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# ► Towards an effective, influential and inclusive social dialogue in Ukraine: The path to recovery and reconstruction

2025 Update of the 2019 Green Paper





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2025 Update of the 2019 Green Paper

*edited by Lejo Sibbel (2025) and Cristina Miheș (2019)*

## **ILO Projects**

*Inclusive labour markets for job creation in Ukraine Funded by the Danish Government*

*Promoting inclusive and sustainable reconstruction in Ukraine through social dialogue*



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## ► Executive summary

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When Ukraine gained independence in 1991, social dialogue emerged 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. It used to be an essential element of labour market governance, through which workers' and employers' interests were taken into account in policy- and law-making processes at all levels. As such, it constituted a form of representative democracy wherein a voice was given to those that are directly affected by the policy decisions being considered.

However, prior to 2019 social dialogue in Ukraine already struggled with serious constraints and setbacks. Among them were a complicated political situation, challenging economic and social developments and new dynamics in the labour market. As a result, institutionalized social dialogue mechanisms failed to ensure tripartite consensus regarding important policy decisions in the socio-economic sphere. Since then, 3 major events have fundamentally changed Ukraine's path of development, namely, the Covid-19 pandemic, the all-out invasion of the Russian Federation in February 2022, and being accorded EU candidate status in June 2022. The impact of the pandemic and the war have further deteriorated the state of social dialogue in Ukraine, as illustrated by the lack of consultation of the social partners on significant pieces of legislation that have a major impact on labour relations, as well as the non-inclusion of the social partners in the planning of Ukraine's path to recovery and reconstruction. EU accession, on the other hand, will require that the constituents in Ukraine make a choice as to the form of social dialogue they want to pursue and how to engage with each other effectively, as having effective social dialogue processes is a condition sine qua non for EU membership.

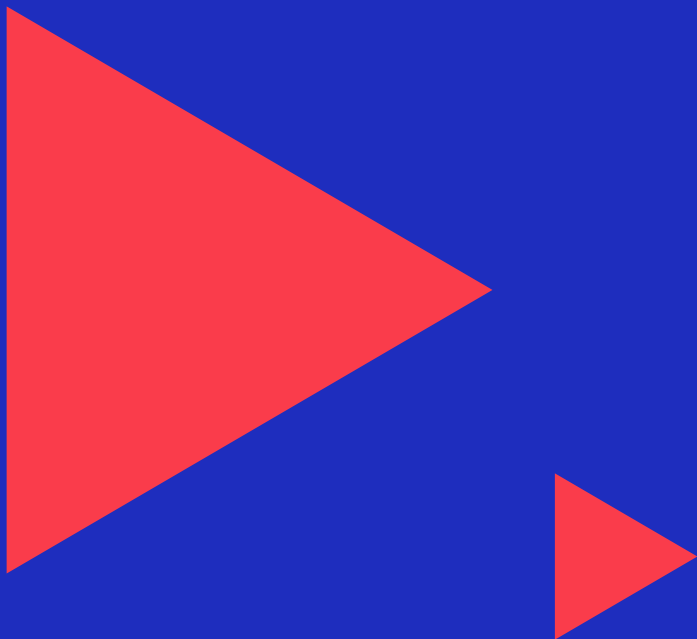
One of the main, if not the main issue currently being debated in Ukraine regarding social dialogue is whether to move away from the current, pure tripartite approach, wherein the government, employers and workers engage with each other in social dialogue, towards forms of civil dialogue, such as the tripartite+ approach, wherein NGOs participate in the process, or the bipartite+ approach which brings together trade unions, employers' organizations and (other) civil society organizations, without government involvement. This debate is driven by a lack of trust between the partners traditionally engaged in tripartite social dialogue resulting in the current dysfunctional social dialogue in Ukraine, and the example provided within the framework of the EU accession process by the European Economic and Social Committee, which is a bipartite+ advisory council to the EU composed of trade unions, employers' organizations and (other) civil society organizations. In this debate it seems to be often overlooked that there are several tripartite bodies within the EU, as well.

