

position paper on OSH LAW in Georgia

Summary

The new Georgia Law on OSH as adopted by the Parliament in February 2018, is an effort to put global OSH principles in practice based on the basis of EU OSH Directives and ILO OSH Conventions and Recommendations. After a profound reform of the labour legislation by the Government back in early 2000 that dismantled the existing OSH system, including the dissolution of the OSH inspection, Georgia remained for years in a vacuum regarding occupational safety and health at work. Efforts to maintain acceptable protection levels of workers were based on voluntarism by companies and/or international standards and certificates.

The overall assessment of the Law on OSH shows that parts of it are entirely theoretically and would fail a test with reality in the field, probably due to a lack of experience and knowledge of state of the art OSH policies. Some provisions are only partially implementing guiding EU and international OSH-principles. In order to be effective and efficient and to ensure a sufficient level of protection of workers and a level playing field for businesses, private and public, additional efforts and mechanisms should be put in place through means of a dialogue with all actors concerned, and in the first place the representative organizations of employers and workers.

These measures and mechanisms should include, a.o.:

- The installation of a bipartite/tripartite structure to advise and assist in the preparation, implementation and supervision of the OSH law and OSH policies/actions;
- A transition period for the implementation of key elements of the law (risk assessment, OSH specialist, information and training,...);
- Leading by example by all governments and government institutions.
- Setting up an Inspection based on shared ownership, credibility and transparency and with a focus on support, assistance and guidance for prevention.
- The implementation of the recommendations mentioned further on in this position paper.

Statement of the issue

Georgia's main economic activities include cultivation of agricultural products such as grapes, citrus fruits, and hazelnuts; mining of manganese, copper, and gold; and producing alcoholic and nonalcoholic beverages, metals, machinery, and chemicals in small-scale industries. The country imports nearly all of its needed supplies of natural gas and oil products. It has sizeable hydropower capacity that now provides most of its electricity needs.

The country is pinning its hopes for faster growth on a continued effort to build up infrastructure, enhance support for entrepreneurship, simplify regulations, and improve professional education, in order to attract foreign investment and boost employment, with a focus on transportation projects, tourism, hydropower, and agriculture. In mid-2014, Georgia concluded an association

agreement with the EU. In 2017, Georgia signed Free Trade Agreement (FTA) with China. Georgia is seeking to develop its Black Sea ports to further facilitate East-West trade.

Some figures:

- GDP per capita: \$10,600 - agriculture: 9.6% - industry: 23.4% - services: 66.2% (2017 est.) (country comparison to the world: 136)
- Industrial production growth rate: 7% (2017 est.) (country comparison to the world: 26)
- Labor force: 1.998 million (2016 est.) (country comparison to the world: 125)
- Labor force - by occupation: agriculture: 55.6% - industry: 8.9% - services: 35.5% (2006 est.)
- Unemployment rate: 11.5% (2017 est.) (country comparison to the world: 149)

Given the country's aspiration for faster growth via infrastructure, entrepreneurship, and foreign investment, and given the above mentioned agreements, investing in occupational safety and health not only makes a lot of sense but will simply be a necessity. It improves people's lives by preventing work-related illness and accidents and also has a tangible positive effect on the economy of a country. It leads to improved business productivity and performance. Different studies prove that the employer will have a return in double for every euro spent on occupational safety and health.

A sound legislative framework is a cornerstone and has to play a key role in shaping national and company level occupational safety and health strategies and in ensuring a level playing field for all businesses, both private and public, big and small. Occupational safety and health measures should reach the widest number of people at work, no matter the type of working relationship they are in, and no matter the size of company they work for.

Compliance with occupational safety and health rules should be manageable for businesses of all sizes and effectively monitored on the ground. However, overall, research concluded that compliance with the occupational safety and health regulations is more challenging for SMEs than large establishments, while at the same time the major and fatal injury rates often are higher for SMEs. Specific support measures are therefore necessary to reach SMEs and help them increase their compliance in an efficient and effective way.

Measures must be result-oriented, not paper-driven, and maximum use should be made of tools, if possible digital to facilitate implementation.

No recent reliable data can be found on the situation of OSH in Georgia. The available data on occupational accidents and disease cannot be validated. The gross underreporting of occupational accidents and diseases, including fatal accidents, is giving a false picture of the scope of the problem. The abolishment of the labour inspection and the collapse of the OSH system in the country are explanatory factors.

