

REGULATION OF LABOUR MARKET IN UKRAINE AND THE EU: COMMON FEATURES AND DIFFERENCES. ADAPTATION OF THE UKRAINE'S LABOR CODE TO THE LEGISLATION OF THE EU

CONTENTS

Part 1. Brief Outline of the Situation in the Ukraine's LabourMarket in Comparison with the EU

Part 2. Major Problems in the Ukraine's LabourMarket

Part 3. Adaptation of the National LabourCode to the Legislation of the EU

Part 1. Brief Outline of the Situation in the Ukraine's LabourMarket in Comparison with the Situation in the EU

In this document, the labour market is regarded as an economic environment with the system of relations between employers, employees, and government bodies. The labour market system is characterised by the relations in such spheres as employment, decent work, and remuneration of labour, workplace rights, dialogue in the labour market.

According to the data on the population's economic activity research conducted by the State Statistics Service of Ukraine on the basis of the International Labour Organization (ILO) methodology, in the first half year of 2016, the number of the working-age population (15-70 years old) was 28.9 million people, which includes 16.2 million employed, 1.7 million unemployed, and 11.0 million economically inactive persons.¹ All in all, 62.4% of the working-age population participated in the labour market, 56,2% were employed. The unemployment level among the economically active population amounted to 9.4% – this is one of the highest indexes for the last 15 years.

Comparing the situation in the domestic labour market and in the EU (Appendix 1), one can't help noticing the fact that the current unemployment level in Ukraine is very close to the average level in the EU. However, in the EU countries that have been struck by the economic crisis most of all (Greece, Spain, Italy, Cyprus) the unemployment level is 1.5-2 times higher than in Ukraine, and accordingly the employment level is lower. It gives ground to allege that in Ukraine the unemployment growth is to a great extent compensated by the decrease of motivation for official employment and the decline of the employment quality. During the crisis, job cuts take place mainly in the sector of official employment, while the number of those self-employed and unofficially employed grows. While the number of regular employees at enterprises stably amounted to 10.1 million, in the first half-year of 2016, this number dropped to 7.9 million. According to the data of the Ukraine's Pension Fund, the number of employees subject to the unified social tax is 10.4 million, and this is only 63.4% of all employed persons or 35.9% of the whole population aged 15-70. The remaining 6 million (more than one-third of the whole employed population) have unofficial or other socially unprotected jobs, being outside the labour law.

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Without considering the temporarily occupied territory of the Autonomous Republic of Crimea, the city of Sevastopol and the ATO zone

The unemployment level among young people in Ukraine is high (25.1% among people aged 15-24) and higher than the average level in the EU (19.3%). However, it does not reach much higher than those "peak" values in southern European countries like Spain and Italy. The reason for this is, for example, a high percentage of young people in this age group who are employed in "untypical employment forms" in Ukraine. In particular, young people are often employed without signing an official labour contract, which ensures a current salary for them but decreases the financial base of united social insurance funds and thus puts the burden of their social insurance on others.

The comparison of the employment structure with regard to economic activity and professional groups indicates the presence of destructive changes in Ukraine, and that the country is falling behind even the least developed EU countries. For the last three years, Ukraine has seen a clear tendency for deindustrialisation – the number of those employed in industry and construction has dropped, and only a certain number of those employed in sales has demonstrated a stable growth rate. Sales have long been the leader in employment (in 2015 – almost 3.5 million or 21.4% of all employed people) leaving traditionally large sectors like industry (2.6 million) and agriculture (2.9 million) far behind. In the majority of the EU countries the number of people employed in agriculture is 1-7%, in Poland – 11.3%, in Greece – 12.3%, in Romania – 23.1%. The number of people employed in sales fluctuates from 12% to 15%, the maximal value is observed in Lithuania, Greece, Bulgaria and on Cyprus (17-18%).

The major branches of "unregistered employment" in Ukraine are agriculture, construction, sales, and HORECA. Those forms of employment that are different from full-time weekly employment on a labour contract prevail more and more in Ukraine and in the majority of cases – only fictitiously, aiming at minimising employer expenses on social insurance and sick leaves. Thus, the situation of such employees is similar to those who work entirely illegally. Another way of minimising social insurance costs is subcontracting labour relations. In particular, employees in the sphere of sales both in small/average businesses and in big sales networks as well as the operating personnel at enterprises (for example drivers or electricians) who actually work on a regular basis are formally legalised as sort of "small entrepreneurs" while in fact their activity has nothing to do with entrepreneurship. The relevant government authorities deliberately "do not notice" this illegal practice and do not properly react to trade unions' notifications about such cases.

The problem of the low employment rate in Ukraine is manifested in all its aspects, including labour conditions, professional growth opportunities, and salary rates. In the majority of the EU countries, the employment rate reduces the risk of poverty by half in comparison with the general index (Appendix 2). In Ukraine, the poverty level of employed people is only 20% lower than that of the other population.

