILO Constitution, is obliged to implement ratified Conventions fully in national law and practice. The comparative analysis, (For details, see the Annex), in particular of the provisions of Convention No. 81 (Labour Inspection in Industry and Commerce) has shown there are some – though not many – serious gaps in need of redress. One prior issue seems to be whether these gaps in law and practice can be corrected by merely amending the present OHS Act (1999, already amended many times since) and the Statute of the Labour Inspectorate (2007), or whether it would not be better to redress the identified deficits firstly as part and parcel of a revision of the entire OHS legal frame, and secondly by

adopting a comprehensive new national labour inspection enforcement policy (the mission would advocate the latter process). That said, if this is considered too time-consuming, certain amendments to the existing legislation, on the basis of the preceding comparative analysis could nevertheless be envisaged at short notice to give better effect to important provisions of C. No. 81 as mentioned in section 2.2.3, (last para), above.

3.2.2.2 *Regarding non-ratified OHS Conventions*

As indicated in the chapter on Findings, there are 4 ILO OHS “Framework” Instruments: Convention No. 155 (1981) on Occupational Safety and Health and the Working Environment; the Protocol to Convention No. 155 of 2002; Convention No. 161 (1985) on Occupational Health Services; and the Promotional OHS Framework Convention No. 187 (2006). 3 of these 4 (i.e. except C. No. 161) are also the international instruments on whose ratification the new ILO 2010 - 2016 OHS Plan of Action specifically focuses as a matter of priority. Their early ratification would therefore also be a primary focus of the mission’s Recommendations.

However, given the rather limited capacity of MoSA to “service” the ratification (and subsequent periodical reporting) process, it would seem essential that any such efforts are coordinated with the “re-vitalization” of tripartite – or multi-partite – social dialogue on OHS issues. If a restructured National Tri-partite Working Environment Council were to be become a multi-stakeholder platform, possibly dissociated from MoSA (as has been suggested by stakeholder representatives during the mission’s first visit to Tallinn), then a broader base and possibility broader consensus could be generated towards ratification of these ILO OHS Conventions, generally considered the most important.

This would again require a revision of § 21 of the 1999 OHS Act. The same considerations as for the correction of deficits between ratified ILO Conventions (Nos. 81 and 129) and Estonian legislation therefore apply: It seems more than likely that without revitalized tri- or multi-partite social dialogue there will be no further ratifications in the foreseeable future. An alternative solution might be to put this process where, in fact, it belongs: namely before the Committee or similar institution that Estonia has set up in fulfilment of its obligations under ILO Convention No. 144 on “Tripartite Consultations (International Labour Standards)” of 1976, which Estonia has already ratified. But again, this is “merely” a strictly tri-partite body, and a “multi-partite” approach, as has been advocated by several stakeholders, might be preferable.

3.3 **Recommendations Estonian OHS legislative frame**

3.3.1 *EU Directives*

Article 6 Framework Directive (General obligations on employers)

Recommendation regarding point for consideration 1 “Measures adapting to technical progress”:

- The OHS Act could be changed in such a way that this EU requirement is described in a more general way and not only related to work equipment and working methods. For example: “the employer should adapt regularly all

preventive and protective measures to technical, scientific and societal progress”.

Recommendation regarding point for consideration 2 “Improving level of protection”:
The OHS Act could be changed in such a way that this improvement-drive on OSH, as a result of the risk assessment, is mentioned explicitly. The wording of such an adaptation of the OHS Act should stress the continuous improvement of the working conditions. For example: “The employer should assure, as a result of the risk assessment, the improvement in the level of protection afforded to employees”.

Article 7 Framework Directive (Protective and preventive services)

Recommendation regarding GAP 1 “Designated workers may not be placed at any disadvantage because of their activities”:

- In the OHS Act the working environment specialist is the designated worker. However the working environment specialist is a representative of the employer, as the working environment representative is a representative of the employees, the working environment specialist needs to operate independently.
- The independent position of the working environment specialist is marked by this article in the Framework Directive. The working environment specialist must have the position to speak frankly and openly about all occupational safety and health issues. Our recommendation is: Copy § 17, (6), 7 (working environment representative) to an extra subsection under § 16 of the OHS Act (working environment specialist). You only have to change the words ‘working environment representative’ in ‘working environment specialist appointed by the employer’.

Recommendation regarding GAP 2 “Designated workers should have adequate time to fulfil their tasks.”:

- The OHS Act has a comparable requirement in § 17, (9). But it is only regulated for the working environment representative. Our recommendation is: Copy the last sentence of § 17, (9) of the OHS Act to § 16 (working environment specialist). You only have to change the word ‘representative’ into ‘specialist’. Further suggestions can be found in the Belgian legislation on the designated worker (see annex C Answer to question 11).

Recommendation regarding GAP 3 “Designated workers should work together.”:

- This general but important cooperation requirement between several working environment specialists should be laid down in the OHS Act. The wording of § 16, (6) OHS Act is already quite reasonable but could be more strict. Our recommendation: A new paragraph or phrase should be added to § 16. The text of this paragraph or phrase can be: “If two or more working environment specialists, employees or specialist from external services, are working for one employer these specialists should work together effectively.”

Recommendation regarding point for consideration 1 “Working environment specialist and their knowledge”:

- Any mentioning of the necessary personal and professional means and aptitude of the working environment specialist is missing in the OHS Act. Especially such a personal and professional aptitude is quite fundamental for the acceptance of the work of the working environment specialist.

- Recommendation: § 16, (4) of the OHS Act should be extended or enriched with the words: “the working environment specialist shall be familiar with professional consultative tools...”
- The Belgian legislation on the designated worker (called: prevention-counsellor in Belgium) is quite comprehensive. (see annex C Answer to question 11).

Recommendation regarding point for consideration 2 “Special branches or special activities.”:

- This recommendation is related to point for consideration 1. If the Estonian government for example wants to hand over the working environment specialist tasks to the SME-employer, one can use the criterion of the size of the company. But it is also possible to use the criterion of the nature of the activity. For example: employers of companies producing or handling dangerous substances are not allowed to fulfil the working environment tasks by themselves.

Article 8 Framework Directive (First aid, fire-fighting and evacuation of workers, serious and imminent danger)

Recommendation regarding GAP 1 “Fire-fighting is missing in OHS Act”

- In § 13 of OHS Act the subject ‘fire-fighting’ is missing. Fire-fighting is one of the tasks the designated workers should fulfil in case of an emergency. Recommendation: “Add the subject fire-fighting to the relevant paragraphs of § 13 OHS Act”. If this is not feasible, there should be an explicit reference to the Fire Safety Act.

Recommendation regarding GAP 2 “Realize necessary contacts with (police, ambulance) external fire-brigade”

- § 15, (2), 1 of the OHS Act requires the organization of the connection to the emergency call number 112. Article 8, paragraph 1, point 2 of the FD asks for a more active role of the employer: arrange necessary contacts with external services, such as the fire-brigade. Recommendation: “Add the last part of the last sentence to § 15, (2) of the OHS Act”. If this is not feasible, there should be an explicit reference to the Fire Safety Act.

Recommendation regarding GAP 3 “Designated workers in case of an emergency”

- This is a more specific GAP as mentioned in GAP 1. The designated worker in case of an emergency has to fulfil first aid responsibilities (§ 13, (8) OHS Act) and evacuation and rescue tasks (§ 15, (2) OHS Act). Recommendation: “Add the task of fire-fighting to the already existing tasks of these designated workers in § 13 or § 15 of the OHS Act”. If this is not feasible, there should be an explicit reference to the Fire Safety Act.

Recommendation regarding point of consideration “Informing workers before an incident occurs”

- It should be made clear in the OHS Act that the employer should inform (instruct) the employees how to handle in case of an incident, way before an incident really occurs. Recommendation: “Add to § 15 of the OHS Act the requirement for the employer to inform and instruct all employees how to act in case of an emergency”. As we understood this GAP has something to do with the (inadequate) translation of § 15 OHS Act. Furthermore the Regulation of the

Minister of Social Affairs of 14 December 2000 about the Procedure for Training and In-service Training regarding Occupational Health and Safety is relevant. Because in this Regulation the obligation exists for employers to give employees “instructions on how to act in the event of the risk of an accident or in the event of an accident at work” (§ 4, (2), 3 of the Regulation of 14 December 2000). But there’s still no reference in § 15 of the OHS Act to this specific Regulation.

Article 10 Framework Directive (Worker information)

Recommendation regarding point of consideration 1 “Specific obligation for accessibility of information”

- Working environment specialist, working environment representatives and the Working Environment Council should have access to information yielded by the Labour Inspection, external services and other inspection bodies.
Recommendation: “In all articles in the OHS Act related to WE specialist, WE representative and WE council this specific obligation should be added”. These articles deal with the accessibility of information. It should be clearly distinguished from asking this information by (for example) the WE-representative.

Article 11 Framework Directive (Consultation and participation of workers)

Recommendation regarding gap “Protection of the WE Council against disadvantage (discrimination or victimisation) of the employer”

- The independent position of the Working Environment Council is marked by this article in the Framework Directive. The members of the working environment council must be in a position to speak frankly and openly about all occupational safety and health issues. Our recommendation is: “Copy § 17, (6), 7 (working environment representative) to an extra subsection in § 18 of the OHS Act (Working Environment Council). You only have to change the words ‘working environment representative’ in ‘members of the Working Environment Council.’ Also, while fully acknowledging, that Employment Contract Act gives quite substantial protection to workers representatives (see § 89, § 92, § 94 and § 109) and thus also to Working Environment Council members (at least those who represent the employees’ side), it would more user friendly to include this information also in OHS Act.

Recommendation regarding point of consideration 1 “Specific items for consultation and participation”.

- The list of topics mentioned in § 12, (5) of the OHS Act is not clearly the same as the topics mentioned in Article 11 of the Framework Directive.
Recommendation: “Specify all topics in article 11, para. 2 of the Framework Directive clearly in § 12 of the OHS Act”

Recommendation regarding point of consideration 2 “Specific rights for working environment council”.

- Recommendation: “§ 18 of the OHS Act should be extended with two rights for (members of) the Working Environment Council. 1. The WE Council has the right to appeal to the Labour Inspectorate if they consider the protective and preventive measures of the employer are inadequate. This is an important point

because for individual employees it is often quite difficult (for a variety of reasons) to appeal to the Labour Inspectorate. For members of the WE-council it is easier to appeal to the Labour Inspectorate, whereas they have more protective rights than individual employees. 2. The members of the WE Council have the right to submit observations to the Labour Inspectorate during inspection visits.”

Article 14 Framework Directive (Health surveillance)

Recommendation regarding point of consideration “Regular intervals health surveillance”.

- Recommendation: “Add the words ‘at regular intervals’ in § 13, paragraphs 7 and 7.1 of the OHS Act.” We are in favour of mentioning this in the OHS Act explicitly, but this is judicially not necessary because in the regulation, called “The procedure for medical examinations for workers” the regular interval is mentioned. In article 5, para. 2 of this Regulation. There is a minimal regular interval of at least once every three years for each employee.

3.3.2 ILO conventions

3.3.2.1 Regarding ILO C. No. 81 (ratified by Estonia) and all related Labour Inspection (LI) matters

The Mission’s principal recommendation is to collect and combine all LI-relevant issues, both policy **and** operational, such as the legal provisions from Chapter 6 of the present OHS Act, the LI (MoSA) Regulations (Statutes) of 2007, as well as any other LI procedures and internal instructions into a single text, preferable a Labour Inspection Law or, failing that, a new, comprehensive LI Regulation (to be issued by MoSA under the OHS Act). Should this not prove feasible, we nevertheless recommend that the following specific points referring to the practice of application of the provisions of ILO C. No. 81 in Estonia be addressed by making changes, as appropriate in Chapter 6 (Supervision) of the present OHS Act, or the LI Statutes of 2007, or by revising existing LI procedures or instructions.

- Article 3, para. 2: “*Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties...*”

It is recommended that the competent authority phase out the practice of inspectors providing training on a fee-charging basis, and of conducting “market surveillance” activities.

- Article 5, lines a and b: *The competent authority shall make appropriate arrangements to promote: (a) effective co-operation between the inspection services and other government services and public or private institutions engaged in similar activities; and (b) collaboration between officials of the labour inspectorate and employers and workers or their organisations.*

It is recommended that formal “Agency Agreements” be concluded by MoSA at least with those other government institutions with whom labour inspectors may have official dealings or on whose cooperation they may depend for the effective discharge of their duties. This concerns, for instance, the Ministry of Interior (for the police services), the Ministry of Education and Research (for all levels of education services where labour inspectors may be involved in prevention-related activities), and possibly other state or local government agencies.

It is further recommended to consider the usefulness of once again concluding formal cooperation agreements with the representative national social partner organizations, to involve these latter more systematically in the work of the Labour Inspectorate, in both policy and operational matters and, ultimately, to ensure “ownership” by the most directly concerned stakeholders in the process of creating an OHS prevention culture in Estonia.

- Article 12, para. 1, lines a, c, (i): *Labour inspectors provided with proper credentials shall be empowered: to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection.*

It is recommended that this wording be inserted in the revised version of § 26, (4) of the OHS Act; that should also contain a provision that inspectors may enforce the “Posting of any (legal) notices in enterprises” as per line c (i) of this Article.

- Article 12, para. 2: *On the occasion of an inspection visit, inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.*

It is recommended to use this wording of the Convention in § 26 of the OHS Act instead of the present text for the reasons outlined in Point 2.2.3 above.

- Article 15, line a: *Subject to such exceptions as may be made by national laws or regulations, labour inspectors shall be prohibited from having any direct or indirect interest in any undertakings under their supervision.*

While such duties (and others) incumbent upon labour inspectors by virtue of the Convention may possibly be contained in rules governing the Estonian civil service as a whole, it is nevertheless recommended that they be specifically included in the proposed new Labour Inspection Law (see the Mission’s first Recommendation above) or revision of the LI Statutes (MoSA Regulation of 2007).

In this context, it is further recommended to consider the usefulness of adopting a separate Code of professional and ethical Conduct specific to the Labour Inspectorate, as is the case in many other countries. The IALI “Code of Integrity” of 2008 could serve as a useful benchmark and reference.

- Article 17, paras. 1 and 2: *Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning: Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given. It shall*

be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

As the Mission has noted (see Point 2.2.3 above), there are no specific provisions on inspectors' important right to use discretion, as envisaged in Article 17, paras. 1 and 2 of the Convention. It is recommended that this important and complex issue be regulated in a separate LI Law, or the to-be-revised LI Statutes, and more specifically addressed in a new national LI Enforcement Policy (see Point 4.3 below).

- *Article 18: Adequate penalties for violations of the legal provisions ... and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.*

Although the Penal Code of Estonia (in §§ 274 - 276) makes obstruction of government officials while on duty an offense, it is nevertheless recommended that such provisions, referring specifically to labour inspectors, also be contained either in a separate Labour Inspection Law or, failing that, in a revised Chapter 6 of the OHS Act (as a new sub-section after § 27, (3)) or in the proposed new LI Statutes; and that additionally the penalties for any violence, whether verbal, physical or otherwise, against a labour inspector on official duty, or for any official act be significantly increased to ensure effective deterrence and to demonstrate the State's determination to protect some of its most vulnerable officials operating, as they usually have to, in isolation, and in often difficult, potentially confrontational situations (through no fault of their own).

- *Article 21: The Annual Report of the central inspection authority shall deal with the following (a – g) and other relevant subjects...*

It is recommended that the issues listed under lines a) to g) of this Article be specifically listed either in a proposed new LI Law, or in the OHS Act (as a new § 28), or in the revised LI Statutes (2007).

3.3.2.2 *Regarding ILO Conventions not yet ratified by Estonia*

The Mission strongly recommends to re-examine, as a matter of priority, the possibility and utility, in the light of its conclusions on this issue, of ratifying the four OHS instruments considered most important by the Organisation for the revitalization of OHS at both international and national levels, (as postulated in the ILO global OHS Action Plan 2010 – 2016): namely Conventions Nos. 155, 161 and 187, as well as the Protocol of 2002 to C. No. 155.

We recommend that this matter be discussed and decided not merely by the Estonia/ILO National Committee (operating in accordance with ILO C. No. 144), but in a wider context, preferably through multi-partite social dialogue (see Point 4.4 below). Once these international OHS standards have been accepted for ratification, changes to the existing OHS laws and regulations will have to be made in accordance with the Mission's GAP analysis (see the relevant Annexes at the end of this report). For any new legal texts, the wording of the international standards should, if possible, be taken over literally.

3.4 Conclusions enforcement policy

3.4.1 Enforcement

Consultations with representatives of both MoSA and the Labour Inspectorate (see the extensive comments on this issue in the chapter on Findings, section 2.3 above), have shown that, on the one hand, there is no comprehensive, modern (5 “Cs”), national Labour Inspection Enforcement Policy; and on the other hand, representatives of both these institutions’ have indicated a strong need for such a policy. (The main elements for such a new Enforcement Policy have been discussed in the Chapter on Findings, section 2.2.3 above in the context of the analysis of ILO Convention No. 81)

A possible practical approach to develop such a clearly needed national LI Enforcement Policy therefore could be as follows: 2 documents already available, namely the 1998 (MoSA) “policy” document, and the model enforcement policy in the ILO (Budapest) publication: “Tool Kit for Labour Inspectors”, benchmarking with the EU-SLIC 2004 “Common Principles for Labour Inspection in relation to Health and Safety in the Workplace” could form the basis for discussion and, later, adoption of such a draft comprehensive new national LI Enforcement Policy. Whether this should be developed in the State Labour Inspectorate and then discussed with, and adopted by MoSA; or whether a combined draft should be prepared by a small working group of MoSA and the Labour Inspectorate, and the results of this process then presented to the (revitalized) Working Environment Committee or a similar platform for tri- or, preferably, multi-partite social dialogue, is a matter for further consultation. (See also Recommendation 4.4 below)

But it can be safely concluded that a combination of these different policy documents, suitably adapted in close consultation not only with all the major stakeholder representatives, but also with the operational level of the Labour Inspectorate, and then adopted by MoSA and subsequently proclaimed by the Government, could produce a very solid, very useful, indeed very necessary comprehensive new Labour Inspection Enforcement Policy for Estonia.

3.4.2 Other policy issues

It has been argued in paragraphs 1.4.1, 2.1.2, 2.2.3 and 2.2.4 above that early ratification of the four key ILO OHS instruments, (Conventions Nos. 155, 161, 187 and the Protocol of 2002 to C. 155), is an essential step forward towards creating a modern OHS frame and a dynamic for continuous improvement. Implementation of all these key international OHS instruments requires the development, through tri- or multi-partite social dialogue, of relevant national policies as a pre-requisite to full and continued application. The ultimate aim of such national policies is to provide a strong benchmark frame and platform for improvement of OHS conditions in workplaces and the working environment. As already mentioned, the ratification of, in particular, ILO Convention No. 155 is considered crucial for successful national action, as stated in the ILO OHS global Plan of Action for 2010 - 2016 (point 23).

Development of relevant national policies commensurate with the requirements of these international standards will require the re-vitalization of institutional tri- or, preferably, multi-partite social dialogue on OHS and related issues.

3.4.3 *Other concerns*

The Mission encountered a number of other issues, which lead us to a series of additional conclusions (in no particular order of priority).

3.4.3.1 *Labour Inspectorate's HRD policy*

Even a relatively small Labour Inspectorate such as that of Estonia should have a Human Resource Development (HRD) policy – in fact, that would be a functional “derivate” of the suggested national LI Enforcement Policy: namely what is needed in terms of qualified HR for optimal policy implementation. There appears at present to be no such HRD policy. It would address both quantitative and qualitative aspects. In quantitative terms, an acceptable ratio of the number of inspectors per workpeople (all sectors of economic activity included) should be developed. ILO (“unofficial”) recommendations have continuously postulated that an acceptable ratio for a highly industrialized market economy such as Estonia would be around 1 inspector for every 10.000 workers/employees (and including self-employed persons, apprentices, students, etc. to which, in most EU MS, present-day OHS legislation is also applicable). For Estonia, with number of employed of potentially over 600.000 people, that would mean, as a minimum, 60 full-time labour inspectors. The present actual number falls short of that target.

In qualitative terms, clear qualification profiles would be desirable, ensuring that a holistic approach to inspection can be developed and that certain systemic weaknesses, for instance in the area of occupational hygiene and health inspection, (and in particular provision of relevant advisory services by inspectors), as well as adequate coverage of new and unfamiliar hazards (psycho-social risks), etc. are ensured. A new HRD policy would then also define the different training needs and skills requirements for the service and identify minimum resources and other issues.

3.4.3.2 *Labour Inspection Law (or new Regulations)*

The Mission has already expressed its concern over the fact that a number of important Labour Inspection-related issues are not, or not adequately covered in national legislation or, if so, are dispersed in different, sometimes quite unrelated legal sources, making direct access and quick, user-friendly referencing difficult. The issue of adequate penalties for obstruction of labour inspectors on official duty (Art. 17 of ILO C. No. 81) is but one such point (see Point 2.2.3 above).

Consideration could be given to re-moulding all LI-related issues into a separate Labour Inspection Law (or Regulations) – a path that several transition economies and new EU MS, such as Bulgaria, Hungary or Romania have recently adopted. These countries' new LI legislation (and that of others) is available as good international practice and could be usefully made the subject of social dialogue in Estonia with a view to deciding on the utility of such an approach for the country as well and, if so, on the scope and content of such a new law. Many of the issues raised in the comparative analysis of ILO Conventions Nos. 81 and 129 (section

2.2.3 above) could then be dealt with in this context. If however, as has been intimated to the Mission, the proposal for a separate Labour Inspection Law is a “non-starter” under present-day political and administrative conditions in Estonia, then these conclusions should nevertheless feed into the drafting of the national LI Policy and, in consequence, to a revision of the LI Statutes (MoSA Regulations of 2007) and any other subsidiary legal texts.

3.4.3.3 *Other issues*

When discussing the question of ratification and implementation of major ILO OHS instruments (section 2.2.4 above) a number of issues have been raised. Four perhaps stand out (one for each instrument): First, there again is as yet no comprehensive national policy on Occupational Health (OH) Services as required by Articles 2 and 4 of ILO C. No. 161.

Second, the concept of “Duty-Holder” in modern OHS legislation (as also referred to in Art. 12 of ILO C. 155) is much broader than the few obligations covered by § 5 of the 1999 OHS Act (on Work Equipment, which contains obligations on employers regarding design and manufacturing). Modern OHS legislation covers a much wider range of “duty-holders”, such as importers, distributors, designers, occupiers of premises, etc. The new Singapore OHS Act of 2006 provides an excellent benchmark for solving this issue. For more details, please follow this [link](#).

Third, the ILO Framework OHS Promotion Convention, No. 187, requires a national programme on occupational safety and health to be set up, which should include “objectives to be achieved in a pre-determined time-frame”, priorities and means of action to be formulated to improve OHS, and means to continuously assess progress made in this context to be developed and applied. These elements and tools are as yet missing in the Estonian OHS system. Once again, they would ideally be adopted through tri- or multi-partite social dialogue; and this long list of issues in need of such social dialogue on OHS clearly refutes the notion that “there is nothing to discuss”.

Fourth (though this short list is by no means exhaustive), application of the Protocol of 2002 to Convention No. 155, in Art. 1 requires not only the recording of occupational accidents and diseases, but also of “dangerous occurrences, commuting accidents and suspected cases of occupational diseases. Such provisions are not contained in the relevant Estonian regulations. Nor is this merely a minor issue. Knowledge of dangerous occurrences and their systematic analysis is an indispensable part of any modern OHS prevention strategy. Commuting accidents are, in many countries, rightly considered to be occupational accidents, not only for purposes of social insurance, but also for targeted prevention measures. And this applies also to suspected, as against merely confirmed cases of occupational diseases. These deficits should be addressed when revising the 1999 OHS Act or drafting a new, modern, comprehensive OHS Law. (In this context, the distinction made in Estonia between occupational and “work-related” diseases is difficult to understand, and not used internationally – the two terms seem synonymous – and, in the opinion of the Mission, the distinction is unnecessary).

3.5 Recommendations enforcement policy

The Mission strongly recommends to develop a new, clear, considered, comprehensive, coherent and consistent National Labour Inspection Enforcement Policy through tri- or, preferably, multi-partite social dialogue (see next Point, 4.4). The following already existing documents should be used as sources of reference for the drafting of a comprehensive, consolidated first draft of this new policy document, which would then be circulated to all stakeholders to initiate the policy design and adoption process: The former (1998) LI policy document mentioned in the Chapter on Findings above; the 2004 (revised) EU-SLIC “Common Principles for Labour Inspection in relation to Health and Safety at the Workplace”; the model LI Enforcement Policy document contained in the ILO (Budapest) “Toolkit for Labour Inspectors”; and the Estonian OHS Strategy 2010 – 2013 statement.

Once a final text has been agreed upon by the revitalized tri- or multi-partite social dialogue process, the new Policy should preferably be adopted not only by MoSA, but by the Government as a whole and given prominent publicity nationally through PR campaigns, a pronouncement by the Minister of SA for instance on the occasion of International OHS Day (April 28) or Labour Day (May 1), and other suitable measures; and internationally by translation into English.

