



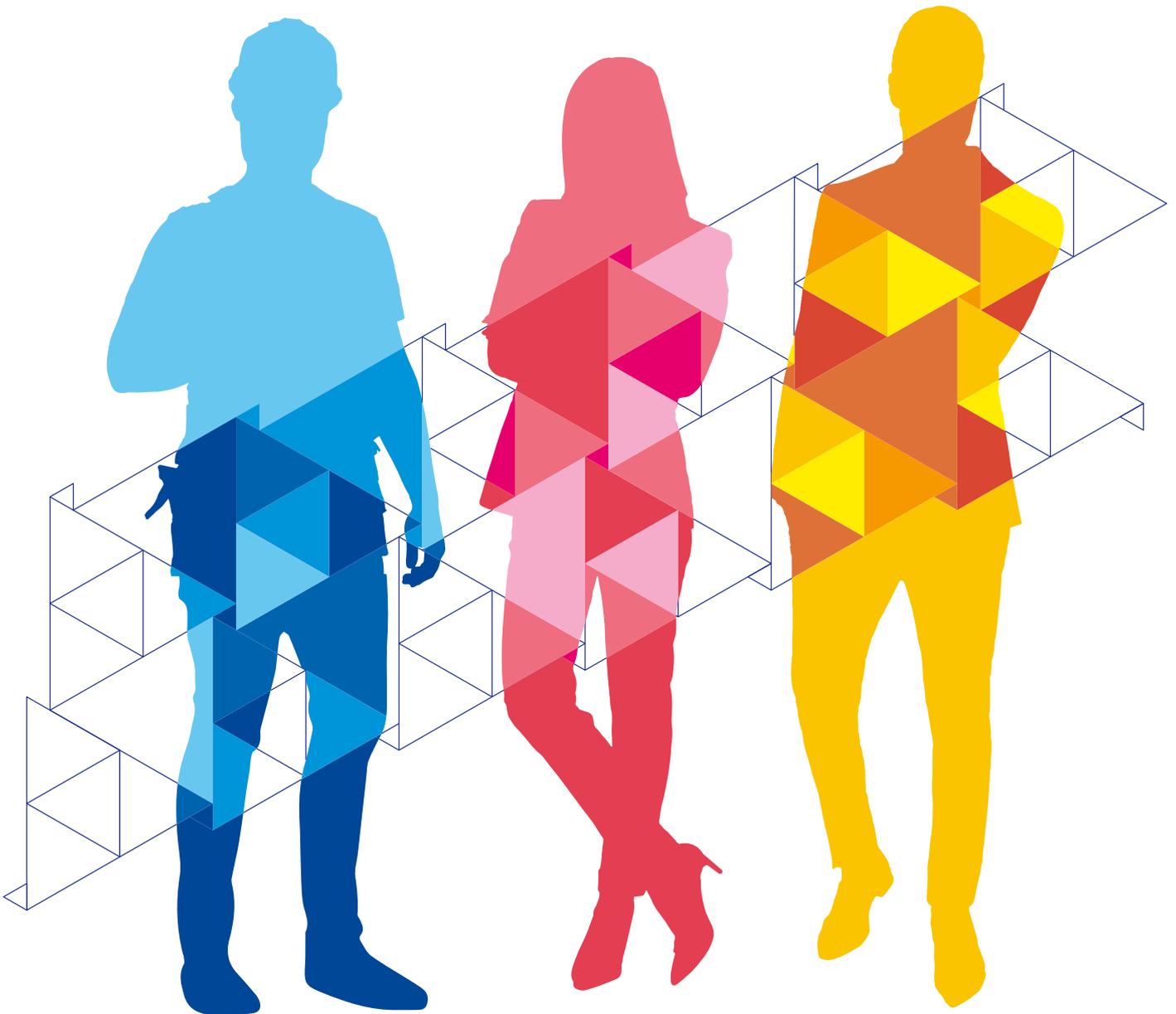
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► Towards an effective, influential and inclusive social dialogue in Ukraine

Green Paper



ILO Project: Inclusive labour markets for job creation in Ukraine
Funded by the Danish Government

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First published 2020

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ISBN: 9789220316511 (print)
9789220316504 (web pdf)

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Towards an effective, influential and inclusive social dialogue in Ukraine

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edited by Cristina Mihes

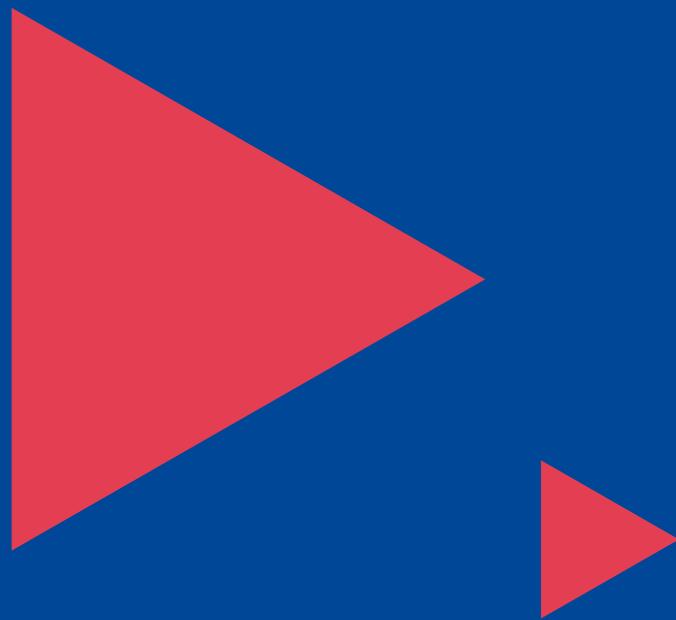
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▶ 01

▶ Introduction



The purpose of this Green Paper is to stimulate broad public discussion in Ukraine on how to improve the effectiveness, influence and inclusiveness of social dialogue. Successful social dialogue is essential for addressing Ukraine's economic and social challenges and creating a positive impact on the living and working conditions of its citizens.

Social dialogue has been developed and implemented both as a policy tool to tackle socio-economic problems and as a mechanism to promote better working conditions and stronger social consent and social justice since Ukraine gained its independence in 1991. It has become an essential element of labour market governance, through which workers' and employers' interests are taken into account in policy- and law-making processes at all levels.

However, social dialogue in Ukraine has struggled with serious constraints and setbacks in the last five years. Among them are a complicated political situation, challenging economic and social developments and new dynamics in the labour market.

Institutionalized social dialogue mechanisms actually have failed to ensure tripartite consensus regarding important policy decisions in the socio-economic sphere. An illustration of the current situation is the fact that the National Tripartite Social and Economic Council (NTSEC), established as the main consultative and tripartite advisory body on economic, social and labour matters, has suspended its activity for more than one year.

This Green Paper has been initiated by a tripartite working group established by the Ministry of Social Policy of Ukraine with the support of the Technical Cooperation Project "Inclusive Labour Markets for Job Creation in Ukraine" (2017–2022), funded by the Danish Government and implemented by the ILO. In the period February–August 2019, the working group held several meetings with ILO experts. A comparative analytical study of eight Economic and Social Councils (ESCs) from European Union member states was carried out by a team of international experts.

This paper is informed by the findings and conclusions of the above study as well as by discussions and recommendations stemming from the meetings of the tripartite working group and ILO experts.

The Green Paper aims to:

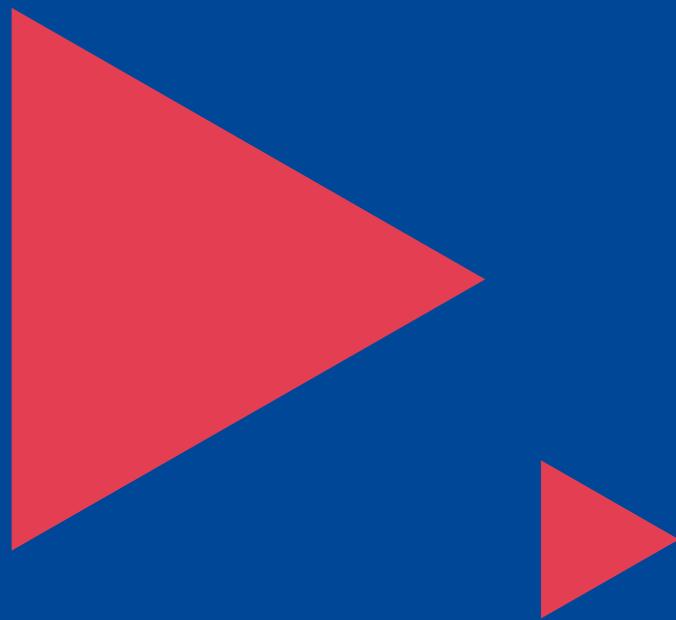
1. provide an overview of the current state of play of social dialogue in Ukraine and examine the extent to which the necessary conditions for effective social dialogue are met in practice;
2. identify key legal and practical obstacles for effective, influential and inclusive social dialogue;
3. analyse the policy effectiveness of social dialogue in three scenarios and suggest corrective measures for discussion;
4. engage Government, social partners, representatives of civil society, academia and experts in industrial relations in a substantive reflection on reforms to be made to the social dialogue system in Ukraine and on future steps.