One of the key aspects of the labour market is the price of labour. Despite massive efforts to improve the state and collective-contractual regulations of labour remuneration made in Ukraine during its independence years, the policy of market reforms has been less successful in resolving the issue of cheap labour force. It has brought negative tendencies of persistent nature: a decrease in the correlation of the minimal salary with the average salary (27.9% in August this year while the EU Parliament recommends 60%), a decrease in the correlation of the minimal salary with the actual cost of living calculated by the Ministry of Social Policy with due consideration of the personal income tax (46,4% in September this year), the remaining gap between the position salary (tariff rate) of a 1st uniform tariff category employee and the minimal salary on the level of UAH 265, growing pay delays (as on September 1 this year – UAH 1,902.3 million).

During the crisis of 2014–2015 the salary lost 25.4% of its purchasing power, and the minimal salary – 36.7%. As a result of a devaluation of hryvnia, the local currency (UAH) the minimal salary is now only EUR 52 according to the official currency rate of Ukraine's National Bank, and comparing to the average index in the economy – 30%. Considering the minimal salary of UAH 1,450 from May 2016 on, a working Ukrainian person can afford to spend no more than UAH 48 a day, or EUR 1.65. The minimal (retirement)

pension of the majority of Ukrainian pensioners has amounted to UAH 1,130 per month from May 2016 on, which makes EUR 39. Thus, a pensioner can afford to spend no more than UAH 37.7 a day, that is EUR 1.3.

The lowered minimal salary rate generates a considerable discrepancy between earned incomes in Ukraine and the EU countries. For example, an average monthly salary in 2016, after paying all taxes, is EUR 1,508 in the EU, while in Ukraine this index in August 2016 amounted to EUR 139 (UAH 5,202).

The problem of the employment quality and salary rates may be solved only by providing social equity on the national level, which includes the fair distribution of work results between employer, state and employees, ensuring a fair share of salaries in production costs and an increase of labour remuneration in the total incomes of households (in 2015 this index amounted only to 37.8%). A salary must ensure decent living standards and protect people from poverty that poses a real threat to social well-being. Together with the employer, the representatives of employees have to find solutions as to the fair distribution of the benefits brought by the progress in terms of labour remuneration, working time, other working conditions and the realisation of the principle of equal remuneration for the same work, which, according to trade unions, must become the foundation for improving the work management.

Requirements made by trade unions as to reforming the labour remuneration system to ensure its radical rise and reach European standards are supported both by the government and by employers. Along with it, despite a number of decisions and assignments made by the government, this process is hindered by executives in ministries.

Being unable to find a proper job with a decent salary in the domestic market, Ukrainians look for work abroad. It does not seem easy to calculate the exact number of Ukrainian migrant workers. According to the International Organization for Migration in Ukraine, the number of Ukrainian labour migrants working abroad is about 700 thousand people.² This data may probably not include cases (which are usually difficult to adequately estimate) like circular labour migration, when one leaves to work abroad for several weeks or months and then returns to Ukraine, sometimes several times a year. Such migrants may not be considered at all, or vice versa – considered several times a year, which increases or decreases the actual data. Sometimes they speak about 5 million Ukrainian migrant workers but this data hasn't been confirmed by any research. According to rational assessments, the volume of more or less consistent labour migration fluctuates in the range of 1.5-3 million people, but due to the absence of a methodology accepted by everyone (in particular, as to circular migration) there is no verified data today.

According to the Ukrainian Mission of the International Organization for Migration, private money transfers that Ukrainian migrant workers made to Ukraine in 2014 amounted to almost 2.8 billion US dollars, which exceeds the total of direct foreign investments in the Ukrainian economy and international development assistance. What causes concern is the growing number of those who work abroad illegally – from 28% in 2011 to almost 41% in 2015. The situation in Ukraine is worsened by the number of Ukrainians willing to find illegal jobs abroad, risking to fall prey to human trafficking.

Taking the above mentioned into consideration, reconstructing the economy and workplaces (in particular, reducing employment in agriculture and sales) is not less important for Ukraine than fighting unemployment. Creating new jobs is impeded by the fact that the semi-skilled workforce is less flexible in terms of occupational and sectoral mobility.

2

International Organization for Migration 20 years in Ukraine http://iom.org.ua/sites/default/files/iom_wwd_ukr_screen.pdf

Part 2. Major Problems in the Ukraine's LabourMarket

2.1 Employment

The main difference of the EU policy is a clear and distinct attitude towards the unconditional necessity to improve the employment level. Employment is regarded as a separate European value that ensures not only the material well-being but also the social consensus and maximal social involvement of all population strata. This attitude is reflected in the major European regulations. In particular, the European Social Charter obliges governments to accept the achievement and maintenance of the possibly fastest and the most stable employment growth as one of their main goals and duties, aiming at full employment.³ For the current decade, the Europe 2020 Strategy mainly aims at the employment growth among 20-64 year old to 75%.⁴ The Employment and Social Innovation (Eased) Programme as part of the Europe 2020 Strategy aims at achieving a high quality and stability level of employment as a guarantee of decent social protection, coping with social exclusion and poverty, improving labour conditions.⁵

The belief in the inherent value of employment and its key role in preventing/coping with poverty and social exclusion is based on the achievement of its high quality, which is ensured by the reliability of the European social model. This model stands on six "pillars": employee rights and labour conditions, social protection, labour market policy, public services, social dialogue, and social togetherness.

