

THE IMPACT OF THE STATE CONTROL REFORM IN THE FIELD OF SAFETY AND HEALTH AT WORK ON THE OCCUPATIONAL SAFETY OF EMPLOYEES IN THE REPUBLIC OF MOLDOVA

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- This Policy Brief is a follow-up to an analysis of the occupational safety reform, undertaken by the author in 2018 and aims to assess the progress of the reform, its expected results and the impact of the reform on the occupational safety and health situation of employees
- The Brief highlights the persistence of the shortcomings in the process of transferring of inspection control skills, characterized by the lack of a reliable mechanism for reconversion of these skills, the low institutional and technical capacity of the new authorities empowered with OSH control, lack of trained and qualified staff and labor inspectors
- According to updated statistical data, including from the ILO, changes to the occupational safety legislation have resulted in a worsening in the prevention of accidents at work and an increase in the number of work accidents, including fatalities

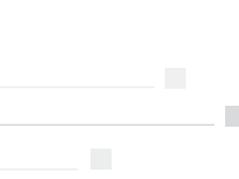
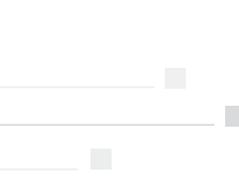


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List of Abbreviations

AAC	Civil Aviation Authority
AN	Naval Agency
ANRCETI	National Regulatory Agency for Electronic Communication and Information Technology
ANRE	National Agency for Energy Regulation
ANSA	National Agency for Food Safety
ANSP	National Agency for Public Health
ANTA	National Auto Transport Agency
APCSP	Agency for Consumer Protection and Market Surveillance
AST	Agency for Technical Supervision
CEACR	Expert Committee on Application of Conventions and Recommendations
CNPM	National Confederation of Employers of Moldova
CNSM	National Trade Union Confederation
ILO	International Labour Organization
IPM	Inspectorate for Environmental Protection
ISM	State Labour Inspectorate
MSMPS	Ministry of Health, Labour and Social Protection
OSH	Occupational Safety and Health
RM	Republic of Moldova
UE	European Union

EXECUTIVE SUMMARY

In the years 2016-2018 the Government of the Republic of Moldova initiated several legal initiatives and reforms whose stated purpose were to create a friendly business environment. These include the legislative changes aimed at reducing the state control over entrepreneurship in order to stimulate and advance the free initiative of small and medium-sized enterprises. The reform of the state control reorganization covered also the field of Occupational Safety and Health (OSH), by transferring the control competencies regarding OSH inspection activity from the State Labour Inspectorate (ISM) to 10 specialized sectoral authorities.

This policy brief is a continuation of an analysis on the occupational safety reform conducted by the author in 2018 and aims at assessing the progress of the reform, its expected results and the impact of the reform on the situation of employees in the field of safety and health at work.

The analysis highlights the persistence of shortcomings in the process of transferring the control competencies related to OSH inspection activity from ISM to 10 specialized sectoral authorities, characterized by lack of a reliable mechanism for reconversion of these competencies, reduced institutional and technical capacity of the new authorities empowered with the OSH control, lack of trained and qualified staff/ inspectors in the field. Mention should be made that the Reform of the state control in the field of OSH is in contradiction with the provisions of the International Labour Organization (ILO) Conventions to which the Republic of Moldova is a party and the commitments of the Moldovan Government under the RM-EU Association Agreement.

According to the latest statistical data and the data provided by the organizations in the area of protection of employees' rights, including ILO, the changes to the occupational safety and health legislation have led to a worsening of the situation in the prevention of accidents at work and to an increase in the work accidents, including fatal accidents, over the past three years. This trend continues also in 2019 (as of 22 March, 2019, ISM had 39 accidents under investigation, of which 22 were serious and 17 - fatal accidents).

As a recommendation, the optimal solution in order to improve the OSH situation as well as to ensure compliance with the ILO Conventions to which the Republic of Moldova is a party and the provisions of the EU-Moldova Association Agreement, is for the State Labour Inspectorate to remain the sole authority in charge of the state control over the occupational safety at work. However, if the decision is to continue with the reform, the consolidation of the functional capacities of the 10 competent authorities in the area of OSH in the shortest time possible, as well as the elimination of all legislative and institutional shortcomings identified, is imperative.

INTRODUCTION

In the years 2016-2018 the Government of the Republic of Moldova initiated several legislative initiatives and reforms whose stated purpose were to create a friendly business environment. These include the legislative changes aimed at reducing the state control over entrepreneurship in order to stimulate and advance the free initiative of small and medium-sized enterprises. The state control reorganization reform covered also the field of Occupational Safety and Health (OSH), by transferring the control competencies regarding OSH inspection activity from the State Labour Inspectorate (ISM) to other 10 specialized sectoral authorities.

In April 2018, in order to monitor the transition of ISM competences on state control over OSH and to assess the impact on the occupational safety of employees, the author made an analysis of the situation in the given field within a joint project of the Friedrich-Ebert-Stiftung Moldova and the Institute for Development and Social Initiatives (IDIS) "Viitorul". The analysis reviewed the entire process of the state control reorganization, the reasons for the initiation and implementation of the occupational safety and health reform, the purpose and stage of the transition of the ISM competences on the state control over OHS to other sectoral public authorities as well as the expectations and results of this initiative (if not at the practical, at least at the conceptual level).

