Opinion on future EU OSH Enforcement priorities contributing to a renewed EU OSH Strategy

A submission from the Senior Labour Inspectors' Committee (SLIC)

Employment, Social Affairs & Inclusion
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Table of Contents

Employment, Social Affairs & Inclusion
Opinion on future EU OSH Enforcement priorities contributing to a renewed EU OSH Strategy
A submission from the Senior Labour Inspectors' Committee (SLIC)

European Commission

INTRODUCTION

This opinion by the Senior Labour Inspectors' Committee (SLIC) consists of three parts.

The first part provides a general introduction and sets out the EU policy context and current macro-level trends. Building on this, the second part presents specific OSH risks and challenges for enforcement. In the third part, SLIC puts forward recommendations for future EU OSH enforcement priorities to be considered by a renewed EU OSH Strategy, as well as priority areas and future actions to be addressed in a new SLIC Work Plan.

Throughout the document, the outbreak of the COVID-19 pandemic, which reached Europe early 2020, and the impacts it has had and is still having on the functioning of national labour inspectorates as well as the work carried out by labour inspectors, has been considered.

SLIC considered *inter alia* the following documents for the drafting of this opinion:
- EU Strategic Framework on Health and Safety at Work 2014-2020 (COM/2014/332)[1], June 2014.
- Safer and Healthier Work for All - Modernisation of the EU Occupational Safety and Health Legislation and Policy (COM/2017/012)[2], January 2017.
- Commission Directive (EU) 2020/739 of 3 June 2020 amending Annex III to Directive 2000/54/EC of the European Parliament and of the Council as regards the inclusion of SARS-CoV-2 in the list of biological agents known to infect humans and amending Commission Directive (EU) 2019/1833[3].
- Commission Statement following the presentation of Commission Directive (EU) 2020/739 to the European Parliament and the Council in respect of the prevention and protection of the health and safety of workers that are or can be occupationally exposed to SARS-CoV-2, June 2020[4].
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A strong social Europe for just transitions, January 2020[5].
- Political Guidelines for the Next European Commission 2019-2024, "A Union that strives for more. My agenda for Europe"[6], Ursula von der Leyen, September 2019.
- European Green Deal[7], December 2019.
- European Pillar of Social Rights[8], November 2017.
- Croatian Council Conclusions, Enhancing Well-being at Work[9], adopted by written procedure on 8 June 2020.

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[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0332
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:012:FIN
[3] https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32020L0739
[4]
https://ec.europa.eu/social/main.jsp?langId=en&catId=89&furtherNews=yes&newsId=9695#navItem-relatedDocuments
[5] https://ec.europa.eu/commission/presscorner/detail/en/fs_20_49
[6]   https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf
[7] https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

Employment, Social Affairs & Inclusion
Opinion on future EU OSH Enforcement priorities contributing to a renewed EU OSH Strategy
A submission from the Senior Labour Inspectors' Committee (SLIC)

European Commission

- Finnish Council Conclusions, A New EU Strategic Framework on Health and Safety at Work: Enhancing the implementation of Occupational Safety and Health in the EU[10], December 2019.
- Romanian Council Conclusions, The changing world of work: reflections on new forms of work and implications for the safety and health of workers[11], June 2019.
- Council recommendation concerning the improvement of the protection of the health and safety at work of self-employed workers[12], February 2003.
- EU strategic priorities, 2013-2020 - A submission from SLIC, February 2012.
- Advisory Committee on Safety and Health at Work (ACSH), Towards better health and safety in the workplace - Opinion on Future Priorities of EU OSH Policy, June 2019.
- Advisory Committee on Safety and Health at Work (ACSH), Opinion on ensuring better and broader protection, compliance and enforcement, December 2019.
- EU-OSHA, COVID-19: BACK TO THE WORKPLACE - Adapting workplaces and protecting workers[13], 24 April 2020.
- EU-OSHA, COVID-19: EU-OSHA guidance for the workplace[14], 6 April 2020.
- Regulation of the European Parliament and of the Council establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344[15], May 2019.
- ILO, Convention 190 concerning the elimination of violence and harassment in the world of work[16], June 2019.
- United Nations, The Sustainable Development Agenda 2030[17], in particular sustainable development goal number 8 on Decent Work and Economic Growth.