Lately, a doubt has reigned as to whether this model can hold out against the pressure of the long-lasting financial and economic crisis in combination with the growing global political instability. Growing unemployment, the spreading schemes of shortened working time, budgetary and fiscal consolidation, decreased social expenses, frozen or cut salaries in the public employment sector, simplified dismissal procedures, the limited volume or durability of unemployment benefits, shortened vocational training programmes, the lessened impact of collective-contractual regulations and along with these growing tendencies for social distancing and stigmatisation among certain population groups (particularly migrants) are giving ground to social conflicts, leading to the lack of labour motivation and human assets.⁶ However, the current "working" documents show that the EU is not going to "lose its ground" either as far as employment or the social model, in general, is concerned, though with due consideration of the budgetary limitations. In particular, the emphasis has been constantly laid on the necessity of ensuring the progress of employment market convergence and the monitoring over the well-being of people in order to prevent the most vulnerable population strata from lagging behind.⁷

Since the increase of the employment rate is considered as a basis for social well-being and the best means of social involvement, this policy is applied for absolutely all population categories with consideration of life-cycle stages and with a special focus on vulnerable groups. For example, as far as young people are concerned, an emphasis is placed on facilitating and improving the transition from education to regular work, for which, on the one part, different forms of combining education with work are used (dual education, on

3 The European Social Charter (revised) (ETS N 163) [Electronic resource]. – Access mode: http://zakon.rada.gov.ua/go/994_062

4 The Europe 2020 strategy, adopted by the European Council on 17 June [Electronic resource]. – Access mode: <http://ec.europa.eu/eurostat/web/europe-2020-indicators/europe-2020-strategy/targets>

5 European Union Programme for Employment and Social Innovation (EaSI), Work Programme Funding priorities for 2015 / EU GD Employment, Social Affairs & Inclusion. — March 2015.— 13 pp.

6 The European Social Model in Crisis: Is Europe losing its soul? / Edited by Daniel Vaughan-Whitehead. — Geneva: ILO, 2015.— 370 pp.

7 European Union Programme for Employment and Social Innovation (EaSI), Work Programme Funding priorities for 2015 / EU GD Employment, Social Affairs & Inclusion. — March 2015.— 13 pp.

the job training) and on the other part – different programmes to support employers who take part in such practices. At the same time, with regard to demographic trends, much attention is attached to "retaining" older generations at the workplace. The EU Sustainable Development Strategy defines the employment rate of older employees (persons 55-64 years old) as the main indicator of monitoring demographic changes and assigns a task to considerably increase this index.⁸

With this in mind, the biggest gap of the domestic policy in the labour market must be the lack of a clear national standpoint as to the pressing necessity to increase the economic activity and employment rate. Instead of a clear definition of the policy goal in the sphere of employment, the law of Ukraine "On Population Employment" (Part 2, Article 15) contains a list of eight clauses, each of which does not provide and cannot ensure the employment growth rate in a direct way. Moreover, Article 3 of the Law "Right for Employment" contains a provision that voluntary unemployment cannot be grounds for bringing a person to responsibility. If necessary, one can regard the meaning of this article as the right for unemployment. The absence of legal and distinct impetus for maximising the employment rate results in the limitation of the policy's active measures in the labour market, the overall "lack" of labour motivation and the loyal attitude of the population to idleness.

Another problematic aspect of the domestic laws is insufficient reckoning with modern changes in the employment nature and labour relations. It is a matter of a so-called retreat from the traditional employment model that meant full-time hired work for one concrete employer. The research of Euro found shows that along with bigger flexibility, autonomy and the content diversification of work, the majority of new employment forms increase the risk of labour intensification, stress level and work-time duration growth, dissolution between work and personal life, inaccessibility to the programmes of professional and careergrowth, low social protection and low incomes.⁹ Thus, employment in the sector of the "digital" technological mode may turn out to be yet less protected than in traditionally unfavourable sectors. Ensuring the proper balance between flexibility and protection requires the legislative regulation of new employment/relationship forms and their monitoring and consideration in the policy, and not only in the policy of employment and social protection but also in the policy of regional and sectoral development.

Certain trade unions claim that the creation of favourable conditions for small and medium business development will build a potential base for new jobs.

2.2 Inclusiveness of the LabourMarket

The necessity of raising the economic activity and employment level is actualised in due consideration with demographic prospects. All existing demographic prognoses foresee a quick population decline in Ukraine. According to the latest UNO prognosis, Ukraine belongs to eleven countries of the world where the population will decrease by more than 15% before 2050, herewith Ukraine holds the third place on this list having the decline rate of 21.7%.¹⁰ The population will decrease mainly for the account of working-age people, while the number of elderly people will increase.

With the decreasing and aging population, the working force reserves will have to be found among elder people. The practice of European countries shows that in order to engage more elderly people with the labour market, it is not enough to only implement some pension reform measures, even radical measures like a

⁸ Sustainable development in the European Union 2015: Monitoring report of the EU Sustainable Development Strategy / Eurostat. — Luxembourg: Publications Office of the European Union, 2015.— 354 pp.