The Green Paper suggestions were submitted for wider public consultations and discussions. These discussions then will feed into the next stage: the production of a White Paper.¹

¹ White Papers are issued by the government as statements of policy and often set out proposals for legislative changes or the introduction of new laws.

▶ 02

▶ Social dialogue in Ukraine



Social dialogue in Ukraine is governed by the 2010 Law of Ukraine on Social Dialogue.² Social dialogue occurs between two parties: (1) central and local executive authorities and (2) trade unions and employers' organizations. This process does not involve representatives of entrepreneurs' associations or other non-governmental organizations who are members of public councils established under central and local executive authorities.

At the national, sectorial and territorial levels, the parties to social dialogue cooperate in the following forms:

- ▶ information exchange (at the social partners' request, public authorities inform the trade unions and employers' organizations with insights about the labour market, including payment of wages);
- ▶ participation of representatives of trade unions, their associations and associations of employers' organizations in CMU meetings, governmental committees and board meetings of central and local executive authorities during consideration of matters related to industrial relations;
- ▶ preliminary consultations by public authorities with representatives of trade unions, their associations and associations of employers' organizations in the decision-making process;
- ▶ participation of social partners in the drafting and expert review of draft legislative acts and programmes of socio-economic development;
- ▶ tripartite social dialogue in national and territorial (*oblast, raion*) tripartite social and economic councils,³ boards of mandatory state social insurance funds and coordinating committees for employment promotion;
- ▶ collective bargaining.⁴

2.1. The legislative and regulatory legal framework

Despite Ukraine's substantial political, economic and social reforms over the last five years, the current legislative and regulatory framework on social dialogue was last "updated" in 2012 with the adoption of the 2010 Law on Social Dialogue. Several contradictory provisions that regulate specific aspects of social dialogue currently co-exist.

In addition to the Law on Social Dialogue, a whole range of laws and regulatory acts contain provisions relating to social dialogue:

- ▶ rights and responsibilities, participation in social dialogue by central and local executive authorities—the Laws on Central Executive Authorities; on Local State Administrations; on Trade Unions Their Rights and Guarantees for Activities; on Employers' Organizations, Their Associations, Rights and Guarantees for Activities;
- ▶ basic principles, procedures, content, composition of parties, level of conclusion of collective contracts and agreements, and the general system of collective bargaining at all levels—the Law on Collective Contracts and Agreements;
- ▶ the general system of conclusion of collective contracts at the company level (enterprise, institution, organization)—Labour Code of Ukraine;
- ▶ collective-agreement-based regulation in certain spheres of labour relations and economic activities—the Laws on Labour Remuneration, on Leave, on Labour Protection; the Economic Code of Ukraine; the Merchant Shipping Code; the Law on Transport; the Mining Law; the Law on State Support for Mass Media and Social Protection of Journalists;

² Hereinafter, Law on Social Dialogue.

³ Hereinafter, NTSEC and TTSEC, respectively.

⁴ As of 1 July 2019, the following collective agreements are in force in Ukraine: (a) national level – the General Agreement for 2019–2021; (b) sectorial level – 96 sectorial agreements; (c) territorial level – 27 territorial agreements; (d) company level – 59,622 collective contracts that cover 5,899,600 persons (that comprise 74.8% of total number of full-time employees (regular staff). Source: Labour in Ukraine in 2018, State Statistics Service of Ukraine, Statistical Bulletin, page 214.

- ▶ liability for violation of the legislation on collective bargaining and the procedure for settlement of disagreements—the Code on Administrative Offences and the Law on the Procedure for the Resolution of Collective Labour Disputes (Conflicts);
- ▶ functioning of tripartite bodies in the field of employment and social insurance—the Laws on Employment of the Population and on Mandatory State Social Insurance;
- ▶ the regulations of the Cabinet of Ministers of Ukraine (CMU) that approve statutes of ministries, the CMU Rules, the procedure of notification-based registration of sectoral (intersectoral) and territorial agreements, collective contracts and so on.

This situation creates legal uncertainty for law enforcement authorities, frequently confuses the purported subjects of the respective legislation and leads to poor compliance. Moreover, many conflicts of law and breaches of legal hierarchy remain unaddressed. For instance, internal regulations of Joint Representative Bodies (JRBs) of trade unions and employers' organizations currently overrule the Law on Social Dialogue.

2.2 Effective social dialogue and Ukrainian practice

In order to produce results, social dialogue requires political support from all the involved parties who ideally express mutual trust and respect for one another as equal partners and who, even more importantly, are viewed as representative and legitimate actors capable of delivering their commitments within an enabling institutional and legal framework.

2.2.1 Necessary political support

In the last three years, the political support for and attention given to social dialogue institutions and processes have decreased abruptly. The causes are twofold: newly appointed managers of central and local executive authorities lack awareness about the requirements for the proper functioning of social dialogue, and public authorities—as regulators, enforcers, promoters and supporters of social dialogue—do not fully understand the benefits of consulted and concerted decision-making. Social partners also contribute to this distressing state of affairs and prefer to uphold their interests unilaterally by lobbying the concerned public authorities rather than striving to achieve tripartite consensus.

2.2.2 Sine qua non condition for mutual trust and respect

Long-standing internal tensions within social partners' organizations have impacted negatively the functioning of social dialogue. In the last three years, there have been multiple breaches of trust between Government and its social partners. For instance, non-observance by Government of its legal obligation to rotate the presidency of the NTSEC triggered the suspension of employers' organizations participation in the Council.

2.2.3 A legislative framework enabling social partners to be consulted upon and to participate in the design and implementation of key socio-economic policy reforms

The legal framework for social dialogue is set out in the 2010 Law on Social Dialogue, which came into force in 2012.

Specific laws also provide for procedures for collective bargaining and the conclusion of collective agreements/contracts and for the resolution of collective labour disputes; provisions concerning the collective-agreement-based regulation of labour relations are contained in the Labour Code, laws on labour remuneration, and others. The powers of the social dialogue partners are defined in specific laws, as well.

However, numerous current legal provisions do not ensure any real influence of social partners over the policy-making processes.

2.2.4 Availability of bodies (institutions) of social dialogue

National and territorial tripartite social and economic councils were established, according to the Law on Social Dialogue, to conduct social dialogue at the national and territorial levels (for instance, in the Autonomous Republic of Crimea, *oblasts*, and cities of Kyiv and Sevastopol).

The law also provides that sectoral and intersectoral tripartite or bipartite councils and other tripartite bodies of social dialogue (committees, commissions and so on) *may be established* at the initiative of the parties concerned.

The Law on Employment of the Population envisages that coordinating committees for employment promotion, vocational guidance councils and other social dialogue bodies *may be established* to agree upon the implementation of employment policies, according to the procedure set forth by the Law on Social Dialogue.

Tripartite bodies for management of social insurance funds as well as *raion*-based social and economic councils have been established.

This multi-layered institutional system of social dialogue raises a series of overlapping coordination problems.

2.2.5 Free, independent and representative organizations of employers and workers

Trade unions and employers' organizations have been created and operate according to the Laws on Trade Unions, Their Rights and Guarantees for Activities and on Employers' Organizations, Their Associations, Rights and Guarantees for Activities.

The present structure of trade unions and employers' organizations may cause certain difficulties during the conduct of social dialogue at the subnational level because trade unions which are representatives in certain economic activities sometime negotiate with employers' organizations which are representative in other economic activities.

At present, five of 21 all-Ukrainian trade union associations and all three all-Ukrainian associations of employers' organizations have obtained official representative status. As a consequence, they are entitled to sit on the NTSEC, participate in collective bargaining for conclusion of the General Agreement and nominate representatives for international events.

Furthermore, trade unions and employers' organizations that do not meet the representativeness criteria may give a mandate to representative organizations to represent their interests or submit their proposals to social dialogue bodies at the appropriate level.

2.3 Legal and practical obstacles to effective social dialogue

The current state of play of social dialogue has been created by policy-makers and legislators' slow response to changes brought about by ongoing reforms of the political system, decentralization of public administration, civil society restructuring and new dynamics in the employers' and trade union parties.