[8] https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en
[9] https://data.consilium.europa.eu/doc/document/ST-8277-2020-REV-1/en/pdf
[10] https://data.consilium.europa.eu/doc/document/ST-14630-2019-INIT/en/pdf
[11] https://data.consilium.europa.eu/doc/document/ST-9686-2019-INIT/en/pdf
[12] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003H0134
[13] https://osha.europa.eu/en/publications/covid-19-back-workplace-adapting-workplaces-and-protecting-workers/view
[14] https://oshwiki.eu/wiki/COVID-19:_guidance_for_the_workplace#See
[15] https://data.consilium.europa.eu/doc/document/PE-49-2019-INIT/en/pdf
[16] https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711570.pdf
[17] https://www.un.org/sustainabledevelopment/development-agenda/

Employment, Social Affairs & Inclusion
**Opinion on future EU OSH Enforcement priorities contributing to a renewed EU
OSH Strategy**
A submission from the Senior Labour Inspectors' Committee (SLIC)

PART I: EU POLICY CONTEXT

1. The effective enforcement of EU law is a precondition for improving the quality of the working environment. According to Article 4 of Framework Directive 89/391/EEC[18], Member States should take the necessary steps to ensure that employers, workers and workers' representatives are subject to the legal provisions necessary for the implementation of the Directive and, in particular, shall ensure adequate controls and supervision. The correct and equivalent implementation and enforcement of EU occupational safety and health (OSH) legislation in all Member States is therefore essential. Not only to fulfil the obligations imposed by Article 4 of the Framework Directive, but also to ensure that the provisions of the Directives are applied in a way guaranteeing the same minimum level of protection for workers throughout the Union and contributing to a level playing field for companies.

2. In 1995, SLIC was formally set up to assist the European Commission in monitoring the enforcement of EU OSH legislation at the national level (Commission Decision 95/319/EC[19], as amended in 2008 by Commission Decision 2008/823/EC[20]). The excellence and relevance of the work carried out by SLIC has been recognised at the international level, and commonly provides a basis for the organisation and implementation of enforcement activities in Europe and across the globe.

3. While the responsibility for the enforcement of EU OSH law lies with Member States, the central role played by SLIC in assisting the Commission in promoting better compliance with national OSH legislation has been underlined in various recent EU Policy documents and by social partners.

4. Also in the context of the ongoing COVID-19 pandemic, a new coronavirus disease that is bound to have long lasting impacts on the world of work in general and OSH in specific, the promotion of effective and consistent implementation and enforcement of EU OSH legislation is crucial. The important role that SLIC plays in this regard has been highlighted during recent months. In particular, the Commission expressed in a Statement published in June 2020 that it intends to invite SLIC to carry out supporting enforcement actions to ensure strict implementation by the Member States of the obligations linked to the classification of the virus causing COVID-19 as set out in the Biological Agents Directive. Such actions should take a flexible approach and be carried out in cooperation with public health authorities, when relevant.

5. The ACSH stressed that facilitating enforcement of OSH legislation by Member States is a priority of the current EU OSH policy and should continue to be high on the agenda of any future EU OSH framework initiative (ACSH opinion, June 2019).

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[18] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0391
[19] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31995D0319
[20] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1579771552834&uri=CELEX:32008D0823

Employment, Social Affairs & Inclusion
Opinion on future EU OSH Enforcement priorities contributing to a renewed EU
OSH Strategy
A submission from the Senior Labour Inspectors' Committee (SLIC)

6. In this regard, the ACSH emphasised that the role of SLIC in assisting the Commission in promoting better coordination of Member States' enforcement policies, in particular through the establishment of common principles for inspection, campaigns and programmes of exchange/training of labour inspectors, needs to be reinforced and properly sustained through adequate resources.

7. The ACSH underlined in its opinion on ensuring better and broader protection, compliance and enforcement (Dec 2019) that labour inspectors must be equipped with a firm level of knowledge as well as suitable competences, as developed by SLIC, and must be adequately trained based on SLIC guidance.

8. In order to protect the rights of mobile workers, including seasonal workers, and to foster fair competition between companies, it is crucial to improve the cross-border enforcement of Union law in the area of labour mobility. To this end, the European Labour Authority (ELA) was established in 2019 to assist the Member States and the Commission in, amongst others, supporting compliance and cooperation between the EU Member States in the consistent, efficient and effective application and enforcement of the Union law related to labour mobility across the Union, as well as the coordination of social security systems within the Union.