⁹ New forms of employment / European Foundation for the Improvement of Living and Working Conditions.— Luxembourg: Publications Office of the European Union, 2015.— 160 pp.

¹⁰ World Population Prospects: The 2015 Revision. Key Findings and Advance Tables / Department of Economic and Social Affairs Population Division, United Nations, New York, 2015.Pp. 9, 26.

retirement age rise. Such measures must be enhanced with a focused policy ultimately targeted at encouraging the employment of elderly people, including enhanced study opportunities during their lifetime and effective stimuli for employers to continue employing elderly people as well as stimuli for elderly people to continue to work longer.¹¹ The actual absence of norms regulating elderly employment in the Ukrainian labour legislation predetermines that low commitment of all parties concerned and as a result of this – one of the lowest employment levels in Europe among people of 55-64 (see Appendix 1).

The problem of the inclusiveness of Ukraine's labour market is transparently reflected in the category of almost 3 million handicapped people. Despite the law that defines employment regulations for such people for all Ukrainian enterprises, the number of jobs offered by employers to disabled people has never been sufficient. Also, claims about the impossibility of employing disabled people in certain economy branches ("a disabled person cannot work near a metallurgic furnace, in construction or on a fishing boat") trenches on cynicism, denying the full value of this population strata. Moreover, a big problem with disabled people is the noncompliance of their real learned professions with jobs offered to them, as well as insufficient salary levels, etc.

2.3 Social Unemployment Insurance and the State Employment Service of Ukraine

The intensification of market segmentation, the growth of discrepancies and risks to lose jobs require the strengthening of the public infrastructure in the labour market, in particular – better budget planning in case of unemployment and easier access to the State Employment Service. Now in Ukraine, only one unemployed person out of four is registered in the Employment Service and enjoys the related social protection (Appendix 3). Anyway, it is hard to say which is the consequence and which is the reason: whether people work unofficially because they have no access to unemployment protection or because they have no right for insurance payments due to their unofficial employment. Also, it is necessary to review the norms and criteria of registering the unemployed in order to encourage as many people as possible to work officially.

In the economic crisis, the budget of the Ukrainian Obligatory State Social Insurance Fund for Unemployment Cases is constantly decreasing, firstly because of decreasing social policy measures. Herewith, the whole office of the State Employment Service is supported by the social insurance costs, which contradicts to the international practice of financing such offices with the state costs. Thus, according to ILO Convention No.88 about the organisation of the employment service, an employment service operates under the guidance of government bodies and its personnel consists of government employees. ILO Recommendation No.83 about the organisation of the employment service suggests that governments allocate enough funds for such a service.

The limited measures of the policy in the labour market are directly connected with extremely low financing. Ukraine spends about 0.4% of its GDP on the labour market policy while the majority of the EU countries – 1-2% (Appendix 3). In fact, the only source of financing is the Ukrainian Obligatory State Social Insurance Fund for Unemployment Cases; most of the costs are spent on unemployment aid, while one-third of recipients receive the minimal allowance of UAH 544.

Disputable is the issue of the division of powers when it comes to the management of this or that obligatory social insurance fund where representatives from employers and trade unions have experienced certain pressure during the last years.

¹¹ Employment trends and policies for older workers in the recession / European Foundation for the Improvement of Living and Working Conditions. – Publications Office, 2012. – 12 pp.

2.4 Impact of the Conflict in Eastern Ukraine on the LabourMarket

The military and political conflict in the East of Ukraine has led to the appearance of a new vulnerable category in the labour market. Even though the majority of domestically migrated persons are pensioners, in 2015, during the registration, 129,230 people of the working age expressed the employment need. 50,499 from them appealed to the State Employment Service for assistance (less than 40% of those registered) and 13,721 (27% of those who appealed) were employed. The problems of employing internally displaced persons (IDPs) can be explained by the fact that they do not have a complete set of documents, but the main reason is the lack of suitable jobs (particularly with regard to salary criteria) in their new places of residence. The actual prohibition of employing people who worked in law-enforcement and correctional institutions in certain areas of the Donetsk and Luhansk oblasts, which are temporarily not under the authority of the Ukrainian government, occurred because of the impossibility of obtaining the personnel files from their previous positions.

The Law of Ukraine "On Population Employment" was amended by a new article with additional guarantees of ensuring the employment of IDPs (payment for retraining, donations to employers for paying salaries etc.) but probably these measures are not sufficient.

2.5 Social Dialogue. Collective Bargaining Conventions. Limitation on the Right to Strike

The Ministry of Social Policy has published the draft of Ukraine "On Implementing Changes to the Law of Ukraine 'On Social Dialogue in Ukraine'" (as to engaging institutions of the civil society). The draft has been coordinated with the representatives of trade unions and employer organisations which belonged to the work group that developed it. This draft suggests civil society institutions (public organisations) be engaged in the social dialogue on a related level to participate in consultations and information exchange. According to some trade unions, the proposed edition of the draft will lead to a conflict of laws caused by the violation of the 'rule of law' principle because of the contradictory interpretation of its provisions and the actual substitution of the notion of the social and public dialogue which in its turn will further decrease the legitimacy level of the Law's provisions. According to some trade unions, the current law "On Collective Contracts and Agreements" provides for the monopoly of the trade union majority in the enterprise – which under the existing conditions in Ukraine is de facto under control of the employer – to make collective contracts, divesting new trade unions of the right to conduct negotiations with the owner.