The analysis revealed multiple shortcomings in the transition of competencies, characterized by lack of a reliable mechanism for reconversion of these competencies, limited institutional and technical capacity of the new authorities empowered with OSH control, shortage of trained and qualified staff/ labour

inspectors in the field, as well as by incompliance of the new amendments to the national legislation on OSH with the provisions of the International Labour Organization (ILO) Conventions to which the Republic of Moldova is a party.

Also, a series of recommendations have been put forward for the successful development and implementation of the Labour Inspectorate reform. Obviously, any reform requires time to be implemented, while implementation period may reveal deficiencies and shortcomings that are later to be removed. Therefore, the purpose was to analyse how the situation in the area of safety and health at works has evolved over the last year as well as the impact of the reform on the situation of employees. We also considered it important to discuss the short-, medium- and long-term implications of the reform and how the latter complies with safety and health standards at work.

As part of the research, interviews were conducted with decision-makers from the Ministry of Health, Labour and Social Protection, the State Labour Inspectorate, experts from the National Trade Union Confederation of Moldova and the National Confederation of Employers of Moldova, as well as with representatives of the International Labour Organization of Moldova. The period under review of this policy brief is April 2018 - April 2019.

The paper makes an assessment of the progress of the state control reorganization reform, the difficulties and shortcomings identified in the process of transferring the ISM competencies on the state control over the OHS to other sectoral public authorities, the expected results of the reform, and the impact of the reform on the occupational safety of employees.

BACKGROUND

The reorganization of state control started in 2017, when the Ministry of Economy and Infrastructure initiated a major reform aimed at reducing the administrative burden for enterprises in order to streamline the control procedures, to ensure the transition to a risk management based control system, to eliminate the overlapping state controls, to implement the principle of the existence of a single control agency per sector/ product and, implicitly, to improve the investment climate in the country.

Thus, by *Law No.185 of 21 September 2017*¹, amendments and additions have been made to a series of legislative acts, including:

- *Law on Safety and Health at Work no. 186 of 10 July 2008*²;
- *Law on the State Labour Inspectorate no.140 of 10 May 2001*³.

According to the aforementioned law, as of 27 October 2017, ISM was deprived of its control function over OSH, as well as of its competence of occupational accidents' research. These tasks have been transferred from ISM to ten competent specialized authorities, namely:

1. National Agency for Food Safety (ANSA);
2. Agency for Consumer Protection and Market Surveillance (APCSP);
3. Agency for Technical Supervision (AST);
4. National Agency for Public Health (ANSP);
5. Inspectorate for Environmental Protection (IPM);
6. National Auto Transport Agency (ANTA);
7. Civil Aviation Authority (AAC);
8. Naval Agency (AN);
9. National Agency for Energy Regulation (ANRE);
10. National Regulatory Agency for Electronic Communications and Information Technology (ANRCETI).

These agencies are to monitor the occupational safety issues of the enterprises in the respective areas. The labour inspectors within the competent authorities are responsible for the control over the observance of the safety and health at work standards in their area of competence.

As regards the ISM, it is responsible for the national coordination and monitoring of the state control over compliance with the legislation on occupational safety and health conducted by labour inspectors of the competent authorities in the field of occupational safety control⁴.

In other words, together with the introduction of new legislative changes⁵, ISM has been restricted the state control function, with inspectors being empowered only with the control over the observance of legal and other normative acts in the field of labour relations, **except for the safety and health at work**.

What followed?

- The number of ISM personnel was reduced from 109 to 73 units (in the case of territorial labour inspectorates this number decreased from 87 to 45 units), according to the *Government Decision no. 163 from February 2018*⁶;
- ☒ The process of transferring the 36 ISM staff with OSH control functions from ISM to the 10 competent authorities was initiated (*see Table 1, April 2018, on the next page*);
- ☒ As a result of the transfer, none of the 10 authorities were operational in OSH;
- A reliable mechanism for reconversion of the ISM competences in the area of OSH to these authorities was lacking;
- Only 4 of the competent authorities (AST, APC, ANSP, ANTA) had at that time Organizational and Operational Regulations in the area of OSH;

1 Art. XXXVI, Law no.185 of 21.09.2017 on the amendment and completion of some legislative acts; In: Official Monitor of RM no. 371-382 of 27.10.2017, <http://lex.justice.md/md/371983/>

2 Law on Safety and Health at Work no.186 of 10.07.2008; In: Official Monitor of RM no.143-144 of 05.08.2008, <http://lex.justice.md/viewdoc.php?id=328774>

3 Law on the State labour Inspectorate no.140 of 10.05.2001; In: Official Monitor of RM no. 68-71 of 29.06.2001, <http://lex.justice.md/index.php?action=view&view=doc&id=312768>

4 Art.23¹ of the Law on Safety and Health at Work no.186 of 10.07.2008, modified by Law no.245 of 15.11.2018, in force since 12.01.2019

5 Art. XXXVI Law no.185 of 21.09.2017 on the amendment and completion of some legislative acts; In: Official Monitor of RM no. 371-382 of 27.10.2017, <http://lex.justice.md/md/371983/>

6 Government Decision no.163 of 23.02.2018 on the amendment of some Government decisions; In: Official Monitor of RM no.67 of 28.02.2018, <http://lex.justice.md/md/374484/>

- Not all agencies were staffed and trained. The personnel transferred to the competent authorities carried out basic control activities in the fields of activity of the authorities, while the control duties in the field of occupational safety and health were assigned as additional functions;
- There was a discrepancy between the new changes to the national OSH legislation and the provisions of the ILO Conventions⁷ to which the Republic of Moldova is a party. At present, out of the 26 Directives included in Annex 3 of the EU-Moldova Association Agreement, only 13 EU Directives in the area of safety and health at work have been transposed into national legislation⁸;
- Employees of certain competent authorities (eg ANTA, ANRE, ANRCETI) did not have *civil servant status*, as provided by the ILO Convention No.81 according to which "labour inspectors are civil servants";
- Not all competent authorities have territorial units/ offices, nor offices specifically designated for occupational safety inspectors;
- There have been no „e-learning” training activities for new OSH specialists from these 10 specialized authorities⁹.