9. In January 2020, the Commission published a Communication on building a strong social Europe for just transitions, setting out some planned initiatives that will contribute to the implementation of the European Pillar of Social Rights. Amongst these, the Commission announced that, in order to maintain its high standards, the current EU Strategic Framework on Health and Safety at Work will be reviewed and newly emerging risks alongside the more traditional ones, such as exposure to dangerous substances and risk of accidents at work, will be addressed.

10. The principle work and activities of SLIC are set out in the Committee's Work Plan 2017-2020, which will end this year. In this regard, specific actions for SLIC described in the Commission Communication on OSH of January 2017 have been fulfilled through the implementation of the current SLIC Work Plan.

Macro-level trends

11. The outbreak of COVID-19 has affected all Member States since early 2020 and is causing major disruptions to all sectors and services, directly affecting the health and safety of all workers across the EU. More than ever, strict compliance with and application of national provisions transposing Union rules on safety and health at work are of utmost importance.

12. The pandemic has shown that the drivers of the future of work, such as globalisation, technological change and climate change, as further elaborated on below, are elements that support a closely interconnected and interlinked world. The pandemic has also fast-tracked the future world of work as the use of digital tools and teleworking procedures have been implemented at a rate that they have become more the rule than the exception.

Employment, Social Affairs & Inclusion
Opinion on future EU OSH Enforcement priorities contributing to a renewed EU
OSH Strategy
A submission from the Senior Labour Inspectors' Committee (SLIC)

13. These rapidly evolving social, economic and technological developments and challenges in all realms of its activity, requiring a crosscutting and transversal approach. Measures for the protection of workers and legislation in the area of OSH need to keep with the pace of these changes and should be adapted to the drivers of the future of work.

14. The ongoing and rapid changes to the workplace, including those implemented in response to the COVID-19 outbreak, are having an impact on the health and safety conditions of workers. They require labour inspectors to develop new approaches and competences in order to be equipped with the right knowledge and tools to address these.

15. Digitalisation and the use of new technologies such as automation, robotics and artificial intelligence, pose both opportunities and challenges for labour inspectors. It has an impact on working conditions of workers and may give rise to new risks[21] that should be considered by labour inspectors. These include the blurring of boundaries between professional and personal life, potential isolation from work community and de-socialisation, technostress and cognitive workload, as well as risks linked to working and interacting with robots.

16. The rise of new forms of work and atypical employment relationships, new forms of work organisation (e.g. platform work, job sharing, co-working, work on demand, ICT-based mobile work)[22], and the growing numbers of teleworkers and self-employed are a challenge for labour inspectors, as inspections are increasingly becoming more difficult and complex. The workforce is dispersed and rarely engaged in a traditional, onsite, employer-worker relationship.

17. At the same time, globalisation of work creates a new paradigm where companies and workers are operating increasingly across borders. Labour force mobility, cross border workers and employers that are operating in other countries further contribute to a more complex world of work.

18. These technical and organisational changes in the world of work are further associated with social and economic challenges such as demographic change, ageing of the workforce and gender considerations.

19. Climate change, resulting in, for example, extreme temperatures, plagues, draughts and floods, may increase the occurrence and severity of some existing occupational hazards and may lead to unanticipated risks. The new forms of work evolving in response to climate change, the so-called "green jobs" (e.g. energy sector, waste and recycling), as well as new technologies designed to protect the environment (e.g. electric vehicles and machines making use of alternative energy sources) may result in new risks for workers.

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[21] https://osha.europa.eu/en/developments-ict-and-digitalisation-work
[22] https://www.eurofound.europa.eu/publications/report/2015/working-conditions-labour-market/new-forms-of-employment

Employment, Social Affairs & Inclusion
**Opinion on future EU OSH Enforcement priorities contributing to a renewed EU
OSH Strategy**
A submission from the Senior Labour Inspectors' Committee (SLIC)

PART II: RISKS AND CHALLENGES FOR ENFORCEMENT

20. The combined effects of technological progress, new forms of work, demographic and climate change and globalisation are directly influencing work organisation, working conditions and occupational safety and health. The complex and interlinked mixture of newly emerging risks, the use of new techniques and equipment, and changing work environments and working relations, require labour inspectors to be equipped with widely diverse fields of knowledge and suitable competences.

21. At the same time, "traditional risks" are still relevant and require the continued attention of labour inspectors. Examples include ergonomics, technical and psychosocial risks, falls from height, and physical, biological and chemical risks (e.g. carcinogens and asbestos). Also in the context of the recently launched Europe Beating Cancer Plan, labour inspectorates could have a prominent role. Not only in ensuring that the principles of relevant chemical legislation are complied with, but also in encouraging health-promoting approaches at work that can have a positive impact on the lifestyles of workers.