As some trade unions claim, the structuring and reorganising of the parties in the social dialogue is still a pressing problem. It is caused by the ambiguous application and interpretation of the laws about collective contracts and agreements (in terms of concluding the General agreement) and state obligatory social insurance funds (in terms of forming their executive bodies).

Taking into account comprehensive and important problems in the sphere of social dialogue in Ukraine, it is worth mentioning that a part of measures taken by the Government grants civil society organisations access to participate in the discussion of their issues.

The national tripartite social-economic council is a legislatively defined ground for the social dialogue between trade unions, employers and the government on the issues of social and economic development of the country. Committees for employment assistance still exist, though with some problems in terms of their functioning.

For trade unions, employers and other public organisations, the Government has opened opportunities to participate in the meetings of government committees – bodies that preliminarily discuss all issues to be approved by the Government.

Random meetings of the Ukraine's Prime Minister with the representatives of trade unions and employers to discuss most pressing problems related to reforms in Ukraine (utilities price increase that stirred big street protests of trade union members, the changes of the labour remuneration system with the purpose of its rise, etc.) as well as related branch meetings between ministers and certain sectoral trade unions are a considerable political step to strength the social dialogue. These first steps have to be developed and enhanced in order to properly protect Ukrainian citizens in the strict social and economic reforms.

Along with all existing problems in terms of observing the law requirements, there are very few collective labour disputes in Ukraine, and almost no strikes (5 strikes in 2014 and 5 in 2015¹²). One of the reasons is the limitation on the right for a strike by the national existing law, which, as trade unions' representatives claim, generally has a negative impact on the ability of the parties to achieve agreements in the social dialogue. Thus, in Ukraine, besides the general terms of prohibiting strikes, according to the Laws "On State Service", "On Service in Local Government", "On Diplomatic Service", "On National Police", "On the Armed Forces of Ukraine", "On Alternative (Non-Military) Service", "On Emergency Medical Aid", "On Fire Safety", "On Electricity", "On the Use of Nuclear Energy and Radiation Safety", "On Transport", "On the Legal Regime of Martial Law" and the Mining Law of Ukraine, certain categories of employees do not have the right for strike if the termination of work poses a threat to the health of people, the environment, or hinders the prevention of a disaster, accidents, catastrophes, epidemics and epizootic or the liquidation of their consequences. Also, according to the law "On the Procedure for Resolving Collective Labour Disputes (Conflicts)", the decision to go on a strike must be made by the majority of all the employees of the enterprise, which implies an extremely long bureaucratic procedure (including the necessity of conducting two employee conferences), which in fact may last two months.

The issues of the realisation of the right for a strike is regulated by the International Labour Organization conventions. However, the prohibition of strikes makes the effective realisation of the assembly freedom and the right to conduct collective negotiations and make collective agreements impossible. That is why the ILO has indirectly admitted this right, i.e. it is assumed that the right for a strike results from the contents of Convention No.87 about the freedom of association and protection of the right to organise convention, 1948, of Convention No. 98 about the right to organise and collective bargaining conventions, 1949, since the freedom of assembly provides for the possibility of conducting strikes.

2.6 Change of the Labour Laws

A powerful tool of reforming the whole system of labour relations in Ukraine will be a new Labour Code of Ukraine, the draft of which has been being developed since 2003. The attitude of different strata of the civil society to the drafts of the Ukraine's Labour Code submitted to the parliament both earlier and now is different. The last draft of the Labour Code preliminarily adopted by the parliament in September 2015 evokes quite opposite conclusions among different interest groups in the civil society. A part of employers calls for the soonest adoption of the Labour Code draft. On the other hand, entrepreneur groups insist on changes in the Labour Code draft in terms of introducing not only employers' organisations (created according to the Law of Ukraine "On the Employers' Organisations, their Associations, Rights and Guarantees of their Activities") into the social dialogue but also entrepreneur groups.

The work on changes to the Ukrainian Labour Code has been systematic and large-scale, and since the end of 2017 more than 1,700 amendments have been introduced by the deputies.

12

The official web-site of the State Statistics Service of Ukraine

http://www.ukrstat.gov.ua/operativ/operativ2014/pr/stv/stv_u/sed.htm

At the same time, certain trade union groups claim that the work on the final edition of the Labour Code is not transparent because certain social dialogue party members haven't been included into the staff of the work group responsible for the Labour Code draft, and that their written propositions have been ignored.

The draft of the Ukrainian Labour Code was thoroughly revised by the International Labour Organization, which, in April 2016, provided its detailed technical comments to the dedicated Committee of the Parliament. The ILO experts pointed out that the main task of the Labour Code draft is to ensure a balance between the interests of the state and trade unions representing employees and employers as well as reach a compromise between the flexibility of employment/dismissal to improve the business conditions and employee protection.