3.6 Conclusions OHS infrastructure

The OHS infrastructure includes serious gaps. A structural social dialogue is missing and the role of occupational health services can be much more strengthened. Moreover, an accident insurance system is lacking whereas this could be a real driver in the Estonian OHS infrastructure to stimulate prevention and increase the demand and need for specialist occupational health services.

Collective labour agreements are presently strongly focused on salaries, whereas these agreements can also be used to negotiate the improvement of working conditions in specific sectors.

The results of the survey are also quite revealing in this respect (cf. Appendix D). Many stakeholders have a neutral or even rather critical attitude toward the national OHS policy in Estonia. Some of them mention that this is the first time they were consulted, others believe that this consultation will not make any difference.

Our main conclusion is that the tripartite dialogue on many levels urgently needs to be revitalized. This report contains an impressive amount of topics and issues which can be taken up by the Estonian government and social partners to strengthen the elements and functioning of an OHS infrastructure in Estonia.

The following topics appear to be key in setting the agenda for this tri- and possibly multipartite dialogue:

- Legislative frame
- Tri partite social dialogue
- Accident insurance
- Risk assessment
- Labour inspection enforcement policy
- OH services

Especially under the new coalition government it seems that an Accident Insurance Law can be realised and this would definitely influence all other 5 key issues as summed up above. This stone in the pond will influence changes in the legislation, foster a need for better risk assessment and related support to enterprises by occupational health services. Moreover, the enforcement policy also would need to adapt to this new situation.

3.7 Recommendations OHS infrastructure

Core topics to improve a well working OHS infrastructure comprise:

- Legislative frame
- Tri partite social dialogue
- Accident insurance
- Risk assessment
- Labour inspection enforcement policy
- OH services

In the paragraphs below we give the main recommendations and conclusions produced and discussed during a stakeholder meeting held on 7th April 2011. Sometimes we also refer to earlier paragraphs in this report where this issue has been dealt with more elaborately.

3.7.1 *Legislative frame*

The stakeholder meeting concluded on the following recommendations:

- The OHS Act is a mixture of general policy principles and detailed prescriptions; restructuring of the OHS legislation is needed into a logic organisation of topics
- Example: specific issues such as the risk assessment process or labour inspection enforcement policy should be structured in one chapter or regulation
- Many important issues within the OHS legal frame are scattered in different texts; making their application problematic
- Principal actors should be encouraged to make more use of soft regulatory tools; which allow for a higher degree of flexibility

As said earlier in this report the comparison between the EU OHS legislation and the Estonian OHS Act is quite positive for Estonia. However, we have some recommendations for improving the Estonian OHS Act. Basically these recommendations are based on our experience with OHS legislation in general and with our knowledge of the OHS legislation in other EU-countries.

Looking at the structure of the OHS Act, it should be stressed that especially Chapter 2 (Working environment) is an odd chapter, because it handles with a lot of very detailed sections and prescriptions. This chapter should be removed from the OHS Act and be placed in one or more Regulations. If this is not possible this chapter should be placed at the end of the OHS Act. At least the Chapters 3 (Obligations and rights of employers and employees), 4 (Organisation of occupational health and safety) and 5 (Occupational accidents and occupational

diseases) of the OHS Act should be placed before Chapter 2. These three general chapters are 'the heart' of the OHS legislation (for example: the risk assessment) and logically should get the primary attention of the 'reader' of the OHS Act.

In our view § 12 (Sickness benefit payable by employer) of the OHS Act should be removed from the OHS Act, which should be dealing with prevention only. This section should be a part of the social security legislation dealing with sickness benefits.

There are a lot of regulations dealing with several parts of occupational health and safety. The consultant's team is rather in favour of one coherent OHS regulation. This makes it easier for employers and employees to comply with the OHS legislation, because in such a situation there are only two 'documents' which are relevant for occupational health and safety: the OHS Act and one OHS Regulation. If this is not feasible, it should be considered to make a digital tool to refer to the exact / relevant OHS legislation in Estonia.

For many employers and employees legal texts are difficult to read and understand. In many EU-countries one can see the development of a variety of so-called soft-law instruments. These instruments, such as the British Codes of practices, describe in a logical and coherent way how to comply with the OHS legislation. Also the 'language' of these documents is not judicially written, but in such a way that employers and employees can use this information in their daily practice. Estonia can make use of the existing codes of practices or other comparable documents. After translation and adjusting the texts to the Estonian situation it should help the Estonian employers and employees to comply to the Estonian OHS Act more easily.

The main conclusions of the discussions during the stakeholder meeting were:

- We should establish a balance between hard and soft law
- We should decide what provisions must be in the act and what in regulations
- The Estonian soft law base today is not very large; it has to be promoted, but this needs resources
- We should work out soft law papers; to use soft law examples from other member states; codes of practice from ILO e.g.

3.7.2 *Tri partite social dialogue*

The stakeholder meeting concluded on the following recommendations:

- Effective, institutionalized, on-going tri-partite social dialogue on OHS policy, OH Services and Labour Inspection is not functioning
- In many EU countries the organised social partners are actively and continuously involved in defining and determining policy issues on OHS; in Estonia this is not the case
- The institution implementing ILO C. 144 seems to be non active
- Making more use of multi-partite social dialogue, also on sector level; e.g. the ongoing multi stakeholder dialogue on maritime conventions

In paragraph 3.1 this topic has been dealt with more elaborately.

The main conclusions of the discussions during the stakeholder meeting were:

- There are many shortcomings on bipartite and tripartite social dialogues on national and enterprise level
- There seems to be some room for such bipartite dialogue and social partners can take the initiative
- Collective labour agreements could be used on sector level
- Tripartite body – the work environment council – must be reformed, rephrase some ideas and goals of this body; we need special brainstorm sessions to revive this; today's model does not work

3.7.3 *Accident insurance*

The stakeholder meeting concluded on the following recommendations:

- The important prevention stimulus provided by a modern work accident and disease insurance system, as an essential part of the overall OHS system, is not yet available
- Ideally, the three main functions of such a system (prevention, rehabilitation and compensation) should come within one organisation
- The 'polluter pays' principle should be one important element of such a new system; consideration could therefore be given to a performance based rating system of contributions that rewards good performance and sanctions poor OHS performance
- Experience from other CEECs shows that such a system can be introduced on a cost neutral base (BG, UA)

It seems that the new coalition government in Estonia has now put this topic on its agenda. The main conclusions of the discussions during the stakeholder meeting were:

- The core is prevention; whatever the design is, prevention is key
- Rehabilitation is also important; activation should be promoted; an adapted career should be considered
- Also focus on workers' role and responsibility; PPE should be used, personal responsibility of workers is also important
- Information on OHS and risks should be available
- Expert advice to the employer should be multidisciplinary, include new hazards
- OH Services should be in the framework of the insurance system; systems of OH services and compensation are now too separated
- Personalized OHS files should be available to track work careers; clearly, privacy issues should be carefully considered
- Contributions should be made by both parties: workers and employers⁵
- Tax reductions for those who perform well
- Collaboration between family and occupational doctors
- Differentiated contributions from the employer linked to the amount of accidents
- A collective working environment fund as in Finland could be introduced

3.7.4 *Risk assessment*

⁵ The consultants team disapproves of this conclusion because it is not in line with international legislation and systems

The stakeholder meeting concluded on the following recommendations:

- Policies and procedures regarding risk assessment are not sufficiently well defined
- Responsibilities for undertaking, assisting with and controlling the quality of risk assessment are not clear
- Expertise both within and outside the enterprise is mostly lacking
- User friendly risk assessment instruments and guidance materials, as available in the EU, are missing; for whatever reasons, little use seems to be made of OTT in enterprises

The main conclusions of the discussions during the stakeholder meeting were:

- Current OTT is not a Labour Inspectorate product and it is not promoted; in pipeline at the Labour Inspectorate is a new interactive tool with some examples from Bilbao OiRA tool; this can be a working tool for working environment specialist
- External experts should be licensed
- Not extensive risk assessments for SME's; different tools for different categories of enterprises; SME does not know how to handle extensive risk assessments
- Labour Inspectorate could check with employees if they know what the risks are; are they aware of the risk assessment
- After registration of a new enterprise, give a brochure on OHS duties
- Output of risk assessments should be standardised; easy to read for employers
- Qualification of external risk assessment providers should be clear
- Can employees reject the risk assessment? Perhaps through the work council?
- We should participate in Bilbao project mainstreaming OHS in education

3.7.5 *Labour inspection enforcement policy*

The stakeholder meeting concluded on the following recommendations:

- there is no national labour inspection enforcement policy (5 C's)
- in many countries such a policy is developed with active participation from the social partners, also at sector levels (NL, DK, G)
- such national policy should include objectives, principles and procedures of Labour Inspection
- in particular it should also be clear on the strategic use of sanctions

In paragraph 3.5 this topic has been dealt with more elaborately.

The main conclusions of the discussions during the stakeholder meeting were:

- Information on OHS and risks should be given life time long; from cradle to grave ...
- Qualification of inspectors are to be raised; leads to more strongly imposed measures
- Best practices to be disseminated with contributions from social partners as well; Labour Inspectorate is doing this already
- More expert advice from and for inspectors; e.g. new hazards on nano particles
- Risk assessment tools combined with advisory tool; linking an enterprise with his house inspector ...
- Soft law
- Inspection quality standards

- Better risk assessment in planning inspections
- Inspectors should also have positive rewards for well performing employers
- Several consecutive inspection visits should be allowed in inspection practice

3.7.6 *OH Services*

The stakeholder meeting concluded on the following recommendations:

- National policy is lacking on the role, scope and function of modern OH Services (e.g. in ILO C. 161)
- In particular multidisciplinary within the OH service is insufficient, more specifically safety expertise is lacking
- Their role in the risk assessment process is not clear and they appear to be little used in that context
- There should be clear procedures regarding responsibility and cooperation between internal (working environment specialist) and external OH service

A clear national policy on role, scope and function of the OH-service is recommended. It is at the moment not crystal clear what the exact role of such an OH-service in Estonia is. Neither in the OHS Act nor in the OHS regulation is an explicit obligation for the employer to use the external OH-service. In the OHS Act the possible tasks of an OH service are listed, but which tasks are obligatory for the employer to consume from the OH-service is unclear. Part of new national policy on OH-services should be a more multidisciplinary approach of the OHS-problems. Especially more attention should be given to the occupational safety discipline.

A formal cooperation between the working environment specialist (internally orientated) and the external OH-service is lacking. For example the cooperation could be concentrated on the risk assessment and the plan of action.

The ILO Convention C-161 on Occupational Health Services can provide Estonia with an excellent framework to compare their national OH-service system with.

The main conclusions of the discussions during the stakeholder meeting were:

- Service providers should have clear qualifications, standards
- OH services should be multidisciplinary
- We should establish a national OHS centre ... in Estonia for research and monitoring
- Family doctors have a different attitude compared to occupational doctors; this should be consolidated ...there is overlap and there are gaps

A Tables legislative Analysis

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
Section 1: General provisions				
Art. 1 (Object)	No explicit mentioning of this article, some topics are mentioned in § 2 (1) (2)			No general considerations are found whatsoever
Scope				
Art. 2 , para 1 (All sectors of activity)	No explicit mentioning of application of Act to all sectors.			It can be read in § 1 (1) of the Act implicitly.
Art. 2 , para 2 (Exceptions of suitability)	§ 2 (2)		The words “insofar as not otherwise provided in...” holds the risk that the essential part of this obligation in EU-directive can be threatened. So explicit mentioning of this principle (not applicable, in cases were conflicts can arise) could be considered.	
Definitions				
Art. 3 , line (a) + (b)	§ 1 (1) + § 2 (3),		More strict definition than in EU-	

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
(Definition of worker and employer)	2)		directive	
Art. 3 , line (c) (Definition of workers' representative)	§ 17, (1)			Why not a specific paragraph with definitions?
Art. 3 , line (d) (Definition of prevention)	Not applied			Why not a specific paragraph with definitions? Or: taken up as a consideration to the Act?
Art. 4, para. 1 (Legal provision)	Chapter 3 and § 17			
Art. 4, para. 2 (Controls and supervision)	§ 25			
Section 2: Employers obligations				
General provisions				
Art. 5, para. 1 (Ensure safety and health)	§ 2, (1) (2) and § 12 (1)		§ 2 (1) (2) is a more specific obligation for an employer then § 12. Therefore it's better to remove it to § 12.	
Art. 5, para. 2 (Enlisting external services)	§ 16, (3)			
Art. 5, para. 3 (Responsibility of	§ 14, (4)			

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
the employer)				
Art. 5, para. 4 (Option for Member States)	Not applied			No problem, because article 5 gives the Estonian government a choice (implementation or no implementation).
General obligations on employers				
Art. 6, para. 1, line 1 (Necessary safety and health measures)	§ 2, (1) (2) + § 12.1 (1)			
Art. 6, para. 1, line 2 (Adjust safety and health measures)	§ 13 (1), 2)		Only a partial implementation; no obligation found related to the continuous improvement of the working conditions.	
Art. 6, para. 2, a) (Avoiding risks)	§ 12.1 (2), 1)			
Art. 6, para. 2, b) (Evaluating unavoidable risks)	§ 12.1 (2), 2)			
Art. 6, para. 2, c) (Combating risks at source)	§ 12.1 (2), 3)			
Art. 6, para. 2, d)	§ 12.1 (2), 5), 6)			

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
(Adapting the work)				
Art. 6, para. 2, e) (Adapting to technical progress)	§ 12.1 (2), 6)		Why is technical progress only connected to work equipment and working methods, and not also to work, workplaces and organization of work?	
Art. 6, para. 2, f) (Replacing dangerous by the non-dangerous)	§ 12.1 (2), 4)			
Art. 6, para. 2, g) (Overall prevention policy)	§ 13 (1), 1)			It's a part of the internal OHS control cyclus, including internal control.
Art. 6, para. 2, h) (Collective above individual protective measures)	§ 12.1 (2), 7)			
Art. 6, para. 2, i) (Appropriate instructions)	§ 13 (1), 13)			
Art. 6, para. 3, a), 1 st phrase (Evaluate risks)	§ 13 (1), 1) + 3)			
Art. 6, para. 3, a), 1 st line (Assure improvements in the level of protection)	§ 13 (1), 2)		Not only adjusting measures to the changed situation, but also according to the FD an improvement in the level of	

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
			protection. This is a more ambitious phrase than in the Estonian OHS Act.	
Art. 6, para. 3, a), 2 nd line (Integrate activities at all levels)	§ 13 (1), 1)			
Art. 6, para. 3, b) (Worker's capabilities)	§ 12, (2)			
Art. 6, para. 3, c) (Introduction of new technologies)	§ 12, (5)			
Art. 6, para. 3, d) (Workers have to receive adequate instructions)	§ 13, (1), 5.1)			
Art. 6, para. 4 (Cooperation between employers)	§ 12, (3.1) + (4)			
Art. 6, para. 5 (No financial costs for employees)	§ 12.1, (3)			
Protective and preventive services				

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
Art. 7, para. 1 (Designation of workers)	§ 16, (2)		It's allowed but the Estonian OHS Act is more strict than the FD. § 16 is about the working environment specialist; this has to be an engineer or any other specialist who received training. This looks like a quite 'strong' obligation for SME's.	
Art. 7, para. 2 (Protection against disadvantage + adequate time)	§ 16, (3) + (7)	1. (3) Make explicit that employee may not be placed at any disadvantage 2. (7) Not only equipment but also adequate time should be given to the specialist		
Art. 7, para. 3 (External services or persons instead of designated worker)	§ 16, (2)			
Art. 7, para. 4 (Informing external services or persons)	§ 16, (8)			
Art. 7, para. 5, 1st point	§16, (3) + (7) +			

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
(Necessary capabilities and means designated workers)	(2.1)			
Art. 7, para. 5, 2nd point (Necessary aptitudes and means external services or persons)	§ 16, (4) + (2.1)		This should be described including more general terms like “necessary aptitude, personal and means”.	
Art. 7, para. 5, 3rd point (Sufficient designated workers or external services or persons)	§ 16, (2.1)			
Art. 7, para. 6, (One responsibility and cooperation between designated workers, external services and external persons)	§ 16, (1) + (4) + (5)	It should be mentioned explicitly that the working environment specialists should work together, when necessary		
Art. 7, para. 7, (Possibility for employers to perform the tasks of the designated worker)	§ 16, (9)		There's no definition related to or based on: - size of the company - nature of the activities - categories of undertakings. For example: employers with 50 or less employees	
Art. 7, para. 8,	§ 16, (4) + (5)		The question is: are these clauses an	

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
(Member States have to define capabilities and aptitudes)			expression of 'necessary capabilities and aptitudes'. It looks more like a description of tasks.	
First aid, fire-fighting and evacuation of workers, serious and imminent danger				
Art. 8, para. 1, 1 st point (Take necessary measures)	§ 13, (8) + (9) and § 15, (2)	Fire-fighting measures seem to be lacking.		Why not one section with measures related to first-aid, evacuation and fire-fighting? Now the provisions are scattered!
Art. 8, para. 1, 2 nd point (Necessary contacts with external professionals)	§ 15, (2)	Connections with fire-brigade and police are not mentioned		
Art. 8, para. 2, (Obligation to designate workers for fire-fighting, first aid etc.)	§ 13, (8) and § 15, (2), 3)	No obligation to designate workers related to fire-fighting		
Art. 8, para. 3, (a) (Informing employees in advance)	§ 15, (3)		Not only informing employees during a risk, but also informing them in advance.	
Art. 8, para. 3, (b)	§ 15, (2), 5) + (3) + (5) and			Add the phrase: "and proceed to a place of safety"

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
(Take action and give instructions)	§ 14, (5), 3)			
Art. 8, para. 3, (c) (Refrain from working in case of serious and imminent danger)	§ 15, (7)			
Art. 8, para. 4 (No disadvantages for employees who have used their right to leave the workplace in case of danger)	§ 15, (6)			
Art. 8, para. 5 (Take appropriate steps for leaving dangerous workplaces for employees and other persons)	§ 15, (4) + (6)			
Various obligations on employers				
Art. 9, para. 1, (a) (In possession of a risk assessment)	§ 13, (1), 3)			Why should this risk assessment be retained during 55 years?
Art. 9, para. 1, (b)	§ 13, (1), 4)			

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
(Decide on the protective measures)				
Art. 9, para. 1, (c) (List of occupational accidents)	§ 24, (3)			
Art. 9, para. 1, (d) (Reports on occupational accidents)	§ 24, (2)			
Art. 9, para. 2, (Possibilities for Member States)	Not applied			Why not use this possibility?
Worker information				
Art. 10, para. 1, (Necessary information)	§ 13, (11),(12), (13) and (14). § 14 (5), 2) (= workers right)			
Art. 10, para. 2, (Information for workers from outside the organisation)	§ 12, (6)			
Art. 10, para. 3, (Accessibility to information for employees with WE-tasks)	§ 24, (3) (= accidents and diseases) § 13, (18) (=		No explicit mentioning of accessibility to the risk assessment and measures or information of Labour Inspection	

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
	precepts of Labour Inspection)			
Consultation and participation of workers				
Art. 11, para. 1 (General obligation to consult employees on WE-issues)	§ 18, (1), (6), 3), (7)			Working environment council is not purely an employee representation body. Half of this council are representatives of the employer!
Art. 11, para. 2 (Consultation of employees with WE-tasks)	§ 12, (5)		No complete mentioning of rights for WE-representative of WE-council on consultation regarding OHS matters	
Art. 11, para. 3 (Right to ask measures from employer by WE-representatives)	§ 17, (5), 3) + (6), 1)			
Art. 11, para. 4 (No disadvantages for employees with WE-tasks)	§ 17, (7)		No protection of members of WE-council against possible disadvantages because of their OSH-tasks	
Art. 11, para. 5 (Special rights for WE-	§ 17, (8) + § 18, (9)		No explicit mentioning of giving means to the WE-representative and WE-	

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
representatives)			council.	
Art. 11, para. 6 (Right of workers and WE-representatives to appeal to LI)	§ 17, (6), 3)		WE-council: no appeal to LI and no right to submit their observations to LI during visits of LI.	
Training of workers				
Art. 12, para. 1 (Workers have to receive adequate training)	§ 13, (1), 13)		No clear description that the training should be given in case of changing or new risks and periodically repeated if necessary	
Art. 12, para. 2 (Instructions for workers from outside the company)	§ 12, (6)			
Art. 12, para. 3 (Training for WE-representatives)	§ 17, (8) + § 18, (10)			
Art. 12, para. 4 (Training costs for employer and during working hours)	§ 17, (8) + § 18, (10)			
Workers' obligations				
Art. 13, para. 1 (Responsibilities for workers)	§ 14, (1), 5)			

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
Art. 13, para. 2, (a) (Correct use of machinery etc.)	§ 14, (1), 8)			
Art. 13, para. 2, (b) (Correct use of PPE)	§ 14, (1), 4)			
Art. 13, para. 2, (c) (Refrain from removing safety devices)	§ 14, (1), 9)			
Art. 13, para. 2, (d) (Reporting serious danger to employer)	§ 14, (1), 6)			
Art. 13, para. 2, (e) (Cooperation with employer and persons responsible for the WE in order to carry out instructions of the LI)	§ 12, (5)			Very general terms used for describing the cooperation-obligations of the employee towards employer, WE-representative and WE-council
Art. 13, para. 2, (f) (General cooperation with employer and persons responsible for the WE)	§ 12, (5)			See: cell above
Miscellaneous provisions				
Art. 14, para. 1 (Health surveillance appropriate to the risks)	§ 13, (7) and (7.1)			

EU Framework Directive 89/391/EEC	Est. OH&S Act	Gap	Points for consideration	Other points
Art. 14, para. 2 (Health surveillance at regular intervals)	§ 13, (7) and (7.1)		In clause 7 no mentioning of "regular intervals " of health surveillance	
Art. 14, para. 3 (May be part of national health system)	Not applied			
Risk groups				
Art. 15 (Protection for sensitive risk groups)	§ 10 (pregnant and nursing employees) § 11 (minor and disabled employees)			

ILO Convention No. 81, Labour Inspection (LI) in Industry & Commerce, 1947, (ratified)	Estonia OH&S Act (RT I 1999, 60, 616), Ch. 6, and LI Statutes (LIS) (Regulation No. 26, MoSA, 17/10/2007)	Gap	Points for consideration	Other points
Arts. 1 and 2 applied <i>(System of LI in industrial workplaces)</i>	§ 1, (1); §2 (2);in connection with §§ 25 (1) and 26; and the LIS		Q: are mining and transport also covered? (Art 2, para 2) Yes	
Art. 3, para 1, lines a), b), and c) applied <i>(Functions of LI System)</i>	§ 26 OH&sA, ((4), 4) ; and §§ 8 and 9, LIS			
Art. 3, para 2 <i>(Other duties not to interfere with primary duties)</i>	unclear		To what extent are Labour Inspectors (LIs) involved in industrial relations issues (dispute settlement, LIS § 9, 11) and 12, 2))? Different categories of inspectors; but more effective use of their services could be made	
Art 4 applied <i>(Supervision under central authority)</i>	§§ 1 (1), 2 and 4, LIS			
Art. 5, line a) apparently applied <i>(Effective cooperation)</i>	§ 9, 16) and 17),LIS, but not entirely clear	Agency agreements with other govt. services (police, health?); other	Apparently no formal “Agency Agreements”	

ILO Convention No. 81, Labour Inspection (LI) in Industry & Commerce, 1947, (ratified)	Estonia OH&S Act (RT I 1999, 60, 616), Ch. 6, and LI Statutes (LIS) (Regulation No. 26, MoSA, 17/10/2007)	Gap	Points for consideration	Other points
<i>with other bodies</i>		public/private institutions?		
Art 5, line b) apparently applied <i>(Collaboration with social partners)</i>	§ 21 OH&SA; §§ 8 and 9, 16) and 17), LIS		Check to what extent the LI is involved in the work of the Advisory Committee on Working Environment? The Committee is inactive	But see Point 8, OH&S Strategy 2010 – 2013: a new W. E. Council
Art. 6 applied <i>(Status and conditions of service)</i>	§ 26, (2) OH&SA; §§ 1 (1) and 2, LIS		But check § 16, 6) LIS: (DG can “release” LIs from office)	
Art. 7: paras 1 & 2: presumably applied <i>(Qualifications of LIs)</i>	(presumably under Civil Service Statutes or similar		Recruitment procedures need to be checked	
Art. 7: para 3 applied <i>(Need for adequate training)</i>	§ 9, , 19) LIS; and 2008 Competency model for LIs, annual training courses for inspectors		Training plans, curricula, etc.?	Check on availability of systematic HRD policy/programs
Art. 8: presumably applied <i>(Both men and women eligible as LIs)</i>	Civil Service Statutes (?)			