History

The new Georgia Law on OSH as adopted by the Parliament in February 2018, is an effort to put the above global OSH principles in practice after several years of back and forth negotiations and based on the EU OSH Directives and ILO OSH Conventions and Recommendations.

A key element of the discussion was and is the re-establishment of an OSH inspection, after the its total dissolution by the Government back in early 2000, as part a profound reform of the labour legislation with the goal of improving the efficiency and combating the corruption, the latter being perceived as extreme in OSH inspection.

Comparison

The scope of the OSH law is not in line with that of EU countries. There is an opportunity to make use of years of experience in EU countries to start with a much more efficient and fine-tuned legislation (see suggestions further on the text).

Impact

The impact on the overall OSH performance of the country would be rather small.

The impact on business could be negative to some extent. More detailed comments can be found in the policy recommendations section below.

Policy recommendation(s):

Summary of recommendations

- ⇒ It is recommended to extend the scope to all sectors of activity and not to work with a list.
- ⇒ It is recommended to change the concepts/definitions and bring them in line with internationally used/accepted terminology. Moreover, qualifiers such as harmful, increased,... should not be used in definitions. It is only by carrying out risk assessment that a qualifier can be attributed.
- ⇒ It is recommend to delete “the methodology recognized by the International Labour Organization” from the definition of risk assessment.
- ⇒ It is recommended to change the function of the OSH specialist to an advisory role in correspondance with EU Directives and ILO recommendations.
- ⇒ It is recommended to use the wording of the EU Directive and not determine the number of OSH-specialists already now. This could be done later in collaboration with social partners and after some experience is build up with OSH-specialists.

- ⇒ It is recommended to discuss appropriate training for OSH specialists with social partners and to develop guidelines rather than training imposed by law.
- ⇒ It is recommended to setup an Inspection on the basis of shared ownership and with a focus on support, assistance and guidance for prevention.

On the scope (art. 2)

The law seems to focus only on specific hazardous situations. On top of that these situations will be defined by the Government (together with the social partners).

“This law applies to the situation of the increased risk, heavy, hazardous and dangerous working conditions. For the aims of this law increased risk, heavy, hazardous and dangerous working conditions will be defined by the Government of Georgia together with the social partners.”

This is problematic for several reasons. First of all, the definitions of the used terminology ‘hazardous work, harmful work, increased hazard, ... are inconsistent and not coherent with the generally accepted definitions in the OSH expert community. But more important, EU directives apply to all situations where work is performed and it is on the basis of risk assessment that preventive and other measures are determined.

“This Directive shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).”

Also, the concepts of hazard and risk should not be mixed up.

- In a not so hazardous work environment the risk can be high (if no or insufficient preventive measures are taken).
- In a hazardous work environment the risk can be low (if all preventive measures are taken and controls put into place).

In reality, this is quite often observed. In hazardous work environments such as petrochemical industry or (nuclear) power plants, the risks are often low because the safety performance is good. And the opposite is also true: in a not so hazardous work environment, such as an office, the risk of accidents (slips, trips and falls) or of ill health (strain injuries, stress,...) can be quite high if no preventive measures are put in place.

The fact that there will be a defined list is no guarantee for a solid approach. There is the risk of strong lobby to be exempted by certain well organised branches of activity. The fact that ministries and other government offices are already exempted demonstrates that this is not a good approach. Ministries and other state offices should not be exempted from the application of the law. On the contrary: they should demonstrate exemplary behavior when it comes to the health and safety at work of their staff in order to ensure credibility and gain the confidence of the business community. The EU Directive is clear, only specific activities such as the army and the police may be exempted, not ministries or public agencies. And even if there are exceptions, the state still has to take action to ensure the health and safety (as far as possible) of the workers concerned (e.g. armed forces, police).

“This Directive shall not be applicable where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it. In that event, the safety

and health of workers must be ensured as far as possible in the light of the objectives of this Directive.”

⇒ It is therefore recommended to extend the scope to all sectors of activity and not to work with a list.

On definitions (art. 3)

The definitions of “hard work”, “harmful work”, “hazardous work” and “increased hazard” as mentioned in the OSH law can not be used in a workplace context. They contain an element of ‘probability’ or ‘likelihood’ and do not make a clear link with the undesired effect that may result out of exposure. Therefore, all work should be considered as hard, harmful, hazardous...