This 2025 Update of the 2019 original Green Paper outlines the current state of affairs of social dialogue in Ukraine, considers the differences between social dialogue and civil dialogue, and provides comparative information from three EU member states, and social/civil dialogue structures within the EU. Its objective is to enable informed decision-making by constituents in Ukraine as they embark on their path of recovery and reconstruction. In this respect, many of the stakeholders interviewed shared that they considered that the best way forward would be for Ukraine to maintain its current tripartite social dialogue approaches and mechanisms, understanding that they would require major reform and political commitment to make them functional again, rather than move towards tripartite+ or bipartite+ forms of civil dialogue.

# ▶ 01

## Introduction

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The purpose of this 2025 Update of the 2019 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, especially as Ukraine develops its path towards recovery and reconstruction. When Ukraine gained independence in 1991, social dialogue emerged 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. It used to be an essential element of labour market governance, through which workers' and employers' interests were taken into account in policy- and law-making processes at all levels. As such, it constituted a form of representative democracy wherein a voice was given to those that are directly affected by the policy decisions being considered.

However, prior to 2019 social dialogue in Ukraine already struggled with serious constraints and setbacks. Among them were a complicated political situation, challenging economic and social developments and new dynamics in the labour market. As a result, institutionalized social dialogue mechanisms failed to ensure tripartite consensus regarding important policy decisions in the socio-economic sphere. Since then, three major events have fundamentally changed Ukraine's path of development, namely, the Covid-19 pandemic, the all-out invasion of the Russian Federation in February 2022, and being accorded EU candidate status in June 2022. The impact of the pandemic and the war have further deteriorated the state of social dialogue in Ukraine, as illustrated by the lack of consultation of the social partners on significant pieces of legislation that have a major impact on labour relations, as well as the non-inclusion of the social partners in the planning of Ukraine's path to recovery and reconstruction. EU accession, on the other hand, will require that the constituents in Ukraine make a choice as to the form of social dialogue they want to pursue and how to engage with each other effectively, as having effective social dialogue processes is a condition sine qua non for EU membership.

This Green Paper was originally initiated by a tripartite working group established by the Ministry of Social Policy of Ukraine in January 2019 with the support of the Technical Cooperation Project "Inclusive Labour Markets for Job Creation in Ukraine" (2017–2024), 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. To reflect the impact of the fundamental change in circumstances in Ukraine since 2019, in 2023–2024 an analysis was undertaken by the Central European Labour Studies Institute (CELSI), based mostly on stakeholder interviews, as well as a further study of "Law and practice analysis of the social dialogue in Czechia, Latvia and Slovakia", which are all EU Member States.

This paper is informed by the findings and conclusions of the above studies, as well as by discussions and recommendations stemming from the meetings of the 2019 tripartite working group, the 2023–2024 interviews, and reviews by 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. examine the new circumstances in Ukraine and the extent to which these (further) limit or contribute to effective, relevant and inclusive social dialogue;
4. analyse the policy effectiveness of social dialogue, as well as the continued relevance of three scenarios put forward in the 2019 Green Paper, and suggest corrective measures for discussion;
5. 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.

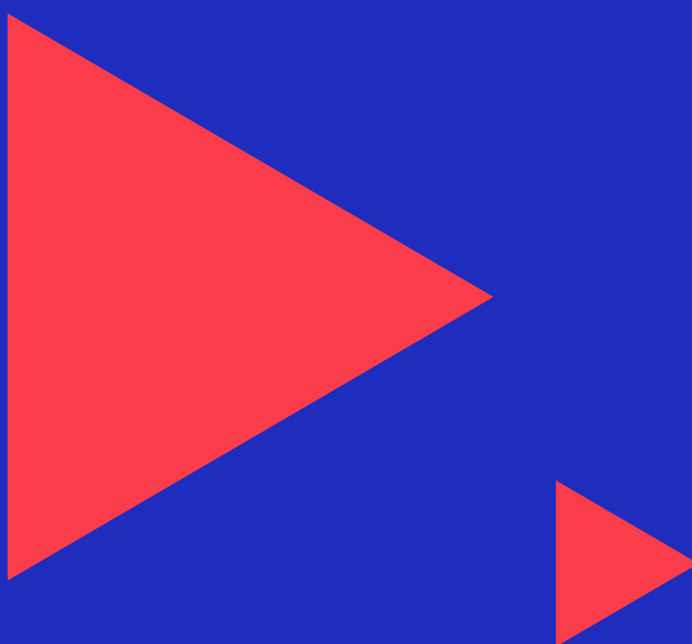
The Green Paper suggestions will be submitted for wider public consultations and discussions. These discussions then will feed into the next stage: the production of a White Paper or the adoption of relevant policy decisions by the government<sup>1</sup>