ILO Convention No. 81, Labour Inspection (LI) in Industry & Commerce, 1947, (ratified)	Estonia OH&S Act (RT I 1999, 60, 616), Ch. 6, and LI Statutes (LIS) (Regulation No. 26, MoSA, 17/10/2007)	Gap	Points for consideration	Other points
Art. 9: presumably applied <i>(Qualified experts/ specialists to be associated with work of LI)</i>	§26, 7) OH&SA; §9, 2) LIS			
Art. 10: unclear <i>(Number of LIs)</i>		No information on the sufficiency and criteria	Check Annual Reports of the LI (English?) and Reports to ILO	
Art 11, para 1, a): applied <i>(Arrangements for offices)</i>	§§ 7 and 13, LIS			
Art 11, para 1, b) and para 2 <i>(Arrangements for transport)</i>		No information	Reimbursement procedures exist	
Art. 12: generally applied; but see next three rows	§ 26, OH&SA; §9, LIS			

ILO Convention No. 81, Labour Inspection (LI) in Industry & Commerce, 1947, (ratified)	Estonia OH&S Act (RT I 1999, 60, 616), Ch. 6, and LI Statutes (LIS) (Regulation No. 26, MoSA, 17/10/2007)	Gap	Points for consideration	Other points
<i>(Powers of LIs)</i>				
Art 12, para 1, a): unclear <i>(Freedom of entry at any hour of day or night)</i>	§ 26, (4) OS&H ??	The right of LIs to enter any workplace “freely... ..at any hour of the day or night” is <u>not</u> specifically stated in the OH&SA.	This is problematic. LIs may enter without prior notice to employers “if necessary”, but if that is contested, they carry the burden of proof. That is to be avoided!	
Art 12, para 1, c, (i): app. not applied <i>(Right to interview staff in the absence of the employer)</i>		Enforcing the posting of notices required by legal provisions is not mentioned in § 26, OH&SA or § 9, LIS		
Art. 12, para 2 (??) gives <i>(LIs the right to conduct an LI without informing the employer)</i>		§ 26, (4), 5) requires LIs to enter workplaces “in coordination with the employer”		
Art. 13: applied <i>(LI powers to make</i>	§§ 26, 26 ⁶ and 26 ⁷ , OS&HA; § 9, 1) , 12), 13), 14), and 15), LIS			

⁶ The system of numbering of these provisions in the OS&H Act is not quite clear

ILO Convention No. 81, Labour Inspection (LI) in Industry & Commerce, 1947, (ratified)	Estonia OH&S Act (RT I 1999, 60, 616), Ch. 6, and LI Statutes (LIS) (Regulation No. 26, MoSA, 17/10/2007)	Gap	Points for consideration	Other points
<i>orders)</i>				
Art 14: applied <i>(Duty to notify accidents and diseases to LI)</i>	§ 24, (2) & (6) OS&HA			
Art. 15, line a): app. not applied <i>(Prohibition of direct or indirect interests)</i>		The OH&SA contains no equivalent provision (§26)	Covered broadly under other (general) civil service regulation	Need to check
Art. 15, b) and c): applied <i>(Prohibition to reveal any secrets and obligation to treat complaints confidentially)</i>	§ 26, (3), 4) and 5)			
Art. 16: unclear <i>(Need to inspect</i>		No specific provisions to this effect in OH&SA , LIS	Not usually found in other countries' LI regulations either	Check LI annual & ILO reports

⁷ Ditto

ILO Convention No. 81, Labour Inspection (LI) in Industry & Commerce, 1947, (ratified)	Estonia OH&S Act (RT I 1999, 60, 616), Ch. 6, and LI Statutes (LIS) (Regulation No. 26, MoSA, 17/10/2007)	Gap	Points for consideration	Other points
<i>workplaces as often and thoroughly as necessary)</i>				
Art 17, paras 1 and 2: unclear <i>(Violations; and inspector discretion)</i>	§ 26, (4), 10), OH&SA; but also § 9, 1) LIS	No specific provisions on LIs' right/use of discretion	LI practice needs to be checked	
Art. 18: unclear <i>(Penalties for violation and for obstructing LIs)</i>	§ 27, 1 to 3, OH&SA	Penalties for violations available;	Penalties for obstructing LIs in the performance of duties only in Penal Code	Need to check
Art. 19, paras 1 and 2: presumably applied <i>(Duty to submit periodical reports)</i>	§ 9, 6) and 7)		Internal reporting procedures? Yes	Need to check
Art. 20: presumably applied as Estonia has ratified C. 81 <i>(Annual general report by central authority)</i>		Need to establish an Annual Report of the LI not specifically stated		Need to check

ILO Convention No. 81, Labour Inspection (LI) in Industry & Commerce, 1947, (ratified)	Estonia OH&S Act (RT I 1999, 60, 616), Ch. 6, and LI Statutes (LIS) (Regulation No. 26, MoSA, 17/10/2007)	Gap	Points for consideration	Other points
Art. 21: No evidence of implementation <i>(Minimum content of annual report)</i>		Minimum content of LI Annual Reports not listed in (available) regulations	List needs to be established after tripartite consultations	Need to check
Arts. 22 to 24: applied. (no use made of Art. 25) <i>(LI in commercial undertakings)</i>	§ 1, (1); §2 (2);in connection with §§ 25 (1) and 26; and the LIS			

ILO Convention No. 155 (1982) and Protocol of 2002 to C. No. 155 (both not yet ratified)	Estonia OH&S Act (RT I 1999, 60, 616)	Gap	Points for consideration	Other points
Art. 1, para 1, ready to be applied (rta) <i>(Application to all economic activities)</i>	§ 1, (1); §2 (2)			
Art 1, paras 2 & 3 <i>(Exclusion of particular economic activities)</i>			To be discussed	(Not yet applicable)
Art. 2 para 1 (rta) <i>(Application to all workers)</i>	§ 1, (1); §2 (2)			
Art. 2, paras 2 & 3 <i>(Exclusion of limited categories of workers)</i>			To be discussed	(Not yet applicable)
Art. 3, lines a) to d) (rta) <i>(Definitions)</i>	§ 1, (1), (2) and (3); § 4; § 25, (1)			
Art. 3, line e) (rta) <i>(Definition of health)</i>	§ 3, (2); § 4, (2) and § 19, (1)			In a revised OH&S Act, the WHO definition of "Health" could be used
Art. 4, para 1 (partly rta) <i>(Need for a coherent national policy)</i>	The OH&S Act as a whole is an expression of such a coherent national	No provisions for found for periodical review of the national policy	The extent to which the social partner organizations were involved/consulted needs to be checked	In addition, the 2010 - 2013 OH&S Strategy is such a policy document

ILO Convention No. 155 (1982) and Protocol of 2002 to C. No. 155 (both not yet ratified)	Estonia OH&S Act (RT I 1999, 60, 616)	Gap	Points for consideration	Other points
	OH&S policy			
Art. 4, para 2 (partly rta) <i>(Aim of the policy)</i>	Ditto	No provisions on what is "reasonably practical"		
Art 5, line a) (rta) <i>(Main spheres of action)</i>	§§ 4; 5; 6; 7 and 8		Also design and testing?	Need to check
Art 5, line b) (rta) <i>(Ditto)</i>	§ 5, (1); §§ 2 (1); 5, (2); 5, (3) 2) and 9, (3)		Should be concentrated in a revised OH&S Act	
Art 5, line c) (rta) <i>(Training)</i>	§ 13, (1), 5), 8) and 13; § 17, (8); § 18, (10)		See also Procedure for> Training regarding OHS>	Training and In- service of 14/12/2000
Art 5, line d) (rta ?) <i>(Communication and cooperation)</i>	§ 12, (5); § 13, (1), 6), 12; § 13 (1), 17 & 18)	Communication and cooperation "up to the national level"?	Well regulated between enterprise and LI, but not evident at higher levels	Need to check
Art 5, line e) (rta) <i>(Protection from disciplinary measures)</i>	§ 15, (6) and § 17, (7)			
Art. 6 (rta) <i>(Functions and responsibilities of different actors)</i>	The entire OH&S Act and subsidiary MoSA Regulations			

ILO Convention No. 155 (1982) and Protocol of 2002 to C. No. 155 (both not yet ratified)	Estonia OH&S Act (RT I 1999, 60, 616)	Gap	Points for consideration	Other points
Art. 7 (rta doubtful) <i>(Need to review policy at appropriate intervals)</i>		No clause in the Act or Strategy for review at appropriate intervals or by sectors of activity	However, this is likely to happen at least with each new EU OH&S Strategy	But the review periods should be shorter, more regular, in a legal norm
Art. 8 (rta) <i>(Action at national level to give effect to Art.4)</i>	OH&SA and OH&S Regulations by MoSA based on it		Consultations with Social Partners on every MoSA subsidiary Regulation?	Needs to be checked
Art. 9, paras 1 and 2 (rta) <i>(Enforcement of laws and regulations through an adequate system of inspection, including penalties for violations)</i>	OH&SA, §§ 25 to 27; LI Statutes (2007)		The “adequacy” of penalties in § 27 ?	
Art. 10 (partly rta) <i>(Guidance to employers and workers)</i>	LI Statutes, para 8		But no specific wording in line with C. 81, Art 3, para 1, line b)	LIs right to use discretion as per Art 17, ILO C. No. 81 unclear in OH&S Act
Art. 11, line a (rta) <i>(Functions to be carried out for effective policy implementation)</i>	§ 13, (1), 1) to 5)			
Art. 11, line b) (rta) <i>(Ditto)</i>	§ 13, (1) in conjunction with § 3, (1) to (5)		Simultaneous exposure to multiple risks specifically addressed in § 3 (2)	

ILO Convention No. 155 (1982) and Protocol of 2002 to C. No. 155 (both not yet ratified)	Estonia OH&S Act (RT I 1999, 60, 616)	Gap	Points for consideration	Other points
Art. 11, line c) (rta?) <i>(Procedures for notification of accidents and diseases)</i>	§ 22, (3) & (4) (Accs.); § 23, (6) & (7) (ODis.)	Only serious or fatal accidents reported	No notification by Insurance Bodies to LI	(LI to Insurance yes: § 24, (8))
Art. 11, line d) (rta) <i>(Inquiries)</i>	§ 24, (1) to (3): Empl.; § 24, (4) to (9): LI		(Also in § 9, 5), LI Statute	
Art. 11, line e) (apparently not rta) <i>(Publication of annual reports)</i>	Only occupational accidents and diseases: § 24, (3), (6) and (7)	No provisions requiring Annual Report on OH&S Policy Implementation	See also Procedure for Reg., Notif., and Invest. of occ. accs. and diseases of 03/04/2008	See also gap analysis o ILO C. No. 81, Arts 20 and 21
Art. 11, line f) (rta) <i>(Systems to examine chemical, physical and biological agents)</i>	§ 13, (1) in conjunction with §§ 6 to 9			
Art. 12 (not rta) <i>(Obligations of designers, manufacturers, importers and duty holders)</i>		§ 5 on Work equipment only contains obligations for employers (even clause (3), on design and manufacturing)	There are no obligations in the Act addressing <u>other</u> <u>duty-holders</u> (e.g. designers, producers, importers, distributors)	But check "OH&S requirements for use of work equipment based on 89/655/EEC, passed on 24/01/2000
Art. 13 (rta)	§ 15, (6) and § 17, (7)			

ILO Convention No. 155 (1982) and Protocol of 2002 to C. No. 155 (both not yet ratified)	Estonia OH&S Act (RT I 1999, 60, 616)	Gap	Points for consideration	Other points
<i>(Workers' right to leave workplace)</i>				
Art. 14 (not rta) <i>(Inclusion of OHS in education and training)</i>		Not found in the OH&SA	But see P. 6.1, Estonia>	EU mid-term review doc
Art. 15, paras 1 & 2 (rta) <i>(Coordination between various authorities and bodies)</i>	§ 21		What is the Committee's	composition, scope, etc?
Art. 16, para 1 (rta) <i>(Duties of employers to ensure safe and healthy conditions)</i>	§§ 12 and 13 in con- junction with §§ 4 & 5			
Art. 16, para 2 (rta) <i>(Duty to control risk/make risk assessment)</i>	§§ 12 & 13 in conjunct-ion with §§ 6, 7 & 8			
Art. 16, para 3 (rta) <i>(Duty to provide PPE)</i>	§ 13, (1), 11) and also § 14, (5), 1)		See also Procedures for> based on 89/656/EEC>	Selection and use of PPE passed 11/01/2000
Art. 17 (rta) <i>(Collaboration between different undertakings)</i>	§ 12, (3), (4), (5) & (6)			

ILO Convention No. 155 (1982) and Protocol of 2002 to C. No. 155 (both not yet ratified)	Estonia OH&S Act (RT I 1999, 60, 616)	Gap	Points for consideration	Other points
Art. 18 (rta) <i>(Employers' duty for measures to deal with emergencies/first aid)</i>	§ 15, (2) to (7); § 13		See also Regulations on>	First Aid (13/12 1999)
Art. 19. line a) (rta) <i>(Arrangements at the level of the undertaking/ duty of workers to cooperate)</i>	§ 12, (5); § 14, (1), 1)			
Art. 19. line b) (rta?) <i>(Duty of workers' representatives to cooperate)</i>	§ 17		However, C. 155 does not limit the election of workers' representative to enterprises with 10 or more 10 employees	§ 17 does not contain a <u>duty</u> to cooperate
Art. 19. line c) (rta) <i>(Duty to give adequate information to workers' representatives)</i>	§ 17			
Art. 19. line d) (rta) <i>(Duty to give appropriate training to workers and their representatives)</i>	§ 13, (1), 5), 8) and 12; § 17, (8); § 18, (10)			
Art. 19. line e) (rta) <i>(Rights of workers and their representatives)</i>	§ 17, (6), 1) to 3)		Consultation with the> mentioned but implied >	employer not specifically § 12, (5). To be checked

ILO Convention No. 155 (1982) and Protocol of 2002 to C. No. 155 (both not yet ratified)	Estonia OH&S Act (RT I 1999, 60, 616)	Gap	Points for consideration	Other points
Art. 19. line f) (rta) <i>(Action in case of imminent and serious danger)</i>	§ 15, (5) to (7); and § 17, (6), 4)			
Art. 20 (rta) <i>(Cooperation between management and workers)</i>	§ 12, (5)			
Art. 21 (rta) <i>(No costs of OHS measures to workers)</i>	§ 12 ⁸ , (3); § 13, (1), 11)			
Prot. Art.1, a) and b) <i>(The Protocol details rights, duties and procedures of different actors with regard to notification, investigation and registration of occupational accidents and diseases, and as such amplifies in particular Art.11, line c of C.155. This explanation applies to all subsequent provisions of the Protocol.)</i>	§ 22 and § 23			
Prot. Art 1, c) and d) (partly rta)	See above for Art. 11	“Dangerous occurrences” and “Commuting accidents” are not	But Registration, Notification and Investigation of occ. Accs. & Diseases	Social insurance regs. do not cover

⁸ (Double numbering of sections)

ILO Convention No. 155 (1982) and Protocol of 2002 to C. No. 155 (both not yet ratified)	Estonia OH&S Act (RT I 1999, 60, 616)	Gap	Points for consideration	Other points
		specifically mentioned	Regulations	commuting accidents
Prot. Art 2, a) and b) (partly rta)	ditto	“Dangerous occurrences” “Commuting accidents” not included in the Act	Not included in the OH&SA, (but see above)	
Prot. Art 3 (rta)	Art. 24, (2), (3), (5) and (6)		Check with Regs. on Notification, etc. (above)	
Prot. Art 4 (partly rta)	§ 22, (4); § 24	“Dangerous occurrences” “Commuting accidents” not included in the Act	ditto	
Prot. Art 5 (partly rta)	§ 22, (4); 23 (7)	ditto		
Prot. Art 6 (partly rta)	§ 24 (7); also § 9, 6) and 7), LI Statutes	ditto	Check whether and in what form statistics are published	Annual report?
Prot. Art 7 (?)	No information		Need to check if ILO or other comparable Classification schemes are being used	

ILO C. No. 161 (1985) on Occ. Health Services	Est. OH&S Act & OH Regs. 2003	Gap	Points for consideration	Other points
Art. 1, line (a), (applied) <i>(Definition of Occupational Health Services – OHS)</i>	§ 19 (1) and (3), 4) and 5)			
Art. 1, line (b) <i>(Definition of workers' representatives)</i>	§ 17			
Art. 2 (not applied) <i>(National policy on OHS)</i>		No national policy on OH Services	No functioning > Social Partner >	consultations with organisations
Art. 3, para 1 (appl.) <i>(Implementation of OHS for all workers)</i>	§ 19			
Art. 3, paras 2 & 3 (not applicable) <i>(Plans for successive implementation of OHS)</i>				Applicable only after ratification
Art. 4 (not applied) <i>(Consultations with social partners)</i>		No national policy on OH Services	No Social Partner consultations	
Art. 5, line (a) (appl.) <i>(Functions of OHS/risk assessment)</i>	§ 19, (3), 1)			
Art. 5, line (b) (appl.)	§ 19, (3), 1)			

ILO C. No. 161 (1985) on Occ. Health Services	Est. OH&S Act & OH Regs. 2003	Gap	Points for consideration	Other points
<i>(Functions/surveillance)</i>				
Art. 5, line (c) (not applied) <i>(Advice on planning and organization of work)</i>			Advice on planning > Work not mentioned >	and organization of in the OH&S Act
Art. 5, line (d) (not applied) <i>(Participation in OHS programme development)</i>			Development of pro- > Evaluation not in the >	grammes, testing & OS&H Act
Art. 5, line (e), (applied) <i>(Advisory services)</i>	§ 19, (3), 4) & 5); § 2, OH Regs. 2003			
Art. 5, line (f), (appl.) <i>(Health surveillance)</i>	§ 19, (3), 2)			
Art. 5, line (g),(appl.) <i>(Promotion functions)</i>	§ 19, (3), 4)			
Art. 5, line (h), (possibly applied ?) <i>(Contributions to vocational rehab)</i>	§ 19, (3), 3)		C. 161 speaks of <u>vocational</u> rehabilitation	OH&SA and Regs. use <u>medical</u> rehab.
Art. 5, line (i), (partly applied) <i>(Collaboration)</i>	§ 19, (3), 4), 5); § 2, (1) OH Regs		<u>Advice only</u> ; no clauses on training in O H & O Hyg, > HealthCare Board <u>does</u> >	providing education, ergonomics. (But training, § 20, 3))
Art. 5, line (j) (not applied) <i>(First aid and emergency treatment)</i>			No role for OH service > first aid, emergency >	providers in organizing treatment

ILO C. No. 161 (1985) on Occ. Health Services	Est. OH&S Act & OH Regs. 2003	Gap	Points for consideration	Other points
Art. 5, line (k) (not applied) <i>(Analysis of accidents and diseases)</i>			No role in analysis of > occ. diseases	occ. accidents, nor
Art. 6, line (a) (appl.) <i>(OHS by law)</i>	§ 19, OH&SA; OH Regs. 2003			
Art. 6, line (b) (optional) <i>(OHS by collective agreements)</i>			No application by collective not required by C. 161	agreements, but
Art. 7, paras 1 & 2, (applied, para 2, (d)) <i>(Organization of OHS)</i>	§ 19, OH&SA; OH Regs. 2003			
Art. 8 ,(applied) <i>(Requirements for cooperation and participation)</i>	§ 12, (5)		Though this clause does > to OH services/providers>	not specifically refer or "equitable" basis
Art. 9, paras 1 – 3, (possibly applied ?) <i>(Conditions of operation of OHS)</i>	§ 19, OH&SA; OH Regs. 2003		But: no occ. safety specia OHS&A or the OH Regs.	-lists required by the
Art. 10, (applied) <i>(Professional independence of OHS personnel)</i>	§ 19, OH&SA; OH Regs. 2003		Professional independence though contracted by empl.	of medical personnel presumed assured

ILO C. No. 161 (1985) on Occ. Health Services	Est. OH&S Act & OH Regs. 2003	Gap	Points for consideration	Other points
Art. 11, (applied) <i>(Qualifications and duties of OHS personnel)</i>	§ 19 ⁹ , OH&SA		Health Care Board – But >	no quality control
Art. 12, (applied) <i>(Workers' health surveillance free of charge)</i>	§ 13, (1), 6 ¹⁰ & 7)		Employer bears costs; but > during working hours and	no mention of OH Ss no loss of pay to Ws
Art. 13, (applied) <i>(Information of health hazards to all workers)</i>	§ 13, (1), 6), 12); § 14, (5), 2)			
Art. 14, (presumably applied) <i>(Duty of employers and workers to inform OHS of risks)</i>	§ 19, (5)		This subpara of § 19 speaks <u>ment</u> (not OH) specialists??	of <u>working environ-</u> <u>(translation error?)</u>
Art. 15, first sentence (applic. doubtful) <i>(Duty to inform OHS of cases of ill health/ absence from work)</i>			“Occurrences of ill health”, for health reasons” not spe	“absence from work - cifically mentioned
Art. 15, second sentence (applied) <i>(OHS personnel not to verify reasons for absence from work)</i>	§ 19, (4), 2) & 3)			

⁹ See numbering of OH&S Act

¹⁰ Ditto

ILO C. No. 161 (1985) on Occ. Health Services	Est. OH&S Act & OH Regs. 2003	Gap	Points for consideration	Other points
Art. 16, (applied) <i>(Designation of national authority responsible for supervising OHS)</i>	§§ 19 and 20			
Arts. 17	Not applicable			

B Overview of stakeholders interviewed

Labour Inspectorate

Katrin Kaarma – Director General of Labour Inspectorate
Herko Sunts – Deputy Director General of Labour Inspectorate
Ülo Ustav – Head of the Labour Inspectorate’s Southern Region
Andres Jõgiste – Labour Inspector
Indrek Avi – Labour Inspector

Health Care system

Ivi Normet – Ministry of Social Affairs Deputy Secretary General on Health Policy
Üllar Kaljumäe – Deputy Director General on Health Care
Hannes Danilov – Director of Health Insurance Fund

Health Service Providers

Viive Pille – Occupational health doctor, North-Estonian Regional Hospital
Alar Seiler – Head of engineer’s division, Qvalitas Medical Centre AS (former Karel)

Reet Pruul – specialist, Ministry of the Environment
Küllü Luuk – Chief specialist on health promotion in work places, National Institute for Health Development
Veronika Kaidis – Head of Work Environment, Rimi Eesti Food AS

Employers Organizations

Marek Sepp – Lawyer, Estonian Employers’ Confederation

Estonian Trade Union Confederation

Harri Taliga – President of Estonian Trade Union Confederation

Individual employers

Heli Voogla – Head of H&S, Tallinna Vesi
Õnnela Paas – H&S Chief Specialist, Tallinna Vesi
Andres Oja – Head of H&S, ABB Baltic Region

... and many others, who participated in larger meetings and provided us with useful comments and suggestions during the mission’s visits to Estonia.

C Questions from the ministry

ANNEX 1 TO CONTRACT OF SERVICES no. 11.12-7.3

Initial questions of clarification

Assuming that upon replying to the questions various possibilities of interpreting and transposing the Framework Directive and the respective best practices and implementation practices of other European states are taken into account we would like to ask the following questions:

1. What is your assessment of the completeness of the transposition of the Directive and the logic of the structure of the Act as well as of the treatment of individual subjects of the act and the proportionality thereof?

While the GAP Analysis shows that the Framework Directive (FD) has been more or less completely transposed, the structure of the OHS Act (1999) could be considerably improved and made more logical, more coherent, more user-friendly.

Chapter 1 on general provisions does not really contain the objectives of the Act, such as: to adapt the working environment to the needs of humans, etc. Now for instance § 9, (3) refers to adapting the work to the workers. This we would rather expect to have in the first chapter.

Modern OHS legislation starts with stating policy objectives and contains special sections on definitions, missing in the present OHS Act. Hence, it identifies the main duty holders for which the Act has been made and assigns sets of rights and duties to each of these actors. Furthermore, it contains a legal empowerment clause authorizing the minister to make special regulations if needed. The detailed regulations contained e.g. in Chapter 2 are relegated to subsidiary legislation under this clause.

To illustrate this: Chapter 2 on the working environment is very detailed, because transpositions are made there from some daughter directives. Based on the empowerment clause, it is better to skip Chapter 2 and refer to just one regulation which incorporates all other regulations. Now it overwhelms employers and it confuses them on what exactly are their obligations.

If you make one OHS regulation, this regulation can be the base of transposition of all EU daughter directives. As a best practice example we refer to the Dutch OHS regulation where several chapters can be found referring to the EU daughter directives.

It is not clear if the Estonian Ministry of Justice agrees on these changes. This could be solved with hyperlinks (references made) to regulations. This could improve the accessibility of the regulations on the web.

There are mainly three levels: the OHS Act, regulations and guidelines/technical standards. The latter are not legislation, but an interpretation/explanation of the legislation.

Unfortunately there's no integrated OHS regulation in Norway anymore. In the Netherlands we have the following legal structure. The Working Conditions Act (can only be changed by Parliament), the Working Conditions Decree (can only be changed by the Government) and the Working Conditions Regulation (can only be changed by the minister). The Working Conditions Decree has a logical structure: starting with a Chapter (2) on health and safety management and the organisation of work and then the organisation of workplaces (3). These chapters are followed by chapters on several risks:

- dangerous substances and biological agents (4)
- physical load (5)
- physical factors (6)

And the next chapters are dealing with work equipment (7) and personal protective equipment and safety and health signs (8).

The structure of the chapters of the Working Conditions Regulation is identically.

The organisation aspects of OHS and the exact responsibilities of the persons/parties involved have been taken up in the Working Conditions Act, whereas the more specific and detailed rules related to specific OSH-issues have been taken up in the Working Conditions Decree and Regulation.

