Why do the psycho-social conditions in the field of mining require changes to occupational health and safety legislation?

Andrei-George Albulescu¹, Costică Bejinariu¹, Ioan Popescu², Constantin Baciu* and Mihai-Adrian Bernevig-Sava¹

¹„Gheorghe Asachi” Technical University of Iasi, Bd. D. Mangeron 71A, 700050 Iaşi, Romania  
²Territorial Labour Inspectorate, Neamț, dr. Gh. Iacomi St, 8, Neamț, Romania

Abstract. In 2019, 13 years have passed since the adoption of Law no. 319/2006 on Safety and Health at Work. Analysing the conditions of its application, there is a clear need to change, to correct some structural deficiencies and to reformulate various terms and definitions. The „ad literam” translation of the Council Directive 89/391/EEC has led to the forced introduction of some terms (e.g. designated worker, external service, light accident) or the ambiguous formulation of some requirements (e.g.: the situations in which the employer resorts to external services). The authors formulate proposals that will lead to the improvement of mining activities: - the obligation to undergo psychological examination, upon hiring and periodically, as a result of intensification of the general stress conditions and the effects of the special activities conducted underground;  - determining the number of specialists in the field of occupational safety and health, depending on the number of employees in the respective enterprise; - the investigation of all work related accidents by the Territorial Labour Inspectorates, respectively the Labour Inspectorate, in order to avoid the conflict of interests during their investigation and to have a correct record of them, including in the mining activities.

1 Introduction

In October 2019, 13 years have passed since the adoption of Law no. 319/2006 on Safety and Health at Work. Currently, after all these years of application, there is a clear need to change it, in order to correct some structural deficiencies and to reformulate some terms and definitions.


The incorrect formulation of some definitions, terms and/or expressions of Law no. 319/2006 arise from the “ad literam” translation of the mentioned European Directive.

* Corresponding author: constantin.baciu@yahoo.com
Although some amendments have been made during the period of application, they were minor and lacked substance. These amendments are found in Law no. 51/2012 [3] and Law 187/2012 [4].

The paper aims at presenting proposals for justified amendments that need to be made to Law 319/2006 so that it can be harmonized with the European Directive. This way, the lucrative activities will be carried out under improved conditions of protection and prevention specific to the work process, thus contributing to the mitigation of the negative effects generated by some psycho-social factors and improving the general health of employees.

2 Organization and responsibilities in protection and prevention activities, in the field of occupational safety and health

With regard to the organization of prevention and protection activities in the field of OSH, a first erroneous translation that resulted in the formulation of a forced definition in Romanian, refers to the employer’s possibility to resort to external services (art. 8, paragraph (4) of Law 319/2006), if prevention/protection activities cannot be organized within the enterprise/company due to the lack of competent personnel.

The European Directive states that if the enterprise/company’s resources are insufficient to organize the protection and prevention activities, due to the lack of specialized personnel, the employer is obliged to resort to resources (persons or services) from outside the respective enterprise or company (art. 7, paragraph (3) of D 89/391/EEC). In art. 5, paragraph (2) the Directive refers to the employer’s possibility to use specialized services or persons from outside his enterprise/company. The same legislative act shows that the employer has the possibility to outsource the prevention and protection activity.

In this situation, we can state that the definition formulated for the term “external service” (art. 5, letter p) of Law no. 319/2006) is forced because the organization chart of a company specifies only the possibility of an operating Internal Service, not of an External Service.

To justify the proposal to replace the term “external service” we present the following three current definitions:

(a) external service - the legal or natural person from outside the enterprise/company, authorized to provide protection and prevention services in the field of occupational safety and health, according to the law (art. 5, letter p) of Law no. 319/2006);

(b) service provider: the person or company providing an activity, a service (according to DEX);

(c) provision of services: any operation that is not a delivery of goods (art. 129 of Law no. 227/2015 - the Fiscal Code [5]).

Considering the three definitions provided above, the authors’ proposal refers to the introduction of the notion of “service provider”, as being the legal or natural person from outside the enterprise/company, authorized to provide protection and prevention services in the field of occupational safety and health, according to the law.

The same organizational issue refers also the existence of an employee referred to as the “designated worker”, for which there is the following definition according to art.8, paragraph (1) of Law no. 319/2006: ...... the employer designates one or more workers to handle the activities of protection and prevention of occupational risks within the enterprise/company, referred to as designated workers.