Some trade union groups make public calls to withdraw the Labour Code draft from the parliament as such which may considerably aggravate the legal situation of employees and trade unions. The major provisions of the Labour Code draft that cause a conflict between the parties of the social dialogue are the advanced list of reasons for dismissal and the limitation on the rights of trade unions, in particular, in terms of information access to the labour conditions of their members, access to different trade union organisations to their members' workplaces, deterioration of labour conditions for children between the age of 14-16, single mothers, employees of small enterprises, the issue of electronic surveillance over the employees by their employer, extension of employers' rights to transfer employees to another place of work, etc.

Part 3. Adaptation of the National Labour Code to the Legislation of the EU

The implementation of the Agreement opens new opportunities for Ukraine in terms of approaching the EU in the political, economic and legal spheres, and obliges Ukraine to introduce political, social, economic, legal and institutional reforms. In particular, Articles 290-291 oblige the parties to ensure and implement major labour standards in their laws and practices, which are accepted on the international level, including the removal of discrimination in employment. Section V "Economic and Branch Cooperation" defines measures for economic and social reforms. Article 21 "Cooperation in the Spheres of Employment, Social Policy, and Equal Opportunities" aims at improving the quality of life; countering common challenges, in particular, globalisation and demographic changes; increasing the number of jobs and improving their quality, with decent working conditions; ensuring the development of social and legal equality in terms of reforming the labour market; creating the conditions for uniting flexibility and protection in the labour market; ensuring the introduction of active measures in the labour market and improving the effectiveness of employment services with the purpose of meeting the needs of all concerned parties in the labour market; encouraging the development of labour markets; ensuring the engagement of low-income persons; decreasing the volume of informal economy by means of transforming illegal employment; improving the level of health care and safe labour conditions as well as by means of education and training on the issues of health care and labour safety; ensuring the implementation of preventive measures, preventing the risk of big accidents and the management of toxic chemical substances as well as exchanging good practices and research results in this sphere; improving the level of social protection and social protection system modernisation, in particular in terms of quality, accessibility and financial stability; reducing poverty and strengthening the social unity; ensuring the gender equality and equal employment opportunities for men and women in the sphere of education and training, economic and public activity and in the process of decision

making; coping with discrimination in all its forms; improving the opportunities of social partners and encouraging the social dialogue.¹³

The action plan for the implementation of the Association Agreement for 2014–2017¹⁴ and the detailed plans developed for it in terms of executives and directives that must be implemented into the national legislation, provide for the expert evaluation of the existing national legislation for its conformity with EU directives and the development of related draft laws and policies as well as quarterly monitoring on the realisation of the planned measures. During the monitoring, not only the fact of making certain legislative changes is assessed but also the aspects of their fulfilment and introduction (the latter is of extreme importance in view of the national legal practice). As the initial experience shows, there are big risks of failing to meet deadlines in the preparation and approval of draft laws and regulations necessary for the implementation of the EU directives. The government reports on the implementation of the Agreement provide information rather about the current legislative work than about the accurate fulfilment of obligations on the Ukrainian part.

At the same time, one has to understand that the EU directives contain only certain "targeted" norms, the mechanical implementation of which will not ensure the quality regulation of the national labour market. Ukraine has to make huge efforts to advance this policy to the best European standards.

Recommendations for the Measures/Directions of the Employment Policy in Ukraine:

- To accomplish the modernisation of the Ukrainian employment legislation in terms of content and inclusive social dialogue.
- On the level of the Ukrainian Law "On Population Employment" and all its related regulations, to accept the increase of the employment level and productivity as the major purpose of the labour market policy.
- To enhance the role of social partners and all stakeholders in the formation of the employment policy, as well as on the local level. To balance authority and establish a constructive social dialogue, the integration of efforts at all stages in the formation and realisation of the employment policy must encourage the society to search for a compromise and reach a consensus.
- To develop a legislative environment for regulating new changes in the employment pattern, in particular, a search for mechanisms to socially protect employees under irregular employment conditions.
- To enhance the social dialogue about reforming the State Employment Service, in particular in terms of financing and support.
- To reform the labour remuneration system to ensure its radical improvement with the purpose of achieving European standards.
- To remove discrimination in the field of labour remuneration, in particular, to establish the position salary (tariff rate) of a 1st uniform tariff category employee in the sum of the minimal salary, and to pay off the salary debts.
- To ratify the European Social Charter (revised) to the full extent.