(The exact text of the Working Conditions Decree can be found [here](#)).

§ 12² on 'sickness benefits payable by employer' can be seen as disproportional; it's a social security issue and does not belong in an OHS Act.

In Denmark there are two types of legislation: the act (the Danish Working Environment Act and the Executive Orders. This legislation is binding. In Article 15a of the Danish Working Environment Act there is the (in general terms formulated) obligation of the employer to perform a risk/workplace assessment. In a WEA Guideline (made by the Danish Labour Inspectorate) the employer can find more (not binding) background information on the obligation to make a risk/workplace assessment. This is quite user-friendly information. (The WEA Guideline on workplace/risk assessment can be found [here](#)).

In the UK there is the Health and Safety at Work Act 1974. The UK uses also regulations as legal binding instruments. But besides the Act and the regulations there are also Codes of Practice. In article

16 of this Act the description of the Code of Practice is: “For the purpose of providing practical guidance with respect to the requirements of any provision...”. An approved Code of Practice is binding, but an employer has the possibility to prove he/she has used another method/instrument/approach which has resulted in the same level of protection. The UK Act can be found [here](#). An example of such a practical code of practice is the one dealing with First Aid. This code of practice can be found [here](#).

In the Netherlands a comparable instrument as the Codes of Practice existed till the 1st of January 2011. But they were repealed by the Minister of Social Affairs and Employment. The reason for this was a growing number of sectoral-based OSH-catalogues. These OSH-catalogues contain a lot of information and solutions especially made for employers and employees in a certain sector, how to comply with the Working Conditions legislation practically. Such an OSH-catalogue can be seen as a (new form of the) Code of Practice.

2. What is your assessment of the interpretation of the idea and requirements of the Framework Directive in our Act?

Please see to chapter 2 and 3 of the report.

What requirements of the Directive are unreasonably strict or too detailed in the Act?

We have not found anything of the kind. What follows are some best practices on national systems for the so called designated workers.

In Germany an employer with less than 50 workers can opt for the so called employers model. This means that, after participating in a few seminars at the Berufsgenossenschaft training centres, he can perform the task of a designated worker himself. However, if a serious accident occurs the employer has to return to the BG for a full service contract. An extensive [article](#) on the German Employer model describes the pros and cons.

In the Netherlands employers have the obligation to designate one or more employees to perform certain OSH-tasks, such as the risk-assessment and the plan of action. These designated workers are prevention-workers in the Netherlands. But, employers with 25 or less employees can perform these OSH-tasks by him- or herself.

In the determination of what kind of prevention-worker is needed, Article 13 of the Dutch Working Conditions Act refers to the risk-assessment of the organization. In other words: the training level, the experience and the knowledge of a prevention-worker should be based upon the outcome of the risk-assessment. Specific obligations related to, for example, the minimum level of education for prevention-workers are not existing in the Netherlands.

In comparison to many EU-countries the position of the prevention worker differs in the Netherlands. In other EU-countries (also in Estonia) two persons are involved within each organization regarding OSH. The first one is the occupational safety and health representative, an employee chosen by the employees and/or trade-unions to protect and improve the working conditions of the employees. The second one is the internal occupational safety and health specialist. The specialist is operating on behalf of the employer, helping the employer to comply to the law.

The prevention-worker in the Netherlands is primarily the OSH-specialist but has the explicit task to cooperate and consult the works council (or other employees representation group). This makes the position of the prevention-worker a more independent one. Article 13 of the Dutch Working Conditions Act can be read [here](#).

Or, to the contrary, too general and not regulated in sufficient detail?

Indeed, we found some issues, such as fire fighting. Please again see chapter 2 of the report.

What requirements could go unspecified at the level of the Act?

It is possible, but in our opinion not advisable. Requirements need to be adapted to the local member state situation. One should regulate these Framework Directive (FD) requirements preferably to the highest level of legislation. The structure and philosophy of the FD requirements should be implemented in the Estonian OHS Act., because the FD contains provisions for OHS policy in enterprises. However, while it is legally possible to implement them in national OHS regulations, this is not desirable and is confusing for the duty holders and therefore not user friendly.

3. Scope of application of the Act (§ 2 of the Act):

What could be the circle of employees and employers to whom the Act should be applied? To whom the Act could or should apply only in part and who could or should be left entirely out of the scope of application and have such regulation in respective special Acts?

It must be applied to all employees and employers. Also to temporary workers, who need the same protection. Please see also the answer to question 20. The Act also needs to apply to self-employed workers. To this latter category it may apply only in part, since some provisions may not be appropriate. No category of duty-holders should be left completely out of the scope of the law, and the range of duty-holders should be considerably enlarged. We refer also to the Gap Analysis of ILO C. No. 155.

Is the present Act covering well enough also self-employed workers? What is our opinion?

It is not clear enough. Please see this example of the Singapore Act for a description of duties for self employed workers:

If You Are A Self-Employed Person

As a self-employed person, you are still required to take measures, as far as reasonably practicable, to ensure the safety and health of others such as members of the public. Everyone has an obligation to ensure workplace safety. Getting every worker home safely at the end of the day does not only depend on the effort of one individual, but is the result of all stakeholders working together.

For more information on the Workplace Safety and Health Act from Singapore please follow this [link](#).

How wise do you think would the application of certain provisions of the Act be with regard to **all** persons performing work, regardless of the form of the contracts regulating their work? How wise and expedient would the idea to apply single parts of the Act to relationships not regulated by an employment contract or service contract be?

Basically, the criteria for protection and coverage should not be the existence (or not) of a contractual relationship between an employer and other persons, but rather the degree of risk that emanates from any kind of work activity being carried out under the responsibility of the employer or other duty-holders. Thus, many countries' OHS legislation (e.g. UK), not only covers employed but also self-employed persons by (at least certain) legal provisions, and likewise an employer or other legally responsible persons, such as e.g. the principal of a building under construction, or the occupier of premises, etc. have a responsibility to protect any members of the general public from any negative effects of ongoing work.

The Estonian Act should be "future proof" and preferably not exclude any sort of contract relationships or work activities. Every worker must be protected and every member of the general public must likewise be protected from ongoing work that offers a risk, (although this is not a specific requirement of the FD), but it emanates from common logic and is found in many EU member states' legislation (e.g. UK or NL)

Maybe the best examples of how EU-Member States handle the question how to include different types of labour into their Occupational Safety and Health are given by Finland and the UK.

Finland has taken up 7 sections/articles related to this question in Chapter 1 of their Occupational Safety and Health Act. Please follow this [link](#) for more details.

The Finish example shows a very detailed and extensive description of what kind of labour applies to the Finnish Occupational Safety and Health Act.

The UK Health and Safety at Work Act 1974 offers also an extensive description of different kind of labour which is included in this Act. These types of labour are described in the sections/articles 2 up to 6 of the Health and Safety at Work Act 1974. Please follow this [link](#) for more information

4. Approx. 97% of enterprises in Estonia are small enterprises. How (if at all) would it be wise to set out special regulations for small enterprises in the Act without conflicting with the idea of the Framework Directive? What would be the possibilities arising from the Directive to stipulate specifications/exceptions for small enterprises?

As a rule, there should be no “double standards”; that is, the same OHS laws and regulations should apply to all duty-holders as specified in the (new) Act, e.g. to all employers, all contractors, all suppliers, all occupiers of premises, etc. as the case may be, regardless of the size of the enterprise.

The differentiation between large, mostly capable (if not always willing) and small/medium, often struggling enterprises in most EU MS is made at the level of application or enforcement of OHS legislation and regulations. It is thus first and foremost a matter of national enforcement policy. This is also good practice in many other industrial market economy countries (IMECs). Example: in the USA, there are very stringent regulations concerning the keeping of Chemical Safety Data Sheets in workplaces. If an employer of a large enterprise does not have the required CSDS available on-site, severe fines (up to US\$ 70.000 per violation) are immediately imposed by OHS inspectors. However, SME “first-time” violators of “administrative” regulations are as a rule merely given a warning, together with an improvement notice.

In The Netherlands, the authorisation of the risk assessment document is less strict for SMEs as long as they work with an approved instrument authorized by social partners in the specific sector or branch.

One final example: all MS have national risk assessment legislation based on the FD, and in many countries this includes comprehensive documentation requirements. But, whereas, for instance, in Ireland at the level of application every employer with one or more employees must have a written risk assessment statement and, based on this, a company OHS policy and action plan, in the UK legislation similar requirements only apply to companies with 5 or more employees.

With regard to sub question 2, article 7 of the FD, on the “designated worker”, also gives this possibility, and the Estonian OHS Act has

used this already, namely: the Estonian employer can perform the tasks of the working environment specialist by him - or herself. Also, article 9 of the FD creates the exceptions as described in the preceding paragraph.

5. How sufficient is the risk assessment regulation in our Act and does it have the required level of detail? In how much detail and how imperatively should the subject be regulated by legislation, taking into account that the risk assessment duty is also set out in various individual directives? (clauses 13 (1) 3 to 5) of the Act)

The risk assessment regulations in the Act are sufficient enough, but the provisions regarding risk assessment are mentioned in two separate Sections, namely § 12, (1) and § 13. In our view this should be combined in one clear section.

The required level of detail is also sufficient enough.

On two levels in Estonian regulation – the OHS Act and regulations - the risk assessment obligation is mentioned. This is correct, and an imperative based on the FD. However, we propose to emphasise the importance of risk assessment by moving the provisions on it to a more prominent position at the beginning of the Act, starting with the (new) OHS policy, which must be based on comprehensive risk assessment requirements.

Organisation of occupational health and safety at the employer's

6. What should the Act regulate in the area of internal control (internal audit)? (clauses 13 (1) 1 to 2) of the Act)

The FD does not contain any provisions for 'internal control'. This concept was originally developed in the mid 1990s in Norway and Sweden as a statutory OHS 'management system' applicable to all enterprises. Both countries have made significant modifications to their approach in the early years of this decade after evaluation showed that the level of implementation, especially in the SME sector, was still quite low. Most other countries have voluntary OHS management systems, often based on the ILO OHS MS 2001 Technical Guidelines (or OSHAS 18000 systems, or ISO series of environmental or quality management systems, ISO 9001 and 9002 and 14001). Our opinion is that the provisions in § 13, (1) of the OHS Act are too brief for a statutory, and not comprehensive enough for a voluntary model. In any case, they should come after, and not before, the provisions on risk assessment and, if at all, should be in a separate section.

Typically, this is an issue that, if it is legislated, would require a much more flexible approach taking into consideration the situation of SMEs in Estonia, for many of whom even the scant provisions in §

13, (1) would be too burdensome. Please see also our answer to question 4 above.

The only form of 'internal control' in the FD is the regular evaluation of the action plan based on the risk assessment document. Therefore, the internal control/audit as described now in the Estonian OHS Act is an extra provision compared to what the FD requires.

7. How can the competence of the health and safety representative for performance of their functions be ensured under the Act? (§ 17 of the Act)

Some broad requirements regarding training and qualifications of these representatives are already contained in § 17, (8), but they are too general. They do not prescribe any minimal time-frame for initial (induction) or annual/bi-annual refresher or specialist training, nor the content of any such training. If at all Estonia wants to regulate this in the Act, one could refer to agreements being made between social partners, allowing them to make tailor-made and sector specific solutions for their particular risks and needs or, if this is not possible or not realised, subsidiary legislation would then have to be applied. This could then also contain standard curricula and time-frames, in which case the "Procedure for training and in-service training regarding occupational health and safety" of 14 December 2000 would have to suitably amended.

8. How wise would it be to regulate in the Act the national training of health and safety managers, representatives and members of health and safety committees in the area of health and safety? Is such regulation necessary? (Subsection 2 (4) of the Act refers to the procedure for training and in-service training in occupational health and safety)

(The team was unable to find any §17, (4), 2 of the Act. Nor could we see any reference to the term "health and safety managers". We presume that this refers to the working environment specialists in § 16 of the OHS Act). The provisions for training etc. of working environment representatives are contained in § 17, (8) and we have already commented on these in our previous answer to question 7. We suggest that this also applies to members of health and safety committees (Working Environment Council, § 18, (10)of the OHS Act) and working environment specialists as per § 16.

As a more general answer to the question, we think it is unwise to regulate this in the Act, which should only contain a framework obligation for the employer (and possibly other duty holders if this new concept is embedded in future legislation). The already mentioned regulation ("Procedure for training and in-service training regarding occupational health and safety" of 14 December 2000) should then be suitably amended or expanded. In particular it should contain clear

qualification profiles and minimum training requirements for not only working environment representatives, but in particular also for working environment specialists.

We also suggest incorporating this special regulation on training into the one integrated regulation as suggested earlier in our answer to question 1.

It may be of interest to note that in some member states a distinction is made, with regards to art. 7 of the FD on 'designated workers', between occupational physicians and safety engineers who have separate qualification profiles. Reading § 16 of the Estonian OHS Act leads us to conclude that "working environment specialists" means only employees with safety expertise. In the ILO OH Services Convention No. 161 there is a reference to multi-disciplinarity, i.e. including both occupational physicians and safety engineers (Art. 9 para. 1), whereas the FD does not make any such distinction between these two professionals.

9. In the case of temporary agency work, how and on the basis of which document should occupational health and safety duties be divided between the agency (the employer) and the enterprise using the temporary agency labour (quasi-employer)? What rights and duties in the area of occupational health and safety should belong to the agency and to the enterprise directly using temporary agency labour?

Please see our answers to question 20.

10. In comparison with other states, what is your assessment of the regulation of the health and safety committee and the health and safety representative in the Act? Is it sufficient or too detailed? (§§ 17-18 of the Act)

For a Framework Act they are too detailed, and for a subsidiary legislation they are not detailed enough

11. We would like to know what the competence requirements and functions of the employer's appointed working environment specialist provided by law should be. Please compare Estonia's regulation concerning health and safety managers with the provisions of the Framework Directive (Art 7 of the Directive). (§ 16 of the Act)

Please see our answers to question 8 and 10.

There is probably confusion amongst Estonian employers on this role of the WES. They firmly understand that this person is exclusively his representative and does not have its own discretion in implementing the tasks.

First of all we want to refer to the answer to question 2, about the Dutch situation concerning the designated worker (prevention-worker)

Belgium has introduced the prevention-counsellors in its OSH-legislation. These prevention-counsellors should be designated by the employer. The position of the prevention-counsellor is a position within the (if existing) internal OSH-service. Explicitly described in the Belgian OSH-Act the prevention-counsellor works independently from the employer and the employees. See: article 25 of the Royal Decree of 27 March 1998 concerning Internal Services for prevention and protection at work. The tasks (see: article 7 of the above mentioned Royal Decree) and level of education (articles 19 up to 26 of the above mentioned Royal-Act) is quite comprehensively described in the Belgian OSH-Act.

The complete text of this Royal Decree can be found [here](#). Unfortunately the Royal Decree giving the exact qualifications for the prevention-counsellor for two (more high risk) sectors has not been translated.

For example a labour inspector should meet and communicate with an employer and preferably not the WES. After a work place round, the closing meeting should be with the employer or top manager.

Provision of occupational health services at the employer's

12. We would like to know whether the occupational health regulation is adequate and sufficient or to what extent Estonia should amend its regulation. (§ 19 of the Act)

§ 19 of the Act covers occupational health services and occupational health service providers. As such, it was the subject of a gap analysis with the provisions of ILO Convention Nr. 161 on Occupational Health Services, which has revealed certain, but important deficits, notably the absence of a national OH Services policy developed through tri-partite social dialogue and periodically reviewed; and we already mentioned a lack of multi-disciplinarity, etc. The team believes that, if at all, within a new framework Estonian OHS Act there should only be framework clauses establishing the general principles of OH Services and the details – over and beyond the five sub-sections of the present § 19 – should be redesigned in a subsidiary regulation. Probably better still, the entire issue of OH Services could be dealt with in a separate Act or Law integrating the material provision of ILO C. 161 and art. 7 of the FD on preventive services (competent external services)

13. How adequate is the treatment of occupational accidents and diseases in our Act (notification, registration, investigation)? Is the treatment of occupational accidents sufficiently clear and unambiguous in our legislation? (§§ 22-24 of the Act)

The FD is quite clear about this: keep a list of occupational accidents and draw up reports on occupational accidents (art. 9.1

c and d of FD). Both issues have been fully implemented in the Estonian OHS Act.

In addition, the team looked at the 'Procedure for Registration, Notification and Investigation of Occupational Accidents and Diseases' of April 2008 which we find to be clear and sufficiently detailed, but in fact quite prescriptive. Furthermore, the gap analysis with the Protocol of 2002 to ILO Convention 151 has shown that important concepts such as "Dangerous occurrences" and "Commuting accidents" are not mentioned in either the OHS Act or regulations.

14. We classify occupational accidents into minor, serious and fatal occupational accidents. Occupational accidents that result in serious bodily injury to an employee or due to which an employee's life is endangered are classified as serious occupational accidents. We would like to know whether our approach in defining occupational accidents based on the degree of the injury is reasonable and how other states have approached the matter. (§ 22 of the Act)

First of all, § 22, (1) which defines an occupational accident, seems to require the existence of an employment relationship, thereby excluding the potential responsibility of other duty-holders whose actions or omissions, etc. may also be the cause of work-related accidents and – at least in so far as the Act itself is concerned - also accidents of self-employed and possibly other relevant categories. However, we acknowledge that §. 4 of the Regulation on 'Procedures for Registration, Notification and Investigation of Occupational Accidents and Diseases' addresses the problematic of accidents of self-employed persons. What is unclear is why this is covered only in the regulation and not in the Act itself. Finally, commuter accidents are also excluded in this § 22.

The classification in the Estonian OHS Act is not 'unreasonable' as such. However, in many countries, besides fatal accidents - which always have to be reported - the main category is "reportable" accidents, meaning any accident where the victim is off the job for three days or more (with perhaps a discussion on whether the day of the accident is to be included or not). In this concept, a reportable accident can also be an otherwise minor accident. The wording of Estonian OHS Act is in this respect confusing that while reading only OHS Act, one gets an impression that there is no need to report minor accidents. Despite the fact that Regulation on 'Procedures for Registration, Notification and Investigation of Occupational Accidents and Diseases' states otherwise, this could be a source of confusion.

EUROSTAT defines an accident as follows:

An accident at work is defined as "a discrete occurrence in the course of work which leads to physical or mental harm".

This includes cases of acute poisoning and wilful acts of other persons, as well as accidents occurring during work but off the company's premises, even those caused by third parties.

It excludes deliberate self-inflicted injuries, accidents on the way to and from work and accidents having only a medical origin and occupational diseases. The phrase "in the course of work" means whilst engaged in an occupational activity or during the time spent at work. This includes cases of road traffic accidents in the course of work.

For more detailed information on these definitions follow this [link](#).

The Framework Directive retained the concept of "absence from work of more than 3 working days". However, as a large number of Member States can not make a distinction between working days or not, because the work stops are prescribed in calendar days, the concept of "3 calendar days", i.e. more simply "3 days", was retained for EUROSTAT. Only full working days of absence from work of the victim have to be considered excluding the day of the accident. Consequently, "more than 3 days" means "at least 4 days", which implies that only accidents with a resumption of work not before the fifth day after the day of the accident or later should be included.

The Swedish Work Environment Ordinance defines a reportable accident as follows:

Section 2

If an accident or other harmful influence at work has caused death or severe injury or affected several employees simultaneously, the employer shall notify the Work Environment Authority without delay. The same shall apply in the event of incidents seriously endangering life or health.

Please follow this [link](#) for more information.

As far as § 22 of the Estonian OHS Act is concerned, it appears that only serious accidents have to be reported. However, § 4, (5) of the above mentioned regulation appears to suggest that the employer has to draw up a report of all accidents and send a copy of this report to the local Labour Inspectorate. This apparent contradiction is not desirable as it may lead to misunderstandings and under-reporting.

15. How has the list of occupational diseases been regulated in other states (**Commission Recommendation C(2003) 3297**)? Estonia has transposed the list in full. When answering the question please consider that Estonia does not have a system for insurance of occupational accidents and diseases. (§ 23 of the Act sets out the list of occupational diseases)

Many countries take the List of Occupational Diseases contained in the Annex to ILO Recommendation No. 194 of 2002 (revised in 2010) as the benchmark. This so-called “open-ended” List is then adapted to national conditions through tri- or multi-partite social dialogue and periodically reviewed as necessary. It is called “open” because it contains one final category of diseases as follows: “Other specific diseases caused by occupations or processes not mentioned in this list where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure arising from work activities and the disease(s) contracted by the worker”. Such a clause does not appear to exist in the respective Estonian subsidiary regulations, i.e. the “List of occupational diseases” of May 2005. However, according to the MOLSA it seems to be covered.

The EU list from 2003 is only a recommendation. Some countries have implemented it in full, others partially and some have not made use of it. For the implementation of this EU recommendation we refer to a scientific article where a comparison of accident insurance systems of Central and Eastern Europe is made, (which we have already distributed separately) on “*Social care and changes in occupational accidents and diseases – the situation in Eastern Europe in general and for skin diseases in particular*”, (Kathrin R von Hirschberg, Björn Kähler and Albert Nienhaus. In Journal of Occupational Medicine and Toxicology, Published: 18 November 2009).

16. We would like to know how psychosocial risk factors should be treated in our Act and what the measures for assessment and reduction of these risk factors should be.

In the EU legislation there is no specific mentioning of any psychosocial risk. In consequence, § 9 of the OHS Act goes over and beyond minimum EU requirements. On the other hand, psychosocial risks are major risk and cost factors for the entire economy and the whole working population. In order to properly control them and to encourage preventative action by all stakeholders, much more would have to be drafted than what is contained in the present sub-sections of § 9. In particular, occupational health services and a modern occupational accident and insurance system have a primary role to play in encouraging preventative measures of these issues in the working environment. In addition, in more and more EU member states (the Nordic countries, UK, Netherlands, Germany and others) the so-called new hazards are increasingly moving to the centre of attention of the national policy makers and the Labour Inspectorates. This requires new qualifications and often also additional resources.

Very important: The categories of “new hazards” as contained in § 9 of the Estonian OHS Act will need to be extended to include hazards such as violence, bullying, sexual harassment, discrimination or

heavy work load. All these hazards can lead to severe psychosocial risk or work stress; therefore they have to be included by law in the risk assessment obligations of the employer. In many EU countries they constitute the single most important cause of absenteeism and early retirement and therefore a major macro- and micro- economic cost factor. The role of the labour inspectorate in dealing with these new hazards is briefly described in the answer to question 19 below.

The examples of legislative texts concerning “new hazards” in Belgium and the Netherlands are quite similar.

Belgium:

The exact wording of Article 4, para. 1, under 3° of the Belgian Act of 4 August 1996 on welfare of workers in the performance of their work is

“3° psychosocial load caused by work, including violence, harassment and sexual harassment at work”

The Netherlands:

The exact wording of Article 1, para. 3, under e. of the Dutch Working Conditions Act is “e. employment-related psychosocial pressure: the factors direct or indirect distinction, including sexual intimidation, aggression and violence, aggravation, and work pressure, in the employment situation that cause stress;”

In Australia an overview has been made on the jurisdictional differences of defining psychosocial hazards, please see Article 11, para. 2 in this [document](#) available on the web.

According to the Swedish Provisions on Systematic Work Environment Management, [AFS 2001:1](#), the employer is obliged to investigate, carry out and follow up activities in such a way that ill-health and accidents at work are prevented and a satisfactory working environment achieved. Systematic work environment management shall be included as a natural part of day-to-day activities. It shall comprise all physical, psychological and social conditions of importance for the work environment.

State supervision of occupational health and safety (Chapter 6, OHS Act)

17. We would like to know whether the supervision model provided by law in Estonia is adequate.

The GAP analysis between ILO Convention No. 81 and the Law (§§ 24- 27 OHSA) shows that the latter does not provide an entirely adequate supervision (labour inspection) model. As indicated in the team’s draft report, (Section 2.2.3) certain clauses of C. No. 81 (and their corresponding provisions in C. No. 129) would need to be addressed in any future revision of the OHS and LI policy and legal

frame, notably: Article 3, para. 2 (“Other” duties of labour inspectors); Article 5, line a (Cooperation with Social Partners and their organisations); Article 12, para. 1, lines a, c, (i) and Article 12, para. 2 (Powers of inspectors and intervention methods); Article 15, line a (Duties of inspectors); Article 17, paras. 1 and 2 (Violations and Inspectors’ use of discretion); Article 18 (Sanctions for obstruction of inspectors); and finally, Article 21 (Content of Annual Reports of the Labour Inspectorate).

18. We would like to know what the competence criteria of labour inspectors should be and how and by whom they should be evaluated. What should be the rights and duties of labour inspectors provided by law? Have the rights and duties of Estonian labour inspectors been regulated sufficiently and expediently in comparison with other states?

The competency criteria for labour inspectors depend on the functions they are expected to perform. (See the EU-SLIC 1990s report of a conference on this topic in Dublin, Ireland). They furthermore depend on, or are derived from the role, scope, responsibilities, methods of intervention, etc. defined, in many countries through a comprehensive national LI Enforcement Policy and then formulated in separate Labour Inspection Laws benchmarking with the material provisions of ILO Convention No. 81. Several new EU MS such as Bulgaria, Hungary or Romania have adopted such LI Laws, distinct from, but of course supplementing their national OHS Laws. As far as the rights and duties of labour inspectors and their formulations in Estonian legislation are concerned, we again refer to the gap analysis with ILO C. 181.

