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Dear Sirs

I am writing on behalf of EPSU – the European Federation of Public Service Trade Unions – to express our support for the letters sent to you by the ITUC and ETUC expressing serious concern over the ongoing regressive labour legislation reform that is taking place in Ukraine.

In their previous correspondence they drew your attention to the incompatibility of several legislative proposals under consideration of the Verkovna Rada of Ukraine with international labour standards, contained in the ILO instruments as well as regional instruments such as the European Social Charter and the Acquis Communautaire of the European Union. They also drew your attention to the lack of any proper consultations with trade unions of these acts.

Along with the ITUC and ETUC we are extremely concerned about 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 echo the ITUC and ETUC in their serious doubts that these drafts are compatible with the international labour standards and draw your attention to the recent 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 raised concerns about 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:¹

- 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, international treaties ratified by Ukraine and national labour law;
- The draft law provides for the possibility of the parties to the employment contract to deviate in pejus from the basic labour standards set out by law through individual negotiations;
- The draft law institutes termination of employment at will of the employer and unilateral change by the employer of essential terms and conditions of the employment contract, which infringe international labour standards and are in contradiction with the general principles of European law and practice;

¹https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms_802222.pdf

- 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 case of SMEs.

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

- With regards regulation of 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 safeguards should be implemented to limit the possibilities of such less favourable conditions in individual labour contracts;
- With regards 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 preventing 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, thus reducing the precariousness and unpredictability of such labour agreements or employment relationships;
- With regards 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 organization 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 Leaves: 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:³

- With regards the organization 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;

² https://www.ilo.org/budapest/what-we-do/projects/declared-work-ukraine/WCMS_776418/lang--en/index.htm

³ https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/legaldocument/wcms_774341.pdf

- With regards 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 regards workers' obligations: the provisions of the draft law must be aligned with Article 13(2)(f) of Directive 89/391/EEC;
- With regards 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 regards 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 regards 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 regards 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;
- With regards the employer's 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 regards grounds and procedure for carrying out inspection visits or desk inspections: the provisions of the draft law contradict ILO C081 and C129, as they are restricting the free initiative of labour inspectors to carry out inspections visits at hour of day or night without prior notice.

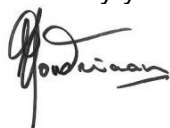
Despite this detailed guidance as well as numerous comments sent to you by the Ukrainian trade unions the incompatibility of the provisions of these drafts with the international labour standards has not been addressed.

We reinforce the demand of the ITUC and ETUC that these drafts be withdrawn and that any formal proceedings in the Verkhovna Rada be stopped. These legislative changes must be subject to full consultations with trade unions.

We strongly support the call on the Ukrainian Government and Parliament to respect universal, international labour standards EPSU, along with the ITUC and the ETUC will continue providing assistance to trade union movement of Ukraine and will be ready to work with Ukrainian authorities and contribute with our expertise and analysis in these difficult reform processes to make sure that 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 to 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,



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EPSU General Secretary

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