The “designated worker” is an ambiguous, general expression. The designated worker is not an occupation that can be found in the Classification of Occupations in Romania (COR). The term “worker” related to different occupations can be found in COR and it refers to low level trades and qualifications.
The authors propose the introduction of the term “occupational safety and health specialist” as a substitute for the “designated worker”, who has insufficient theoretical and practical training, being the graduate of only an 80-hour training course.

COR provides for this occupation - CODE 226302, under the denomination of “Occupational safety and health specialist”. In our opinion, the activities of prevention of professional risks in the enterprise/company should be carried out by workers with specialized university studies, or higher preferably, technical studies. We point out that, currently, several universities in the country are organizing bachelor's and master's degrees for the specialization of “Occupational Safety and Health Engineering”.

3 Accident at work and light accident

Art. 5, letters g) and q) of Law no. 319/2006, provide that:

- letter g) accident at work - violent injury of the body, as well as acute occupational intoxication, which occur during the work process or during the performance of work duties and which cause temporary incapacity to work for at least 3 calendar days, invalidity or death;
- letter q) light accident - an event that results in superficial injuries which require only the provision of first aid and results in an incapacity to work with a duration of less than 3 days;

Considering the conditions of these definitions, in the European statistics of EUROSTAT, Romania ranks first with regard to the number of fatal accidents (236 in 2016) as compared to other states that have a much higher number of workers (Poland 243/2016; England 252/2016; Spain 296/2016; Germany 413/2016). Surprisingly, though, with regard to the total number of accidents at work (4188/2016) we are outrun by countries with a much smaller number of workers (Czech Republic: 45248/2016; Denmark 49439/2016; Ireland, 14088/2016; Croatia 13263/2016, Hungary 27434/2016). This would lead to the false conclusion that Romania has a very good level of occupational security and that is why it is registered with a small total number of accidents at work.

This erroneous statistical classification is generated by two factors:

- the introduction of the term of “minimum 3 working days” in the definition of the temporary incapacity to work, a fact due to which most events are classified as “light accidents” at work;
- the obligation to report: light accidents don’t have to be reported by the employer to the Territorial Labour Inspectorate nor by Romania to EUROSTAT.

The actual level of occupational safety and health is given by the number of fatal accidents, due to the obligation to report them.

To correct this situation, we propose the reformulation of the two initial definitions in terms of duration of the incapacity to work. Thus:

- letter g) accident at work - .... and which cause temporary incapacity to work for at least one calendar day, invalidity or death;
- letter q) light accident - .... and it has not resulted in incapacity to work.

These two amendments will restore the truth about the level of occupational security in Romania and allow organization by considering the legislative requirements of other EU countries.

A requirement of Law 319/2006 provided for in art. 23, letter e) stipulates the obligation of the worker to inform the manager of the workplace and/or the employer of the accidents suffered by himself/herself.

A special situation may occur when the person who gets injured faints and loses consciousness, thus not being able to notify the manager of the workplace and/or the
employer. This case reconfirms the need to reformulate art. 23, letter e) of Law 319/2006 as follows:

- Art. 23, letter e) - to inform the manager of the workplace and/or the employer of the accidents suffered both by himself/herself and by other persons.

Regarding the investigation of events, art. 29, paragraph (1) of Law 319/2006 stipulates that this is mandatory and is conducted by the employer, in the case of events that have resulted in temporary incapacity to work. This provision entails many suspicions. Thus:

- the employer will form a commission to investigate the event, and conflicts of interest may arise between the injured person and the members of the commission;
- in most cases, this commission will rule in favour of the employer by placing full responsibility for the occurrence of the accident on the victim;
- this commission does not have the capacity of an ascertaining agent and cannot apply the sanctions provided for by Law 319/2006;
- the investigation commission cannot propose the initiation of criminal proceedings against its own employer.

By invoking the lack of human resources, the employer will try to resort to an external service company to investigating the event. Being a provision of services for which a payment is made, the provider will be tempted not to incriminate his client.

To solve these situations, the authors' proposal is as follows: all accidents at work will be investigated by the Territorial Labour Inspectorates, respectively by the Labour Inspectorate in Bucharest.

### 4 Workers information and training

If the European Directive 89/391/EEC, by art. 6, paragraph (1) recommends workers training and information, Law 319/2006 on Safety and Health at Work obliges the employer to train and inform workers. After the amendments of the Government’s Decision no. 1425/2006 [6] for the approval of the Methodological norms for the application of the provisions of Law 319/2006, the duration of training upon employment and at the workplace is 1 hour and not 8 hours each, as it was before the amendment.