Reorganization of the state control in the field of occupational safety and health has compromised the labour accident investigation process, causing conflict of competencies in the field of occupational safety. This despite the fact that at the end of February 2018, the task of investigating accidents at work was temporarily (until June 15, 2019) transferred back to the State Labour Inspectorate following the amendment of the *Government Decision no.1361 of 22.12.2005 on the approval of the Regulations on how to investigate accidents at work*¹⁰ and in compliance with the Law no.79 from 24.05.2018¹¹).

⁷ The provisions of the ILO Conventions state expressly that the labour inspection system is under the control of a single central authority.

⁸ Association Agreement between the Republic of Moldova and the European Union, <http://www.mfa.gov.md/img/docs/Acordul-de-Asociere-RM-UE.pdf>, p.620-626

⁹ According to the Medium Term Budget Framework (2019-2021, p.100), the e-learning system should be implemented starting with 2019 and should contain a ISM/ SSM module <https://mf.gov.md/sites/default/files/documente%20relevante/CBTM%20%282019-2021%29%20-%20ro.pdf>

¹⁰ Government Decision no.1361 of 22.12.2005 for the approval of the Regulations on the method of investigating accidents at work; In: Official Monitor of RM no.67 of 28.02.2018, http://lex.justice.md/document_rom.php?id=1BAAE26A:69C4E2DA

¹¹ Law no. 79 of 24.05.2018 on the amendment and addition of several legislative acts; Art. CCLXXVIII, In: Official Monitor of RM no.195-209 from 15.06.2018, <http://lex.justice.md/md/375880%20/>

Table 1. Distribution of inspectors and efficiency of the competent authorities

April 2018				Authority	April 2019				
Nr. of units to be transferred to the competent authorities	De facto no. of inspectors transferred from ISM	Occupation at the moment	Functionality in occupational safety		De facto no. of inspectors	Organizational and Operational Regulations	Functionality in occupational safety		
State Labour Inspectorate	10	9	Employed in other positions than labour inspectors	Non-functional	ANSA	9	approved	Functional (without investigating work accidents)	
	4	-		Non-functional	ANSP	1	approved	Functional (without investigating work accidents)	
	4	3	Assigned with control duties in the field of safety and health at work	Non-functional	APCSP	2	approved	Functional (without investigating work accidents)	
	4	-		Non-functional	IPM	3	approved	Functional (without investigating work accidents)	
	4	4	Assigned with control duties in the field of safety and health at work	Non-functional	ANTA	4	approved	Functional (without investigating work accidents)	
	1	-		Non-functional	AAC	1	approved	According to Article 21 (7) of the Law no.131 of 8 June 2012: „... the control shall be carried out by at least two inspectors, delegated by one control body or by several control bodies in the case of joint controls”.	Functional (without investigating work accidents)
	1	-		Non-functional	AN	1	approved		Functional (without investigating work accidents)
	1	-		Non-functional	ANRE	1	Approved, but occupational safety is not included		Functional (without investigating work accidents)
	3	-	Have no tasks of labour inspectors	Non-functional	ANRCETI	4	Not approved	Non-functional (without investigating work accidents)	
	10	2	Employed in other positions than labour inspectors	Non-functional	AST	9	approved	Non-functional (without investigating work accidents)	
36	18				34				

Source: developed by the author based on the data and information briefs provided by ISM

CURRENT SITUATION IN THE FIELD OF OCCUPATIONAL SAFETY AND HEALTH (April 2018-April 2019)

Until introduction in April 2017 of legislative changes on the reorganization of state control, one of the main objectives of the State Labour Inspectorate was to ensure application of labour law provisions, including those related to the safety and health at work.

Currently, together with the amendment of the Law no.131 of 08.06.2012 on state control over entrepreneurial activity, the state control exercised by ISM is reduced only to "Compliance with the legal provisions regarding the labour relations, observance of the correctness of establishment, calculation and payment of social security allowances" (see the Annex to this Law¹²).

Limiting the ISM's control competencies on occupational safety and health and delegation of these powers to 10 authorities is a unique model both in Europe and in the world. Viewed from the perspective of other countries' experience, as we have assumed in the first study on this research topic, the reorganization of ISM can lead to a failed reform, as it was the case of Georgia¹³. Together with the transfer of OSH control functions to different ministries, Georgia has seen an alarmingly increased rate of fatal accidents at work, while control over working conditions, particularly in hazardous industries, has been compromised by the chaos of competences between ministries.

In order to reduce such possible risks in the Republic of Moldova, the Government has decided to temporarily give back the State Labour Inspectorate the accident research attributions starting with 15 June 2018 for a period of one year¹⁴. In this context, the following questions seem reasonable: What will

happen after the expiry on 15 June 2019 of the additional transitional period of ISM competencies in the field of safety and health at work? How prepared and competent are the 10 authorities to whom the control functions will be delegated to ensure quality, timely and relevant OSH inspection activity? How is the dynamics of work accidents going to change?