22. The ongoing relevance of these traditional risks is also clearly demonstrated by the COVID-19 outbreak. The availability of training and correct use of personal protective equipment (PPE) at the workplace, psychosocial risks for workers operating at the frontline such as healthcare workers, food industry and logistics, and organisational and ergonomic risk factors while working from home, are mostly issues that are known OSH challenges. However, it is the magnitude of the problem, which presents a challenge to the labour inspectors in times of pandemics.

23. When addressing traditional risks, it is thus relevant to consider these in relation to the ongoing changes to the world of work and the challenges they bring along. For example, in the context of climate change, the exposure of workers to certain biological agents may be more likely in areas with increased risks of flooding. Moreover, globalisation allows infectious diseases to spread more rapidly around the world, which is particularly relevant for workers in the healthcare, waste or transport sectors. Another example is psychosocial risks and work stress, and their relevance in the context of new forms of work and the blurring of workers' work-life balance. Exposure to asbestos may increasingly become relevant in the context of renovation of housing in the light of energy efficiency objectives.

24. A challenge for national labour inspectorates as well as SLIC is the interface between OSH and other areas of related activities, such as the requirements laid down in the context of the internal market policy, the Machinery Directive and the use of Workplace Equipment Directive. The well-known interface between REACH and OSH legislation requires continued consideration of common elements and possible divergences in the management of risks related to chemicals. Another example is market surveillance of PPEs and other safety equipment, which is an area of critical concern for OSH in times of pandemics.

25. New and traditional risks can be found in all sectors, but some experience the highest number of emerging and crosscutting issues. For example, as shown by the pandemic, the outbreak and spread of an emerging infectious disease,

Employment, Social Affairs & Inclusion
Opinion on future EU OSH Enforcement priorities contributing to a renewed EU
OSH Strategy
A submission from the Senior Labour Inspectors' Committee (SLIC)

favoured by demographic changes and globalisation, puts significant additional strains on those working at the frontline. Some workers will continue to perform their duties even during a crisis, and as a result will be exposed to a disproportional risk of hazardous biological exposure compared to other workers during pandemics. This concerns in particular workers in health care, emergency response, law-enforcement, cleaning services, agriculture, logistics and other essential services.

26. A complexity for the construction sector, one of the most hazardous industries, is that it encompasses a broad range of work. It ranges from large infrastructure projects carried out by major contractors to small jobs carried out by self-employed workers, who, in general, have a higher likelihood of being involved in a work-related accident. In addition, logistics and digitally enabled work, which are growing sectors, frequently encounter work-related health issues such as MSDs and work-related stress. The education sector is another example of a sector where psychosocial risks are increasingly occurring.

27. The globalized economy, with companies utilising sophisticated, diverse and global supply chains, complicates the enforcement of OSH legislation. Because the scope for enforcement of OSH legislation is at the national level, cross-border sourcing of goods and services creates difficulties in the achievement of workplace compliance and for ensuring appropriate inspections. Particularly in the construction sector, the utilisation of global supply chains creates additional challenges for labour inspectors.

28. The concept of a circular economy offers an avenue to sustainable growth, good health and decent jobs, while tackling climate change and environment-related challenges. In the transition to a circular economy, the use of new (digital) technologies and processes, implemented across borders and companies, is essential. The path towards a circular economy may give rise to new OSH risks for workers involved in activities such as recycling and production processes, or for workers exposed to waste and raw materials.

29. The development of new technologies and the digitalisation of work has created more opportunities for people to become self-employed and to work in different environments, including across borders, resulting in a rapid increase of these types of workers during the past decade. Self-employed and mobile workers – often with a migration status - are considered particular vulnerable groups, with a higher likelihood of being involved in a work-related accident or developing an occupational illness.

30. Reaching and helping microenterprises and SMEs to increase their compliance with occupational health and safety rules remains a challenge. Two third of the EU workforce is employed by micro enterprises and SMEs, which represent 99% of all companies in Europe.