2.3.1 Law clashes and lack of consolidation of legal provisions relating to social dialogue

Discrepancies in or overlapping of legal provisions relating to social dialogue result in uncoordinated positions on important matters of socio-economic policy and exacerbate the authorities' selective approach when consulting upon the same matters that fall under the remit of different social dialogue bodies and organizations;

Powers of social and economic councils as defined by the Law on Social Dialogue are reflected inadequately in other regulatory and legal acts. For instance: endorsements of draft laws; obligations to consider recommendations and proposals of social and economic councils by public authorities and local governments; participation of representatives of social and economic councils in the meetings of collegial bodies of central and local executive authorities during discussions on social and economic policy issues;

Conflict of laws between the provision of the Law on Social Dialogue concerning the establishment of the NTSEC and appointment of its secretary and the provisions of the Constitution of Ukraine concerning the powers of the President of Ukraine (specifically, the 2014 amendments) and of the Law of Ukraine on Civil Service (2016);

Current legislation neither defines mechanisms for implementation/consideration of tripartite agreements nor how Government is to provide feedback during the follow up to recommendations of social dialogue bodies.⁵

2.3.2 Changes in territorial structure and powers of local authorities and local governments (decentralization)

Following the adoption of the Law on Voluntary Amalgamation of Territorial Communities (2015), the ongoing reform of local self-governance foresees that a major share of powers will be concentrated at the community level in order to improve people's well-being and socio-economic protection. Newly created Amalgamated Territorial Communities (ATC) will be in charge of management of local-budget-funded institutions, economic and social community development and social dialogue, among others.

The Constitution of Ukraine defines the *territorial level* as an *oblast*, *raion*, city, town or village. Trade unions and employers' organizations have a corresponding structure, i.e. the status of *oblast* or city, *raion* in a city, *raion* in an *oblast*, town or village.

Already created ATCs *differ significantly in their composition*: there are "rural" ATCs with an administrative centre in a town/village, where farms and budget-funded institutions (educational, health care, recreational) are situated; there are those created within one *raion* with an administrative centre in a city or town; those created in the territory of a few *raions* include cities with developed industry. The only common requirement is that they must be formed within one *oblast* and a community's territory must be continuous.

Under such circumstances, it seems impossible to establish a "*one size fits all*" procedure for determining the composition of the social dialogue parties within an ATC. For example, according to the current law, local-level trade unions should include no less than 2 (!) primary organizations, and employers' organizations with a local status should include no less than 10 employers. At the sub-*oblast* territorial level, trade

⁵ According to survey findings, the following percentage of experts described as "substantial" or "determinative" the impact of decisions made within the national social dialogue framework on: employment policy—27.3% and 3.6%, respectively; social policy—22.4% and 11.5%; economic policy—23.2% and 3.6%; budget policy—22.8% and 1.9%. About 70 percent of the surveyed SD parties' representatives (active participants of various SD forms), experts and scientists describe the legislative and regulatory legal framework as only partially meeting the need of ensuring a productive and efficient SD. The survey was conducted within the ILO project "Inclusive Labour Markets for Job Creation in Ukraine" (2018) and the International Renaissance Foundation project "Promoting public communication in a dialogue between authorities and the public in terms of implementation of Chapter XXI of the Association Agreement amid decentralisation" (2019).

unions mostly function in budget-funded institutions, while employers' organizations generally comprise large and medium-sized industrial enterprises. The likelihood of such organizations existing in "rural" ATCs is very slim.

Some current proposals suggest to amend the Law on Social Dialogue in order to add the ATC to the sub-*oblast* territorial level; as yet no assessment procedure of would-be social partners is foreseen at territorial levels lower than the *oblast*.

Such an approach contradicts the requirement for representativeness/legitimacy of social partners for effective social dialogue. A substantial analysis of each ATC's structure is required to understand what trade union organizations and employers' organizations are present in order to adopt an effective interaction between the parties and workable social or civic dialogue platforms to ensure meaningful participation of the community in decision-making.

2.3.3 Changes in the economic activity and redistribution of the employed

Ongoing changes to Ukraine's economy and labour market have led to a decrease in membership in trade unions and employers' organizations, particularly in the private sector, predominantly composed of SMEs.

For example, analysis of state statistical data indicates a downward trend in the recorded number of employees.

Table 1. Number of Enterprises and Number of Employees 2011–2017

Year	Number of enterprises	Recorded number of employees
2011	375 695	7 712 400
2014	341 001	6 190 000
2017	338 256	5 714 600

The decrease is the highest, 16.3%, in industry, whereas wholesale and retail trade show 7.8%.

The 2018 data on the number of large and medium-sized enterprises that are mainly covered by membership in trade unions and employers' organizations indicate a substantial reduction in employment at large enterprises.

Table 2. Enterprise Status by Economic Activity Type

Economic activity type	Enterprise status							
	Large (over 250 persons)		Medium (51–250 persons)		Small (up to 50 persons)		Micro (up to 10 persons)	
	Number	Percent of the total enterprise number in the economic activity type	Number	Percent of the total enterprise number in the economic activity type	Number	Percent of the total enterprise number in the economic activity type	Number	Percent of the total enterprise number in the economic activity type
Industry	239	0.5%	4 854	10.8%	39 779	88.7%	30 400	67.7%
Construction	6	0.02%	877	3%	29 713	97%	24 086	81.4%
Wholesale and retail trade, repair of motor vehicles	135	0.2%	3 045	3.2%	90 825	96.6%	80 155	85.3%

Overall, enterprises of different types had the following percentages in the total number of enterprises in respective economic activities in 2018: large – 0.1%; medium-sized – 4.5%; small – 95.4%; micro – 82.3%.

It is worth noting that the number of the informally employed population was 3,541,300 in 2018 (21.6% of the total number of employed population): in particular, the highest percentage of those informally employed was in agriculture (42.9%), the lowest being in industry (5.5%).

This situation shows that a considerable share of both employees and employers are not members of trade unions and employers' organizations. In addition, sectorial membership coverage of social partner organizations (affiliation of enterprises to certain economic activity areas) differs significantly, which results in a limited scope in the application of collective agreements, especially in those economic activities where small and micro enterprises prevail.

Such a situation has caused a number of problems in the collective-agreement-based regulation of industrial relations at the sectorial level, in particular:

- ▶ lack of organizational structures of trade unions and employers' organizations at the territorial level, especially in *raions*, cities, towns and villages. This problem has become acute because of the processes of decentralization and creation of ATCs;
- ▶ employers and employees have insufficient institutional representation in the economic activity areas where there is a downward trend in the number of employed (services, wholesale and retail trade, hospitality);
- ▶ the scope of sectorial collective agreements is limited by the composition of the parties' subjects and their powers in addressing the issues that are included by the legislation in the collective-agreement-based regulation at certain levels;
- ▶ insufficient information sharing between the representative sectorial trade union and employers' organizations about the composition of subjects and their affiliation to economic activity types, and whose interests they are authorized to represent, which results in an uncertain scope and lower implementation of sectorial agreements;
- ▶ the structure of social partners' sectorial organizations do not correspond to the classification of economic activity types;
- ▶ there is a low level of employers' coverage by sectorial organization membership, due to which trade unions are forced to violate legislative provisions and conclude sectorial agreements with economic entities, entrepreneur associations or central executive authorities on a bilateral basis.

2.3.4 Shortcomings in the practice of social dialogue

1. Overlaps in addressing the same issues by different social dialogue mechanisms and bodies

A great number of matters falling under the mandate of the NTSEC are dealt with on other platforms.

For example, the NTSEC's powers as defined by the Law include, inter alia, development of concerted standing positions and provision of recommendations and proposals of the parties to social dialogue concerning: social standards and labour remuneration; draft legislation, social and economic policies and labour relations; key economic and social indicators of the draft State Budget of Ukraine; ratification by Ukraine of International Labour Organization Conventions, intergovernmental agreements and EU regulatory acts on matters relating to the rights of workers and employers.

However, the same list is provided by the General Agreement signed for 2019–2021, which foresees to address the issues during implementation. Some of these issues, for instance ratification of ILO Conventions, exceed the scope of collective bargaining. Furthermore, a special annex contains a Procedure of Reconciliation that practically excludes the NTSEC from the consultative process.

Employment and vocational guidance issues also are handled on different platforms established under the public councils by the central and local executive authorities.

2. Suspension of the work of the NTSEC

The critical situation at the NTSEC has been caused by both legislative and organizational factors.