Activity of the State Labour Inspectorate during the transition of competences in the field of OSH

Since the establishment of ISM until present, the role and contribution of the state control in the area of OSH conducted by this public institution cannot be contested. This was also demonstrated statistically (in the first research on this issue) when the timely intervention (planned and unannounced) of ISM inspectors in the prevention of occupational hazards has led to a certain discipline on the part of the employer regarding the organization and conduct of workers' protection activities. At present, statistics shows that changes to the occupational safety legislation have led to a worsening in the prevention of occupational injury risks over the past three years (see Table 2). This trend is continuing in 2019. Thus, on 22 March 2019, ISM reported 39 accidents, of which 22 were serious and 17 were fatal.

This negative trend is explained by:

- introduction in 2016 of the 6-month state moratorium on the control over enterprises;
- transfer in 2017 of OSH control competences from ISM to 10 different authorities;
- modifications to the *Law no. 131 of 8 June 2012 on state control over entrepreneurial activity*, according to which the State Labour Inspectorate exercises control only with regard to labour relations, its state control function in the field of OSH having been withdrawn.

According to the ISM Activity Report for 2018, the Inspectorate has undertaken several collaborative actions with the competent authorities in the field of occupational safety control as part of the transition process of the ISM competencies to them. Thus, all these authorities were provided with models of inspectors' job descriptions. They have also been provided with an Activity Regulations for the terri-

12 http://lex.justice.md/UserFiles/File/2018/mo126-132md/anexa_131.doc

13 IAȚCO Mariana, Impact of state control reform on occupational safety and health, http://fes-moldova.org/fileadmin/user_upload/2018/publications/Policy_brief_Reforma_ISM_rom.pdf

14 Art. CCLXXVIII, Law no. 79 of 24.05.2018 on the amendment and completion of several legislative acts; In: Official Monitor of RM no.195-209 of 15.06.2018, <http://lex.justice.md/md/375880%20/>

Table 2. Number of reported work accidents

	2015	2016	2017 ¹	2018 ²	January-March 2019 ³	
No of reported work accidents	411	449	394	416	No of reported work accidents	98
Number of work accidents victims	441	371	448	503 ⁴	Number of work accidents victims	98
Rate of work accidents, %	0,76	0,66	0,79	0,88	<i>of which fatal accidents</i>	17
of which fatal accidents	0,057	0,052	0,073	0,067	<i>serious accidents</i>	22

Source: developed by the author on the basis of the NBS Statistical Yearbook data and the ISM Activity Report for 2018, 2019

1 Statistical Yearbook of the Republic of Moldova 2018. National Bureau of Statistics, p.83, http://statistica.gov.md/public/files/publicatii_electronice/Anuar_Statistic/2018/Anuar_statistic_2018.pdf

2 Report on the activity of the State Labour Inspectorate in 2018, <http://www.ism.gov.md/ro/content/raport-anual>

3 Monthly Report of the State Labour Inspectorate, January-March 2019, <https://ism.gov.md/ro/content/raport-lunar>

4 Work accidents victims, 1995-2018. www.statistica.md

torial labour inspection as well as with work forms (*Safety and Health at Work Checklist*) and Monthly Occupational Safety Reporting forms (*typical forms*). An initial training of the employees of ANRCETI, ANRE, APCSP and AST tasked with occupational safety was carried out.

However, during the research period shortcomings in the transition process of OSH competences have been identified of which:

- 2 out of the 10 competent authorities do not have *Organizational and Operational Regulations* providing for control duties in the field of occupational safety;
- 2 out of the 10 competent authorities do not have *State Control Methodologies over entrepreneurial activity* based on risk analysis in the areas of competence;
- 6 out of the 10 competent authorities did not submit to the State Labour Inspectorate the *forms of labour inspectors* with control responsibilities in the field of occupational safety (ANSA has submitted forms for 9 inspectors, ANRCETI - for 3 inspectors, AST - for 8 inspectors, APCSP - for 3 inspectors);
- 2 (AAC and AN) out of the 10 competent authori-

ties did not approve staffing¹⁵. Accordingly, there are no subdivisions or personnel responsible for conducting state control in the field of occupational safety. Thus, there is no activity in this area. (see *Table 1, April 2019 section*);

- 3 (AAC, AN and ANRE) out of the 10 competent authorities have only one inspector, while according to art. 21 paragraph (7) of the *Law no.131 of 08 June 2012*¹⁶, "... the control shall be carried out by at least two inspectors, delegates from the same control body or from several control bodies, in the case of joint controls." In the case of one single inspector, the control cannot be carried out because it is contrary to the legal norms. Moreover, the legal entity subject to control is entitled to refuse access to the inspector for the joint control;
- None of the 10 competent authorities had *Control Plans for the year 2018*; only 6 out of 10 authorities have *Control plans for 2019*. The authorities lagging behind in this respect are the following: AN, ANRE, ANRCETI and AAC. Despite the fact that those 6 competent authorities have *Control Plans for 2019*, controls were not carried out. One

15 For comparison, on 1 January 2018, none of the 10 competent authorities had personnel.

16 Law no. 131 of 08.06.2012 on state control over In: Official Monitor of RM no.181-184 from 31.08.2012, <http://lex.justice.md/md/344613/>

Table 3. Indicators „Safety and health at work”

Republic of Moldova	2016	2017	2018
Indicators			
Non-fatal occupational injuries per 100'000 workers	61	72	-
Day lost per occupational injury	12997	15199	-
Fatal work accidents per 100 000 employees	5.2	7.3	-
Inspectors per 10'000 employed persons	6	6	-
Labour inspection visits per inspector	58	48	-

Source: ILOSTAT. OIM. 2016-2018, www.ilo.org

of the reasons for that is the *malfunctioning of the State Control Register*¹⁷ which was to be applied starting from 1 April 2019. The official website of the State Control Register¹⁸ contains incomplete information (access date: 13 May 2019);

- Regarding the staff with powers to carry out work accidents research, currently, the following number of persons operate within ISM:
 - 4 persons in the headquarters;
 - 4 persons in the territorial labour inspectorates compared to 10 persons with such powers prior to the reform;

- Since 28 April 2017 and during 2018, the labour inspectors from the 10 authorities **have not carried out a single state control** on compliance with occupational safety and health standards.

