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Legal-SMG/PERC-AL

Brussels, 9 September 2021

Dear Sirs,

Following our earlier letter sent to you in May this year, we write to you again to express our serious concern over the ongoing regressive labour legislation reform that is taking place in Ukraine.

This letter is sent on behalf of the International Trade Union Confederation (ITUC), representing 200 million workers in 163 countries and territories and having 332 national

affiliates, and the European Trade Union Confederation (ETUC), representing 45 million members from 90 trade union organisations in 38 European countries.

In our previous correspondence, we drew your attention to several legislative proposals under consideration by the Verkhovna Rada of Ukraine that are incompatible with international labour standards contained in the ILO instruments, as well as incompatible with regional instruments, such as the European Social Charter and the *acquis communautaire* of the European Union. We also drew your attention to the lack of any proper consultation with trade unions regarding these acts.

Among others, we expressed concerns over the draft law No. 5388 on deregulation of labour relations and on the draft law No. 5371 On Amendments to Certain Legislative Acts regarding Simplification of Labour Relations Regulation for Small and Medium Business as well as Alleviation of Administrative Burden on Business and the draft law on safety and health of workers at work.

We reiterate that these drafts pose serious concerns as regards the incompatibility of their provisions with international labour standards. We would like to draw your attention to the fact that these drafts have been recently subject to technical analysis conducted by experts in the framework of two ILO technical cooperation projects: the technical cooperation project "Rights at work: Improving Ukraine's compliance with key International Labour Standards" and the EU-ILO Project "Towards safe, healthy and declared work in Ukraine". The experts have raised concerns about the non-compliance of numerous provisions of these drafts with international labour standards.

Specifically, on draft law No. 5371, the technical note raised several concerns, among others:<sup>1</sup>

- The draft law excludes a significant share of the Ukrainian workforce from the application of the general labour law (Labour Code) through the establishment of a parallel and less protective regime for workers employed in small and medium-sized enterprises, i.e., enterprises employing fewer than 250 workers.
- The draft law allows individual negotiation over inalienable and non-negotiable labour rights protected by the Constitution of Ukraine and international treaties ratified by Ukraine and part of national labour law;
- The draft law provides for the possibility of the parties to the employment contract - through individual negotiations - to deviate in peius from the basic labour standards set out by law.
- The draft law institutes termination of employment at the will of the employer and unilateral change by the employer of essential terms and conditions of the employment contract such that they infringe international labour standards and are in contradiction with the general principles of European law and practice.
- Being mainly governed by the principle of equality of the contracting parties' characteristic to the civil law, the draft law diminishes considerably the protective role of the labour law in the case of SMEs.

Further, on draft law No. 5388, the technical note raised the following concerns:<sup>2</sup>

- With regard to regulation of the employment relationship by individual contract: the draft law does not provide for protection against deviation in peius from the minimum labour standards established by labour legislation and collective agreements. Adequate

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<sup>1</sup> [https://www.ilo.org/wcmsp5/groups/public/--europe/--ro-geneva/--sro-budapest/documents/genericdocument/wcms\\_802222.pdf](https://www.ilo.org/wcmsp5/groups/public/--europe/--ro-geneva/--sro-budapest/documents/genericdocument/wcms_802222.pdf)

<sup>2</sup> [https://www.ilo.org/budapest/what-we-do/projects/declared-work-ukraine/WCMS\\_776418/lang--en/index.htm](https://www.ilo.org/budapest/what-we-do/projects/declared-work-ukraine/WCMS_776418/lang--en/index.htm)

safeguards should be implemented to limit the possibilities of such less favourable conditions in individual labour contracts.