<sup>1</sup> 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

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## 2.1. Ukraine's labour market trajectory

The Ukrainian labour market has experienced turbulent years since 2020. Although the economy saw growth levels close to 10 per cent per year between 2016 and 2019, this positive development was interrupted by the COVID-19 pandemic and in 2022 by the full-scale invasion of Ukraine by the Russian Federation. This is reflected in the level of unemployment: whereas in 2018 the unemployment rate was 9,1% and in 2019, 8,6%, in 2020 it increased to 9,9%, and in 2022 it sky-rocketed to 21,1% to drop somewhat to 19,0% in 2023.<sup>2</sup>

The private sector, and especially microenterprises, were hit hardest by the war. In 2022, there was a 21.3% decrease in the number of non-state enterprises with a 15% decrease in the number of employees, reaching 6.65 million in the fourth quarter of the year. At the same time, the number of employees hired by individual entrepreneurs decreased by 28%. During the year, companies that continued to operate reduced their staff by 5%.<sup>3</sup> All categories of companies, regardless of their size, saw a reduction in staff, with microenterprises experiencing the largest drop in the number of employees, down by 53% compared to the beginning of the year. In contrast, large enterprises saw only a 4% reduction in staff. Medium and small enterprises lost 6 and 8% of their employees, respectively<sup>4</sup>.

Most impacted were the construction and real estate sectors which saw the largest declines in the number of employees, with a 17% and 18% drop, respectively. Mining and services also experienced significant staff losses, at 8%. At the same time, in the agriculture and sectors with a high share of state-owned enterprises, such as water supply, the number of employees remained stable, as well as in the energy, science and healthcare sectors with limited staff reduction of 2% and 3%, respectively. The trade and information technology and telecommunications sectors also showed relatively small staff reductions, not exceeding 3%.

While there is a decrease in employment in traditional sectors, there is an increase in the number of those seeking job in platform work and those having remote work. Both categories have increased significantly in Ukraine since 2020. Work.ua, the largest online employment platform, analyzed changes in remote work from 2019 to 2022. The initial phase of the trend was catalyzed by the COVID-19 pandemic, which saw the proportion of remote job openings rise from 4% in the second quarter of 2019 to 6.4% in the same period of 2020. This trend accelerated, peaking in the fourth quarter of 2021, with 9,313 employers listing 19,186 remote positions, making up 6.8% of all job listings. The outbreak of war in Ukraine further influenced this dynamic, severely impacting the job market initially. Companies with prior remote work capabilities demonstrated stronger resilience, leading to an increase in remote job listings from 6.5% in the second quarter of 2021 to 13.9% in the second quarter of 2022, amidst the conflict's initial stages<sup>5</sup>. According to Freelancehunt's analytics, 40.67% of freelancers started working on the platform after February 24, 2022. 43.2% worked before the war and continue to do so now, and 16.13% were registered with the service a long time ago but started working on projects during the war.<sup>6</sup>

Although no precise figures are available, trade unions and employers' organizations report a significant decrease in membership and the payment of membership dues. It can also be assumed that collective bargaining was significantly impacted by the war and the March 2022 Martial Law, which curtailed the implementation of bargaining agreements.

## 2.2. Ukraine's labour market recovery

The Government of Ukraine has set itself an ambitious reconstruction target of 7% growth of GDP annually until 2032. ILO estimates suggest that this will require the addition of 8.6 million new workers to the labour market. Being able to do so requires measures to activate more women to enter the labour market, integrate persons with disabilities, encourage the return of Ukrainian refugees from abroad, and effectively manage labour migration. This herculean reconstruction effort will require the development and implementation of a complex set of legal, policy and programmatic measures that also considers conformity with relevant international labour standards and related EU acquis.