The consequences of the absence of inspections in the field of occupational safety are reflected also in the annual ILO statistics which show an alarming increase in the fatal workplace accidents rate in the Republic of Moldova. While in 2016 this rate was 5.2 per 100 thousand workers, in 2017 it increased to 7.3¹⁹. The figure is three times higher than the European Union average (2.3). For the year 2018, ILO did not provide data. (see Table 3).

17 Government Decision no.464 of 23.05.2018 on approval of the Regulations on the maintenance of the State Control Register; In: Official Monitor of Republic of Moldova no.167-175 of 25.05.2018, <http://lex.justice.md/md/375583/>

18 Checklist of Controls of the State Control Register of, <https://controale.gov.md/grafice-de-control>

19 ILOSTAT ILO 2016-2018, https://www.ilo.org/ilostat/faces/ilostat-home/download?_adf.ctrl-state=1vjnq69pd_254&_afLop=4087998962160701#!

Measures taken by the Moldovan Government in order to eliminate the contradictions between the national legislation and the provisions of the ILO Convention on Labour Inspection

Between 28 May and 08 June 2018, Geneva held the 107th Session of the International Labour Conference, where a Report of the Committee on Application of Standards regarding the application of conventions and recommendations was drafted²⁰. As a result of the evaluation of the national reform in the field of OSH, ILO has presented the Moldovan Government with several requirements regarding the compliance with the ILO Conventions to which the Republic of Moldova is a party.

Mention should be made that the Republic of Moldova, as a member of the International Labour Organization, has adhered to the norms of international law and ratified a number of ILO Conventions. These include *Convention No. 81/1947 on Labour Inspection in Industry and Trade*²¹, ratified by Parliament on 26 September 1995, and *Convention No. 129/1969 on Labour Inspection in Agriculture*, ratified on 26 September 1997²².

- Previously, the author of this paper analysed the discrepancies between the new changes to the national legislation on OSH and the provisions of the ILO Conventions²³. In broad terms, they aimed at:
- Supervision and control of the labour inspection system by a central authority;
- Cooperation with the judiciary and appropriate sanctions for violation of legal provisions applied by labour inspectors;
- Unannounced controls;
- Confidentiality regarding the inspection visit as a result of a referral/ complaint;

- Performing control visits whenever necessary to ensure effective enforcement of relevant legal provisions;
- Prompt legal or administrative procedures;
- Appropriate training of labour inspectors in agriculture.

We find that during the reference period, the Government of the Republic of Moldova did not take measures to ensure the compatibility of the national legislation with the provisions of the Conventions no. 81/1947 and 129/1969 of the ILO. In order to argue this observation, we start from the following findings:

- The return of competencies for work accident research back to the Labour Inspectorate *is temporary* and expired on 15 June 2019. This organizational measure is not in line with the recommendations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) nor with the provisions of the *ILO Conventions no. 81/1947 and 129/1969*;
- According to *Government Decision no.1472 of 30 December 2016*, the Government of Moldova *re-affirmed its commitment* to effectively implement both in the legislation and in practice the priority fundamental conventions and other ILO Conventions ratified by the Republic of Moldova. For the above purposes, by the end of Q1, 2018, a draft law was to be drafted in order to adjust the national legislation to the provisions of the ILO Conventions No. 81 and No. 129 and to preserve in an integrated format the State Labour Inspectorate. (*see Annex 1 "Extract from the National Action Plan for the Implementation of the Moldova-EU Association Agreement in the period 2017-2019"*). Neither CEACR nor CNSM know about such a bill;
- In April 2018, the National Commission for Consultations and Collective Bargaining recommended to the Ministry of Economy and Infrastructure to set up a working group to include relevant institutions in the field of OSH, as well as representatives of CNSM and CNPM, in order to identify solutions to existing problems in the field. Such a working group with participation of trade unions representatives has not been established;

The provisions of the ILO Conventions no. 81 and No. 129 on unannounced controls and on carrying

20 Provisional Record, Third item on the agenda: Information and reports on the application of Conventions and Recommendations. Report of the Committee on the Application of Standards. Part two (9B), International Labour Conference, 107th Session, 2018; p.63, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_631799.pdf

21 Conventions of the International Labour Organization in the field of work ratified by the Parliament of the Republic of Moldova, <http://ism.gov.md/ro/legisla%C5%A3ia>

22 Ibidem

23 IAȚCO Mariana, Impact of state control reform on occupational safety and health, p.15-17, http://fes-moldova.org/fileadmin/user_upload/2018/publications/Policy_brief_Reforma_ISM_rom.pdf

out of control visits whenever necessary cannot be implemented because of the last modifications to the *Law no.179 from 26.07.2018 on the amendment of several legislative acts, in force since 17.08.2018*, which amended the *Law no. 131/2012 on state control over entrepreneurial activity*.