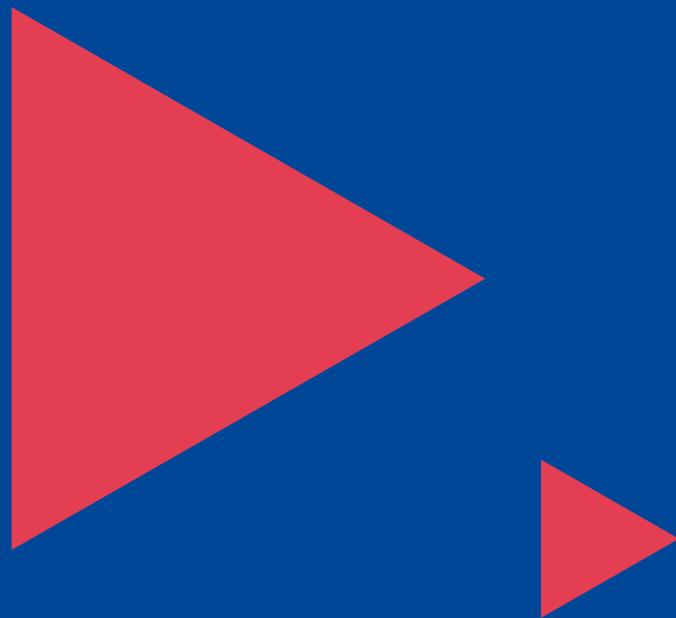
The mandate of the NTSEC as set out by the Law on Social Dialogue is not adequately stated in other regulatory and legal acts. Also, there is no legal obligation of public authorities to seek the NTSEC's recommendations on matters falling under its mandate.

The high turnover of staff at the executive authorities makes it difficult to hold meetings or efficiently carry out activities between meetings; rights, duties and responsibilities of NTSEC members are unclear; understaffing and insufficient qualification of secretariat personnel hamper the adequate performance of tasks; ineffective working methods slow down internal decision-making; there is no policy for public communication and, consequently, citizens are unaware of the issues addressed by the NTSEC and the parties' positions.

The lengthy suspension of the NTSEC's work indicates an urgent need to revise its status, adjust legislative provisions concerning its establishment and provide more specific definition of its powers, tasks and functions.

▶ 03

- ▶ Three scenarios for effective, influential and inclusive social dialogue
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Methodology

With a view to answer the above, the policy effectiveness of social dialogue institutions and processes at national and territorial levels have been examined using a SWOT analysis of three scenarios. Furthermore, a set of corrective measures required to improve the performance of the social dialogue system are suggested for each scenario.

The following dimensions of effectiveness are assessed below:

1. relevance, including:
 - a. participation in national and local policy agenda-setting
 - b. consensus-building
2. instrumental and analytical effectiveness;
3. operational effectiveness.

Terminology

Social dialogue encompasses⁶ all types of negotiation, consultation or information-sharing among representatives of governments, employers and workers or between those of employers and workers on issues of common interest relating to economic and social policy.

The national social dialogue system is composed of the existing institutions, processes and actors involved in consultation, negotiation, and joint decision-making at the national, sectorial, territorial and company level. The interrelations between the involved parties are defined by law or by agreement. They may be ad-hoc or institutionalized.

Tripartite social dialogue is “the interaction of government, employers and workers, through their representatives, as equal and independent partners to seek solutions to issues of common concern”.

Tripartite plus social dialogue requires that representatives of other interest groups from civil society participate in tripartite social dialogue on an equal footing with government and representative workers’ and employers’ organizations.

Bipartite social dialogue comprises institutions and mechanisms for consultation, negotiation and joint decision-making at various levels between workers and employers or their organizations; the latter are called “social partners”.

Bipartite plus implies that, in addition to social partners, representatives of interest groups other than workers and employers or independent experts participate on an equal footing in the social dialogue process.

Bilateral dialogue between government and one social partner—employers’ or workers’ organization(s)—is generally understood as lobbying undertaken by the concerned organization.

Effectiveness is understood hereinafter as the extent to which pre-set institutional objectives have been attained by the examined institution.

Instrumental effectiveness means in this context the extent to which the policy instruments produced by the given institution (recommendations, opinions, social pacts and so on) have been considered and applied by policy-makers at the examined levels.

Analytical effectiveness indicates the extent to which the analytical outcomes of social dialogue institutions and processes, such as analyses of a certain issue or situation, policy monitoring and evaluation reports, policy impact assessments and so on, have documented and fed policy debate and decision-making with government and parliament.

Operational effectiveness reflects the extent to which the “business processes”, including working methods, statutory arrangements, composition, voting system, internal and external technical and communication structures, outreach and coordination methods and monitoring and evaluation of institutional impact, enable the realization of the objectives of the concerned institution.

⁶ ILO working definition.

The following scenarios are proposed for examination and debate:

Scenario A: Current tripartite social dialogue system is improved.

Scenario B: Current tripartite social dialogue system is expanded to include other interest groups in civil society (tripartite plus).

Scenario C: Current tripartite social dialogue is dismantled, and a bipartite plus social dialogue system is established.

Relevance			
	Scenario A	Scenario B	Scenario C
Strengths	<p>I. Participation in policy agenda-setting</p> <ol style="list-style-type: none"> 1. NTSEC has the legal mandate to issue recommendations and opinions on economic and social matters of general interest for citizens. 2. Composed of representative organizations of workers and employers and representatives of key economic, labour and social affairs ministries. 3. High potential to influence policy agenda-setting through tripartite consensus-based recommendations. 4. Institutional links with Government and Parliament through its members. 5. Over 15 years of practice and expertise. 6. Presence of tripartite social dialogue infrastructures at lower levels. <p>II. Consensus-building</p> <ol style="list-style-type: none"> 7. High potential for consensus-building due to its tripartite composition. 	<p>I. Participation in policy agenda-setting</p> <ol style="list-style-type: none"> 1. Inclusiveness of dialogue is likely to increase. 2. Discussion agenda broadened to non-traditional topics for social partners (e.g. environmental issues, green economy, agriculture, farming, consumers' rights, migrants, minorities and so on). 3. Might work at local/community level, where various groups of interests are better defined and known. <p>II. Consensus-building</p>	<p>I. Participation in policy agenda-setting</p> <ol style="list-style-type: none"> 1. Genuine independence of advisory and consultative services provided. 2. Independent experts from academia, industry, statistics, financial institutions and so on bring valuable expertise to the table. 3. High likelihood for debates to be informed by objective evidence. 4. High potential to influence policy agenda through the power of objective arguments prevailing over the arguments of political power. <p>II. Consensus-building</p> <ol style="list-style-type: none"> 5. Medium to high potential for consensus-building provided that the third party is represented by independent experts selected for their professional merits.

Relevance			
	Scenario A	Scenario B	Scenario C
Weaknesses	<p>I. Participation in policy agenda-setting</p> <ol style="list-style-type: none"> Neither Government nor social partners recognize the NTSEC as the most prominent national tripartite advisory and consultative body for Government and Parliament. NTSEC is perceived as slow and inconclusive by policy- and law-makers who prefer to consult directly with selected social partners outside the institutional framework. Ad-hoc formal and informal channels are used by both Government and interested social partners to negotiate bilateral “deals” rather than seeking tripartite consensus within the NTSEC. There is neither legal obligations or incentive for Government or Parliament to seek the opinion/ recommendations of the NTSEC nor to provide feedback or follow up. There is significant overlapping and lack of legal clarity concerning the content and outcomes of various parallel forms of social dialogue. There is a lack of coordination among levels, roles and outcomes of various forms of social dialogue. There is a very poor infrastructure of trade unions and employers’ organizations at the local level. Inclusiveness of social dialogue bodies is perceived as very limited; for instance, SMEs, emerging large categories of non-standard workers or vulnerable workers are rather often not represented. <p>II. Consensus-building</p> <ol style="list-style-type: none"> Large number of parties’ representatives may delay significantly the consensus-building process. Internal tensions, divergent agendas and lack of consensus within the social partners hamper effective social dialogue. 	<p>I. Participation in policy agenda-setting</p> <ol style="list-style-type: none"> There is no legal framework in place for the participation of other groups of interests on equal footing with the social partners and Government. There is no legal definition or selection criteria of other groups of interests of civil society, which makes the selection of those representative arbitrary. It implies a much larger membership, which will delay even more the decision -making process. A lack of expertise and experience of some of the civil society groups in matters pertaining to economic, social and labour affairs. Negotiation of social pacts is very difficult due to the multitude of divergent interests. Coordination with lower levels requires similar composition and expanded infrastructures. <p>II. Consensus-building</p> <ol style="list-style-type: none"> Very low potential for consensus-building, which is likely to translate into low problem-solving capacity. Internal tensions, divergent agendas and lack of consensus within social partners are likely to be multiplied by those between social partners and other civil society interest groups, as well as by those within civil society groups. 	<p>I. Participation in policy agenda-setting</p> <ol style="list-style-type: none"> There is no legal and institutional framework in place. There is no transparent procedure for selection of independent experts in place. The are no institutional or informal communication channels with Government or Parliament that would allow regular feedback. Negotiation of tripartite social pacts is not possible in the absence of Government representatives. Replication at lower levels is likely to be difficult. Lack of steady practice of bipartite plus dialogue. <p>II. Consensus-building</p> <ol style="list-style-type: none"> Very low consensus-building in case the third party is represented by various interest groups from civil society. Internal tensions, divergent agendas and lack of consensus within social partners will be multiplied by those between social partners and other civil society interest groups, as well as by those within civil society groups.