Most EU MS recruit labour inspectors at graduate level, but increasingly move away from purely technical backgrounds. In Sweden, nowadays more than 50% of new inspectors are recruited from non-technical or ‘soft’ faculties such as psychology, sociology, etc. The prerequisites for a professional approach to labour inspection are then supplied through extensive induction training (e.g. France: 18 months, Germany: 3 years), usually as a mix of classroom and in-service training. Smaller countries such as The Netherlands have excellent modular training programmes of some 10 weeks, emphasizing not only safety and health issues, but also social competence training, etc. Performance evaluation must be done through examinations at the end of the induction training and in regular periodical intervals by the management of the inspection system. Some countries give inspectors an enforcement license which has to be renewed in periods of e.g. 5 years (NL) after a successful examination.

The Dutch program of internal training labour inspectors is vast, but available in Dutch and will be handed over during the last visit of the team in September 2011.

19. What could the method of supervision over psychosocial risk factors inherent in the working environment be?

The Netherlands and Sweden have developed very comprehensive guidelines and instructions for their labour inspectors on how to intervene in cases of “New Hazards”. In particular the Dutch LI has issued such instructions (used to be available in English, but do not exist any longer unfortunately) for different kinds of “new” hazards, which require different methods of intervention concerning different hazards, e.g. stress, or sexual harassment, etc. Usually, inspectors deal with these issues when they check the quality and content of the company risk assessments, (mandatory for all enterprises), which must also address new hazards if there is a likelihood of their occurrence, and more specifically, if the inspectorate has received a relevant complaint. The NL Labour Inspectorate has designed comprehensive checklists which inspectors use as a first step, as well as procedures for specific investigations of often particularly difficult/delicate situations (mobbing, etc).

In Denmark the legal provisions that require employers to manage psychosocial risks in the workplace is listed in Executive Order No. 559 of 17. June 2004 on the Performance of Work (www.at.dk). We include an extensive answer given from Denmark to Estonia on this issue through SLIC. Please follow this [link](#).

20. In addition to conventional forms of work there are unconventional ones such as telework, homework, temporary agency work, etc. How could the legislature regulate supervision over the healthy and safe working conditions of employees covered by these forms of work?

Basically in the same way as every other kind of work involving occupational risk to health and safety. However, supervision (enforcement) may have to be limited (e.g. in case of tele-work) to advice, guidance, information, etc. (so-called “soft” intervention methods); or undertaken in the same way that micro-enterprises or self-employed persons are “covered” by the Law (also home-workers, household workers or home-based workers); or in the same manner that SMEs are inspected (if at all). This also applies to workers working for temporary work agencies, provided they are covered by the Law, i.e. irrespective of their employment contract or status.

The basic difference is that many of these workers work in a private home which is not readily accessible to a labour inspector because of the constitutional principle of inviolability of the private sphere. Different methods have been developed to overcome this obstacle, e.g. use of the element of surprise, or

obtaining permission of the occupier, (i.e. not necessarily also of the employer), etc.

The Swedish Work Environment Act applies to all types of work as is described in Section 2 and the Comments on Chapter 1 of this [Act](#).

Scope

The Work Environment Act applies to all work (Section 2). It makes no difference whether the work in question is factory work, outdoor work, agricultural work, office work or any other kind of work. Nor does it make any difference whether the work is done under private or public auspices. Above all, the Act applies when a worker is employed by an employer. Partly, though, it also applies to persons working on their common account and to self-employed persons and family undertakings (see Chap. 3, Section 5 and Chap. 5, Sections 2-3).

[Article 20](#), para.2 under a. of the UK Health and Safety at Work Act 1974 offers the British Labour Inspector the possibility to enter all kind of premises if he/she has reason to think it's necessary to enforce the Act.

In addition, in many countries, Temporary Work Agencies (or Private Fee-charging Employment Agencies, as the official term is also known) are themselves subject to regulatory regimes enforceable by the national Labour Inspection Services. (See also ILO Convention No. 181 and Recommendation No. 188, as well as the Publication: "Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement (2007) which contains best practice examples from many different countries.

There is a specific EU Council directive (91/383/EEC) regarding safety and health of temporary workers. In this directive responsibilities are explained and divided between the temporary agency and the entrepreneur making use of its (manpower) services. For example: the temporary worker should be informed about the risks he/she is facing during work at an enterprise. This should be done by this enterprise itself.

Additional questions related to the Estonian regulations implementing the daughter directives of the EU Framework Directive

Health surveillance

1. What should be the criteria for sending an employee to the health surveillance? Should it be the exposure to risk factors in general, exposure to risk factors at the action values (as 80 db(A) for noise for example) or in case of exceeding the permissible limit value? Should the need for health surveillance arise out of the results of the risk assessment? Are there any other criteria used in other member states? What are the best practices?

In general terms: health surveillance is meant to be one of the preventive actions which should be taken by the employer. Health surveillance can be seen as a monitor-instrument. What are the effects e.g. of the employer's health and safety policy regarding for example noise? Another aspect of the health surveillance is the early (as possible) diagnosis of an occupational disease.

In all daughter directives such a health surveillance is linked to the risk assessment. However, an obligatory time-interval between the risk assessment (and also the health surveillance) is not given by the European OHS-legislation. If the outcome of the risk assessment indicates a breach of the threshold limit values, a regular/frequent health surveillance should be set up. It is up to the Member States to decide if there should be a legal obligation on the frequency of the risk assessment and the health surveillance. In some Member States there is a possibility for employees to visit the occupational physician if there are doubts or complaints about for example hearing loss.

2. Should the occupational health doctor's decision/recommendation on changing the working environment be mandatory for the employer? For example in a situation where the doctor decides the employee cannot continue working in the same working conditions (OSHA§13 (10)). The employer might be in a situation where it is not possible to offer the employee an alternative job/work tasks.

The EU OHS legislation does not mention this point at all. The reason for this is likely the hesitation of the EU to create legislation with aspects of public health and social security. The last two items cannot be regulated by the EU and therefore the regulation of this subject (decisions of occupational health doctors) is up to the Member States. Despite this remark, in our view it should be mandatory for the employer to follow the expert decision of the occupational health doctor. Maybe this decision can be a joined decision between the occupational health doctor and another medical specialist.

Risk analysis/risk assessment

3. Please explain the obligations related to the risk assessment in The Netherlands (SME's can conduct it themselves, large enterprises

need to use an outside expert). What is the justification/motive for this requirement of buying in the service?

All Dutch employers are obliged to make a risk assessment, including a plan of action. The designated worker has the task to coordinate this process. The risk assessment and plan of action have to be sent to the occupational safety and health service for an expert judgement and official authorisation. After this, the employer can negotiate with his/her work council the content of the plan of action. After the approval of the work council, the organisation can start implementing the preventive measures. SME's can use a digital Risk assessment tool, which has been developed by trade-unions and employers organisations at branche-level and have been judged by occupational safety and health experts. If employers with 25 or less employees are using such a digital risk assessment the authorisation of an occupational safety and health service is not obliged; this saves money for the SME's. The reason for the obligation to hire in this expert judgment are the following: most companies have not enough expertise to know which preventive measures are available and effective. Some risk assessments are not complete or the employers are not aware of the risks within their company or branche.

Occupational health and safety services

4. What should be the qualification criteria for the person/service providing the risk assessment service for enterprises?

In our view the safety expert is the specialist for the risk assessment. This specialist should be qualified at least at a level of Higher Vocational Education. So it should be a person with at least a safety specialist education. Within this education much attention has to be paid to a diversity of risk assessment theories and tools. Preferably he or she should have some years of practical experience within companies as a safety specialist. Also the safety specialist should have consultation qualities like good writing and capable of influencing and convincing people. Of course other specialists can be risk assessment experts as well, such as occupational hygienists and occupational health doctors. But we think the safety expert should be the first one to perform a general risk assessment. On special topics (ionising radiation, diving work) he can ask for assistance of other specialists. It is good to stress that a risk assessment can be done by a safety expert, but if one has a digital risk assessment at hand, it is not necessarily obligatory that this work is done by an expert. Answering questions from a digital (or paper) risk assessment tool can also be a task of a designated worker. The result of the answers (action plan), however, should be judged preferably by a safety specialist. If such a digital risk assessment tool is not available, this work should be preferably done by a safety specialist.

5. Does our current division of occupational health and safety specialists and their tasks make sense?

All in all the tasks and divisions are relatively clear and transparent. However, we discussed already in chapter 3 of the report the somewhat unclear position of – what is called in the Framework Directive – the so called ‘designated worker’. This worker should preferably be a non expert who is designated by the employer to assist him in his tasks. Now it seems that the Estonian OHS Act has transposed the FD concept of the ‘designated worker’ to the working environment specialist. This is allowed, but it is also rather confusing.

Decree on training and instruction

6. What should the competence requirements/competence training for working environment specialist consist of (number of hours, specificity of topics)?

There are no legal obligations on EU-level related to the competence requirements or training for the working environment specialist. So it is up to the Member States themselves to make a choice how detailed these requirements should be. As already mentioned in our answers to your earlier questions, for example in Belgium, there are quite detailed obligations for the prevention consultant (= working environment specialist). But in the Netherlands any legal obligation related to specific training and specific competences for the prevention employee (= working environment specialist) is non-existent. But looking at the text of article 16 of the Occupational Health and Safety Act, the working environment specialist should be familiar with:

- OHS legislation;
- Working conditions within the company;
- Monitoring and inspecting the working conditions;
- Taking measures to reduce the effect of risk factors present in the working environment.
- The working environment specialist has the right to stop work and to prohibit the use of dangerous work equipment or eliminate the risk in another way.

Their main task is to create a safe working environment and maintain employees’ capacity for work.

This is quite a heavy task for the working environment specialist. So it’s obvious why the working environment specialist should be an engineer, as stated in subsection 1 of article 16 of the OHS Act. And even an engineer need to have firm additional OHS-training of several days to learn the most essential parts of risk assessment, monitoring and inspecting working conditions and protective and preventive measures. But are these obligations not too hefty for a vast majority of the organisations in Estonia? We believe they are! Especially for the SME’s and companies operating in non-industrial sectors a less educated working environment specialist is more than sufficient. To execute the tasks of a working environment specialist (i.e. the designated worker) you don’t have to be an engineer. Every employee with a middle or higher education level should be able to execute the main working environment specialist tasks. A training of two or three days for such a working environment specialist is enough. During this

training the essential practical parts of a good OHS policy should be taught (legislation, risk assessment, plan of action, parties involved with OHS). The training in Germany for employers who wants to execute the designated worker tasks themselves could be a good example for Estonia. One can find an example of a two day German training program for designated workers [here](#) (only in German)

7. What should be the competence requirements for employee OHS representatives?

What we said as an answer to question 6 could be repeated here partially. Looking at the obligations for the working environment representative as mentioned in article 17 of the OHS Act this person should be a reasonably well educated OHS specialist. Is this not a too strong obligation for the SME's especially in the non-industrial sectors with only a few risk factors. We do think that a working environment representative should be the one who should be carefully monitoring the OHS activities of the employer. The working environment representative needs to know the elementary principles of OHS-policy and -legislation. He/she should have the competence to be (positively) critical towards the employer regarding the companies efforts to prevent occupational injuries and diseases. Some specific competences can be:

- ability to read and analyse the OSH-policy, the risk assessment and the plan of action of the company;
- ability to talk and negotiate with the employer and/or working environment specialist and other relevant stakeholders;
- ability to write down a vision or opinion in a clear way.

The working environment specialist is more or less the representative of the employer and is trying to implement the OHS-policy within the organisation in a practical way. The working environment representative, however, should be the one who is observing the implementation process of protective and preventive measures and be the one with creative or new ideas. Of course these competences will lead to some other OHS elements in a training course for the working environment representative.

8. What is your opinion on the regulation of the training of the employee representatives - the amount of training hours and requirement for repeating the training periodically? Is the requirement of 3 days/24 hours too much?

As said before we can imagine that this training for working environment representatives is quite time-consuming and expensive for SME's. Especially for those SME's with only a few risk factors. Maybe it is possible to make a division in two categories: a category of sectors with relatively high risks and another category with sector with relatively low risks. For the low risks sectors only 1,5 day training can be enough. Among OHS-specialists and OHS-legislation experts there is always a discussion about the usefulness and the effects of detailed OHS-legislation. This training regulation is quite detailed; some companies, especially the larger companies and the companies with their own (internal) expertise, are not in

favour of this detailed legislation. They know often exactly what to do and this type of legislation is distressing them (this is a clear disadvantage of a one-size-fits-all model). These type of companies are in favour of more legislation in general terms (this makes tailor-made solutions possible). But on the other hand, the SME's do not have OHS expertise and time to figure out what kind of training is good, feasible and realistic. For SME's a clear and undisputable legislation is in most cases valuable: they want to know exactly what their obligations are. Hence, with a very vast percentage of SME's in Estonia this more detailed legislation can be very useful.

9. What should be the requirements for the trainers of these specialists?

The trainers should have the qualification of OHS-specialist by themselves. Of course for some elements in a training (if the training has different elements) also non-OHS-specialists can be active, for example regarding legislation or negotiating/training techniques. We should think these trainers should have received a OHS-training on (at least) the higher vocational level. At the same time this educational level should be 'maintained' throughfor example certification procedures for professionals. These trainers should have verifiable experience with the functions of working environment specialist or working environment representatives. They should be capable to express themselves clearly, written and orally.

10. Should e-learning be regulated? Do you have any best practice of the use of e-learning in OHS in other member states?

We think this is not very useful; it is up to the training bureaus to choose what kind of training method is adequate.

Occupational accident/disease investigation decree

11. What is the role of labour inspector in investigating an occupational disease (best practice)?

In principle, as long as it concerns examinations of the worker patient, that is the role of the medical specialist (occupational physician or similar). When it comes to visiting the workplace to identify possible causes for the occupational, the labour inspector can do it alone and send a report to the occupational physician; but ideally, the two should work together when inspecting or investigating the working environment of the patient worker. That said, it has to be kept in mind that because of long-term exposure possibly at different workplaces this can be very complex. But the last worksite should as a rule be investigated, particularly for noise-related diseases and others with a relatively short exposure, and also if the worker has been working in the enterprise already for a considerable period of time.

It is very important that clear and effective procedures are in place so that the Labour Inspectorate receives all information about any suspected or acknowledged occupational diseases, not only those that have been officially recognized. In particular it must be ensured that the suspected causes are also notified to the labour inspectorate. Internal labour

inspectorate procedures must then ensure that labour inspectors investigate conditions in the suspected workplaces. This also requires good cooperation mechanisms with the planned new occupational accident and disease insurance system.

12. Is our definition for occupational accident sufficiently clear (also in relation to international best practice)?

There are no real best practices in this field.

The OECD gives the following definition:

The term occupational disease is linked to the identification of a specific cause-effect relationship between a harmful agent and the affected human organism. However, it is not easy – and considerably more difficult than in the case of accidents – to prove that a disease is occupationally conditioned, i.e. caused by conditions at, not outside work. Because of the difficulty in proving a disease to be occupational in origin, most countries have produced lists of prescribed occupational diseases. These are generally limited to those diseases where a strong cause-effect relationship has been proven.

However, with the number of categories ranging from 50 to 90, national lists vary in terms of those diseases recognised as occupational. Recommended lists developed by the International Labour Organisation and the European Communities seem to have led only to limited degree of harmonisation.

13. Should the labour inspectorate investigate the accidents that have occurred in armed forces?

To the extent that the labour inspectorate has OHS inspection responsibilities, they should be associated with all peacetime accident investigations, particularly training accidents. In wartime, some countries also send inspectors to examine working conditions and accidents in the rear zone, but not, of course, front-line. Thus, in the Falklands war in the early eighties, the UK HSE sent inspectors to St. Helena to observe refueling practices at the field airports there, but not to the Falklands.

It is very important that internal military peace time training and operational procedures are reviewed together with the labour inspectorate from an OHS prevention aspect. As with other so-called "disciplinary services" training of course has to be as realistic and real life as possible - after all it will help save the soldiers' (or policemen or fire fighters') life. But as experience has shown, these training and operational procedures are very often designed by senior officers who have only the military prerogatives in mind, and very little, if any, notion about OHS. The intention is to "separate the men from the boys" and this often leads to unnecessarily unsafe practices. One example from Germany comes to mind: Training to evacuate a wounded soldier from high position used to be undertaken with one recruit carrying another one down a high ladder over his shoulder. One day the inevitable happened, one man recruit panicked and two young men fell to their death. The very simple solution recommended by the labour inspectorate was to

conduct this kind of necessary training in future with an 80 kg puppet. Conclusion: there is an important role for labour inspection in investigating peace time military (police, prison guards, fire fighters, etc.) accidents, and also occupational diseases from, e.g. exposure to hazardous chemicals such as fighter fuel (e.g. training refuelling under combat-like conditions) etc.

Construction regulation

14. Does the directive 92/57/EEC apply to a private sector client? (domestic client).

No, the meaning of this directive is to force occupational clients and architects to think about the possible consequences of their project preparation for the safety and health of the workers during the project execution stage. Taking this into account, it should be strange to oblige civilians (domestic client) to comply with occupational safety and health provisions; civilians don't have any OHS-expertise and it can be expensive for them to acquire this expertise. But it is possible to give the obligations for the project preparation stage to the architect instead of the domestic client.

15. Are the responsibilities of the duty holders related to the construction planning and construction activities stated correctly and in sufficient detail (in relation to the requirements and meaning of the directive). If not, what should be amended?

Your questions are already indicating that the division of responsibilities in the Estonian OHS-regulation regarding temporary and mobile construction sites is not (yet) clear (enough). We will give a more specific answer to this question in answers 17 and 18. Your "Occupational Health and Safety Requirements at Construction Sites"-regulation has a clear division in articles related to the responsibilities of all parties involved in the different stages of a building process or project (chapter 1) and a vast amount of typical occupational safety and health rules at the construction site (chapter 2). You can compare your Regulation with the relevant [Dutch Working Conditions Decree](#). The Dutch requirements for construction sites can inspire you to new ideas. You can compare chapter 1 of the Estonian Regulation of Construction sites with the articles 2.23 up till 2.36 of the Dutch Working Conditions Decree. The same can be done with your chapter 2 of the Estonian Regulation with the article 3.26 up till 3.32 of the Dutch Working Conditions Decree.

16. What should be the competency and training requirements for safety coordinators at construction sites?

In our view this competency and training requirements of a safety and health coordinator can be compared with the working environment specialist within any other organization. But there is one big difference. The working environment specialist is working within one company and is dealing with his colleagues, whereas the safety and health coordinator is working with (possibly) a lot of different companies and self-employed persons. So the

collaboration and communication skills of this safety coordinator is quite essential, but also because of a lack of (legal) power he/she should have strong persuasive skills. Some ideas about training requirements can be found in this [Powerpoint presentation](#) regarding an Italian course for the safety and health coordinator.

17. If and in what extent should the construction project include safety requirements (as in the Art 4 of the directive)? We could not include these requirements at the wish of/pressure by the Ministry of Economic Affairs and Communications.

The safety and health coordinator in the project preparation stage has to look carefully at the choices made by his employer (the client) and the consequences these have for the safety and health of the construction workers during the project execution stage. The safety and health coordinator of the project preparation stage has to start writing the safety and health plan. The whole idea behind the division of responsibilities between parties involved at the project preparation and execution stage is to make it clear that the safety and health of the construction workers is influenced by the choices made in the project preparation stage of a building project. Therefore, the client is now involved in this type of OHS legislation. So in the Estonian OHS-legislation it should be quite (undeniably) clear that the client has two main responsibilities: 1. The appointment of a safety and health coordinator and 2. Start with the development of the safety and health plan. If the project preparations stage ends and the project execution stage starts these (two) tasks have to be carried out by a construction company (appointed by the client).

18. What is the role of the coordinator in Art 2 e) of the directive? Our regulation does not include this coordinator as we could not find a sufficient function/purpose for this role.

Well, the role of the safety and health coordinator in the project preparation stage is to pay attention to safety and health aspects “when architectural, technical and/or organizational aspects are being decided” (= text of article 4 of the 92/57/EEC directive). Some choices made by the client (in the project preparation stage) can cause serious safety and health risks during the project execution stage. These possible risks have to be a part of the safety and health plan, which is also a part of the tasks for the safety and health coordinator in the project preparation stage (see: article 5 of directive 92/57/EEC). Therefore the ‘position’ of this person (safety and health coordinator for the project preparation stage) is quite important: he can influence certain decisions of the client and prepare the safety and health plan (the risk assessment for the construction site) for all workers involved.

19. What should be included in the file stated in the Art 5 c) of the directive? This requirement is not included in our regulation as it was not found to be justified.

This file with safety and health information can be used by the subsequent owners or users of the building. For example: this file can contain

construction schemes or drawings. Such schemes can be useful for the attachment(points) for safety lines in case of cleaning or painting the building. If the owner/user wants to drill holes, it is good to know what kind of material has been used (dust exposure) and where electrical cables are hidden. Quite practical information which can be used during the whole “lifetime” of such a building.

20. How to make sense of the Art 10 (2) of the directive – the employer takes part in the construction works.

According to article 3 of the Framework Directive (89/391/EEC) and article 1 of the Estonian Occupational Health and Safety Act the object of these legal OHS-requirements is the employee. The name employee refers to the judicial agreement: labour contract. This labour contract is the main judicial foundation for protecting one party of this labour contract via OHS-legislation: the employees. The other party of the labour contract, the employer, is the one who is responsible for complying with the OHS-legislation. As a consequence of this, the employer him- or herself does not have any legal protection of the OHS-legislation, unless this is clearly prescribed in the Act itself. And this is what article 10, section 2 of Directive 92/57/EEC is all about. In many SME's the (judicial) employer is working closely together with his/her employees during the working day, and this article of Directive 92/57/EEC offers him/her a bit of legal OHS-protection.

21. What should be the relation of safety plan (Art 5 b) and risk assessment at the construction site? Is it possible to carry out a risk assessment as such at the construction site at all (§ 4 (4) of the regulation).

The safety and health plan of article 5, b. of Directive 92/57/EEC can be seen as a specific risk assessment of the construction site. The main objective of this safety and health plan is to stimulate cooperation between several employers working at the same time on the same spot and protect employees against risks caused by the work of others (other companies). Such a safety and health plan is unique and has a relatively short duration; it ends when the project is finished. The risk assessment is an obligation of article 6 of the Framework Directive 89/391/EEC. The (general) risk assessment is an obligation for every organization with the purpose to make an inventory and assessment of risks of this individual organization. Such a risk assessment is the main instrument to improve working conditions of the organization continuously regarding all relevant OHS aspects. A risk assessment of a construction company will have a longer life time than the safety and health plan of a construction project as such. Concluding: the safety and health plan is a specific (project bound) element of the general risk assessment obligation.

D Results survey

Introduction

The electronic survey was conducted amongst employer and employee organizations as well as OHS service providers. While interpreting the results it is important to keep in mind, that the survey was not designed to be representative amongst companies or employers. The main purpose of the survey was to gather “informal facts” type of information in addition to face to face meetings. So – these results cannot be treated as representative for the groups participating in the survey. Altogether, the division of responses was following (see Table 1).

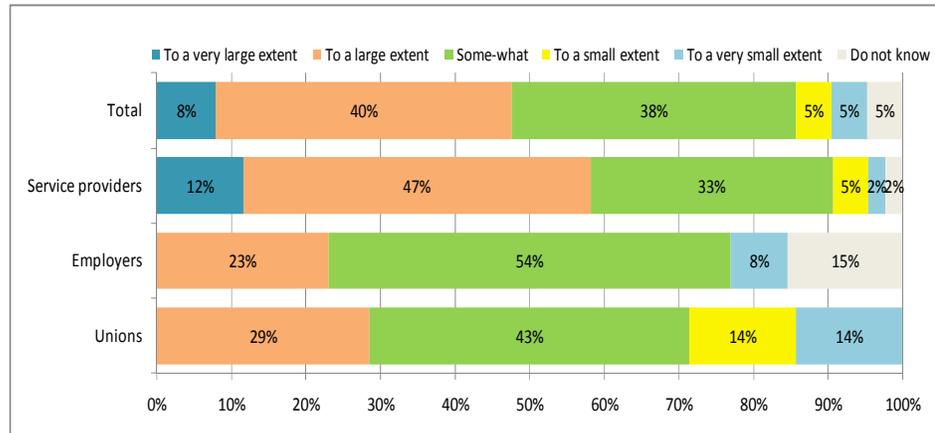
Table 1. Division of respondents to electronic questionnaire

	Number of respondents	
		%
	63	
Completed responses	53	
Employee union representatives	7	11%
Employers	13	21%
Service and/or training providers	43	68%
Incomplete responses	10	
Employee union representatives	1	
Employers	2	
Service and/or training providers	7	

The results are presented in the same sequence as the questions in the questionnaire. A quantitative question is followed by a selection of statements from the qualitative part of the questionnaire. It is important to keep in mind that not all statements are correct – there are statements that actually do not have the facts straight. However, as one goal of the questionnaire was to get a picture also on the awareness of stakeholders, these answers are included in the report in a more or less unaltered form.