2 data up to 2021 - official data using the methodology of the International Labor Organization, from 2022 - approximate estimates of the National Bank. Source: (<https://index.minfin.com.ua/ua/labour/unemploy/> and <https://bank.gov.ua/ua/news/all/inflyatsiyniy-zvit-kviten-2023-roku?fbclid=IwAR1y64ENWpe2zFy2CszuBpU2sG6nyiV7bHvQkFsLVwicxc4COPP1mGmUw4>)

3 [https://solidarityfund.org.ua/wp-content/uploads/2023/04/ebrd\\_ukraine-lm-1.pdf](https://solidarityfund.org.ua/wp-content/uploads/2023/04/ebrd_ukraine-lm-1.pdf)

4 [https://solidarityfund.org.ua/wp-content/uploads/2023/04/ebrd\\_ukraine-lm-1.pdf](https://solidarityfund.org.ua/wp-content/uploads/2023/04/ebrd_ukraine-lm-1.pdf)

5 <https://cases.media/en/article/yak-pandemiya-ta-viina-vplinu-na-distanciinu-robotu-analiz-rinku-2019-2022-roki>

6 <https://freelancehunt.com/blog/portriet-frilansiera-2023/>

To support the constituents, the ILO developed a Transitional Cooperation Strategy focusing on three priority pillars:

- investing in people to mitigate the impact of the war and to increase resilience;
- creating quality employment and sustainable enterprises for reconstruction and recovery;
- improving labour market governance, including social dialogue, in line with international labour standards and related EU acquis.

From amongst these three pillars, the strengthening of social dialogue is key as a governance process and enabler for the realization of the other two priorities.

In this respect, the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) recognizes the importance of social dialogue “[i]n taking measures on employment and decent work in response to crisis situations arising from conflicts and disasters” and that it is recommended to take the strategic approach of “ensuring “consultation and encouraging active participation of employers’ and workers’ organizations in planning, implementing and monitoring measures for recovery and resilience”. Section IX of the Recommendation is devoted solely to the importance of social dialogue and the role of employers’ and workers’ organizations in responding to crisis measures.

Evidence concerning the role of social dialogue during crisis situations also demonstrates the important role it can play in ensuring that measures are well-informed, and that their implementation is supported by the social partners, thereby improving their impact and sustainability.<sup>7</sup>

## 2.3. Social dialogue vs civil dialogue

According to the ILO, social dialogue is defined as all types of negotiation, consultation or simply exchange of information between, or among: (1) representatives of government and (2) employers and (3) workers on issues of common interest relating to economic and social policy. Employers are represented by employers’ associations and workers by trade union organizations.

When other organizations, such as NGOs, professional organizations, and chambers of commerce, are involved in a dialogue with the government this is considered to constitute “civil dialogue”, which is distinct from social dialogue as it is understood within the governing structure and the body of international labour standards of the ILO.

One of the main, if not the main issue currently being debated in Ukraine regarding social dialogue is whether to move away from the current, pure tripartite approach, wherein the government, employers and workers engage with each other in social dialogue (Scenario A<sup>8</sup>), towards forms of civil dialogue, such as the tripartite+ approach, wherein NGOs participate in the process (Scenario B), or the bipartite+ approach which brings together trade unions, employers’ organizations and (other) civil society organizations, without government involvement (Scenario C). This debate is driven by a lack of trust between the partners traditionally engaged in tripartite social dialogue resulting in the current dysfunctional social dialogue in Ukraine, and the example provided within the framework of the EU accession process by the European Economic and Social Committee, which is a bipartite+ advisory council to the EU composed of trade unions, employers’ organizations and (other) civil society organizations. In this debate it seems to be often overlooked that there are several tripartite bodies within the EU, as well.

The conclusion of tripartite discussions based on the Green Paper was that the tripartite approach should be maintained, i.e. scenario A was considered the most appropriate for Ukraine. However, as the question of the participation of NGOs in social dialogue remains, the current Update devotes particular attention to the distinction between social and civil dialogue as it is understood in theory and practice, and as illustrated in chapter 3.