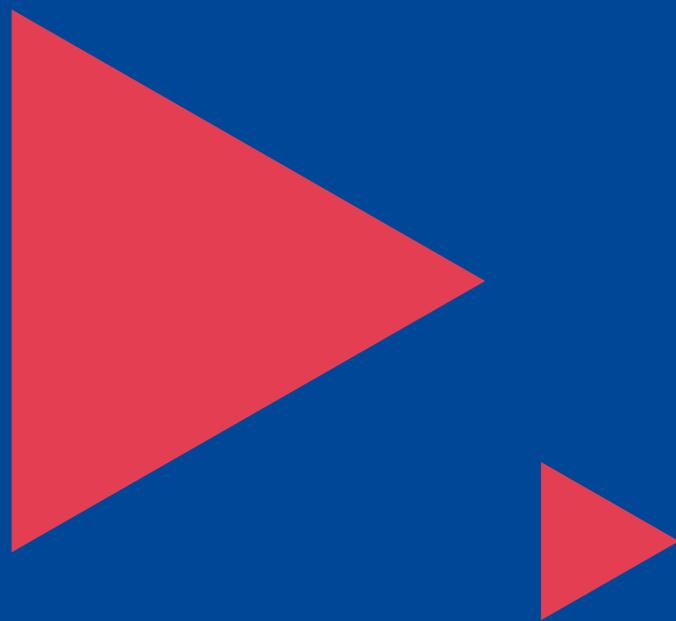
Relevance			
	Scenario A	Scenario B	Scenario C
Opportunities	<ol style="list-style-type: none"> 1. Ongoing legislative, institutional and administrative reforms can address the weaknesses and can streamline and reinvigorate the tripartite social dialogue system. 2. Ongoing legislative and administrative reforms can relaunch the discussion on representativeness and representation of the social partners in social dialogue structures at all levels. 	Ongoing legislative, institutional and administrative reforms can launch a reflection on the type of social dialogue needed at the current stage of development of Ukrainian society and how to make it work.	Ongoing legislative, institutional and administrative reforms can launch a reflection on the type of social dialogue needed in the current stage of development of Ukrainian society and how to make it work.
Threats	<ol style="list-style-type: none"> 1. Necessary political will and support becomes insufficient to sustain democratic processes and institutions of tripartite consultations with the world of work on matters of general interest for the three actors in the labour market. 2. Government is uninterested in seeking consensus with the social partners in the policy- and law-making processes. 3. Social partners undermine the consensus-building process. 	Social dialogue is diluted to the extent that it becomes meaningless and produces no result.	<ol style="list-style-type: none"> 1. In the absence of formal or informal channels of communication with Government/Parliament, social dialogue transforms into a civic dialogue confined to civil society groups, with low/no impact on policy-making. 2. Political support is dependent on the high reputation of individual experts. 3. Engagement of Government into dialogue decreases in the absence of legal obligation or steady practice.

Instrumental and analytical effectiveness			
	Scenario A	Scenario B	Scenario C
Strengths	<ol style="list-style-type: none"> 1. Long-standing practice of issuing recommendations and opinions. 2. When specific and consensual, recommendations have been considered by Government. 	<p>Recommendations reflect a broader range of interests.</p>	<ol style="list-style-type: none"> 1. High potential for making good-quality and evidence-based recommendations in case third party is composed of independent experts. 2. High potential for the advisory body to conduct independent research, analysis and policy impact studies, which could feed national debates.
Weaknesses	<ol style="list-style-type: none"> 1. Recommendations are too general or formalistic in nature, difficult to implement. 2. Recommendations are not supported by sound analysis, evidence or impact assessment, which translates into low problem-solving value for policy-makers. 3. No clear understanding of the limitations of advisory nature of the recommendations. 4. Conflicting recommendations made by social partners in parallel instances/fora of social dialogue. 5. Low number of recommendations (approximately 50 percent) are taken on board by policy-makers. 6. Recommendations are not always made public by Government/Parliament and are rather individual opinions of representative of the social partners. 7. Low/no analytical contribution (research, studies, policy impact assessments, policy monitoring and evaluation reports) to Government/Parliament debates. 	<ol style="list-style-type: none"> 1. There is no practice in place. 2. Low likelihood for consensual recommendations, but rather many dissenting opinions, with low problem-solving value. 3. Recommendations are likely to be very general as they have to reflect many divergent interests. 4. Quality of recommendations is likely to decrease due to uneven expertise and agendas of members. 5. Low likelihood of analytical contribution (research, studies, policy impact assessments, policy monitoring and evaluation reports) to Government / Parliament debates. 	<ol style="list-style-type: none"> 1. Quality and impact of recommendations highly dependent on the expertise and capacity of independent experts to mediate divergent interests. 2. When the third party is made up of various interest groups, there is a low likelihood for consensual recommendations, with many dissenting opinions and a low problem-solving value. 3. When the third party is made up of various interest groups, recommendations are likely to be very general as they have to reflect many divergent interests.
Opportunities	<p>Ongoing legislative and institutional reforms can correct the legal and practical bottlenecks and increase the technical support apparatus of the advisory body.</p>	<p>Ongoing legislative, institutional and administrative reforms can launch a reflection on social dialogue outcomes needed at the current stage of development of Ukrainian society.</p>	<p>Ongoing legislative, institutional and administrative reforms can launch a reflection on social dialogue outcomes needed at the current stage of development of Ukrainian society.</p>
Threats	<p>Unless the added value of recommendations is improved, the impact of recommendations in the policy-making process will decrease.</p>	<p>Number of recommendations implemented by Government is likely to decrease.</p>	<p>In case the third party is made of representatives of various interest groups, the number of recommendations taken on board by Government is likely to decrease.</p>

Operational effectiveness			
	Scenario A	Scenario B	Scenario C
Strengths	<ol style="list-style-type: none"> 1. Legal and institutional frameworks are in place. 2. Well-established internal structures for technical support (technical secretariat, specialized standing committees) 3. Well-established working methods and an annual work plan. 		High potential to operate smoothly in case of reduced membership and availability of professional technical secretariat.
Weaknesses	<ol style="list-style-type: none"> 1. Low frequency of meetings. 2. Low attendance by Government representatives. 3. Non-observance of the rotation principle. 4. Acute lack of human and physical resources. 5. Slow decision-making procedure due to large representation of each party, combined with a voting system, which requires the majority of representatives of each social partner to pass a decision. 6. Internal tensions within social partners, which further delays decision-making and reduces the potential for consensus. 7. No procedure to ensure coordination with lower levels of social dialogue. 8. No standardized methodology for monitoring and evaluation of institutional performance. 9. No systematic process for identifying, adopting or transferring better practices. 	<ol style="list-style-type: none"> 1. No legal and institutional framework in place. 2. Technical support structures will require more human, physical and financial resources. 3. Complex tasks involving multiple groups frequently result in errors, delays or delivery quality problems. 4. Meeting frequency and attendance is likely to be poor. 5. There is no standard way of passing information or agreeing on common goals between the groups. 6. Disagreements or misunderstandings among various groups are frequent. 7. Internal tensions within social partners, multiplied by those with and among the other groups. 8. Ensuring coordination with lower levels of social dialogue is more difficult. 9. Monitoring and evaluation of institutional performance is likely to be a challenge. 	<ol style="list-style-type: none"> 1. There is no legal and institutional framework in place. 2. Significant financial contribution of the social partners is likely to be required. 3. High dependence on independent experts, who make recommendations with a long-term impact. In case of high turnover rate, and absence of systematic documentation, the institution will no longer have guaranteed access to experts to check why things were done in a certain way. 4. Disagreements or misunderstandings among various groups are frequent. 5. Internal tensions within social partners, multiplied by those with and among other groups. 6. Coordination with lower levels of social dialogue could be a challenge.
Opportunities	Ongoing legislative and institutional reforms can correct legal bottlenecks and increase the technical support apparatus of the advisory body.	Ongoing legislative, institutional and administrative reforms can launch a reflection on the requirements for functional social dialogue institutions needed at the current stage of development of Ukrainian society.	Ongoing legislative, institutional and administrative reforms can launch the reflection on requirements for functional social dialogue institutions needed in the current stage of development of Ukrainian society.
Threats	Policy-makers and the citizens perceive the institution as slow, inconclusive and irrelevant. Ultimately, deinstitutionalization of tripartite social dialogue.	Policy-makers and citizens perceive the institution as slow, inconclusive and irrelevant. Ultimately, deinstitutionalization of tripartite plus social dialogue.	Unless the social partners are capable of contributing financially to the functioning of the institution, the system might be unsustainable.