¹³ The association agreement between Ukraine on the one part and the European Union, the European Atomic Energy Community and their member-countries on the other part http://zakon.rada.gov.ua/go/984_011

¹⁴ The action plan as to the implementation of the Association Agreement between Ukraine on the one part and the European Union, the European Atomic Energy Community and their member-countries on the other part for 2014-2017 / approved by ordinance of the Cabinet of Ministers No. 847 dated September 17, 2014 <http://zakon.rada.gov.ua/go/847-2014-%D1%80>

- To increase the number of working places at the cost of the Social Protection of the Disabled Fund; to encourage enterprises to meet the regulation of employing this category of people; to effectively exchange information between the departments of labour and social protection and the employment centres in terms of disabled people who wish to work; to develop individual rehabilitation programmes for disabled people, to develop special conditions of pension accounting for the disabled who work.
- To balance economic and social stimuli for employing vulnerable population strata, including IDPs and ATO veterans.
- To remove the discrimination of IDPs during their employment in law enforcement and correctional agencies.
- To develop and implement the acquired professional skills and the system of their independent approval.
- To create conditions for the effective and full-scale work of the labour inspection.
- To ensure the observation of the right of the social dialogue parties in the revised Laws of Ukraine "On Collective Contracts and Agreements", "On the Procedure for Resolving Collective Labour Disputes (Conflicts)", "On Social Dialogue".
- To deeply discuss and regulate necessary and sufficient terms that guarantee the right for a strike in Ukraine and an excluding list of limitations on it with the purpose of enhancing the social dialogue and improving the content of collective bargaining conventions.
- To enhance work as to concluding two- and multi-party international agreements on the employment and social protection of migrant workers.
- To encourage the development of the system for confirming informal education results, in particular for working professions, which, first of all, is aimed at enhancing the competitive advantages of vulnerable population strata, mainly migrant workers that have returned home from abroad.
- To improve the system of professional orientation, to engage as much population as possible in it, beginning with school pupils and ending with the adult and elderly population.

Appendix 1

Employment and Unemployment Rate in the EU Countries and Ukraine, 2015

	Employment level of population aged 20-64, %		Employment level of population aged 55-64, %		Unemployment level of population aged 15-24, %		Unemployment level of population aged 25-64, %	
	Men	Women	Men	Women	Men	Women	Men	Women
EU-28	75.9	64.3	60.1	46.9	21.0	19.5	8.3	8.6
Belgium	71.3	63.0	48.9	39.3	23.8	20.0	7.9	6.8
Bulgaria	70.4	63.8	56.8	49.5	21.2	22.3	9.1	7.8
Czech Republic	83.0	66.4	65.5	45.9	11.3	14.4	3.8	5.6
Denmark	80.2	72.6	69.8	59.6	11.6	10.1	5.1	5.9
Germany	82.3	73.6	71.3	61.2	7.9	6.5	4.8	4.1
Estonia	80.5	72.6	63.1	65.7	13.8	12.2	5.6	5.7
Ireland	75.1	62.6	64.9	46.4	23.6	17.6	10.0	6.8
Greece	64.0	46.0	44.9	24.7	45.2	55.0	20.5	27.4
Spain	67.6	56.4	54.0	40.2	48.6	48.0	18.9	21.9
France	73.2	66.0	50.6	46.8	25.8	23.3	9.2	8.6
Croatia	65.2	55.8	48.0	30.6	41.9	44.5	13.1	14.9
Italy	70.6	50.6	59.3	37.9	38.8	42.6	9.7	10.9
Cyprus	72.3	64.0	57.8	39.5	34.7	31.1	13.7	13.1
Latvia	74.6	70.5	60.1	58.9	18.0	14.2	10.7	8.3
Lithuania	74.6	72.2	62.4	58.8	16.0	16.6	9.7	7.7
Luxembourg	76.7	65.0	43.0	33.7	18.9	15.7	5.0	6.6
Hungary	75.8	62.1	54.4	37.7	18.3	16.0	5.6	6.4
Malta	81.4	53.6	58.8	21.9	13.9	9.4	4.5	4.4
Netherlands	81.9	70.8	71.1	52.4	11.3	11.2	5.7	6.5
Austria	78.4	70.2	54.1	38.8	11.1	10.0	5.5	4.7
Poland	74.7	60.9	54.2	35.5	20.7	20.9	6.2	6.8
Portugal	72.6	65.9	56.0	44.5	29.6	34.5	11.4	11.4
Romania	74.7	57.2	51.2	32.1	20.6	23.4	6.6	4.8
Slovenia	73.3	64.7	42.6	30.5	17.7	14.6	7.4	9.9
Slovakia	75.0	60.3	53.6	41.0	25.8	27.5	8.9	11.9
Finland	73.9	71.8	57.4	62.5	25.4	19.7	8.1	7.4
Sweden	82.5	78.3	76.8	72.1	21.2	19.6	5.9	5.5

UK	82.5	71.3	68.7	56.0	16.2	12.9	3.9	3.9
Iceland	89.6	83.3	89.0	80.5	10.9	6.7	2.7	3.6
Norway	81.3	76.7	75.6	68.8	11.2	8.6	3.7	3.3
Switzerland	87.3	78.2	78.9	66.7	9.2	8.0	4.0	4.2
Ukraine	70.2	59.1	44.6	28.4	22.7	21.9	8.8	7.0

Source: Review of the work force according to the ILO standards: for the EU countries, Iceland, Norway, Switzerland – Eurostat data (t2020_10, tsdde100, une_rt_a), and for Ukraine – data of the State Statistics Service of Ukraine