<sup>7</sup> [The need for social dialogue in addressing the COVID-19 crisis.](#)

<sup>8</sup> See Chapter 4 for a full description of the three scenarios.

## 2.4. The legislative and regulatory framework

Despite Ukraine's substantial political, economic and social reforms, the current legislative and regulatory framework on social dialogue has not seen major reviews since the adoption of the Law on Social Dialogue in 2010.<sup>9</sup> In November 2023, the National Mediation and Conciliation Service of Ukraine set up a working group tasked with revision of the Law on Social Dialogue.

At the national, sectoral and territorial levels, the parties to social dialogue should/can 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 meetings of the Cabinet of Ministers, 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,<sup>10</sup> boards of mandatory state social insurance funds and coordinating committees for employment promotion;
- collective bargaining.<sup>11</sup>

However, several contradictory provisions that regulate specific aspects of social dialogue currently coexist. 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 agreements, and the general system of collective bargaining at all levels — the Law on Collective 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 Occupational Safety and Health; 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;
- 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.

<sup>9</sup> Hereinafter, Law on Social Dialogue.

<sup>10</sup> Hereinafter, NTSEC and TTSEC, respectively.

<sup>11</sup> As of 1 July 2019, the following collective agreements were in force in Ukraine: (a) national level – the General Agreement for 2019–2021; (b) sectoral level – 96 sectoral agreements; (c) territorial level – 27 territorial agreements; (d) company level – 59,622 collective agreements 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.

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.

In addition, Martial law introduced in March 2022 placed certain restrictions on labour relations, including conditions of work and employment, termination of contract, pay, settlement of labour disputes, and compliance measures. It also introduced a temporary ban on strikes.<sup>12</sup>

## 2.5. Effective social dialogue and Ukrainian practice

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.

### 2.5.1. Necessary political support

During the period 2016–2019 the political support for and attention given to social dialogue institutions and processes decreased abruptly. The causes were 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.

Since 2019, political commitment to social dialogue has further decreased. While this may be understandable given that Ukraine is at war, it should be borne in mind that the Government did adopt several significant pieces of legislation on which the social partners were not consulted in a structured manner through existing social dialogue mechanisms, with significant impact on labour relations in Ukraine (platform work, zero-hours and fixed-term contracts, etc.). At the end of 2023, the Government also unveiled a new draft of the Labour Code which has not (yet) been shared with the social partners through social dialogue mechanisms. So far, the social partners have also not been consulted in a structured manner on the development of Ukraine's recovery and reconstruction policies and plans, even though they will have to play a major role in their implementation.

### 2.5.2. Sine qua non condition for mutual trust and respect

Long-standing internal tensions within social partners' organizations have negatively impacted the functioning of social dialogue. Prior to 2019, there were 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.

The lack of political will to engage in structured and good faith social dialogue has changed little since 2019, as illustrated by the limited functioning and support to the NTSEC. In 2020, the NTSEC resumed its work with a meeting of the Presidium of the National Council in the Government House, and in 2021 a new chairman was appointed as the head of the council, and the first meeting under new leadership was held in December 2021. These changes are generally linked to the report of the European Commission on Ukraine's implementation of the Association Agreement with the EU, which called on the Ukrainian Government to systematically approach and institutionally support the social dialogue and to undertake efforts to make the National Tripartite Social and Economic Council an effective instrument of social dialogue<sup>13</sup>;” (European Parliament, 2020).

At that time, the government engaged in social dialogue with employers and trade unions, covering issues like the demographic situation, industrial potential, and involvement in developing strategic documents and anti-crisis measures. In May 2022, the NTSEC set up four committees: the Committee on Economic Development and Entrepreneurship, the Committee on Social and Humanitarian Policy, the Committee on Civil Society

<sup>12</sup> See: [the Law of Ukraine on the organization of labour relations under martial law \(rada.gov.ua\)](https://rada.gov.ua)

<sup>13</sup> [https://www.europarl.europa.eu/doceo/document/A-9-2020-0219\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2020-0219_EN.html)

Development and International Relations, and the Committee on Labour Relations and the Labour Market.<sup>14</sup> These committees were instrumental to maintain the NTSEC operation in-between the plenary sessions, approximate positions of social dialogue actors and prepare the decisions for the NTSEC adoption. However, it is not clear how the results of the committees were used as the NTSEC has not reconvened in plenary mode since 23 November 2021, while the rotational Presidency has been on hold since the expiration of the mandate of the employers' presidency in 2022<sup>15</sup>.