31. There is thus a wide range of different risks to be addressed through enforcement activities, urging labour inspectors to keep up with the pace of change and to adapt their enforcement activities in such a way that effective and equivalent enforcement of OSH legislation in workplaces can be ensured. Yet, while labour inspectors are assigned with more extensive duties in a rapidly transforming environment, with few exceptions, its workforce is shrinking. Labour inspectorates

Employment, Social Affairs & Inclusion
**Opinion on future EU OSH Enforcement priorities contributing to a renewed EU
OSH Strategy**
A submission from the Senior Labour Inspectors' Committee (SLIC)

are required to deliver more within shorter timespans and with fewer human and financial resources.

32. This is putting a growing pressure on labour inspectorates to efficiently plan and manage inspections that are proactive, targeted and tailored. While new technologies could offer opportunities to support labour inspectors in doing so[23], for example by data-sharing or using new technologies such as drones to inspect dangerous work sites, this field is still rather unexplored.

PART III: SLIC RECOMMENDATIONS AND PRIORITY AREAS

SLIC recommendations for the new EU OSH Strategy

33. Investments in OSH help to prevent work-related illnesses and accidents, thus reducing costs for absenteeism and work-related ill health, and have, apart from the obvious benefits for workers and their families, a positive effect on the economy, both for the company and for society as a whole, by contributing to better productivity and sustainable work careers. This should be recognised by and addressed in a renewed EU OSH Strategy as well as the crucial role that proper and full enforcement of EU OSH legislation plays in this regard.

34. There is a need for a continuation of the updating of the EU OSH directives, matching the needs and demands of the new world of work, which would ensure that EU OSH legislation is correctly applied, adequately implemented and equivalently enforced, as promulgated by the Common Principles for labour inspection in relation to occupational health and safety. In the context of COVID-19, the need should be assessed to amend the Biological Agents Directive 2000/54/EC following the lessons learnt in view of better preparedness and response planning in all workplaces. Furthermore, updating Council Directive 90/270/EEC on display screen equipment and Council Directive 89/654/EEC on workplaces are particularly relevant. Moreover, SLIC recommends revisiting the Council Recommendation concerning the improvement of the protection of the health and safety at work of self-employed workers (2003), as well as assessing the need to develop a specific initiative for promoting proper considerations of psychosocial risks during enforcement activities.

35. Promoting effective enforcement of EU legislation by Member States is a priority for this Commission, as stressed in the Political Guidelines by Ursula von der Leyen, which state: "*I intend to focus on tighter enforcement, using recent judgements of the Court of Justice showing the impact of rule-of-law breaches on EU law as a basis (…)*". It should also be high on the political agenda of any future EU OSH strategic initiative. In this regard, mainstreaming OSH with other sectors

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[23]   https://osha.europa.eu/en/publications/future-role-big-data-and-machine-learning-health-and-safety-inspection-efficiency/view

Employment, Social Affairs & Inclusion
Opinion on future EU OSH Enforcement priorities contributing to a renewed EU OSH Strategy
A submission from the Senior Labour Inspectors' Committee (SLIC)

European Commission

or areas (e.g. environment, education, procurement) is particularly important. It is vital that Member States ensure adequate monitoring and enforcement on the ground, by including such priority in their national OSH strategies and by providing the adequate financial and human resources to the national labour inspectorates.

36. A renewed EU Strategy Framework on OSH should address the fact that new risks and new forms of work present additional challenges to effective labour inspection, while new approaches are emerging that could complement traditional means and enforcement methods. Moreover, it should recognise that labour inspectors contribute decisively to key issues on Europe's agenda, such as preparedness for pandemics and Europe's fight against cancer through, among others, the enforcement of relevant OSH legislation at the workplace.

37. In its Communication from January 2020, the Commission announced that a Platform Work Summit will be organised to discuss priority issues and possible solutions, including for example employment status, working conditions and access to social protection of platform workers, access to collective representation and bargaining, as well as cross-border aspects of platform work. SLIC recommends that as part of this Summit, health and safety issues related to platform work are discussed and fully taken into consideration.

38. Further or improved data collection on (recognised) occupational accidents and diseases at EU and national level is required, in particular in relation to worker status (e.g. permanent or temporary contract, self-employed, posted workers) and sectors, as well as to the causes and circumstances of accidents such as, for instance, those related to the nature of work equipment and machinery involved. This would allow for the development of (more) reliable enforcement tools as well as effective planning of inspections.