▶ 04

- ▶ Corrective measures required
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With a view to leverage existing strengths, address identified weaknesses and maximise potential, it is proposed to examine a set of legislative and institutional measures required in each scenario as described below.



Scenario A

1. Defining the roles, mandates and outcomes of existing parallel social dialogue⁷ processes and institutions

- a. **It is suggested** to clearly define the content, role, mandate, expected outcomes and participating actors in different processes and institutions of social dialogue in order to avoid misunderstanding, overlapping and conflicting results.
- b. **A distinction between policy dialogue (tripartite social dialogue) and collective bargaining (bipartite social dialogue)⁸** at various levels should be made in law and in practice.

A. Tripartite social dialogue processes and institutions

Information sharing

It does not imply any action upon discussed matters. An organized and regular exchange of information between Government and social partners helps the latter to become aware of governmental views, priorities and initiatives on economic and social matters. The exchange also may help both parties gain insights into their respective positions.

It is suggested to define, in a governmental regulation, a standardized procedure for information exchange with and within the national tripartite social dialogue institutions. For example: the General Secretariat of the Government regularly provides the NTSEC with the Government's legislative agenda and timeframe for bill submission to Parliament; member ministries present their annual reports of activity and policy implementation monitoring and evaluation to the NTSEC; the NTSEC submits its annual report of activity and evaluation of its performance to Government and Parliament.

A similar scheme is suggested at the territorial level, i.e. sharing the local legislative agenda and approving an information exchange procedure by local executive authorities⁹ and executive committees of local governments,¹⁰ subject to the proposals submitted by TTSECs/Social Dialogue bodies.

Consultations

Consultations offer Government an opportunity for a "reality check" on its legislative or policy initiatives and allows social partners the possibility to learn from the source about Government intentions and to offer their opinions therein. It may result in one party reconsidering its position. Consultation does not carry decision-making power, but it can assist the decision-making process.

⁷ ILO definition: all types of negotiation, consultation or information-sharing among representatives of governments, employers and workers or between those of employers and workers on issues of common interest relating to economic and social policy.

⁸ ILO Collective Bargaining Convention, 1981 (No. 154) defines collective bargaining as: all negotiations which take place between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more workers' organizations on the other, for one or more of the following purposes: (1.) determining working conditions and terms of employment; (2.) regulating relations between employers and workers; (3.) regulating relations between employers or their organizations and a workers' organization or workers' organizations.

⁹ Hereinafter referred to as LEAs.

¹⁰ Hereinafter referred to as LG ECs.

Unlike negotiations, consultations are not supposed to lead to agreements¹¹ but may lead to common understanding or declarations, joint statements, recommendations, opinions or reports. They, however, imply a certain level of commitment from Government, such as listening actively to the opinions of social partners, considering them in good will and providing feedback to the consultative body on the follow up to its recommendations together with explanations about its refusal to take certain items on board.

The current Law on Social Dialogue defines the primary role of the NTSEC as a national consultative and advisory body to Government and Parliament in matters pertaining to its mandate.

First, it is suggested that the Law on Social Dialogue is amended to clearly define the purpose and objectives of consultations, as well as its possible outcomes as described above.

Second, it is suggested to introduce a legal obligation for Government to provide feedback on the follow up to the NTSEC's recommendations with explanation in case of rejection.

Third, it is suggested to introduce a legal obligation of Government to inform Parliament on the views expressed by the NTSEC on the envisaged policy measures or legislation.

Negotiations

Tripartite negotiations at the national level usually address major national economic and social policy issues. They can result in national tripartite agreements or so-called "social pacts".¹²

Social pacts are different from general collective agreements as they are the outcome of tripartite policy negotiations, whereas collective agreements result from collective bargaining which is a bipartite process by definition.¹³ In general, social pacts seek to agree on economic adjustments to external shocks such as global economic and financial crises or to reach an acceptable compromise on structural reforms (e.g. social security, wages and income policies). Social pacts also can cover tripartite declarations of a more general nature, aiming at reaffirming a number of fundamental rights and principles at work.¹⁴

General (national) collective agreements are more specific and reflect the results of bipartite negotiations between national social partners on working conditions and terms of employment above the minimum standards laid down by the labour law. They also can regulate relationships between social partners or extrajudicial dispute resolution procedures. Government intervenes in these negotiations only in its capacity as employer in the public sector.

It is suggested to amend the Law on Social Dialogue so as to clearly specify that the NTSEC could negotiate social pacts within the above described meaning but not general collective agreements. The latter shall be negotiated in collective bargaining processes and institutions (e.g. joint bipartite committees for the public and the private sector or both) at the level decided by the concerned social partners.

Agreement (conciliatory) procedures

The goal of the "agreement procedures", as a specific social dialogue form established by the Law on Social Dialogue, is to "take consideration of the parties' positions and elaborate compromise solutions during the drafting of regulatory legal acts". It deserves mention that agreement procedures ought to be defined by the concerned social dialogue bodies. However, Article 12 of the Law on Social Dialogue assigns NTSEC with the task to reach compromise on draft legislative and regulatory acts.

It appears that the "agreement procedures" are, in reality, tripartite consultations and negotiations¹⁵ that aim to reach mutually acceptable compromise regarding draft legislative proposals. Currently, this type of process can take place either within the specialized standing tripartite committees of the NTSEC or in

¹¹ With regard to ILO Tripartite Consultations Convention, 1976 (No. 144), ILO Committee of Experts recalls that the Convention does not require that an agreement should necessarily be the goal of the consultation; the principal aim of the consultations is to assist the competent authority in taking a decision. See: ILO NORMLEX: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0>.

¹² Examples of social pacts: Compromise for Growth, Competitiveness and Employment (Portugal 2012); Tripartite Commitment to a Medium-term Social Dialogue Agreement (Portugal 2017); Agreement on the Guaranteed Minimum Income for 2016 (Portugal); Tripartite Agreement on the Reform of the Social Security System (Uruguay); Tripartite Agreement on the National Decent Work Programme (Chile); New Mechanism for Setting the Minimum Wage (Honduras); *ibidem*.

¹³ ILO Collective Bargaining Convention, 1981 (No. 154).

¹⁴ *ibidem*.

¹⁵ Successful negotiation implies reaching a mutually acceptable compromise by the negotiating parties over a negotiated matter.

separate settings outside the NTSEC (for instance, in ad hoc tripartite committees set up by line ministries in relation to a new legislative initiative) or in both.

First, it is suggested to remove the reference to “agreement procedures” as a distinct form of social dialogue and to stipulate in the Law on Social Dialogue, as well as in the relevant regulations of the Government and legislation initiator ministries, that ad hoc tripartite committees set up by the latter shall coordinate and communicate with the specialized standing committees of the NTSEC, which are entrusted with the final tripartite consultations or negotiations over draft legislative acts.

Second, it is suggested to stipulate in the law that tripartite member representatives shall participate in tripartite consultations and negotiations with clearly defined negotiating powers, such that the expected outcome is either a binding agreement for the negotiating parties or a recommendation (consensual or with dissenting opinions) stemming from consultation.

NTSEC

The NTSEC is the main institution of tripartite social dialogue at the national level with the legal mandate to:

- a. issue recommendations and opinions to policy- and law-makers on strategic matters pertaining to national socio-economic policy formulation and implementation, particularly on drafts and proposals for:
 - ▶ the State Budget of Ukraine;
 - ▶ state programmes of economic and social development;
 - ▶ laws on economic, social and labour-related matters;
 - ▶ reforms in the field of socio-economic and labour relations;
 - ▶ ratification by Ukraine of ILO Conventions, intergovernmental agreements and EU regulatory acts on the matters concerning the rights of workers and employers;
 - ▶ long-term and current plans of the CMU on legislative initiatives;
 - ▶ legislative amendments relating to legal framework of social dialogue.
- b. coordinate with specialized social dialogue bodies established at the national level in specific sectors (employment, social insurance and so on);
- c. coordinate with the TTSECs, civil society institutions, and other national and local advisory bodies established under the CMU and local executive authorities (business councils, public councils and so on);
- d. prepare and publish analytical studies and policy impact assessments on economic and industrial relations.

Based on national and international experience, **it is suggested to further develop the legal status of the NTSEC** as either:

- a. **A constitutional body** acting as an advisory and consultative body to the President of Ukraine.

At the legislative level, this option would imply amendments to the Constitution and to the Law on Social Dialogue, as well as to Government Rules of Procedure.

At the operational level, the President of Ukraine appoints the chairperson and secretary of the NTSEC, while the NTSEC’s recommendations may be implemented through presidential decrees and orders.

- b. **A national consultative and advisory body to Government and/or Parliament.**

At the legislative level, this option implies amendment to the Law on Social Dialogue so as to remove the provision according to which the NTSEC shall be formed by the President of Ukraine.