### 2.5.3. A legislative framework enabling the consultation and participation of social partners 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. Revision of this Law is currently being considered.

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.

The new Law on Collective Agreements, which was adopted in April 2023,<sup>16</sup> defines 5 levels of collective bargaining, from the national level to the company level, and only better working conditions can be regulated at the lower levels and erga omnes extensions are defined at the sector level. These principles may have the potential of ensuring that collective agreements will improve the working conditions of the majority of workers. The Law also amended the law of Ukraine's 1999 "On Trade Unions, Their Rights and Guarantees" by stipulating that trade union representatives can participate in "the implementation of sustainable development principles within the processes of production modernization, in the creation of green jobs, and in the organization of measures to ensure a just transition to the economy without a negative environmental impact." Although views on the Law are mixed, depending on its application the new Law may have the potential of playing an important role in the post-war restoration of the labour market and strengthen the role of social dialogue in improving the working conditions.<sup>17</sup> However, the Law will not go into force until 6 months after martial Law is lifted so its impact will not be known for some time.

### 2.5.4. 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, which is further exacerbated by the impact of the war on Ukraine's economy and infrastructure.

14 Regulation on NTSEC Committee and Workgroup adopted by the NTSEC Presidium on 17 May 2022 <https://ntser.gov.ua/work-groups/polozhennya-pro-komitet-i-robochu-grupu-ntser-zatverdzhene-rishennyam-prezydiyi-vid-17-05-2022/>

15 Decree of the President of Ukraine No.640/2022 of 10 September 2022 "On the Recognition of the Decree of the President of Ukraine dated August 22, 2021 No. 387/2021 as Invalid ([president.gov.ua](https://president.gov.ua/)).

16 The Law will enter into force six months after the termination or cancellation of martial law.

17 See: <https://trudovi.org.ua/en/analytics/new-law-on-collective-bargaining-agreements/> КВПУ, ([kvpu.org.ua](https://kvpu.org.ua/))

### 2.5.5. 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 all-Ukrainian trade union associations<sup>18</sup> and all three all-Ukrainian associations<sup>19</sup> 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.

## 2.6. 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. The pandemic and the war have reinforced these dynamics.

### 2.6.1. 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.<sup>20</sup>

<sup>18</sup> See: Register of trade unions that have passed the assessment of compliance with the criteria of representativeness at the national and sectoral levels (as of 04/25/2024)/ National Mediation and Conciliation Service of Ukraine (<https://www.nspp.gov.ua>)

<sup>19</sup> See: Register of employers that have passed the assessment of compliance with the criteria of representativeness at the national and sectoral levels (as of 04/25/2024)/ National Mediation and Conciliation Service of Ukraine (<https://www.nspp.gov.ua>)

<sup>20</sup> 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).

## 2.6.2. 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 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 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.

Proposals put forward in 2019 suggested 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. Views shared during the 2023 interviews considered that the decentralization process in Ukraine practically erased territorial social dialogue but that the new Law on Collective Agreements may have the potential to restore territorial and sector/territorial bipartite social dialogue through collective bargaining.

## 2.6.3. Changes in the economic activity and redistribution of the employed

Changes to Ukraine's economy and labour market prior to 2019 and the subsequent impact of the Covid-19 pandemic and the war had 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 2011–2022

| 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                    |
| 2022 | 261 992               | 5 335 045                    |

The 2018 and 2022 data by enterprise-size indicate a substantial reduction in employment at micro, small and medium-size enterprises (see Tables 2 and 3).