Given this very short time allotted for occupational safety and health, the existence of adequate training or quality vocational training can no longer be taken into account, in accordance with the occupational health and safety laws and regulations in order to eliminate all the risks and dangers which can affect the human resource during the activity [7-10].

We consider that it is necessary to train workers before hiring. The training can be carried out by the employer, the insurer, educational institutions and will be of a formal or informal nature, on-line through appropriate programs.

Given that, according to DEX the terms “training” and “education” are synonymous, throughout Law no. 319/2006 the term “education” should be replaced by that of “training”. In this case, the Emergency Ordinance GEO 129/2000 [11] regulates the continuous training of adults.

### 5 Adapting the work to the individual

Aiming at reducing the monotony of the work process, the introduction of work with a predetermined rhythm and at mitigating their consequences on occupational health, jobs were designed by the justifiably choosing work equipment and working methods.
Within Directive 89/391/EEC, the meaning of this principle refers to the need to adapt the work to each person who works. However, the translation into Romanian was made in a general and not a specific manner, according to the Directive. It is understood that we have the obligation to create jobs for people and not for each individual worker.

The authors propose the following reformulation for this principle:

- adapting the work according to the individual, especially with regard to the design of jobs, the choice of the work equipment, of the working and production methods, in order to mitigate monotonous work, standardized work and to reduce their effects on health.

A provision of Law 319/2006, art. 9, paragraph (5) shows that the Ministry of Labour, Social Solidarity and Family establishes, by the methodological norms for application, the necessary abilities and skills, as well as the number of specialists in the field of occupational safety and health, considered sufficient at the level of an enterprise.

To date, this ministry has not established the value of this number considered sufficient. The consequence is that we have insufficiently trained specialists in the field of occupational safety and health, and their number, at the level of the company, is undersized due to the lack of a legislative provision.

We consider that this situation is unacceptable and to correct it we propose the amendment of the Government Decision no. 1425/2006 by introducing provisions that determine the number of occupational safety and health specialists according to the number of workers in the company.

6 The obligation to undergo psychological examination upon employment and periodically, after employment

In order to ensure occupational safety and health conditions and to prevent accidents at work and occupational diseases, employers have the following obligations:

- to employ only persons who, following the medical examination and, as the case may be, the psychological testing of skills, correspond to the work task they are to carry out;
- to ensure periodic medical examination and, as the case may be, periodic psychological examination, following employment.

These are the provisions of Law no. 319/2006, art. 13, letter j) regarding the medical and psychological examinations. They indicate that the occupational medicine physician decides whether or not it is necessary to carry out the periodic medical and psychological examination. We consider that undergoing medical and psychological examination upon employment and then periodically must become mandatory. The installation of stress, the most widespread occupational disease in Europe and in the world nowadays, can be detected only through psychological examinations.

Obviously, for the mining activities, the special conditions of the working environment and the general social conditions will intensify the negative effects of stress, affecting the general health of the miners.

The proposal to reformulate this legislative provision is as follows:

- Art. 13, letter j) to hire only persons who, following the medical examination and the psychological testing of skills, correspond to the work task they are to carry out and to ensure the periodic medical and psychological examination, following the employment.

7 Conclusions

Following the investigations regarding some of the provisions of Law no. 319/2006, the following conclusions can be formulated:
The justified replacement of some terms: “external services” by “provision of services”; “designated worker” by “occupational safety and health specialist”; “education” by “training”;

Reformulating the definitions for the terms of “accident at work” and “light accident” by modifying the duration of the incapacity to work to at least one calendar day;

Completing the definition that refers to the obligation to inform the employer on work-related accidents;

All types of accidents at work should be investigated by the Territorial Labour Inspectorates, respectively by the Labour Inspectorate in Bucharest;

The obligation to undergo periodic medical examination and periodic psychological examination, following employment;

Determining, by the Methodological Norm, the number of specialists in the field of occupational safety and health depending on the number of workers in the respective enterprise.

References
1. *** Legea nr. 319/2006 a Securității și Sănătății în Muncă
2. *** Directiva 89/391/CCE
3. *** Legea nr. 51/2012 privind modificarea și completarea Legii nr. 108/1999 pentru înființarea și organizarea Inspecției Muncii
4. *** Legea nr. 187/2012 pentru punerea în aplicare a Legii nr. 286/2009 privind Codul penal
5. *** Legea nr. 227/2015 privind Codul Fiscal
6. *** H.G 1425/2006 pentru aprobarea Normelor metodologice de aplicare a prevederilor Legii securității și sănătății în munca nr. 319 din 2006
11. *** Ordonanța de urgență OUG nr 129/2000 privind formarea profesională a adulților