At the operational level, Government or Parliament will appoint the chairperson and secretary of the NTSEC, while the NTSEC’s recommendations may be reflected in policies, bills or laws adopted by Government or Parliament.

In order to improve the relevance of the NTSEC, it is suggested to:

- ▶ reaffirm Government and social partners' commitment and engagement in tripartite social dialogue through a tripartite agreement/social pact.
- ▶ reach out to non-unionized workers who may be self-employed, vulnerable, minorities or in casual/informal employment as well as to underrepresented employers like micro-SMEs small businesses, artisanal workshops and others.

In order to improve the instrumental and analytical effectiveness of the NTSEC, it is suggested to:

- ▶ strengthen the composition and technical expertise, including external expertise as required by discussed subject matter, of specialized standing tripartite committees;
- ▶ conclude agreements of cooperation with academia, research institutes, think-tanks, civil society organizations and national and international training centres;
- ▶ introduce a regular calendar of meetings of specialized standing committees as well as an indemnity system for attendance;
- ▶ introduce the practice of documenting internal decision-making with analytical reports on discussed subject matters;
- ▶ amend the Law on Social Dialogue and/or Rules of Procedure of the NTSEC as well as Government and line ministries so as to provide an institutionalized mechanism for monitoring and evaluating the integration of NTSEC recommendations in concerned policies and/or bills/laws.
- ▶ publish regular NTSEC annual reports on economic and social policies implementation and impact assessments.

In order to improve the operational effectiveness of the NTSEC, it is suggested to:

- ▶ reduce the number of representatives of each party so as to optimize and speed up the decision-making process;
- ▶ introduce a "one voice" system, where each group has its own "spokesperson";
- ▶ set out the term of office of five years for NTSEC members, so as to match the five-year validity of the representativeness certificate for social partners;
- ▶ observe the legal principle of rotation of the presidency;
- ▶ provide a dedicated budget line within the State Budget for financing NTSEC activities (meetings and conferences, analytical research, engagement of scientists and independent experts, activities in the framework of membership in the International Association of Social and Economic Councils and Similar Institutions, awareness raising campaigns), with consideration of possible financing from other legal sources (for instance, a public private partnership);
- ▶ provide adequate staffing and financial resources to the technical secretariat;
- ▶ publicly advertise NTSEC recommendations and opinions in the (social) media within a systematic communication strategy;
- ▶ strengthen the educational function of the NTSEC through the provision of regular training of social dialogue actors, including a specialized course "Social dialogue as integral part of public administration" designed for training civil servants and local self-governance officials as well as to representatives of trade union and employers' organizations.

B. National bipartite social dialogue processes and institutions

JRBs of trade unions and associations of employers' organizations¹⁶

According to the Law on Collective Contracts and Agreements¹⁶, JRBs carry out collective bargaining with the aim of concluding collective agreements.

At present, according to internal regulations approved by member parties, these bodies perform many more functions, practically covering all the matters that fall under the remit of the NTSEC, where their members are also represented.

In addition, JRBs consider draft laws and governmental acts because, according to Government Rules of Procedure, draft legislative acts on industrial and economic relations are sent to JRBs for endorsement. JRB competences also include the delegation of representatives to social dialogue bodies and other advisory and consultative bodies established under central executive authorities. Trade unions in JRBs coordinate the work of representative all-Ukrainian associations' members in social dialogue bodies.

This situation undermines tripartite consensus-building and raises legal and practical obstacles to the NTSEC's proper functioning. On the legal level, it creates confusion about who should be the recipient of governmental draft policy and legislative acts as well as creates a conflict of interest whereby JRBs' internal regulations clash with the Law on Social Dialogue. In practice, the JRB members are not interested in participating in the NTSEC's work, as they can uphold their interests in dealing with public authorities unilaterally, without seeking consensus with other social partner's representatives. This also drastically affects the activities of the NTSEC and its tripartite standing committees.

It is suggested to clearly define and demarcate the mandate, role and functions of JRBs as collective bargaining institutions from those of the NTSEC, so as to eliminate the current overlapping and conflict of interest, as well as duplication of tasks.

It is therefore suggested that JRBs mandate should be strictly limited to:

- ▶ negotiations on general collective agreements, supervision of compliance therewith, and resolution of labour disputes arising in the process of collective bargaining or in relation to the implementation or interpretation of the general collective agreement;
- ▶ coordination of participation of representative trade unions/employers' organizations in social dialogue processes and institutions;
- ▶ representation and protection of rights and interests of workers/employers in relations with public authorities;
- ▶ nomination of their representatives in trade unions/employers' organizations' international events.

It is also suggested to amend the relevant Government rules of Procedure to include an obligation to send all relevant draft policies and legislative acts to the NTSEC for discussion.

¹⁶ Hereinafter referred to as JRBs.

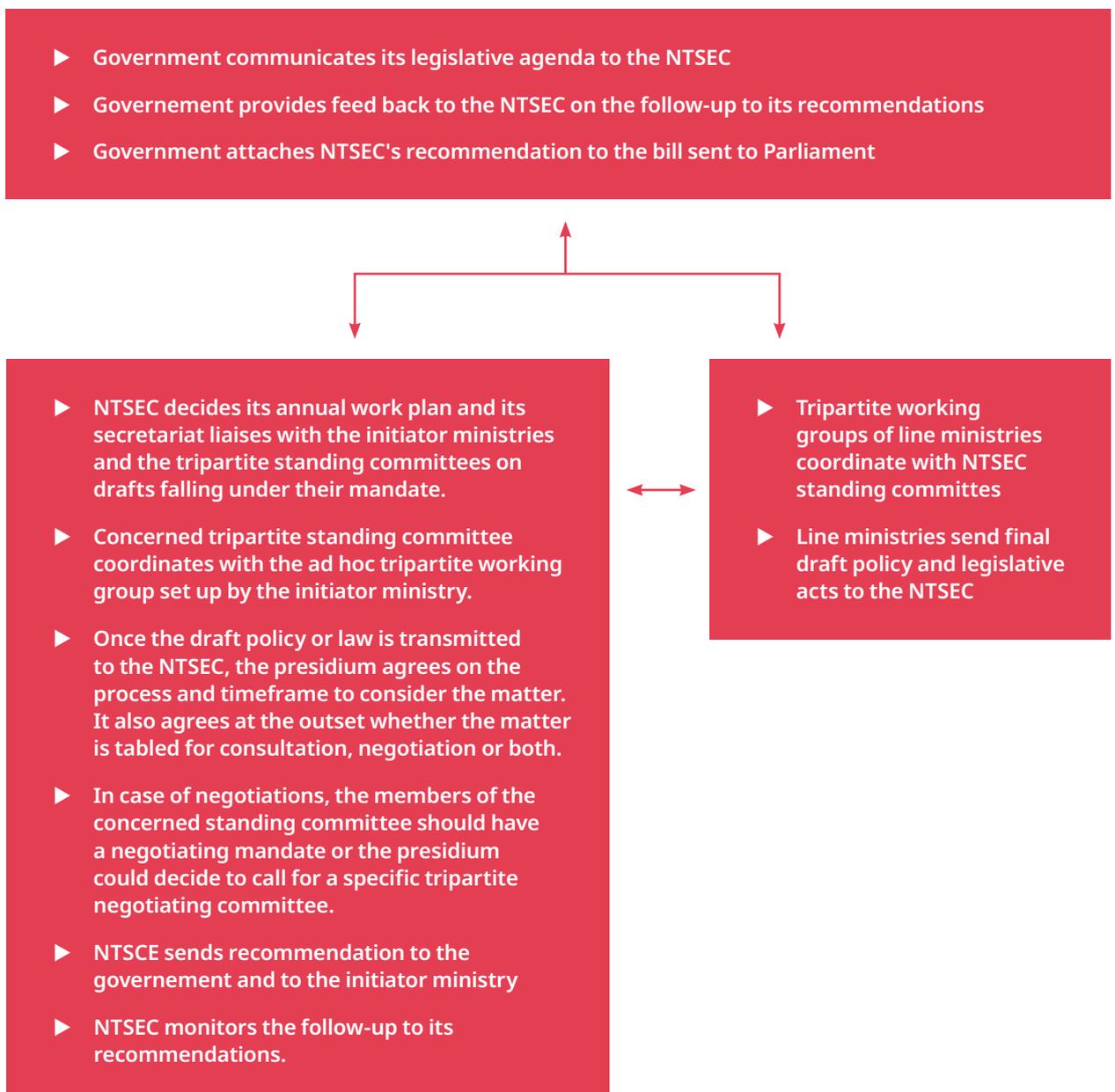
2. Coordination of social dialogue processes, institutions and actors

Effective social dialogue requires coordination and complementarity within a holistic mix of engagement, processes, institutions and actors in order to avoid duplications, delays and wasting resources and ultimately to maximize its overall impact and benefits.