The modifications provide for new restrictions on both planned and unannounced control visits:

- When carrying out planned or unannounced controls, the controlling authority shall request from office the documentation and other information from the controlled entity.
- Only if the documentation and information necessary to determine compliance with the legislation by the supervised person have not been submitted within 5 working days, the control body shall carry out on-the-spot controls.

Safety and health at work is a widely promoted topic by trade unions, but also a field that the European Union pays special attention to - at the level of the EU states, the European Agency for Safe-

ty and Health at Work was set up²⁴. The role of the Agency at the Member State level is to develop, gather and disseminate reliable and relevant information, analyses and tools aimed at raising public awareness, including among institutions and staff, and to exchange information and good practice on OSH.

In conclusion, the institutional reform of the state control in the field of safety and health at work cannot be sustained or accepted without respect for international labour standards regulated by the ILO. So, the Government of the Republic of Moldova is expected to take concrete and effective measures to examine all findings, conclusions, comments, recommendations, requests and appeals of CEACR, trade unions, experts, using the ILO experience in this process in order to improve the situation.

In this respect, the Government should not neglect the fact that at the International Labour Conference in May-June 2018, the Republic of Moldova was asked to provide detailed information on the application of Conventions no. 81 and No. 129²⁵. The selection of the Republic of Moldova in this respect was made on the basis of criteria such as *gravity and persistence of problems*, urgency of the situation, quality and extent of the Government's response or the lack of response from the latter to the issues addressed by CEACR.

24 EU-OSHA, <https://osha.europa.eu/ro>

25 Provisional Record. Third item on the agenda: Information and reports on the application of Conventions and Recommendations. Report of the Committee on the Application of Standards. Part two (9B), International Labour Conference, 107th Session, 2018; https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/p.69

Shortcomings registered during one year of occupational safety reform

As part of this research several interviews with representatives from the field of occupational safety and health were conducted to find out their opinion on OSH reform during the reference period.

Thus, *all relevant public institutions have practically admitted that the process of transition of OSH control competences to the 10 authorities is difficult and complicated.*

These observations were summarized and reproduced in Table 5.

Table 5. Findings of Public Institutions in the field of OSH on the progress of the Institutional Occupational Safety System Reform, April 2018 - April 2019

Public authority	Observations and findings during the reference period
<p>Ministry of Health, Labour and Social Protection</p>	<ul style="list-style-type: none"> • The inspectors from ANRE and ANRCETI do not have civil servant status; • ANRE and ANRCETI do not use the instruments (<i>Regulations, Plans, Instructions</i>) for the enforcement of the Law no.131 on state control over the entrepreneurial activity, respectively they will not use the State Control Register; • Only two competent authorities - ANSA and AST - have territorial subdivisions; • ANRE, AAC and AN will not be able to carry out controls, as only one inspector unit has been provided in the personnel structure; • There is a risk that the number of yearly controls carried out by a competent authority will increase because of the different control planning methodologies covering their field of activity, on the one hand, and occupational safety, on the other hand. At the same time, the risks are different, while the OSH research procedures for the 10 competent authorities are not clear, complete and integrated; • As a result of the request from the 10 competent authorities to submit information on the reform implementation on a weekly basis, there was a low interest on the part of the authorities to report systematically. This situation cannot be influenced because <i>9 out of the 10 authorities are not subordinated to MSMPs.</i> • As regards the new restrictions for both planned and unannounced control visits (the amendments to the Law no.131/2012 contradict Article 12 of the ILO Convention no.81, which provides that <i>labour inspectors have the right to enter freely, without prior notice, at any hour of the day and night, any undertaking subject to inspection</i>), MSMPs submitted in October 2018 a request to the Ministry of Economy and Infrastructure to adjust the legal framework to the ILO Conventions and to remedy the situation outlined above. So far no answer has been received from the Ministry of Economy and Infrastructure.
<p>State Labour Inspectorate</p>	<ul style="list-style-type: none"> • This reform is being implemented with many gaps and shortcomings, among which: <ul style="list-style-type: none"> ➢ existence of conflicts and competency decline within the 10 authorities with regard to occupational safety control; ➢ personnel issues at the level of competent authorities; ➢ the need to develop OSH checklists by the new competent authorities;