Topic 1: OHS policy in general

1. Are you aware of the Estonian government's goals concerning improving the health and safety on work in your country?



2. If yes, can you mention a few?

The following answers are more or less a random selection of the relatively large number of goals that were "attributed" to the current national OHS policy. All in all, the picture is rather colourful indicating that there is no specific commonly accepted goal.

- Through strategic decisions and regulations to create a framework for improving OHS, to support employers and employees in their OHS activities, to value OHS issues;
- To update regulations, to bring regulations into conformity of EU law;
- To establish occupational accident insurance (OAI);
- To make government supervision stricter, more effective over employers not meeting OHS requirements;
- To get employers more into assessing risk factors, conducting risk analyses;
- To impact work life quality by increasing OHS awareness (informing public about work environment (WE) risk);
- To organise OHS training for employees and employers;
- To advise in OHS regulations, to help employers to meet the OHS requirements set by law (especially small and middle sized organisations);
- To make OHS information materials as available as possible to everybody;
- To create OHS networks, to tighten partnerships between all OHS structures;
- To help to ensure safe, up to date work environment, to decrease risks for every employee. To inform this would also improve quality of work;
- To support developing OHS aspects of control systems and organisation of work in order to ensure safe work environment which also ensures employees' physical, mental and social wellbeing, work matching their abilities and thus increasing productivity;

- To gather necessary OHS data (from employers) and analyse it;
- To arrange statistics about work accidents and occupational diseases, conduct a review of current situation;
- To implement measures in order to decrease and prevent work traumas, accidents and occupational diseases;
- To promote health and preserve capacity for work;
- To eliminate OHS risk factors, to carry out medical checks regularly;
- The elimination of OHS services in Estonia!

2a. Your additional opinions, comments about Estonian OHS policy in general / on current set of questions:

The general comments and opinions about Estonian OHS policy in general are quite critical. A current policy is considered to be lacking or at least not concrete enough, also the implementation of the strategy is weak. The following is a selection of opinions from the survey:

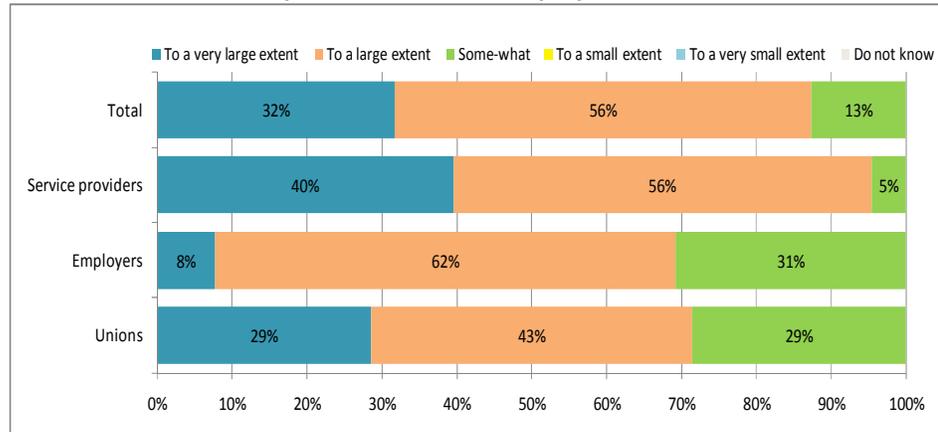
- The government has set goals to improve the health and safety at work, but nothing has been done to achieve those goals. Some respondents feel there's not enough information about governments OHS goals and the existing policy is pointless;
- There's no/not enough OHS data gathered, lack of statistics about work accidents or effects of actions taken so far to fulfil OHS goals. The existing statistics aren't comparable to other countries' indicators;
- There's lack of structure in national OHS policy/activities, government has "no audible" voice in OHS matters, no effective measures taken. OHS policy is fragmented and feeble; the government is not able to enact the necessary OHS legislation;
- The government and employers do not pay enough attention to OHS issues although there's plenty of information of research outcomes and international practices proving economic efficiency of quality occupational health services;
- The fringe benefits tax on benefits paid by employers for employees' sport and health activities which prevent health risks and fosters healthy behaviour has not been abolished.
- No-one checks if employers abide the existing OHS rules, if they act according to OHS specialists' suggestions, assessments. The Labour Inspectorate (*or LI for short*) does not have conditions to effectively check if employers fulfil their OHS obligations, neither does LI have legal obligations to do it (only rights);
- There should be a system of occupational accidents and diseases which would assure employees and motivate employers to invest in safer work environment;
- At the moment there are problems with registering work place accidents. Employees are afraid of reporting accidents and employers have no incentives or penalties to follow the law on that matter. There's only one occupational health centre where one can register work place accidents

and get occupational diseases diagnosed, if the financing would be cut for the centre there'd be no institutions taking over its role;

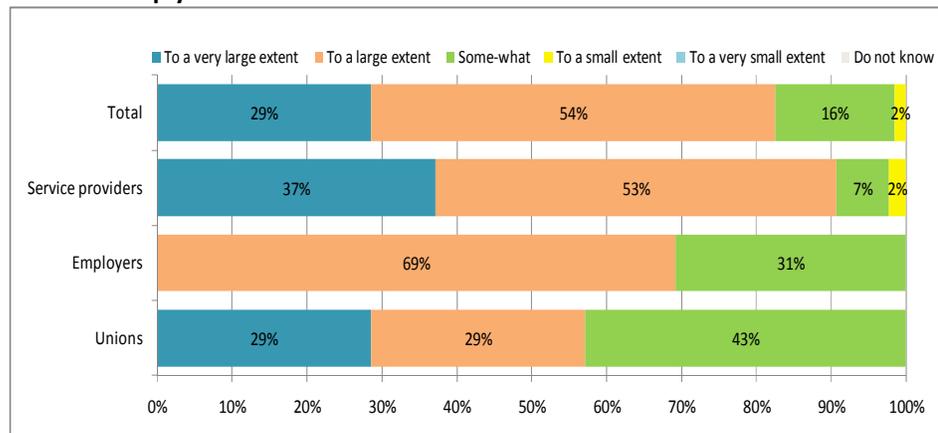
- OHS specialists should carry on their work fastidiously despite employers' ignorance; medical checks should be more meticulous, thorough and compendious. There are not enough OH doctors and not enough devotion to quality in their work.

Topic 2: Responsibilities of Estonian employers

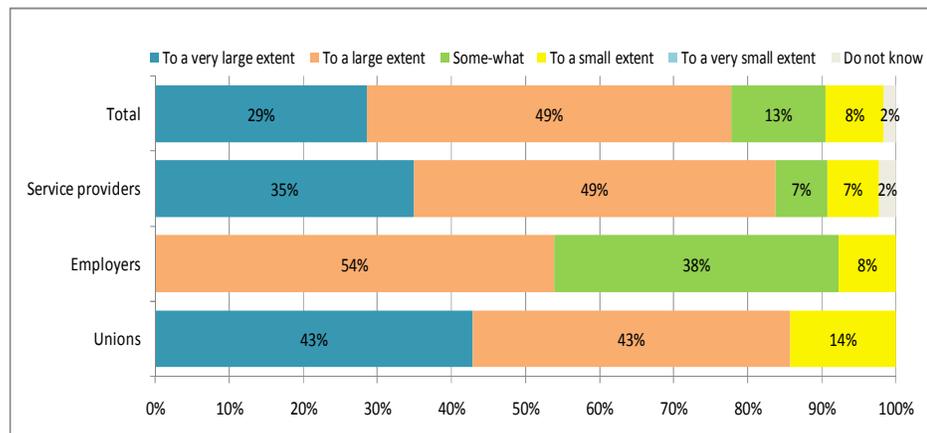
3. Is it clear what the responsibilities of the employer are?



4. Do you understand, what activities in what order should be conducted in order to comply with the Estonian OHS Act?



5. In your opinion, is the obligation to perform risk analysis meaningful, does it fulfil its purpose?



6. If, in your opinion, the obligation to perform risk analysis is meaningful only to a small or very small extent, what are the reasons?

The attitude towards risk analysis as such is mainly positive among respondents. Respondents brought out positive effects of conducting risk analysis (e.g. employer has more control over OHS situation at work place). The main problem of obligatory risk analysis according to a large part of the respondents is that although the idea of it is good, the way it is carried out is not satisfactory.

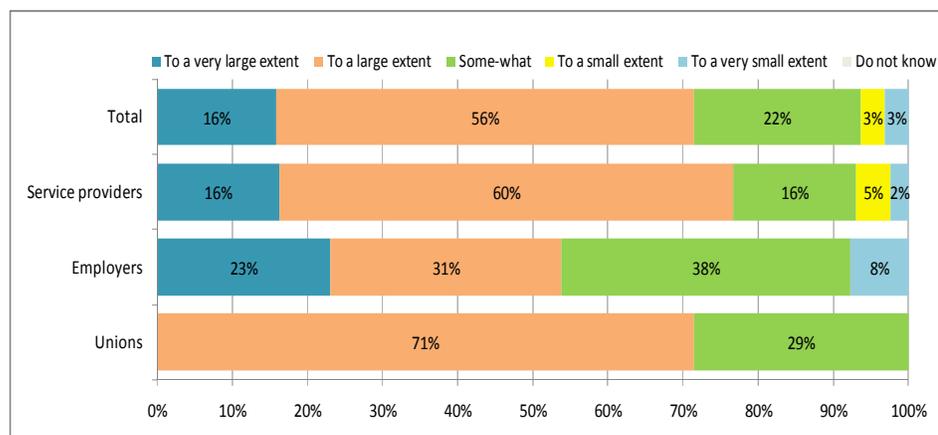
Negative aspects of implementation have been listed as follows:

- No control over fulfilling the obligation (e.g. by Labour Inspectorate);
- It tends to be only a formality at the moment, no real acts follow;
- No unified format for risk analysis;
- People carrying out the analysis aren't experts, but for it to be useful it has to be conducted by specialists who also know the company well;
- There's a need for training how to conduct risk analysis;
- Employers do not realise the positive traits of risk analysis and there is no incentives from the government.

Respondents also mentioned a couple of negative judgments of obligatory risk analysis as such:

- Too much of pointless paperwork;
- Odd obligation for office work, especially for working from home;
- It's always possible for employer and employees to come to some agreement with each other and avoid following the law.

7. Is it possible to get qualified help for conducting the risk analysis?



7a. Your additional opinions and comments on this topic:

Respondents from each group (employers, union representatives, service providers) have expressed the significance of risk analysis. But only if:

- It's not conducted superficially or just as a formality to be checked by officials;

- It also focuses on psychosocial risk factors, work-related stress, bullying etc.;
- Employers actually want to know where and what the risks are in their organisation;
- It is used to improve work conditions.

There are different views of respondents (mostly OHS service/training providers) concerning the matter of getting help or being aware of the options to get help with risk analysis. There are respondents who say help is available, but the prevailing opinion is that employers either do not know about help/consulting options (e.g. from LI) for conducting risk analysis or they just choose not to get help. One of the service providers said according to their sales experience, only 15-20% of employers are interested in getting some help/service to carry out risk analysis or to get training in OHS issues from qualified experts.

There are also different opinions about who should conduct risk analysis. Most of the respondents who had something additional to say about this set of questions brought out that risk analysis should be done by someone who actually works in the environment which risks are being assessed. High-quality training (not just any!) is essential; risk analysis should be conducted by the company's work environment specialist. The main point of this in-house risk assessment reasoning is that risks should be assessed and analysis carried out by a person who has first-hand knowledge of and experience with the work environment, work process under assessment. That's the foundation for relevant and useful suggestions for improvement. An important aspect of in-house specialists conducting risk analysis is that this person should be provided with a sufficient amount of relevant, quality training. One respondent points out that in-house work environment specialists are especially meaningful in companies which operate in/with hazardous environments/materials, but there is no ergonomists or work hygienists registered in the Health Board who'd be qualified for conducting risk analysis in such environments.

The opposite opinion suggested that work environment risk analysis should be conducted only by specifically qualified specialists and there should be a certain permit for the service providers to be able to operate in this field. The argument is that "a 24hrs training session does not give enough knowledge in order to conduct an in-depth risk analysis that could be of quality and useful for the company". Another aspect against in-house specialists/employees assessing risks was that the analysis could come out biased by the fact that the employee could be under pressure by the employer and conducting risk analysis tends to be an additional duty for the employee who has to fulfil it besides his/her other work duties – therefore lowering the quality of outcome.

Additional comments were following:

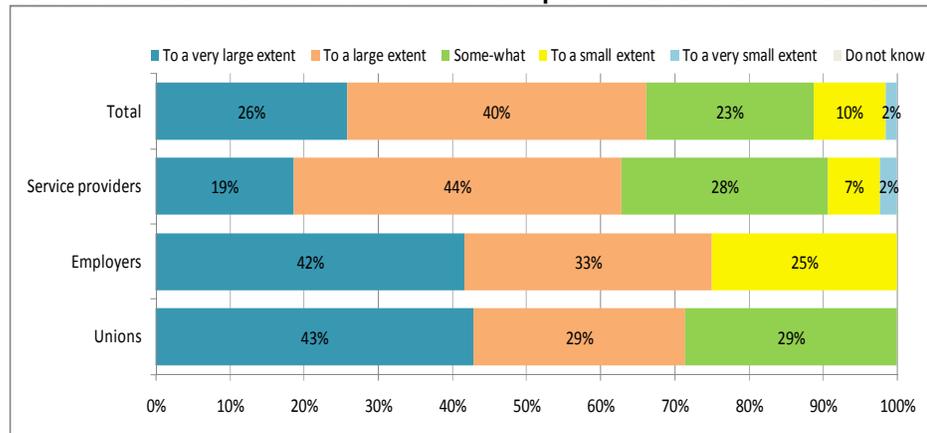
- The LI's attitude is too concentrated on risk analysis – it's taken as the main indicator of employers meeting or not meeting the responsibilities set by the OHS law(s). Although risk analysis is a very important document, it cannot be taken as evidence that employers actually take care of OHS

issues in their organisations. One should improve employers', managements' knowledge of how useful risk analyses can be or why is it really needed, that it is important also to take actions in order to decrease risks at work place.

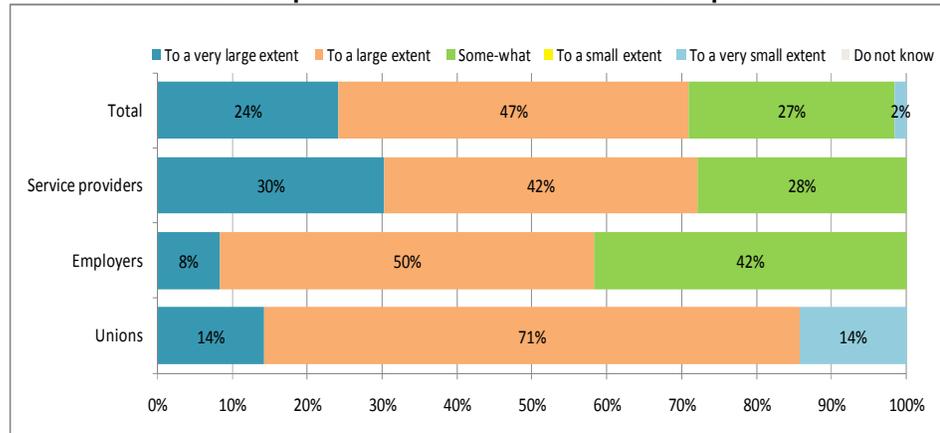
- Risk analysis is not as a one-time document just to follow the law – the biggest mistake is to take risk analysis as a finished activity. One should constantly work on the issues, risk analysis is a process: if risks appear they should be dealt with, situation assessed again, shortcomings taking care of again and so on.
- Employers should have to make employees acquainted to the document as well otherwise employees don't have any information of the risks at their work place, therefore no idea how to prevent risks or to protect their health. Preventive measures do not get enough attention. Employees get sick while working, but it's usually diagnosed as influenza, not as a work related illness or occupational disease.
- Conducting risk analyses and surveying risks is very expensive for employers. There's also lack of resources (human and financial) to make the changes suggested in risk analyses. OHS law is too difficult to understand and containing too many possibilities of misunderstanding.
- Concerning human capital the approach can't be one-sided – that employers are responsible for one issue, the employees for another and somebody else for something else. The solution can only be complex with contributions from all the stakeholders which makes up as basis for joint responsibility moving towards bet outcomes.
- Risk analysis is very necessary, it should be conducted based on common internationally approved methods.

Topic 3: Internal structure of OHS in enterprises

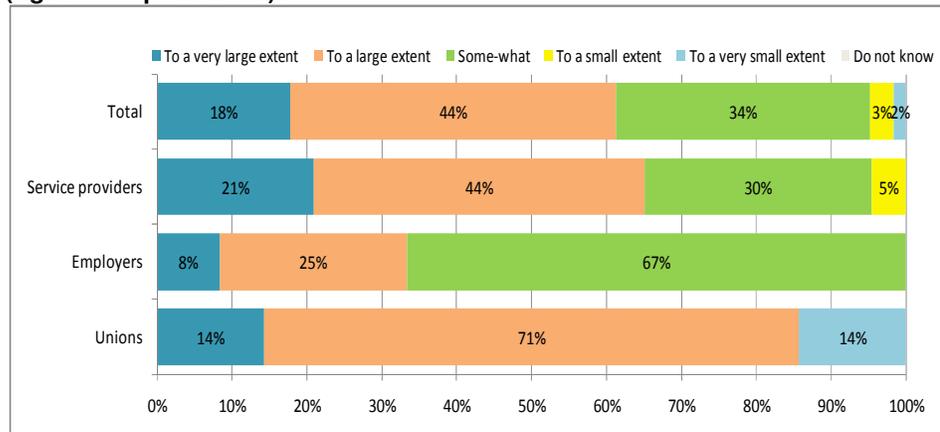
8. Is the internal structure of OHS in the enterprise clear and understandable?



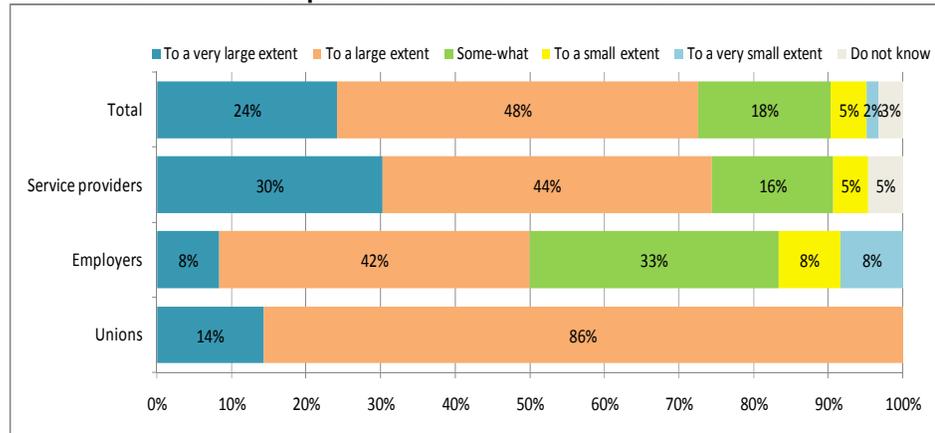
9. Is it clear what the responsibilities of work environment specialist are?



10. Is it clear what the responsibilities of work environment representative are (right to stop the work)?



11. Is it clear what the responsibilities of the work environment council are?



12. Do you see any duplication?

The views about duplication of responsibilities between 3 OHS actors are split. There are quite a few respondents who don't see any duplications at all or they do but the amount of it is not worth mentioning. Others mention a couple of situations or conditions when there is some duplication. For example if an employer has not been able to divide the OHS responsibilities (properly) between OHS actors, not given them enough time at work to fulfil those responsibilities and/or the actors haven't understood their responsibilities (or division of resp.).

A few other opinions of possible shortcomings or reasons of why there's no duplication:

- It's hard for work environment actors to be independent of their employer in their decisions and use their rights;
- It often happens that work environment representative and council are passive, even fictive bodies with no "right to vote" and almost all the OHS responsibilities fall on work environment specialist(s);
- It might also be that other employees can't tell the difference of OHS actors' duties at workplace, often they mix up the responsibilities of a work environment representative and a union rep. One employer (over 3000 employees) said that there's a confusion of roles written in legislation, it seems to one respondent (employer) that the aim is to carry social affairs of the company over to work environment field. The role of work environment specialist could be seen as additional qualification, but the list of duties of work environment representative is too narrow for it to be a full-time job. They decided to assign the duties of work environment representative to the employees' representative, that way the rights of employees are better advocated and represented;
- One should reduce the employee count for the work environment council obligation since in Estonia most of the companies/organisations have less than 50 employees and it's not enough to have just one work environment

specialist (often employer him/herself) in order to guarantee safe and healthy work environment anyway.

Respondents who argue that there is duplication also emphasize that all actors – representatives, specialists & councils work towards the same goals. Therefore the responsibilities cannot be that different either, more so – duplication is the key, guarantee of safety. Duplication is natural since all work environment actors need to work in close cooperation, supporting and complement each other.

The list of responsibilities named as being or potentially being duplicated is as follows:

- Constantly monitoring work environment, guaranteeing safety in work place, improving WE
- Temporarily stopping work if it becomes dangerous to anyone (not only the responsibility for work environment specialist, representative and member of work environment council, but in fact for every employee if such a situation occurs) – a duplicating responsibility mentioned quite a few times;
- Work environment specialist and representative (can) have a lot of duplicating responsibilities, also mentioned by a few respondents. For example both of them have to fill the documents regulating work environment monitoring and work safety.
- To know OHS regulations, relevant laws; to check if all the requirements are met and make sure they are; to take measures to avoid risks; cooperate in OHS matters.

12a. Your additional opinions and comments on this topic:

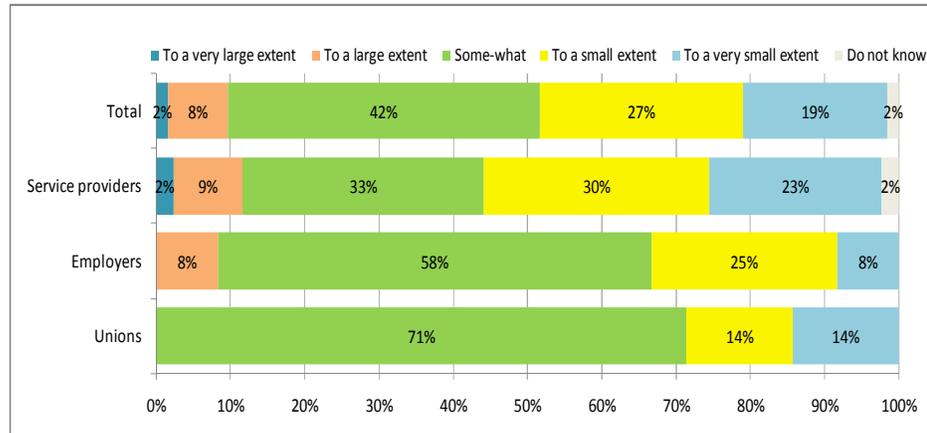
A selection of comments:

- The 24hr-training for work environment representatives is too theoretical and “dry” concerning topics only foreseen in OHS regulations and compulsory, it doesn’t motivate work environment representatives to fill their duties. If work environment representatives would get more practical training, knowledge of examples of real life situations of how to act, they would be a major help for work environment specialist(s). In addition to training there should be easily understandable univocal manuals, instructive material available;
- Companies/organisations should prefer outsourcing work environment specialist responsibilities to qualified service providers. Although in-house work environment specialists have better access to information about work environment situation in their organisation, they lack training and time to meet their work environment responsibilities;
- Unfortunately the social guarantees to work environment representatives were eliminated;
- It seems the situation is better in internationally managed companies or which operate in international markets;
- There is no need for work environment representatives / specialists in small/micro enterprises;

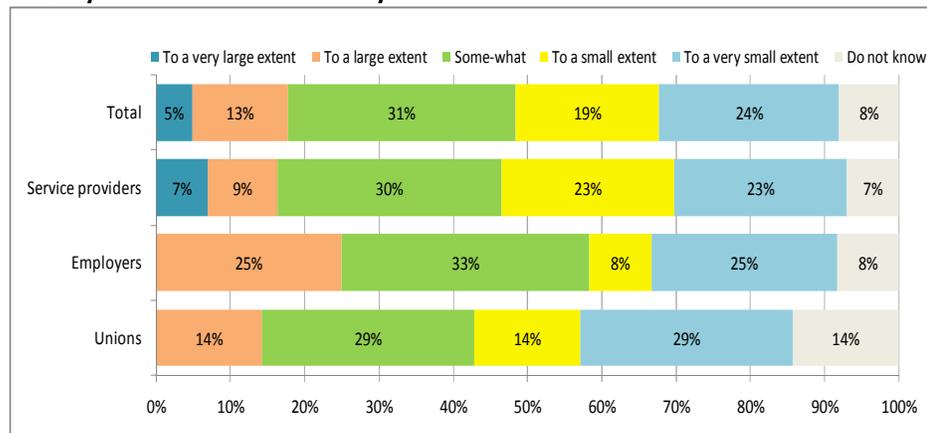
- Since the structure of work environment actors established by law (rep, specialist & council) does not work and specialists usually have council's responsibilities, too, there should rather be just representatives and specialists;
- The internal structure of OHS in enterprises certainly depends on managements'/employers' attitude towards OHS issues. Some take it as an expensive obligation, some don't. There's a lot of fear of penalties which shapes the formation of OHS structure in companies – the obligations are set by the law. Maybe the point here is to better inform employers in order for them to start valuing their employees' health (more). More even – there are employers who are not aware of their responsibilities established by OHS legislation, let alone are they neither conducting risk analyses nor employing/training work environment specialists. Who is responsible for informing employers about OHS issues, responsibilities?
- Often even employees don't have a clue of work environment representatives responsibilities, they don't know whom exactly are they electing; nobody wants to take the position of work environment representatives and so on – just a fictive situation. Often employees don't know to whom they should address their work environment concerning inquiries, employees don't dare to turn to employers with work environment matters. It also happens that employees don't even know there is a work environment representative at their work place – meaning the work environment representative has not been elected by employees;
- All work environment actors should know their responsibilities and rights themselves – everything is written down in legislation. Still there are a lot of violations. Do all the work environment representatives get enough time to fulfil their duties set by law and do they get paid for that time?
- Quite a few respondents mark that work environment representatives do not get enough time to do their work environment work (even if they were enabled to get relevant training), it's said that work environment representatives are often considered unnecessary;
- It seems that [work environment representatives, specialists, council members] know their rights, but they're afraid to act on those because of fear of losing their jobs. They say employers point to queues of potential replacements available in no time;
- Employers often consider work environment specialists unnecessary, work environment specialists often do not have information about what's going on in the company, work environment specialists are not valued. It's a good thing LI started to train work environment specialists by modules.