It is suggested to amend the Law on Social Dialogue and relevant Rules of Procedure of participating institutions in order to simplify and streamline the advisory and consultative processes taking place at various levels and on various platforms. A framework act governing the advisory and consultative bodies ought to be considered.

It is suggested to assign overall coordination to the NTSEC as described below:

1. Communication flow with Government and line ministries



2. Coordination of specialized social dialogue bodies

The NTSEC maintains a register of the specialized social dialogue bodies (name, mandate, representation of the parties). The secretariat and relevant standing committees are responsible for the formation of the register and coordination. For example, the standing committee for labour relations and labour market will register and coordinate with specialized social dialogue bodies established according to the Law on Employment of the Population, the committee for social and humanitarian policy will deal with the specialized social dialogue bodies on social insurance, and so on.

3. Coordination with territorial social dialogue bodies

The NTSEC maintains a register of regional TTSECs and interacts with them on a permanent basis. TTSECs send regularly to the NTSEC secretariat information about their activities (recommendations made and their impact on the regional policy formulation and implementation), as well as opinions on matters of national interest to be considered by the NTSEC.

The NTSEC provides regular assistance, experience sharing and training to TTSECs.

3. Territorial Tripartite Social Dialogue

Currently, territorial tripartite social dialogue infrastructure is made up of social and economic councils, which operate at the *oblast* level (OTSECs) along with newly created *raion* and ATC¹⁷ councils. According to an interview conducted with TTSEC secretaries,¹⁸ the most effective social dialogue forms at the *raion* level include information exchange (36.8% of respondents), consultations and conclusion of territorial agreements (26.3%). At the ATC level, social dialogue mainly consists of information exchange and consultations—26.3%, conclusion of collective contracts at enterprises, institutions and organizations—26.4%. Operation of the social dialogue bodies (councils and committees) is described as efficient at the *raion* level by 21.1% and at the ATC level by 10.5% of respondents.

It is suggested to assign coordination of territorial social dialogue bodies to OTSECs. They should maintain a register of and coordinate with all social dialogue bodies established in the *oblast* territory, including decentralized specialized ones existing at the *oblast* level (for instance on employment, vocational training, and so on).

With the view to provide technical and administrative support to OTSECs, it is necessary to equip them with a technical secretariat.

Given that, according to available information, the presence of the social partners in newly created ATC is very scarce and the role of such a tripartite body in local policy-making is still unclear, **the possibility of civic dialogue bodies at the ATC level can be envisaged.**

¹⁷ Amalgamated Territorial Community.

¹⁸ The survey was conducted during an OTSEC secretaries training on 19–20 June 2019.

4. Inclusive social dialogue

The determination of representative organizations of workers and employers for the purpose of participation in tripartite policy consultation and negotiation processes and in collective bargaining should be based on *precise, objective and pre-established criteria* so as to avoid any opportunity for partiality or abuse. Certification of fulfilment of these criteria should be entrusted to an independent and impartial body which enjoys the trust of the parties.¹⁹

The representativeness of trade unions and employers' organizations is the source of their legitimacy for participation in tripartite policy social dialogue as well as in collective bargaining. This "confirmed by representativeness" legitimacy is the feature which distinguishes social partners from other civil society interest groups.

The distinction between representative and non-representative organizations of workers and employers should be limited to the recognition of certain preferential rights: for example, for purposes of collective bargaining, consultation by the authorities or the designation of delegates to international organizations. In other words, this distinction should not have the effect of depriving organizations that are not recognized as official representative of the essential means for defending the occupational interests of their members, for organizing their administration and activities and formulating their programmes, in accordance with freedom of association and the right to organize as enshrined in international labour standards.²⁰

In democratic governance systems, inclusiveness is generally defined as participation of key stakeholders in decision-making processes. Inclusiveness of tripartite social dialogue is ensured through genuinely representative and independent workers' and employers' organizations, which represent the interests and bring together the points of view of a wide range of groups/categories workers and employers in both the private and the public sector. It also has a vertical dimension tracking the national, territorial, sectorial and company levels. This is further reinforced by democratic structures and elected leadership.

At the national level, the following organizations have been found representative as of 2017:²¹ five of 21 all-Ukrainian trade union associations which declared 7,183,640 members during the assessment of representativeness, and all three of the all-Ukrainian associations of employers' organizations, registered with the Ministry of Justice, which declared, during the assessment, 8,321,640 workers employed by their members.

At the same time, according to state statistics as of 2017, the number of workers was 5,714,600. This situation *is a result of the double membership of some organizations in the associations*, which is not prohibited by the law and which does not provide an accurate picture of representativeness.

¹⁹ ILO. 2006. Freedom of association – Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (Geneva).

²⁰ ILO Freedom of Association and the Right to Organize Convention, 1948 (No. 87); ILO. 2006. Freedom of association – Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (Geneva).

²¹ Data available from the year when the last representativeness assessment took place at the national level.

In consideration of the above and the section 2.3.3, the following is suggested:

1. Revise the procedure of acquiring trade union membership, the structure and definition of the status of workers' organizations:
 - ▶ introduce "direct membership" in sectorial trade unions in order to allow workers employed in small and micro enterprises and economic activity areas (such as wholesale trade, temporary accommodation, hospitality and so on) where there is no primary organization, to join²²;
 - ▶ bring the status of organizations into conformity with the territorial system: all-Ukrainian; *oblast*; *raion* (if this territorial unit remains); local (organizations uniting workers and employers of the enterprises situated within the ATC boundaries).
2. Eliminate the possibility of double membership of organizations in national-level associations.
3. Align the sectorial structure of trade unions and employers' organizations to the current classification of economic activities.
 - ▶ the list of economic activities, as well as of sectorial trade unions and employers' organizations, which operate in a certain economic activity covered by the general collective agreement shall be annexed to the latter;
 - ▶ the list of enterprises, institutions, organizations, other economic entities, which are covered by the concerned sectorial collective agreement shall be annexed to the latter.
4. Revise the representativeness criteria in consultation with those concerned:
 - ▶ at the national level: define the quantitative criterion as a percentage of the workforce; territorial coverage as presence of member organizations in most *oblasts* (at present, the standard is the majority of the territorial units defined by Article 133(2) of the Constitution, i.e. *oblast*, *raion*, city, town, and village);
 - ▶ at the sectorial level: increase the quantitative coverage indicator in the declared economic activity areas so as to ensure the extension of sectorial agreements (the standard of 3%, currently foreseen in the draft Law on Collective Contracts and Agreements is insufficient for this purpose);
 - ▶ at the territorial level: define the quantitative criterion as percentage of the workforce (the law prescribes percentage of the employed population), increasing the percentage of coverage.
5. Include "non-representative" trade unions and associations of employers' organizations with appropriate status in the JRBs composition with a consultative vote.
6. Provide the opportunity of non-representative social partners to express their opinions on important social-economic matters (for instance, inviting them in the preparatory meetings of the social partners for NTSEC sessions or in the works of NTSEC tripartite standing committees or other tripartite working groups).

²² ILO Freedom of Association and the Right to Organize Convention, 1948 (No. 87) provides the right of all workers and employers with no distinction whatsoever to form or join organization at their own choosing.



Scenario B

In order to expand tripartite social dialogue to tripartite plus, **it is suggested** to discuss the following legal and institutional changes:

1. The Law on Social Dialogue is amended so as to allow the participation of other civil society interest groups on an equal footing with the social partners and Government.
2. Selection criteria of newly participating groups of interests are defined by law or agreement of those concerned.
3. New composition and working methods, including a new voting system, are adopted so as ensure smooth internal decision-making.
4. Internal technical support structure is expanded to include representative of selected groups of interests.
5. Technical secretariat's staffing and financial resources are increased.
6. A smaller tripartite body/mechanism is established at the national level for tripartite policy concertation on labour-related issues, including consultations on the minimum wage.
7. Composition and structure of territorial social dialogue bodies are expanded to include representatives of local interest groups.
8. All corrective measures suggested for Scenario A remain valid.



Scenario C

In order to establish a bipartite plus social dialogue system, **it is suggested** to discuss the following legal and institutional measures:

1. The Law on Social Dialogue is abrogated, and a new legal and institutional framework is laid down by law or agreement of those concerned.
2. Government is replaced by representative of other civil society interest groups or independent experts.
3. Selection criteria of new participating interest groups are defined by law or agreement of those concerned.
4. Independent experts are appointed by social partners or Government according to agreed, pre-determined criteria.
5. New composition, working methods and internal bipartite plus structures are in place.
6. Funding sources are identified, including contribution of social partner members.
7. A smaller tripartite body/mechanism is established at the national level for tripartite policy concertation on labour related issues, including consultations on the minimum wage.
8. Local public authorities are replaced by local interest groups or local independent experts in territorial social dialogue bodies.
9. All corrective measures suggested for Scenario A remain valid.