Employment, Social Affairs & Inclusion
Opinion on future EU OSH Enforcement priorities contributing to a renewed EU
OSH Strategy
A submission from the Senior Labour Inspectors' Committee (SLIC)

European Commission

Priority areas and future actions by SLIC

The following identified priority areas and activities are at the core of the future SLIC actions:

- Enforcement
- Emerging and traditional risks
- New forms of work
- Knowledge development & exchange
- Communication

Building on these priority areas, a new SLIC Work Plan is expected to be adopted, and Working Groups with targeted mandates and structures will be defined building on these. This Work Plan may be reviewed whenever necessary, for example to adapt it to new EU policy developments.
The following provides suggestions of activities and actions to be considered in a new SLIC Work Plan.

ENFORCEMENT

39. Inspections are the core business of the Committee: the future SLIC Work Plan should focus on the facilitation and promotion of inspections, also addressing mobility of workers, and the structure and organisation of SLIC and its activities should be adapted accordingly. The impact of the COVID-19 outbreak should be taken into account.

40. SLIC should initiate efforts to address the importance of drawing up or updating crisis contingency plans for labour inspectorates and/or the development of checklists for shutdown and start-up activities in the case of a crisis, such as a pandemic outbreak, and addressing situations in specific sectors and workplaces. Such crisis contingency plans should also consider the necessary protection measures of labour inspectors.

41. SLIC should carry out work to identify examples of and exchange information on technologies that can support the work of labour inspectors, particularly to increase the efficiency of enforcement activities as well as the targeting and planning of OSH inspections.

42. Continue SLIC's discussions around the effectiveness of labour inspections. For example, analysis, planning and management of OSH inspections, collaborations with other enforcement bodies and sectors, and measuring the impact of enforcement.

Employment, Social Affairs & Inclusion
Opinion on future EU OSH Enforcement priorities contributing to a renewed EU OSH Strategy
A submission from the Senior Labour Inspectors' Committee (SLIC)

EMERGING AND TRADITIONAL RISKS

43. SLIC should identify the impact of new and emerging risks across all sectors on enforcement activities, and collect approaches for addressing these. In particular, learning should be drawn from the impacts of the COVID-19 outbreak and the lessons learnt by national labour inspectorates. The exchange of good practice of enforcing OSH, linked with public health rules, should be facilitated.

44. Traditional risks remain a priority area for SLIC, in particular exposure to dangerous substances and ergonomic and psychosocial risks, and any needs to support enforcement should be considered.

45. SLIC should support labour inspectors in increasing their awareness regarding new EU legislation and policies that have an impact on OSH and enforcement. In this regard, coordination and cooperation with other enforcement bodies should be explored.

NEW FORMS OF WORK

46. SLIC should address new forms of work, and identify the challenges (and legal limitations) for labour inspectors concerning atypical employment relationships as well as cooperation with relevant EU bodies (e.g. EU-OSHA, ELA, Eurofound) and social partners (at national level and EU level through the ACSH).

47. In particular, as a result of the outbreak of the pandemic, the number of people who are teleworking has increased significantly, posing challenges for labour inspectors in terms of inspections and ensuring that OSH demands are met. Addressing psychosocial and ergonomic risks are particularly relevant in this context.

KNOWLEDGE DEVELOPMENT & EXCHANGE

48. There is a need to improve and broaden the knowledge and competences of labour inspectors through training and exchanges between Member States, addressing the wide scope of their enforcement activities. The SLIC exchange programme and the organisation of training is paramount for ensuring that labour inspectors across the EU have a comparable level of knowledge and competences.

49. The SLIC evaluation programme remains essential to identify and share (new) enforcement approaches and innovations put in place by Member States.

50. SLIC should ensure that the topics of the SLIC thematic day and the SLIC Campaign are linked with the EU OSH policy agenda and priorities.

Employment, Social Affairs & Inclusion
**Opinion on future EU OSH Enforcement priorities contributing to a renewed EU
OSH Strategy**
A submission from the Senior Labour Inspectors' Committee (SLIC)

COMMUNICATION AND COOPERATION

51. Improve SLIC's visibility and external communications, in particular through a review of the Committee's webpages on the Commission website and the possible development of an informative document about SLIC.

52. The vast amount of publications, guidelines and reports produced by SLIC should be made better accessible for labour inspectors across the EU and, where relevant, other stakeholders, including social partners. Efforts will be made to facilitate their practical implementation.

53. SLIC should continue to develop its collaboration with other bodies such as EU-OSHA, ECHA and ILO to facilitate the dissemination of OSH information and relevant publications to labour inspectors, policy makers and the workplace. Moreover, SLIC should explore its interface with ELA, and identify synergies and opportunities for collaboration.