

Regarding the Draft Law of Ukraine
“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”
(No 5371)

The draft law is not supported by trade unions because, contrary to the ILO Recommendation No 189 concerning job creation in small and medium-sized enterprises, it was discussed only with representatives of small and medium-sized enterprises without the participation of trade unions.

It does not take into account:

- Articles 296, 419 and 420 of the **EU-Ukraine Association Agreement**, in particular Article 296, which stipulates that a Party shall not weaken or reduce the labour protection afforded by its laws;
- the **ILO Recommendation No 189**, in particular regarding stimulation of job creation in small enterprises through the implementation of the policy of non-discriminatory application of labour legislation.

Besides:

- proposed wording of **Articles 21, 49-5 and 49-8** of the Labour Code is not in line with Ukraine's international obligations, including: **Council Directive 98/59/EC** of 20.07.1998 on the approximation of the laws of the Member States relating to collective redundancies; Article 24 of the **European Social Charter** (revised), Article 4 of the **ILO Convention No 158** and **Recommendation No 166**, Articles 1 and 2 of the **ILO Convention No 135**, which provide that *employment relationships with workers shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service*.

Therefore, the possibility to dismiss any employee at the unilateral discretion of the employer without any grounds makes void any guarantee of labour rights in Ukraine and makes impossible effective trade union work (because trade union activists can be fired without explanation) and the fight against violations of labour rights at workplaces;

- proposed wording of **Article 49-6** narrows the imperative norm concerning information of employees about any change in working conditions, which is not in line with Article 6 (1) of **Directive (EU) 2019/1152**, according to which in the event of any change in the essential aspects of the employment relationship (**not only those that “entail deterioration of working conditions”**), the employer must inform employees.
- the **shift** from the regulation of a number of important aspects of labour relations by law or collective agreements **to their regulation through individual employment contracts** not only prevent the creation of adequate mechanisms to protect workers from abuse, especially workers in precarious or unpredictable labour relations, but also in some cases **contradicts** applicable international and European labour norms, in particular **Directive 2003/88/EC**, and also violates **Article 92 of the**

Constitution of Ukraine in part of regulation of labour by laws rather than individual employment contracts.

- the role of trade unions in the representation and protection of labour rights is eliminated by excluding the norm concerning the consent of the trade union to dismiss an employee at the initiative of the employer as well as other issues related to representation and protection of workers' labour, socio-economic rights and interests in relations with employers. This in turn **contradicts** provisions of **Article 36 of the Constitution of Ukraine**, **ILO Convention No 87** on Freedom of Association and Protection of the Right to Organize and **ILO Convention No 158**, which provides for conciliation procedures in the event of dismissal, and **Council Directive 98/59/EC** of 20.07.1998 on the approximation of the laws of the Member States relating to collective redundancies.

Implementation of the proposed contractual regime of labour relations regulation in small and medium enterprises will significantly complicate collective bargaining, hamper the realisation by the employees of these enterprises of their constitutional rights to strike, to form and join trade unions, and thus deprive workers of their right to collective protection of their labour and socio-economic rights and interests.

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