Topic 4. Incentives to improve OHS situation in Estonia

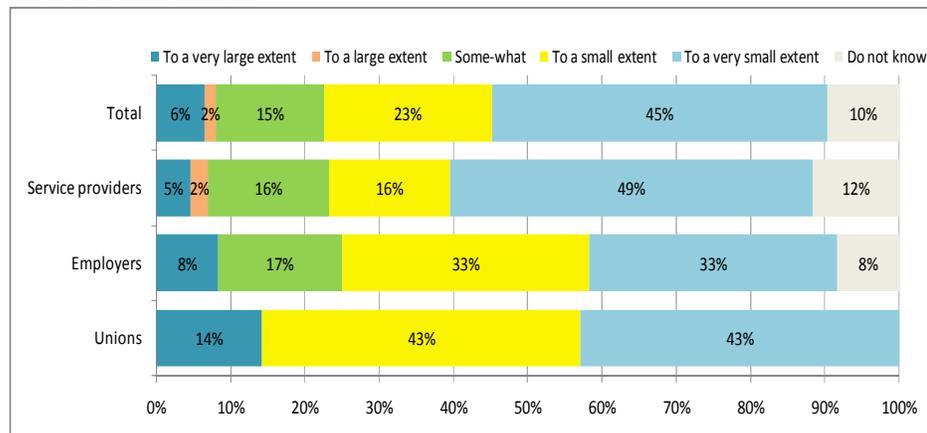
13. Does the present Estonian OHS policy encourage improving the OHS situation in Estonia?



14. Do you feel that there are any financial incentives?



15. There was a change in legislation making the employer responsible of paying the sickness leave for 4-8th day (70%). Is this an incentive for you for improving the work environment?



18. What are your views on establishing occupation accidents/diseases insurance (OAI) in Estonia?

Most of the respondents have a very positive standpoint on the insurance matter (incl. most of employers who answered the question), almost all of them consider OAI essential. They say it's about time for it to be established. There has been a lot of talk about it, but it's been just talk for way too many years (15-20yrs) and nothing has been actually done yet. A few emphasize that it should be done as soon as possible. There have been negotiations and some important agreements, but the process hasn't had any results, it all turned back to the beginning again. Some of the respondents suggested that there could/should be a conference based on the already existing material on the OAI topic in Estonia: what have been the suggestions, opinions of different stakeholders, both sides; in which issues compromises were achieved; what's rational and what's just political rhetoric etc. There should be hundreds of pages of text about it in government archives (Ministry of Financial Affairs, Ministry of Social Affairs) also stakeholders have those documents (incl. assessments and suggestions from foreign experts).

The following list includes comments that favour the establishment of OAI:

- OAI is especially needed in fields of higher risks, hazards, probability of getting an occupational disease. If there would be an OAI system employers of those fields shouldn't have to constantly worry about unexpected expenses. Insuring against occupational diseases should be made compulsory to employers. One respondent, an employer notes that they already have accident insurance for employees doing most hazardous work, but OAI law would be preferable;
- Although employers are afraid of work accidents the current system does not motivate employers (or employees) to invest in improving safety of their work environment or prevention of diseases and accidents. Rather the approach is freedom of interpretation, meaning that employers' role and responsibilities of work accidents and occupational diseases could be mitigated or even ignored. OAI would increase employers' interest in improving work environment and guaranteeing safety, it would be a huge motivator to take care of their employees. Experience of other countries supports this view;
- OAI would help save on expenses on work accidents and cases of occupational disease both in short and long run;
- Most employers do not analyse how much and why exactly do they make payments of incapacity to work and they don't identify the possible connections with unsafe work environment. For example in Germany employers must pay disability payments for 6 weeks in case of occupational diseases and it's considerably cheaper for them to improve work environment and care for their employees' health.
- A few years ago a comparison of Estonian, Latvian and Lithuanian number of work accidents diagnosed was carried out, it showed that in Estonia the number of such diagnoses was several times smaller because we don't have an OAI system;
- Employees who already have an occupational disease do not agree to be diagnosed with occupational disease because it will result in him/her

losing his/her job and losing the opportunity to work on their field of expertise in some other work environment. And often there is no way to acquire a new qualification on some other field. This means the person is ill and would stay unemployed for a long period of time. In case of OAI the company would make insurance payments (according to risk levels and numbers of accidents and diseases) and if an employee would develop/get a work related disease then employer wouldn't have to bare huge additional expenses. Also the employee gets rehabilitative care and relevant training, he/she would have no need to go to court to get support from the employer;

- Current system doesn't support defining and registering occupational diseases because it creates arguments between employers and employees;
- One should understand already that caring for and treating people who have work related diseases or gotten ill caused by occupational diseases or become handicapped as a result of a work accident is wearing out the finances of Health Insurance Fund and thereby the whole Estonian medicine field. Estonian social benefits' system is already in trouble since its costs are already larger than benefits;
- Our neighbouring countries' (like Finland, Sweden) experience is educative/enlightening.

There were also suggestions how the OAI should be implemented (although rather mixed):

- The financing should come from employers, that way it will guarantee their motivation to keep work environment safe;
- It should be a voluntary insurance, not compulsory. In addition there could be a voluntary health insurance as well. And it's important that employers' insurance contributions/ payments wouldn't be taxed with fringe benefit tax;
- The amount of insurance payments should depend on the company's work environment situation, on how employers fulfil their OHS responsibilities. The more risks/hazards the bigger should be insurance payments. For employers who invest in safe WE, improving WE, conduct risk analyses, apply preventive measures (like employees medical checks) and don't have any violations, accidents or cases of occupational disease insurance payments should be decreased step-by-step or a smaller coefficient(s) applied;
- Insurance payments should be based on solidarity – employees' contributions should be included, the proportions here are of course a matter of discussion. The amount of contribution of both sides should depend on whether there have been previous accidents or occupational diseases and if they were at fault (e.g. ignoring regulations);
- OAI is necessary to establish, but no idea how it should work, if it's possible to raise tax burden or who would administer the finances. Presumably discussion is needed, but first the decision should be made that one should start thinking about it.

Opinions against OAI:

- In general OAI would be necessary, but if there're only a few work accidents, it might seem like an unnecessary expense;
- OAI is not motivating for employers if most of the employees are willing to come to work while being ill;
- Just another addition to employers' expenditure;
- I doubt if OAI would work out since employers tax burden is already high enough and people sick enough (or have bad health);
- Social tax budget should suffice to guarantee such insurance, it has been until now. There's no point to try to increase the number of useless vegetating OHS public servants on tax payers' expense;
- OAI system would rather increase employers' [financial] responsibilities and decrease their resources for work environment. A lot of employers have been investing in improving work environment today, they are aware of the risk factors; employees' health is being checked regularly and so on. The problem is rather that employees aren't responsible enough of their own health and their level of awareness is low. Employers' obligation to pay sickness benefits to employees is not motivating to improve work environment since employees use their sick leave certificates for health problems which are not related to work. In fact nobody checks if the health problems are related to work or not. In my opinion, occupational health should be 50% financed by government and 50% by employers (to be exact – a fix amount per employee according to rates set by the Health Insurance Fund). The system should be established taking Finnish system as an example: employed people see OH doctors regularly, OH doctor treats them, issues sick leave certificates, sends them to specialized doctors and so on. GPs are for people who are not employed (mothers, pensioners, students). OH doctors should commit to employees getting well enough to work as soon as possible. If employees see OH doctors regularly the doctor has a full overview of their health, also it would be possible to get statistics of work related illnesses. OH doctor could then be able to assess if illnesses are related to work and give better advice how to change employees work conditions or suggest other work duties/another job/field of work. That's how OH doctors could be able contribute to preventing occupational diseases more directly. At the moment OH doctors have a little role advising employers and carrying OHS law into effect – the system puts OH doctors in a position similar to civil servants diagnosing work related illnesses or occupational diseases since they don't treat employees, but send them to other medical specialists.
- 2 respondents said they don't have enough information to have any views on it.

18a. Your additional opinions, comments on about incentives to improve OHS situation.

Some comments:

- Government institutions have a very limited budget to meet the OHS obligations set by the law. There's no problem understanding OHS goals or

benefits of OHS regulations, but to fulfil their duties completely – there's just not enough finances;

- Tax system needs revisiting, especially the part of preventive measures taken for employees' better health (like swimming pool passes, health procedures, creating sports possibilities, buying sports equipment etc.). There should be a limited annual amount year per employee which won't be taxed as fringe benefits;
- High time for the government to have a say on how to develop an OAI system. If there's no plan to establish a public OAI system, private OAI activities should be regulated in order to motivate employers to use it;
- Some private employers pay even for those 3 sick leave days in order for the illness not to be spread to other employees;
- Today's system of sick leave payments is worsening the situation. Employers don't want the employees to be sick and to pay for it, employees can't afford to be sick (and medication is very expensive) and don't stay home. This leads to sick employees coming to work and ending up infecting others as well, so the staff's ability to work decreases;
- The current system of employers paying part of sick leave can't motivate them to deal with OHS issues, because most of the reasons of these expenses are not changeable by employers – it's not just work environment that affects employees' general health;
- All things can be further improved; it's the constant dissatisfaction with the results that seems to be the problem. It is too early to start increasing employer's administrative and financial burden;
- Concerning AOI, the key question is what will determine the premium paid by employer?

Topic 5. Health monitoring of employees

19a. Please describe what kind of help would you need with your OHS activities from OH doctors?

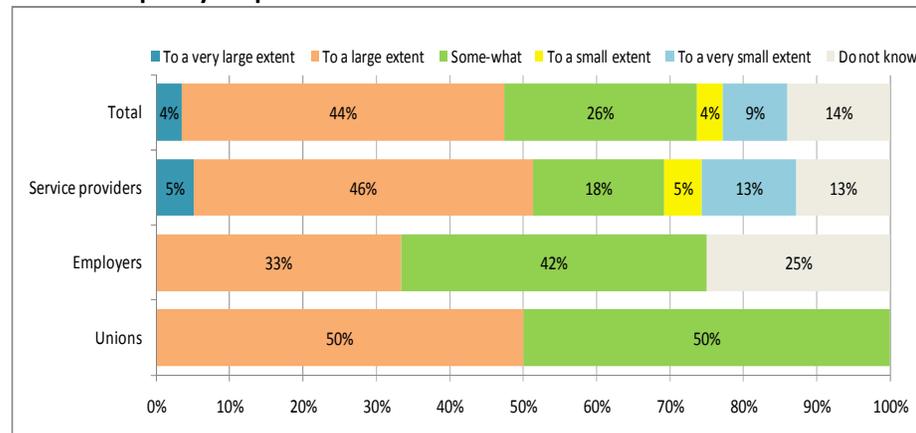
Quite a few respondents say they're happy with the service from OH doctors so far. There were, however, also critical notes. Some respondents suggested that OH doctors don't treat employees, they only do superficial checks. In case of diseases one should be treated by competent doctors in relevant field(s). Some respondents also stated, that there should be more government finances for OH doctors to commit to employees and monitor regularly employees working in hazardous environments (it's not enough to just measure blood pressure once a year). OH doctors' service should be cheaper. Employers need to consult more with OH doctors; today employers have to pay for it which often means they don't ask for consultation besides regular employee medical checks. OH doctors' consultation is not a service that sells well. It is good enough that OH doctors get invited to give lectures in companies from time to time.

Concerning the need of help from OH doctors the following were mentioned:

- To identify risks of trauma and occupational disease in work place, to help with risk analysis
- Periodical medical checks, constantly monitoring employees' health in work process;
- OH doctors should evaluate if the working conditions and work arrangements (process) are suitable, help with creating health improving work places. OH doctors should be familiar with the company of which employees' health he/she is evaluating; they should at least once go and check out the work place, work environment conditions of where the employees under evaluation work. OH doctors should make sure if the risks employers list in risk analyses are true/real;
- OH doctors should limit work place access to employees who's health and abilities do not meet the requirements of their jobs. Medical checks should give a clear evaluation if a person could work at certain job or should they be transferred to another, more suitable (health-wise) job instead;
- OH doctors should give all-around help, because GPs are not good enough (they try to cut back their finances), so employees should be able to get all kinds of medical checks done by OH doctors;
- OH doctors should organize a full range of different medical checks/examinations; OH doctors should be competent and allowed to decide which medical checks should be done. Employees' health should be examined more thoroughly and diagnosed early enough, evaluated objectively and impartially – OH doctors should not act as employers' representatives;
- OH doctors should organize employee rehabilitation if needed and in the evaluation document there should be described in detail what the exact work environment related causes were in first place;
- OH doctors should be able to anticipate employees' probable health problems (in an early stage);
- There should be more communication in general by OH doctors and more cooperation with OHS specialists;

- OH doctors should give explicit thorough advice to both employers and employees (they should not tell employees that their employers wouldn't take OH doctors advice into account anyways because following the advice means making expenses for them);
- OH doctors should not force employers or employees to medical checks or procedures which should be done by GPs anyway (without additional payments);
- The effectiveness of OH doctors work depends largely on employers' attitude, help and openness;
- An employer expects to get true information about employees' states of health, especially of the ones who are working at hazardous jobs (electricity works, miners etc);
- Clearer regulations about what are the health requirements of different jobs;
- OH doctor is foremost a doctor who should be diagnosing diseases and treating patients. Ideally it should be possible for employees to turn to an OH doctor as soon as a health issue occurs, OH doctor could then organize necessary medical checks, treatment and monitor its efficaciousness.

19b. Is the quality of qualification of OH doctors sufficient?



19c. Please describe what kind of help would you need with your OHS activities from ergonomists?

First of all – the information about the activities of ergonomists is not very widely spread. Also, it seems that ergonomists are hard to find, even if you need them. This is illustrated by following comments:

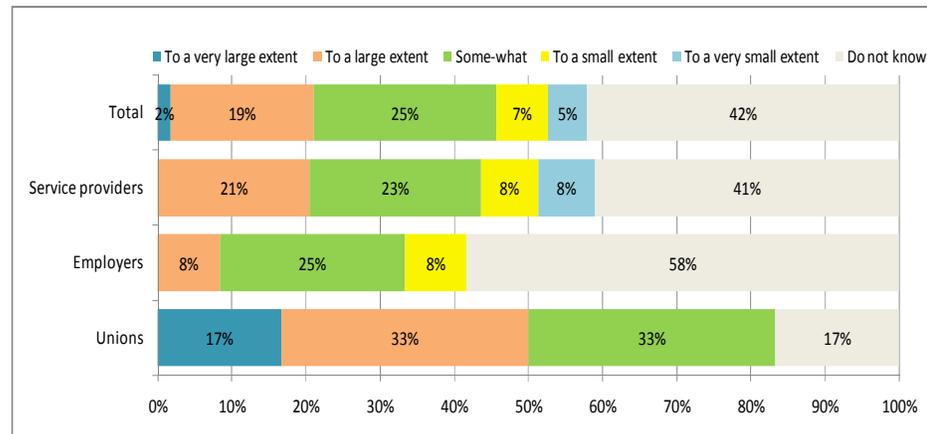
- There are only a few ergonomists in Estonia and it should be shouted out loud that there's such thing as work ergonomics. We'd like to hear from ergonomists more, like how to improve work environment, prevent possible (occupational) diseases. Employers aren't interested about ergonomists. Ergonomists should organize more briefing days, introduce themselves and their "abilities", training courses, spread information materials;

- Where are the ergonomists? What are the possibilities to use their services?
- I know how few ergonomists there are in Estonia, which means even the best intentions won't get them to help most of the employers;
- I wasn't able to find an ergonomist anywhere;
- We might need help from ergonomists, but the advice we get is limited by finances;
- There are huge gaps in designers' education concerning ergonomics. A lot of mistakes, shortcomings in work environment and work place set up which later cause health problems for employees is initially caused by the work of designers. Educational institutions should get ergonomists to teach students of design and engineering to be able to see work environment, not just production capacities or the beauty of rooms. That's a serious problem in OHS field – designers don't know anything about ergonomics!

Concerning the need of help from ergonomists the following were mentioned:

- Demonstrating staff how to do different exercises (that employees can do while on breaks), teaching how to use ergonomic, safe methods of work. Give study materials of those exercises, either on paper or even videos;
- Instructing should be regular, according to employees' needs. Ergonomists should get feedback from employees to assess if methods of work and attitude has actually changed as taught;
- Useful examples and tips to improve work environment. Advice about how to design, furnish and use ergonomic work places. Point out possible problems what wouldn't occur to employers or employees.
- Articulate suggestions for short and long term action plans. Preventive action;
- Assessment of current situation, work process, suggestions for change (based on risk analyses);
- After measurement procedures explaining the results in detail, explaining risk factors.
- Employees usually don't know their work place has to be designed ergonomically or even what it means. Ergonomists should visit work places and talk to employees.
- Ergonomists have a lot to do for occupations where the work is done mainly sitting behind the desk (office jobs). Occupations doing field jobs (like electricians) there's not so much ergonomists could do, maybe suggest comfortable tools;
- We need employers to take account ergonomists' suggestions;
- OH doctors and nurse need training in ergonomics;
- All OH doctors have had courses of ergonomics and deal with ergonomic issues on a daily basis. An ergonomist (as a separate specialist) is needed probably in large companies, where employees need advice and counselling every day.

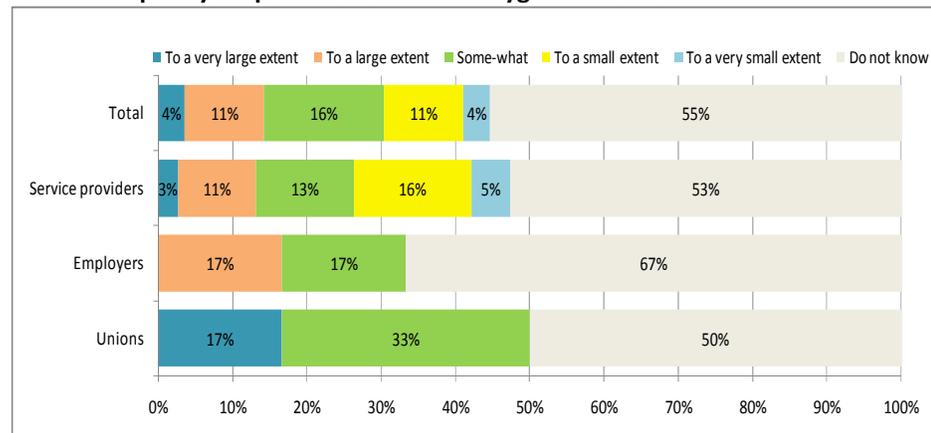
19d. Is the quality of qualification of ergonomists sufficient?



19e. Please describe what kind of help would you need with your OHS activities from work hygienists?

The same applies also to work hygienists – the information about their activities is scarce. However, there are also some comments and suggestions:

- Articulate suggestions for short and long term action plans. Help with measuring different work environment risk factors, with identifying biological risk factors, measuring noise, vibration, temperature, lighting and with taking preventive action, measures to reduce effects of risk factors. Advice for drawing up work hygiene documentation;
- Assessment of current situation/work process, help with risk analysis, suggestions for change in order to improve work environment (based on risk analyses). Advice in avoiding risks, choosing safe tools and personal protective equipment, using them safely;
- Has to be able to answer employees' questions;
- More attention to non-physical (risk) factors, decreasing their effects. Advice to employers and employees;
- We need understanding attitude from work hygienists, the law states rigid rules, and regulations are too detailed;
- Mainly work hygienists have to increase awareness of the employers and persons in charge about necessity of OHS matters in economic affairs at first;
- Work hygienist should have knowledge of all OHS main fields (excl. medical checks), even ergonomics (because there's too few ergonomists in Estonia);
- We have a hygiene nurse employed.
- Work hygienists services are used very little;
- Work hygiene is not a problem in most of the organizations in my opinion. One shouldn't push the requirements to "excessively bacteria free".

19d. Is the quality of qualification of work hygienists sufficient?**19g. Please describe what kind of help would you need with your OHS activities from work psychologists?**

Of the three occupations the work psychologist are probably most “unknown”. The situation is illustrated by the following comments:

- Is there such an occupation? Haven’t seen or heard of work psychologists (WP);
- There should be more information about the whereabouts and activities of WPs. The help needed would be there existence. And possibilities to get counselling quickly if needed;
- Haven’t met any WPs yet and not sure if there is any such specialists working in our economic field. Therefore we’d preferred of such jobs would be created at first; there’s too little attention to work environment psychological factors or solutions. Work stress, burning out and other psychological problems seem to be a big problem today;
- WPs should conduct research of work place psychosocial climate, analyze results, and suggest relevant solutions. But there are no WPs in Estonia.

However, this does not mean that they are not needed. According to some respondents today’s work intensity, diversity and mobility of mental factors (at work and outside) all combined would imply a lot more attention from psychologists; and not just after negative symptoms appear, but as a constant prophylactic activity.

Additional comments and suggestions concerning them and their activities are following:

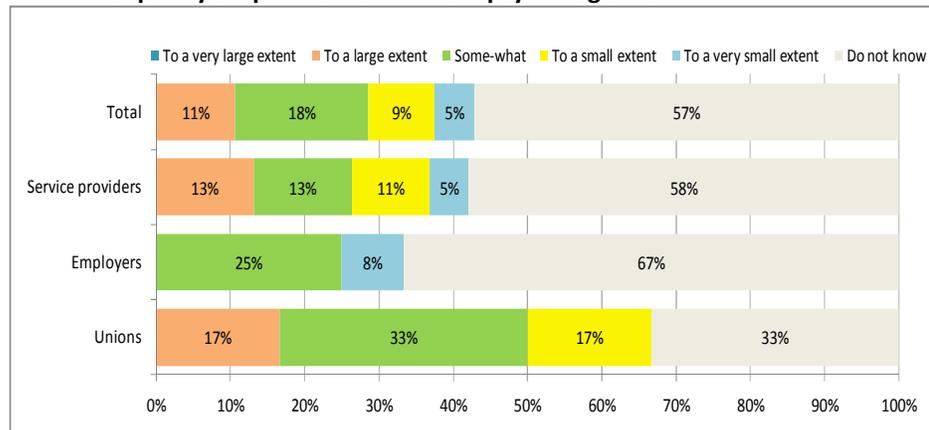
- WPs should explain problems and suggest solutions, diagnose work stress, assess other psychological risks in work process, develop plans of measures to manage those risks, act on the plan. Train and counsel employees most at risk of work stress;
- WPs should be specialist who are able to connect psychological risk factors to other aspects of work environment and other risk factors;

- WPs have a huge role in helping to maintain a healthy work climate in companies, improving relationships. Every employee should have a right and a possibility to get counselling from WPs. It's also difficult for managers, not only employees get stressed, so everybody should have access to counselling. But especially for people who work in shifts, at nights and in office or have irregular working hours or have to work alone;
- WPs help is needed when there are a lot of dismissals at once for the employees to cope with changes;
- WPs are foremost needed for counselling in issues like conflict and tension at work. WPs role should be understanding, explaining and easing tensions between employees and the management, between employees;
- No extensive experience of cooperation with WPs, but we have used psychologists' help for counselling employees who have been in extreme situations. Employees should have access to WPs, but the results depend on the trust between employees and WPs;
- Practically every day OH doctors get patients with problems and worries caused by work stress, OH doctors should get help from WPs to diagnose the level of seriousness of those problems, disorders and to organizer further help. There are also situations when collective stress occurs and WP's intervention is needed. Today OH doctors often have also the role of a WP;
- WPs are definitely very necessary specialists, but again, there's only a few of trained WPs in Estonia. WPs have to help employees to get over huge stress caused by work place accidents for example. Also problems caused by overworking need solutions by WPs. WPs services are hugely requested in Estonia, but its deficit!