Appendix 2

Risks of Poverty and the Minimal Salary in the EU Countries and Ukraine, 2014

	Poverty risk, %		Minimal salary	
	The whole population	Working people	Euro	% of the average rate
EU-28	17.2	9.5	:	:
Belgium	15.5	4.8	1,502	44.9
Bulgaria	21.8	9.2	174	40.3
Czech Republic	9.7	3.6	310	32.8
Denmark	12.1	4.9	:	:
Germany	16.7	9.9	:	:
Estonia	21.8	11.8	355	36.2
Ireland	15.6	5.5	1,462	42.6
Greece	22.1	13.4	684	:
Spain	22.2	12.5	753	34.2
France	13.3	8.0	1,445	47.6
Croatia	19.4	5.7	396	37.8
Italy	19.4	11.0	:	:
Cyprus	14.4	7.8	:	:
Latvia	21.2	8.1	320	44.4
Lithuania	19.1	8.3	290	45.7
Luxembourg	16.4	11.1	1,921	47.6
Hungary	15.0	6.7	342	45.5
Malta	15.9	5.7	718	44.6
Netherlands	11.6	5.3	1,486	43.3
Austria	14.1	7.2	:	:
Poland	17.0	10.6	404	45.1
Portugal	19.5	10.7	566	44.9
Romania	25.4	19.6	190	38.4
Slovenia	14.5	6.4	789	51.3
Slovakia	12.6	5.7	352	36.4
Finland	12.8	3.7	:	:
Sweden	15.1	7.8	:	:
UK	16.8	8.7	1,251	40.1

Iceland	7.9	4.6	:	:
Norway	10.9	5.0	:	:
Switzerland	13.8	6.3	:	
Ukraine – 2014	23.4	18.4	77.5	35.0
Ukraine – 2015	22.9	18.3	52	30.3

Source: for the EU countries, Iceland, Norway, Switzerland – Eurostat data (tsdsc320, tessi010, tps00155, earn_mw_avgr2), and for Ukraine – the Ministry of Social Policy of Ukraine, the State Statistics Service of Ukraine, the National Bank of Ukraine (annual average euro rate).

The methodology of defining the poverty level in Ukraine considerably differs from that of Eurostat, but the data is suitable for assessing the correlation between different population groups.

Appendix 3

Performance indicators of public employment services in the EU countries and Ukraine, 2014

	The annual average number of registered unemployed people		Public expenses for the labour market policy, % of GDP			
	thousand people	in % of the unemployed according to the ILO methodology	Total	including:		
				for services	for measures	for support
Belgium	429.8	102	2.653	0.220	0.521	1.912
Bulgaria	366.5	95	0.621	0.036	0.175	0.410
Czech Republic	555.6	171	0.594	0.124	0.243	0.227
Denmark	134.7	71	3.215	0.388	1.403	1.424
Germany	2,898.4	139	1.595	0.367	0.289	0.939
Estonia	29.1	58	0.593	0.102	0.097	0.394
Ireland	383.8	158	2.609	0.098	0.682	1.829
Greece	1,013.0	80	0.858	0.036	0.306	0.516
Spain	4,575.9	82	2.991	0.105	0.447	2.439
France	3,657.5	121	2.464	0.258	0.731	1.475
Croatia	328.2	100	0.618	0.056	0.171	0.391
Italy	:	:	1.911	0.026	0.276	1.609
Cyprus	:	:	1.041	0.030	0.100	0.911
Latvia	87.2	81	0.528	0.031	0.137	0.359
Lithuania	173.0	109	0.428	0.058	0.179	0.191
Luxembourg	18.3	115	1.316	0.055	0.505	0.756
Hungary	422.4	123	1.122	0.092	0.768	0.263
Malta	7.4	67	0.501	0.100	0.095	0.306
Netherlands	844.6	128	3.030	0.277	0.551	2.202
Austria	319.4	130	2.209	0.178	0.623	1.408
Poland	1,825.2	116	0.789	0.082	0.397	0.310
Portugal	604.6	83	1.875	0.021	0.529	1.325
Romania	475.8	76	0.224	0.070	0.023	0.132
Slovenia	120.1	123	0.976	0.089	0.279	0.607
Slovakia	385.7	107	0.548	0.037	0.163	0.348
Finland	325.7	140	2.840	0.113	0.907	1.819
Sweden	379.4	92	1.914	0.220	1.077	0.617

Norway	72.4	75	0.881	0.129	0.375	0.378
Ukraine – 2014	458.6	25	0.434	0.090	0.037	0.307
Ukraine – 2015	461.1	28	0.396	0.073	0.032	0.291

Source: administrative data from public employment services; for the EU countries, Iceland, Norway, Switzerland – Eurostat data (DG EMPL, tps00076, tps00081), for Ukraine – data of the State Employment Service and the State Statistics Service of Ukraine

The data available for Ukraine is not complete; due to the lack of information, the expenses of local budgets and employers for public and other temporary works are not accounted for, as well as the expenses of the Social Protection of the Disabled Fund for labour rehabilitation measures. However, this data is quite sufficient for the general comparison of expenses on the employment labour policy.