⇒ It is recommended to change the concepts/definitions and bring them in line with internationally used/accepted terminology. Moreover, qualifiers such as harmful, increased,... should not be used in definitions. It is only by carrying out risk assessment that a qualifier can be attributed.

The definition of “risk assessment” refers to “the methodology recognized by the International Labour Organization”. There is no such one accepted methodology recognized by the ILO. There are hundreds of methods for risk assessment. Based on the nature of the activity, the size of the company, the type of hazard, the working conditions, etc. a suitable method should be used. The important thing is that the following steps are part of the methodology:

- Identification of hazards
- Analysis and assessment of the risk
- Identification of the preventive measures (based on the prevention hierarchy principles).

⇒ It is recommended to delete “the methodology recognized by the International Labour Organization” from the definition.

On the role/definition of occupational safety and health specialist/s (art 3, 7)

The role that the OSH law is giving to the occupational safety and health specialist/s is not in line with EU Directives and ILO conventions. It is not the role or responsibility of such a specialist to prevent the violation of the standards of occupational safety and health or to ensure implementation and management of occupational safety and health measures. The latter is the responsibility of the employer and the first is the role of inspection.

The role (in conformity with EU Directives and ILO conventions) should be an advisory role, not one of supervision or implementation. The specialist’s responsibility is to advise the employer and the workers on maintaining a safe and healthy working environment. If such competent specialist cannot be found internally for lack of competent personnel in the undertaking and/ or establishment, the employer shall enlist competent external services or persons.

⇒ It is therefore recommended to change the function of the OSH specialist to an advisory role in accordance with EU Directives and ILO recommendations.

On the organization and management of occupational safety and health (art. 7)

The OSH law stipulates that the employer is obliged to designate one or more employees as an occupational safety specialist, or set a unit up with this purpose. The law imposes the number of specialists according to the size (>20, 20-100, >100).

This means based approach is rather counterproductive. It is not the number of specialists that is important but the fact that the employer gets the necessary specialized advice and support. The specialist support needed and the organization of OSH management should depend upon the size of the company, the nature of the activities, etc. and should be determined by an assessment of the situation rather than imposed by law.

Even in countries with a sophisticated approach to internal and external OSH specialists and services such as Belgium (3 levels of training/education for OSH specialists, the level depends upon size/nature of activities, some tasks should be done by external specialists), the prescriptive approach is not the optimal one. It is recommended to use the wording of the EU framework Directive on OSH that allows more flexibility and a more appropriate response for different situations.

“The employer shall designate one or more workers to carry out activities related to the protection and prevention of occupational risks for the undertaking and/ or establishment. If such protective and preventive measures cannot be organized for lack of competent personnel in the undertaking and/ or establishment, the employer shall enlist competent external services or persons.

In all cases: — the workers designated must have the necessary capabilities and the necessary means, — the external services or persons consulted must have the necessary aptitudes and the necessary personal and professional means, and — the workers designated and the external services or persons consulted must be sufficient in number to deal with the organization of protective and preventive measures, taking into account the size of the undertaking and/ or establishment and/ or the hazards to which the workers are exposed and their distribution throughout the entire undertaking and/ or establishment.

Member-States may determine the sufficient number.”

So there is no obligation to define the number of specialists. Given the lack of experience of Georgia and given that it is better to take some time to develop a mature system and approach, it would be better not to define the number already now. It could be done later after some experience and in collaboration with the social partners. This can lead to a more effective and more fine-tuned approach where for example in dangerous branches of the economy the number of specialists could be higher and so could be their qualification.

⇒ It is recommended to use the wording of the EU Directive and not determine the number of OSH-specialists already now. This could be done later in collaboration with social partners and after some experience is build up with OSH-specialists.

Accredited training programme for OSH specialists (art. 7.6)

The OSH law stipulates that OSH specialists should have attended a relevant accredited programme. The volume of the programme, the rules and conditions of its implementation is defined by the individual-legal act of the Minister of Labour, Health and Social Affairs of Georgia.

This is again an example of an approach that is not effective or efficient and rather counterproductive. The employer is responsible and he should be able to define the appropriate level of training. If the volume, the rules and conditions of the programme are defined by the Minister of Labour, it will be a one size fits all approach, not taking into account the size of the company, the nature of the activities, the level of expertise already present,...