Public authority	Observations and findings during the reference period
	<ul style="list-style-type: none"> ➤ the need to develop the State Control Methodology over entrepreneurial activity by these authorities; ➤ the need to develop Control Plans for the year 2019 by the 4 authorities lagging behind (AN, ANRE, ANRCETI and AAC); ➤ impossibility of carrying out qualitative controls over occupational safety because of limited competence in the field of OSH <ul style="list-style-type: none"> • Immediate implementation of the <i>e-learning</i> system. The question of financing its implementation remains open. The reasons are unknown why the World Bank, as the project sponsor, does not advance in the dialogue with the Moldovan authorities in this respect. The implementation will allow for: <ul style="list-style-type: none"> ➤ continuous training of state labour inspectors from the competent authorities in applying OSH standards; ➤ enhancing training for employers/ entrepreneurs with regard to OSH standards and requirements.
<p>National Confederation of Employers of Moldova</p>	<ul style="list-style-type: none"> • Adopted a standpoint on the effects of the reform by the end of 2019; • Shows disappointment by the reform, because of the inconsistencies between international conventions and national legislation; • Admits that the competent agencies are dysfunctional, while ISM has lost its control capacity over safety and health at work. Also, the new authorities lack qualified staff in the field of OSH; • Employers/ entrepreneurs find it more difficult to manage safety and health at the economic entity level. • The gaps in the reform are explained by the institutional fragmentation of OSH authorities (for example, if until the reform there was only one competent authority responsible for occupational safety – ISM, at the moment there are 10 competent authorities, which is confusing the entrepreneurs with regard to OSH).
<p>National Trade Unions Confederation of Moldova</p>	<ul style="list-style-type: none"> • Advocates maintenance of the integral format of ISM with regard to the control tasks in the field of occupational safety and health as well as in the field of labour relations; • Reported that the measures taken by the Government in the field of labour inspection did not ensure compliance of the national legislation (<i>Law no.140/2001 and Law no.131/2012</i>) with the provisions of ILO Conventions No. 81 and 129. Also, little attention was paid to the findings and recommendations of the ILO Tripartite Commission Report on Moldova's failure to comply with Convention no. 81; • Believes the institutional reform of the national labour inspection system cannot be sustained or accepted without complying with the International Labour Standards; • Following the recommendations of the National Commission for Consultations and Collective Bargaining to create a working group to include competent institutions in the field of OSH, representatives of the National Trade Union Confederation and of the National Employers Confederation, in order to identify solutions to the existing problems in the field, such working group has not been established.

Public authority	Observations and findings during the reference period
	<ul style="list-style-type: none"> • Shows concern about the real situation of safety and health at work in the Republic of Moldova. Given that starting 15 June 2019, the 10 competent authorities in the area of occupational safety will take over the research tasks in the case of fatal and serious work accidents, it have signalled several risks in accomplishing this task, and namely: <ul style="list-style-type: none"> ➢ Lack of a clear communication mechanism with the control authorities about occurrence of work accidents (for employers, employees and employees of medical institutions); ➢ Lack of territorial units and offices as well as of specifically designated offices for inspectors in accordance with the provisions of the international conventions, which compromises the process of cooperation with the territorial units of the State Labour Inspectorate, as well as the on-the-spot investigations of work accidents, occupational safety and health controls (except for the National Food Safety Agency and the Technical Supervision Agency); ➢ Lack of personnel/ labour inspectors with duties in the field of safety and health at work in the case of authorities with control competences; ➢ Low professional capacities of labour inspectors with duties in the field of safety and health at work; ➢ Lack of civil servant status personnel in the case of some authorities (this contradicts Article 6 of ILO Convention No 81, which states that „the inspection staff shall be composed of civil servants”).
International Labour Organization	<ul style="list-style-type: none"> • Expressed concern about the opportunity and quality of the initiated reform; • Currently, it has a neutral stance on the labour inspection reform, monitoring the process; • Is reserved as to the expiry on 15 June 2019 of ISM’s competence to investigate accidents at work. The experts are dubious about what is going to happen after expiry of this temporary competence; • Conceptually, it does not support the current labour inspection reform.

CONCLUSIONS AND RECOMMENDATIONS

There is one year since the author's first research on this issue. The period under research has been one of the most difficult times for the occupational safety and health since the launch of reform. This is characterized by institutional and competency disbandment in the field of OSH; lack of labour inspectors within the 10 competent authorities; withdrawal and then temporary return to the State Labour Inspectorate in 2018 of competencies for investigating serious and fatal accidents until 15 June 2019; reduced institutional capacity in the field of occupational safety of the 10 authorities; dissonance between the new amendments to the national legislation on OSH and the provisions of the ILO Conventions to which the Republic of Moldova is a party.

In spite of the Government's commitments to remediate the situation in this area and to remove the deficiencies in the process of transition of the ISM competencies to the 10 authorities in order to create a controlled and functional environment, we find that the occupational safety and health **remains vulnerable**, while in the case of fatal and serious accidents, **the situation is alarming**.

This conclusion is based on the following observations and findings:

- During the moratorium on the state control (2016) and the reform of the national labour inspection system (starting in 2017), the rate of fatal accidents at work per 100 thousand workers increased by 2.1%, from 5.2 % in 2016 to 7.3% in 2017²⁶;
- Interruption of investigating into the work accidents in October 2017 and the indiscipline of employers on organizing and conducting employee protection activities, as well as on the failure to immediately communicate or conceal the work accidents. In order to prevent the occurrence of work accidents, it is necessary to carry out planned and unannounced controls, which have the effect of preventing accidents and disciplining the employers;
- Not all competent authorities have Control Plans for 2019 (AN, ANRE, ANRCETI, AAC), while

those that have them have implementation shortcomings;

- The State Control Register remains inoperable (*at least this was the case on 13 May 2019*). The official website of the Register lacks information under the headings "Planned controls" and "Unannounced controls" for the 10 competent authorities;
- The state control reform in the field of safety and health at work has led to conflicts and declines with regard to the competencies of the authorities with occupational safety responsibilities. Consequently, there is a risk that the number of controls carried out by a competent authority will increase as they have to carry out controls both in their field of activity and in the field of occupational safety and health;
- AAC, ANRE and AN have provided only one inspector unit for their staff structure. (*see Table 1, April 2019*), while rigorous legislation establishes the need for at least 2 inspectors;
- Only two out of the ten competent authorities have territorial subdivisions (ANSA and AST). This points out to the *reduced institutional capacity in the area of OSH of competent authorities*;
- The compliance of the national legislation in the field of occupational safety with the provisions of *ILO Conventions No. 81 and 129* to which the Republic of Moldova is a party is not ensured. This happens despite the fact that the Moldovan Government reaffirmed its commitment to implement the ILO ratified basic conventions. Moreover, it has committed to keeping the State Labour Inspectorate in integrated format (*see Annex 1*). Currently, neither the trade unions nor experts know about the existence of any draft law in this regard.
- Mention should be made that according to the ILO Convention No.81, "*labour inspectors are civil servants*", while at present the staff of some competent agencies (ANRE, ANRCETI) have no civil servant status yet;
- There is evidence of *delays in the implementation of the "e-learning" training system* for the labour inspectors of competent authorities under the supervision of ISM. This happens despite the fact that the Government of Republic of Moldova approved on 20 August 2018 the *Medium-Term*