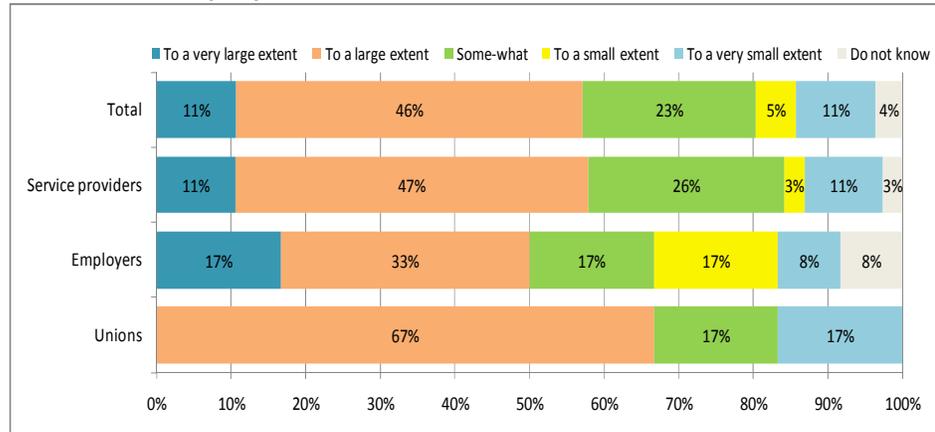
There were also some comments indicating no need for people with this specific qualification:

- We don't need any outside counselling, we have our own qualified specialist. Although his/hers services aren't needed too often;
- Well, if you can't help yourself, no-one can...;
- Can't see any relevant difference between a WP and ordinary psychologist.

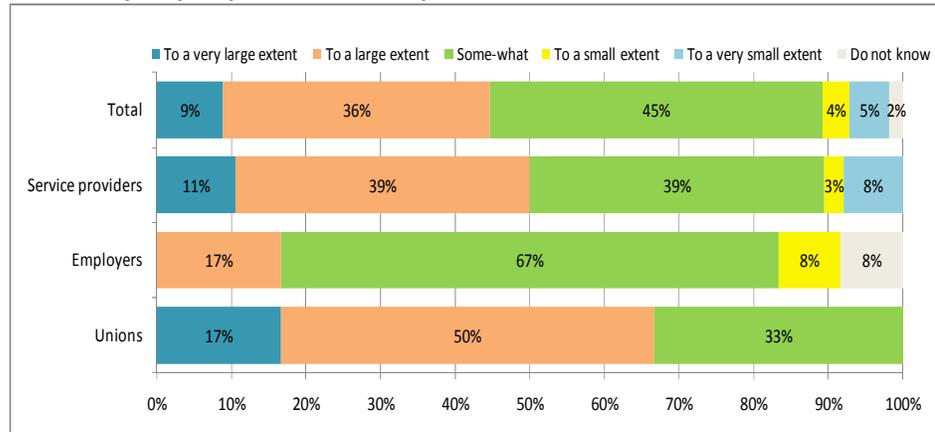
19h. Is the quality of qualification of work psychologists sufficient?



20. Are the results of the health monitoring useful for improving the OHS situation in a company?



21. Do they help to prevent the occupational diseases?



21a. Your additional opinions, comments on about incentives to improve OHS situation.

- OH doctors aren't appreciated enough by government, it depends too much on the employers will to finance OH doctors services, not enough OH doctors are being trained (their numbers fall fast), in some regions OH doctors services are not available – an unacceptable situation in a developed country;
- One should pay more attention to the quality of risk analysis (carrying out medical checks is based on the results of risk analyses). Today it happens that the work environment risks are assessed as low as possible so it seems no medical checks for employees are needed and that's how it is;
- The results of employees' medical checks would be a huge help to improve OHS situation in organizations and prevent occupational diseases IF the checks would be thorough, high-quality and OH doctors would acquaint themselves to specific work environment beforehand, IF employers and employees would act according to the precepts issued as a result of

medical checks, IF the checks are done regularly (and more often than just in every 3 yrs);

- Medical checks don't prevent occupational disease, but the actions and changes in work processes based on the results of medical checks do;
- OH doctors should work in cooperation with GPs;
- There should be separate medical check requirements for different occupations, fields of activities, and those shouldn't be changed every year;
- It's not clear what one (employer or employee) has to do if the occupational disease has occurred rather because of the previous employer than the present one;
- Mere human attention from employers to employees, even just reliable communication between employer and employee would help a lot to prevent health damages. And this wouldn't require substantial finances either;
- Unfortunately these questions about incentives to improve OHS situation are strange – the topic of work hygienist, work psychologist and ergonomist – which companies can afford their services?

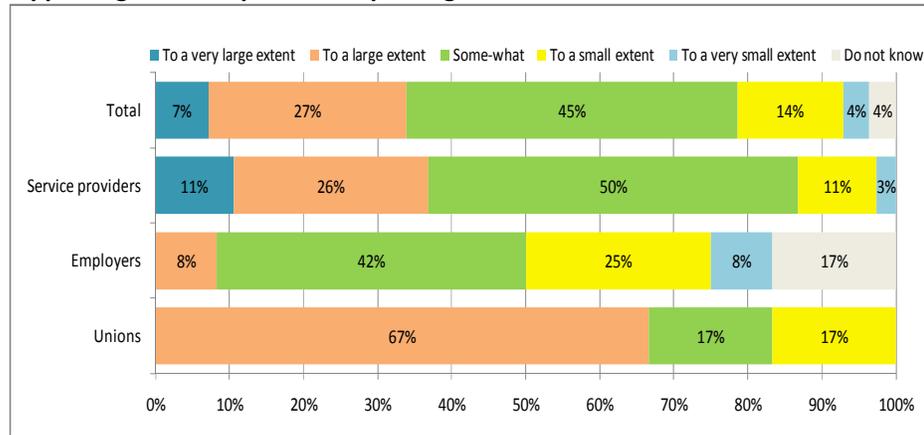
Some comments concerning the qualification of OH doctors were quite critical:

- OH doctors' qualification in Estonia is low. Training is concentrated mainly on diagnosing diseases and medical treatment, but a qualified OH doc has to know how to read and conduct work environment risk analyses, know every work related regulations to detail, know how to create an ergonomic work place. If needed, OH doctors also have to be work psychologists, lecturers, give first aid. Not sure if it's the fault of trainers or training system, but there's a significant qualification gap between the first OH doctors educated in Estonia (they had 6 months training) and the present ones (3yrs training) – the first ones are significantly better qualified;
- The qualification levels of all the OHS specialists are very uneven (since I am an OH doc myself, I know the level of service provided at the moment on the market). Work hygienists who finish their training need extensive additional training because their knowledge and skills needed to assess work environment are low, they don't know how to make suggestions to employers properly. My company offers work hygienist services and we have to train hygienists in conducting risk analyses. The qualification of work hygienists educated in *University of Life Sciences* is a lot weaker than the ones trained in Tallinn where study programs and lecturers are a lot better (*Tallinn Technical University, University of Tallinn*).
- It's hard to say anything about OH doctors' qualification as a bystander but it seems there's a lack of OH doctors who actually know about the work conditions and are able to make the connection between the disease diagnosed and work. I think this might be the reason for so few diagnoses of occupational diseases in Estonia. Same applies to work stress;
- Medical checks would be more helpful if OH doctors weren't afraid to tell employers (their clients) what are the real work environment problems. OH doctors, work hygienists, ergonomists freshly out of school have no experience about different manufacturing companies; they have only visited maybe a couple of companies all together as part of their training.

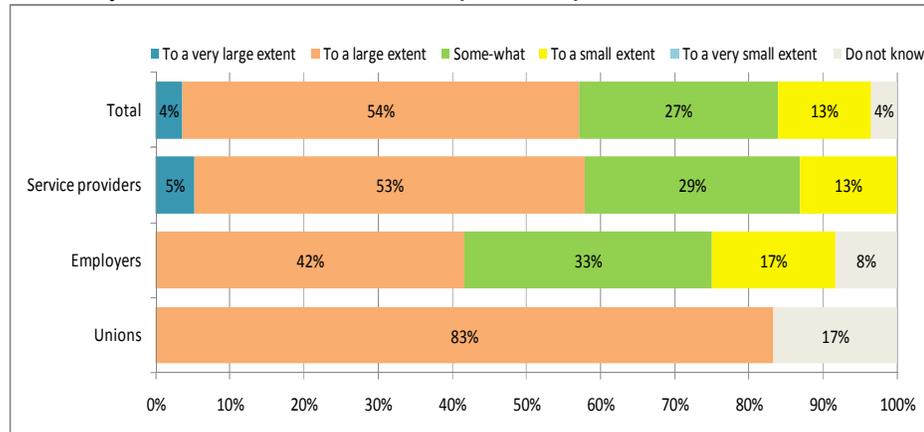
Since their practical training is scarce they have no knowledge about different work in different companies, about the specifics of different industries and they have no good advice for employers. It's hard for the graduates to start working in their field, because the clients (employers) are more competent in their field than they are. Experience, sufficient enough for them to give advice, will pile up with 4-5 years, not sooner. Therefore the training system needs changes, more focus and time to practical training, study programs should include months of practical on-site training in manufacturing companies in order for them to see the everyday real work life.

Topic 6. Role of Labour Inspectorate and Ministry of Social Affairs

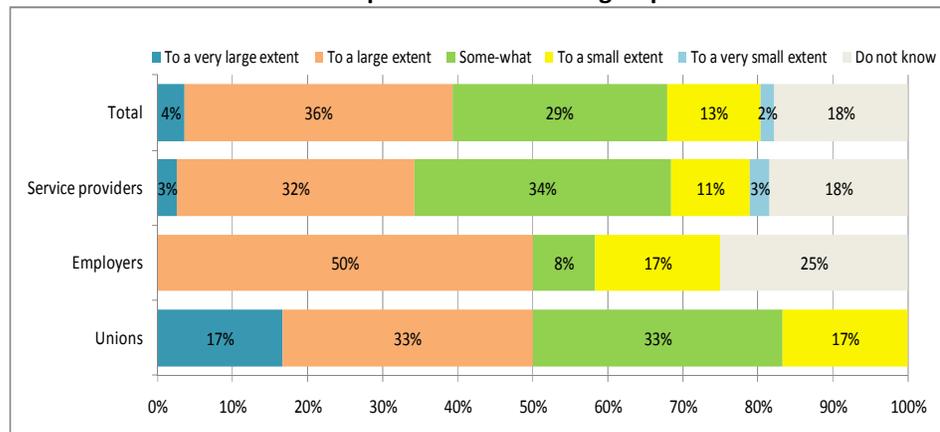
22. Is the Labour Inspectorate (or the Ministry of Social Affairs) perceived as supporting the enterprises in improving OHS situation?



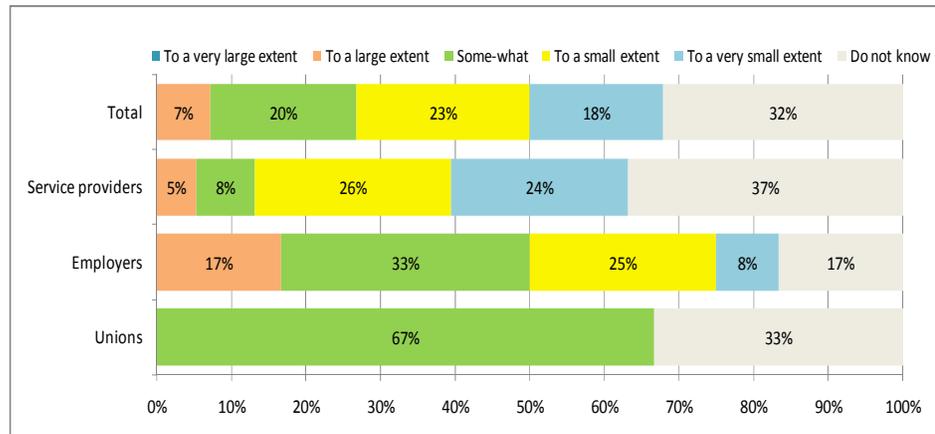
23. Do they provide enough information so that employers can easily understand what they should do in order to reduce (eliminate) the risks?



24. Are the actions of labour inspectors in conducting inspections coherent?



25. Do you receive any support from your employer organization in the OHS field?



25a. Your additional opinions, comments on this topic:

If one is looking at the figures listed above then the overall opinion of Ministry's and Labour Inspectorates activities is not that bad, however, the comments listed below are quite harsh:

- There should be more emphasis on companies who have applied for 24hrs shifts for their shift workers. Have those employers provided all the conditions needed and if and how to check if the 24hrs shift is not harming employees' health in any way;
- The main attitude towards LI is that if the inspector is visiting one has to be alert and scared;
- If the system is weak the control (mechanism) is not enough to improve the situation;
- At the moment LI has just a control function, no preventive or advisory activities. If an inspector issues a precept, then employers know exactly what they have to do. But the order of activities should be different – at first inspectors should consult employers about their obligations, then they'd control employers and issue precepts if needed;
- It's often very difficult to get specific advice from LI or anywhere else;
- Communicating with companies who have got a precept issued to them by LI we see they're clueless and have a lot of unanswered questions. LI inspectors don't inform them nor do they try to explain them what and why is done. Of course, the precept form includes paragraphs of the regulations, but it's not enough to answer employers' questions. And employers don't ask them from the inspector, they're probably afraid to. LI is not known as a place to get information, help and answers although it should be the best source for that;
- The control function and managing the field should not be in the jurisdiction of the same organization (LI). Often it seems inspectors' opinions are subjective, they suggest trainings provided by themselves through training companies and ask a fee for it, LI has not trained their

inspectors enough, has not developed unified viewpoints. The Ministry is weak!

- LI has mainly the control function, but if we have questions, we do get explanations, answers from them;
- The Ministry should prefer more those training providers who don't work in LI. Then inspectors would have more time to inspect, give guidance and take on useful activities concerning OHS;
- LI's (also Ministry's) homepage get visited only when there's something wrong – a work accident happened, inspector coming to visit or has visited or there's problems with employees' health etc. Otherwise employers don't visit those pages. Only some employers want to improve their work environment and look for information from LI or the Ministry. LI doesn't take any initiatives to inform employers, no training materials are sent to employers or e-mails sent about upcoming free courses or about new requirements stated. LI (and other government institutions) should have a more active role advising and helping. Employers don't look up LI or the Ministry of Social Affairs if there's no certain need for it, so they don't make any effort to improve work environment nor to find information how to improve it. On the other hand, LI and the ministry have improved in their homepages which have gotten more informative. If only employers would use this information voluntarily not only if in urgent need!
- The government is not supporting employers in OHS matters. In other EU countries employers get a subsidy from government – a percentage of the OHS expenses they've made, but in Estonia all the costs are carried by employers – it's not a motivating arrangement.

Topic 7. How to improve the system

26. In your opinion, what are the most important bottleneck aspects of OHS field in Estonia?

There're not enough finances and motivation – mentioned by many respondents:

- Even if companies are aware of OHS requirements they don't have enough finances for improving it, especially in rural areas. Financial environment is not in favour of spending on OHS issues;
- OHS issues are not appreciated by employers; it's just an additional burden of expenditure. But it also happens that companies hide behind the "no finances" argument and lack of resources is not always the reason for not fulfilling OHS obligations;
- The responsibility of fulfilling OHS requirements set by regulations lies solely on employers, no support from the government. Finance system for OHS activities is lacking;
- No compensation for employers' OHS costs; it's expensive to supply all the personal protection equipment to employees. The OHS training for OHS specialists and council members should be subsidized by the government. Also health checks should get some financial support from the government. OH doctors services should be partly financed by the Health Insurance Fund (*Health Insurance Fund*), otherwise employees don't get checked enough, their health condition is bad and ability to work low;
- Why should employers spend anything on employees' health (prevention) if they have to pay the fringe benefit tax on those costs? In addition to that Ministry of Social Affairs decided not to support (financially?) the only OHS magazine in Estonia "Estonian Occupational Health". This attitude indicates ministry's priorities in OHS field;
- A lot of respondents denoted fringe benefits tax on employees' health (prevention) costs as a major hindrance for employers taking action in OHS field;
- One should improve employers' motivation and interest to take on work environment and OHS activities by OAI system – payments should be tied to OHS situation in companies. OAI was also mentioned by most of the respondents as a solution for financial obstacles and overall OHS field developments in Estonia. Plus OAI would make employees also more responsible for their health at work.

Not enough information:

- Both employers and employees aren't informed enough about OHS issues in general and their obligations, requirements set by regulations, risks at work place, rights, personal protection equipment etc. Not enough information about why OHS issues are important and what are the benefits of fulfilling the requirements;
- Employees don't have enough courage to raise the topic of OHS problems and agree (knowingly or unknowingly) to do work that poses a health hazard (a union representative recommends joining a union as one of the solutions);

- Not enough information/support concerning ergonomics – there has been some general talk, but nothing concrete (like what's right or wrong for different occupations).

Government supervision:

- Government supervision over OHS law is weak; LI inspectors' work load is too big;
- Reality is different from what's written on paper. Supervision is more for like just checking off things in inspectors' to-do lists;
- No control over companies, it seems only motor vehicle drivers' timesheets are being checked. Mostly only large companies and public companies fulfil OHS requirements, but the small ones don't obey the law, seems like impunity is taking over among them;
- A lot of civil servants doing nothing – controlling OHS situations in companies where work environment is practically safe;
- Lack of incentives for LI inspectors, which means there're no possibilities to hire highly qualified and committed specialists;
- There are still a lot of companies where risk analysis hasn't been conducted yet and OHS issues are not organized. For different reasons OH doctors precepts are getting ignored (no finances, no replacement employees, problems with logistics etc).And inspectors haven't come around to check them yet;
- Since LI is not fulfilling its supervisory obligations properly and not imposing enough fines for violations employers are not taking their OHS obligations seriously, because only sanctions like that motivate employers to deal with OHS issues (and only to the point where the precept has been observed). Even when dealing with asbestos nobody here cares about safety – how is it possible?
- A training/service provider mentions that they have come to situations where/when it's difficult or not reasonable to follow the law:
 - The Regulation of biological hazards states that skin-penetrating contact that is followed by preventive treatment must be considered as work accident. There are circumstances, however, where employee does not want to confirm that he or she has been in contact with infected and is thus potentially virus carrier. I believe that in these cases worker has a right for privacy;
 - The regulation on OHS training states that introductory supervision should be done by work environment specialist. In large companies (e.g. more than 3000 employees), this is not possible;
 - In hospitals that are full of potential first aid providers the regulation on first aid is not applicable.

Systemic flaws:

- OHS topics are not dealt systematically enough;
- There's no coordinating centre which would be responsible for the entire OHS field. No competent body to organise the OHS activities in the country, carry out applied research, work out directions to develop, communicate internationally etc. The government has no long-term OHS

goals or action plan. We have to think 5 years ahead, what would be the situation then. The Ministry has to plan the actions in cooperation with service providers, summon work groups to discuss problems and try to find solutions;

- Employers should be more involved in setting the goals and strategies. There's no social dialog in OHS matters, employers are not consulted in the process of putting together instruction manuals, incl. risk analysis program. Theoreticians come up with documents which are not usable in practice. Employers' confederation doesn't offer any support to employers in OHS issues;
- The most important of bottlenecks is that no real OHS statistics exist today and it's an obstacle for developing strategies, planning actions;
- Today every actor in the field acts on their own competing against others on the market;
- One should publicly recognise employers who actually try to take care of their employees' health;
- OHS topic is not recognised in general, its reputation is low in public (boring and bureaucratic), no interest in OHS topics in public sphere. Informing public about the importance of work safety is insufficient;
- No cooperation between higher education institutions and Ministry of Social Affairs and LI. There is some contact with Health Board though;
- Although the regulations allow all sorts of OHS specialists organisations usually still only have a work environment specialist, work environment representative and OH doctors. Other specialists are rarely seen, unfortunately;
- OH doctors' role is smaller than needed. The number of OH doctors who actually work at their field is critically low. Most of the OH doctors registered in Health Board registry don't work in the field, are retired or work abroad. Approximately 30 OH doctors are too few for our country;
- Different OHS/work environment specialists have duplicating duties;
- The problem is that in a lot of companies there isn't any of those work environment specialists or their qualification and additional training is unsatisfactory.

Regulations:

- There is no size limit for organisations for obligation to have a work environment specialist and first aid person employed;
- Work environment specialists can be the employer him/herself or any other employees (whom main duties are something else);
- Work environment risk analysis can be conducted by the employer or any other employees.

Training and OH service provision:

- work environment specialists', representatives' and council members' training and continuing education is insufficient. The level of training is weak (but the 120hr long work environment specialist training organised by EU was very motivating and interesting). Those 24hr courses are too theory oriented;

- Only a few training providers publish their course schedules on their homepage online. A lot of companies who offer OHS training courses only have 1-2 lecturers, but the number of topics offered is huge, so those lecturers cannot have practical experience in all of those topics and training consist basically just of references of regulations. The same goes about VET schools offering OHS courses;
- Not good enough education/training in the field of work safety, not enough research and out-dated literature;
- OH doctors' training system needs to be revised and supplement if needed, we should take our northern neighbouring countries as good examples;
- Price of OHS services varies a lot between providers. Clients tend to change OHS service providers often;
- The occupational disease centre should be restored; it'd bring together best OHS specialists.

27. What would you suggest to improve the system, get rid of these bottlenecks?

- Since different stakeholders have different interests all OHS topics should be discussed thoroughly between them and the politicians, the decisions needed and act on them. One should value civil society more in these processes and not only in words. Accept employees' opinions and suggestions in legislative drafting. Parliament members shouldn't be under employers' influence (a lot of them are also members of large companies boards), until then nothing's going to change. Organise a roundtable for government representatives and service providers to get to see the real view of the field today;
- Before laying down the legislation one should gather some practical knowledge/take account practitioners' opinions;
- Allocate money from state budget. No fringe benefits tax on expenditures on employees' health, sport activities. Review the sick leave financing scheme. OHS services should be included in Health Insurance Fund pricelist. Diagnosing occupational diseases can't be a responsibility for employees or employers, government funding is definitely needed;
- More training courses for everybody would be better informed (obligations, rights, reasons) and hopefully attitudes change. More online information, training manuals and practical guidelines (even video clips), manuals to help dealing with OHS issues in organisations. Already in basic/high school there should be basic OHS courses. All new employees should have compulsory introductory work safety training;
- Motivate employers to invest in improving work environment. How would employers finally understand that improving work environment is also investing in their employees' loyalty?
- Improve the quality of OHS services and training of OHS service providers, specialists in organisations. Maybe there should be a coordinating body for OHS guidance and training in order to develop some common ground in the field. Service/training providers should be divided by region of clients.

- OHS training should be a bachelor level study programme (or even master's degree);
- Develop a system for work accidents and occupational diseases. Establish occupational disease and accidents insurance;
 - More OHS field research and literature (in Estonian). (Re-)activate the Advisory committee on Working Environment;
 - Ministry of Social Affairs should do its job: develop the field, set goals, and implement them effectively;
 - Better control over:
 - Health checks;
 - Information and consultation with employees in OHS matters;
 - OHS service/training providers, training licences, lecturers' qualifications.
 - The control process of LI inspectors should also include guidance and explanations;
 - Employers should be obligated to conduct annual reports of their OHS activities;
 - The taxes should be lower if employers risk analysis indicators are better;
 - Engage GPs to OHS monitoring system. GPs should try to make sure if a diagnosis is related to patients work, notify LI inspector in case of suspicion of such connection. If such notifications pile up for an employer, inspectors should treat it as an indicator for the need to check the work environment and OHS situation in that organisation/company;
 - Separate health protection requirements for different occupations;
 - Raise LI inspectors' salary to higher than average pay and then request for them to do their jobs more effectively;
 - Opinion of an employer/federation of employers': It should be prohibited for LI inspectors/officials to ask a fee for their OHS training courses while it's actually their government salaried work time! It's not right they get paid double for the courses they themselves order employers to take (which often seems unnecessary and useless). Also inspectors should quit wasting time controlling details of white collar employees' work places and concentrate on checking the safety in actually hazardous and really dangerous work environments. "Every employee is equally important" is not an excuse for that, but the legislation supports this approach and doesn't allow for prioritizing occupations for control (and prevention) purposes. If that's not going to change, we are sorry we wasted a lot of time answering to your survey (of predetermined answers);
 - There should be ways to not allow for establishing companies without having conducted risk analysis and created a structure of work environment specialists. These should be the prerequisites of starting a business or at least it should be required to conduct risk analysis shortly after registering a company.

27a. Your additional opinions, comments on this topic:

- I've been on the field for a long time and given suggestions etc., so far none has been taken into account;

- There should be more information and materials available in internet for work environment specialists;
- These kinds of surveys should be organised together with employers and respondents should include also employees, that's the way to get real suggestions of how to improve the OHS situation;
- The sanctions for employers for not meeting the OHS requirements should differ by seriousness/repeatability of violations;
- In order to reorganise the whole OHS field in Estonia there should be a body for analysis, for example comparing employees' (general) illnesses occurring in companies and indentify possible (causal) connections with work place risk factors and planning measures to improve the situation.

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