It is recommended to start a discussion with social partners, to develop guidelines on training (rather than legislation) and to encourage employer organizations, training centers, schools, universities, etc. to develop tailor made OSH training. The focus should not be on the accreditation/diploma but on how well the specialists perform their tasks. This could be monitored. This does not mean that accreditation should be avoided but it should not be imposed by law.

⇒ It is recommended to discuss appropriate training for OSH specialists with social partners and to develop guidelines rather than training imposed by law.

On inspection

Caution is needed when it comes the OSH inspection re-establishment.

Not only because, in the business view, the main issue with the re-establishment of OSH inspection remains the risk of reappearance of corruption, as well as that of (the lack of) control over the inspection once it is recreated. The fact that the Government refuses to accept the social partners in the managing body of the inspection leads to believe that the Government might be using the inspection as an instrument of oppression rather than an advisory and support institution.

This is not a good starting point for setting up an effective and efficient inspection system.

Setting up an Inspection, given the bad experiences from the past, should be based on shared ownership, credibility and transparency and with a focus on support, assistance and guidance for prevention. Shared ownership means governance of the inspection in collaboration with social partners. It means joint decisions on training of inspectors, working methods, indicators including quality of inspection, follow-up and adjustment if necessary.

Collaboration between Inspection and social partners should be encouraged in order to ensure a level playing field for companies and to make sure the focus is on the 'bad companies' rather than harrasing the good ones with administrative burden and sanctions. OSH is an area where the traditional approach to labour inspection, based on regulation, monitoring and sanctions is increasingly complemented and shifting to methods of risk management and prevention. The emphasis should be on awareness-raising, encouragement, capacity-building, information and advice, whereas sanctions are imposed only as a last resort.

There are many formal or less formal ways of cooperating. For instance, employers' organizations can cooperate with labour inspection in the field of OSH in order to assist their members better comply with regulation e. g. in the provision of information and advice, OSH training, technical assistance. There could be programs allowing labour administrators and inspectors to gain operational experience of enterprises. This could involve training exercises in enterprises, joint investigations or mutual secondments.

⇒ It is recommended to setup an Inspection on the basis of shared ownership and with a focus on support, assistance and guidance for prevention.

Conclusions.

The GEA should pursue

1. On tactical level, an advocacy campaign aimed at changing the recently adopted OSH Law in such way to accommodate the legitimate interests of the business,
2. On the strategic level, the development of the wide ranging strategic policy paper of GEA on the OSH policy for Georgia aimed at streamlining the process of OSH reform in the country and making it all business friendly as possible.

Questions:

Article 4: Registration of the activities with the increased risk, heavy, hazardous and dangerous work. Is this a new obligation of registration of activities or does it already exist?

Article 5.6: Employer should not employ a person younger than 18 years old, as well as pregnant women and those women who are breastfeeding on the positions with increased risk, heavy, hazardous and dangerous work conditions. Is there no exception to the 18 yr old rule? In EU it is 15. What if people combine school and work? (dual system)

Core strategic policy directions on OSH of GEA

1. Strengthening of GEA lobbying policy:

- 1.1. Increasing the activities and determination of tactic positions **at national level** for further communication and amendments with Parliament and Government of Georgia. First of all:
 - a) For the purpose of accredited outsourcing service possibilities;
 - b) For the purpose of gaining the Court permission for Inspectors;
 - c) For the purpose of increasing the involvement in the inspecting monitoring process together with Inspection;
- 1.2. **On Inspection level:** - co-attendance at the inspection and protection of interests of members;
- 1.3. **On member companies and sector levels** – cooperation with employees representatives and assistance to issues of OSH;

2. Development of GEA consulting policy:

- 2.1. Improvement of training and consulting activities as well as offering more efficient services to members;
- 2.2. Establishment of highly effective audit services via classification of economic sectors;
- 2.3. Development and strengthening of electronic service base and guidelines with the background of current practice basis;

3. Strengthening of GEA international policy:

- 3.1. Analysis of existing OSH policies and situation in the post-soviet and Eastern European countries as well as seeking for the best practices and their multilication;
- 3.2. Activation of participation in international forums, conferences, fairs and meetings;

4. *Popularization of GEA OSH policy:*

- 4.1. Development of GEA PR and communication strategy with regard to OSH;
- 4.2. Increase in usage of public audiences and mass-media;
- 4.3. Development and strengthening of OSH social activities together with member companies;