- With regard to regulation of fixed-term contracts: adequate measures should be foreseen to prevent abuse arising from the use of successive fixed-term employment contracts or relationships and to prevent the recourse to contracts of employment for a specified period of time with the aim to avoid the protection resulting from ILO Convention No. 158, as foreseen in Clause 5 of the Framework Agreement annexed to Directive 1999/70, which reduces the precariousness and unpredictability of such labour agreements or employment relationships.
- With regard to general regulation of labour agreements or employment relationships: the provisions of the draft law are not compatible with the ILO standards:
  - o Working time: the provisions of the draft law must be aligned with Article 2 of ILO Hours of Work (Industry) Convention, 1919 (No. 1); Article 3 of ILO Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); Article 1 of the ILO Forty-Hour Week Convention, 1935 (No. 47); and Article 6(b) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;
  - o Weekly rest period: the provisions of the draft law must be aligned with Article 5 of Directive 2003/88/EC; Article 2 of the ILO Weekly Rest (Industry) Convention, 1921 (No. 14); and Article 6 of ILO Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).
  - o Minimum daily rest: the provisions of the draft law must be better aligned with Article 3 of Directive 2003/88/EC.
  - o Overtime: the provisions of the draft law must be aligned with the requirement to ensure clear limits on overtime hours per day and per week, in a manner that accounts for Article 3 of ILO C1, Articles 5 and 6 of ILO C30 and Article 6(b) of Directive 2003/88/EC.
  - o Leave: the provisions of the draft law must be aligned with Articles 7(1) and 7(2) of Directive 2003/88/EC, and Articles 9(1) and 12 of ILO C132.

Lastly, on the draft law on occupational safety and health, the technical note raised the following concerns:<sup>3</sup>

- With regard to the organisation and functioning of the safety and health of workers system: the provisions of the draft law must be aligned with EU Directive 89/391/EEC.
- With regard to the employers' obligations: the provisions of the draft law must be aligned with Articles 5(1), 6(1) and 6(2), 7(1) and 7(3) of the EU Directive 89/391/EEC.
- With regard to workers' obligations: the provisions of the draft law must be aligned with Article 13(2)(f) of Directive 89/391/EEC.
- With regard to the central executive authority responsible for the control of compliance with the labour legislation: the provisions of the draft law must be aligned with ILO Conventions C081 and C129, on labour inspection.
- With regard to information in the field of safety and health of workers: the provisions of the draft law must be aligned with Article 21 of ILO C081.
- With regard to regulation of State Labour Inspection: the provisions of the draft law must be aligned with a number of articles of ILO C081 and C129.
- With regard to the powers, main obligations and independence of state labour inspectors: the provisions of the draft law must be aligned with a number of articles of ILO Conventions C081 and C129.

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<sup>3</sup>[https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/legaldocument/wcms\\_774341.pdf](https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/legaldocument/wcms_774341.pdf)

- With regard to the employers' liability for violation of the legislation on safety and health of workers: the provisions which provide for liability only in case of failure to comply with the labour inspector's order issued after inspection contradict Article 17(2) of ILO Convention 81, Article 22(2) of ILO Convention 129, Article 9(2) of ILO Convention 155, Article 18 of ILO C081 and Article 24 of ILO C129, Article 4(2) of EU Directive 89/391/EEC.
- With regard to the grounds and procedure for carrying out inspection visits or desk inspections: the provisions of the draft law contradict ILO C081 and C129, as the provisions restrict the free initiative of labour inspectors to carry out inspection visits at any hour of day or night without prior notice.

We express concern that despite this detailed guidance, as well as numerous comments sent to you by the Ukrainian trade unions, the incompatibility of the provisions of these drafts with international labour standards has not been addressed.

We reiterate our demand that these drafts be withdrawn and that any formal proceedings in the Verkhovna Rada be stopped. These legislative changes must be subject to full consultation with trade unions.

We call on the Ukrainian government and the Parliament to respect universal, international labour standards. The ITUC and the ETUC will continue providing assistance to the trade union movement of Ukraine and will be ready to work with Ukrainian authorities and contribute, with our expertise and analysis, to these difficult reform processes to make sure that the economic, social and democratic development of Ukraine benefits all workers and their families.

The international and European trade union movement will not hesitate to further mobilise – including via relevant ILO and EU mechanisms – to support Ukrainian workers and their trade unions and to make sure that international commitments to workers and trade union rights are respected in Ukraine.

Sincerely yours,



Sharan Burrow  
General Secretary  
ITUC



Luca Visentini  
General Secretary  
ETUC and PERC

cc: Grigori Osovyi, FPU/ Mikhaylo Volynets, KVPU