26 The average rate in the EU is 2.3%

*Budgetary Framework (2019-2021)*²⁷, indicating the terms and the amounts of money for the creation, maintenance and permanent updating of the e-learning system with the component: "Labour Force";

- According to the legal framework, MSMPS is the central specialized body of the public administration, which ensures "coordination, supervision and control of the public administration activity in the fields of activity entrusted to the Ministry"²⁸. However, 9 out of the 10 authorities are not subordinated to the MSMPS, which results in the lack of an institutional connection and central executing authority that would ensure effective coordination, including in the regular presentation of reports on the implementation of OSH policies;
- There are considerable doubts as to the quality of the investigations into the fatal and serious labour accidents conducted by the 10 institutions after 15 June 2019, when the ISM's research competences will be reassigned to these authorities.

Based on the above-mentioned findings, we come up with the following recommendations with a view to streamlining the reform of the state safety and health control system:

The State labour Inspectorate should remain the sole authority responsible for the state control in the area of occupational safety. This fully corresponds to the norms and practices of the ILO and EU Conventions that the Republic of Moldova committed to implement. An alternative would be for ISM to remain only with control duties *in the field of occupational safety*, while the powers of control *in the field of occupational health* to be delegated to ANSP.

If it is decided to continue the reform, it is recommended that all existing institutional and functional loopholes and discrepancies be resolved, and namely:

- Completion of all the control bodies responsible

for occupational safety and health with the necessary personnel and organization of training for the personnel in the areas of competence;

- Provision of the 10 competent authorities with offices/ territorial offices and their furnishing with the necessary equipment;
- Immediate implementation of the *e-learning system* and of the State Control Register, as well as ensuring their functionality;
- Return to the practice of *unannounced controls* (in compliance with ILO Conventions);
- Granting *civil servant status* to all personnel in the occupational safety inspection system (according to ILO Conventions);
- Elaboration of Checklists on OSH, State Control Methodology on entrepreneurial activity, Control Plans for the reporting year by the competent authorities;
- Submission to the ISM as soon as possible by all competent authorities of the Forms of Labour Inspectors in charge of occupational safety control;
- Coordination among competent authorities on safety and health at the workplace, as well as coordination of the interaction between these authorities and ISM. For this purpose, it is necessary to develop and present to ISM the lists of units carrying out entrepreneurial activity in the field of activity of the respective competent authorities in the area of occupational safety, according to the type of activity practiced.

In conclusion, we have to restate that the Republic of Moldova has undertaken several commitments within ILO, but also within the EU-Moldova Association Agreement, on transposing OSH directives into national legislation without diminishing the social rights of its citizens, admitting that the completion of the state control reform in the area of OSH will require significant additional material and human resources in order to ensure proper functioning of all competent authorities throughout the country.

27 Government Decision No. 851 of 20 August 2018 on the approval of the medium-term budgetary framework (2019-2021), p.100, <https://mf.gov.md/sites/default/files/documente%20relevante/CBTM%20%282019-2021%29%20-%20ro.pdf>

28 Government Decision of the Republic of Moldova no. 694 of 30.08.2017 on the organization and functioning of the Ministry of Health, Labour and Social Protection; point 9, paragraph 4), <http://lex.justice.md/md/371189/>

ANNEX 1

Extract from the National Action Plan for the implementation of the Moldova-EU Association Agreement in the period 2017-2019²⁹

Standards and multilateral labour agreements

p.365 The Parties recognize that full and productive employment and decent work for all are key elements of globalization management and reaffirms its commitment to promoting the development of international trade so as to contribute to full and productive employment and decent work for all. In this context, the Parties undertake to consult and cooperate, as appropriate, on commercial issues of common interest in relation to employment.

(3) The Parties reaffirm their commitment to effectively implement in their legislation and in practice the fundamental, priority and other ILO Conventions ratified by the Member States and respectively by the Republic of Moldova	<i>Action</i> LT1. Act for modification The draft law for amending and completing the Law no. 131 of 8 June 2012 on state control over entrepreneurial activity and the Law no.140-XV of 10 May 2001 on the Labour Inspectorate with a view to adjusting to the provisions of the International Labour Organization Conventions (81) on labour inspection (129) and on labour inspection in agriculture, as well as with a view to preserving the State Labour Inspectorate in an integrated format (control tasks in the field of safety and health at work and in the field of labour relations)	<i>Indicator:</i> Law in force	<i>Responsible:</i> Ministry of Economy and Infrastructure; Ministry of Health, Labour and Social Protection	<i>Deadline:</i> Q I, 2018	<i>Resources:</i> Within the budget limits of the authority

²⁹ Government Decision no.592 of 23.06.2018 on the approval of the amendments and additions to the Government Decision no. 1472 of 30 December 2016; In: Official Monitor of RM no. 225-234 of 28.06.2018, <http://lex.justice.md/md/376151/>

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