►Table 2. Enterprise Status by Economic Activity Type

| Economic activity type                               | Enterprise status           |                                                                      |                            |                                                                      |                             |                                                                      |                             |                                                                      |
|------------------------------------------------------|-----------------------------|----------------------------------------------------------------------|----------------------------|----------------------------------------------------------------------|-----------------------------|----------------------------------------------------------------------|-----------------------------|----------------------------------------------------------------------|
|                                                      | Large<br>(over 250 persons) |                                                                      | Medium<br>(51–250 persons) |                                                                      | Small<br>(up to 50 persons) |                                                                      | Micro<br>(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%                                                                |

►Table 3. Enterprise Status by Economic Activity Type for 2022

| Economic activity type                               | Enterprise status           |                                                                      |                            |                                                                      |                             |                                                                      |                             |                                                                      |
|------------------------------------------------------|-----------------------------|----------------------------------------------------------------------|----------------------------|----------------------------------------------------------------------|-----------------------------|----------------------------------------------------------------------|-----------------------------|----------------------------------------------------------------------|
|                                                      | Large<br>(over 250 persons) |                                                                      | Medium<br>(51–250 persons) |                                                                      | Small<br>(up to 50 persons) |                                                                      | Micro<br>(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                                             | 237                         | 0.7%                                                                 | 4 230                      | 11.6%                                                                | 31 955                      | 87.7%                                                                | 23 634                      | 64.9%                                                                |
| Construction                                         | 7                           | 0.0%                                                                 | 677                        | 3.2%                                                                 | 20 890                      | 96.8%                                                                | 17 207                      | 79.8%                                                                |
| Wholesale and retail trade, repair of motor vehicles | 153                         | 0.2%                                                                 | 2 681                      | 4.0%                                                                 | 64 561                      | 95.8%                                                                | 55 289                      | 82.0%                                                                |

Although large companies seem to be less affected by the economic changes and the impact of the war, traditionally trade union membership is concentrated in large and medium sized enterprise, so their reduction in numbers will have a disproportionate impact on the number of trade union members.

Overall, enterprises of different types had the following percentages in the total number of enterprises in respective economic activities in 2022: large – 0.2%; medium-sized – 5.6%; small – 94.2%; of which 82.3% were micro.

It is worth noting that the number of the informally employed population was 3,018,400 in 2022 (19.3% of the total number of employed population): in particular, the highest percentage of those informally employed was in agriculture (45.5%), the lowest being in industry (5.8%).

Moreover, after 2020 and the COVID-19 pandemic, the spread of remote work increased significantly and it is estimated that more than 30% of employees work remotely, which has a further impact on industrial relations in the country, as well as union membership.

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.

The social partners have been hit hard by the war. Not only do they report having lost a significant number of members but with this also a considerable source of income. In that sense, the social partners will also have to recover from the impact of the war, while at the same time they must play a role in shaping Ukraine's path of recovery and EU accession.

## 2.6.4. 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.

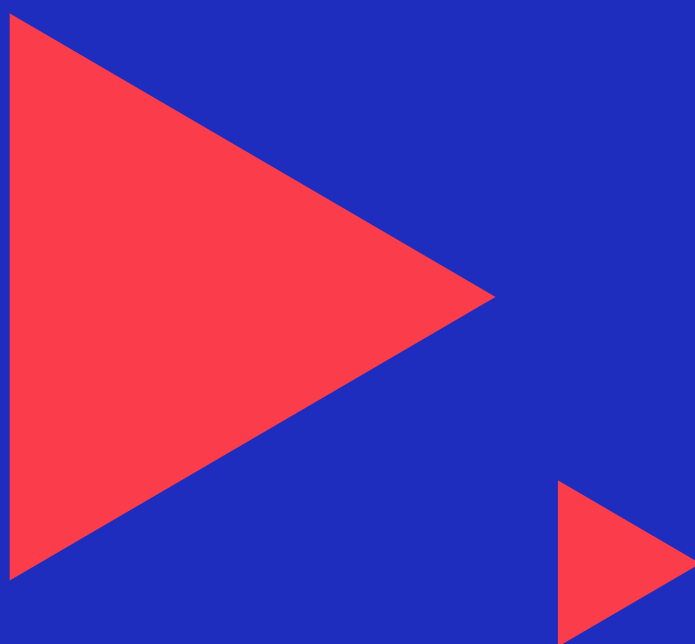
The high turnover of staff at the executive authorities makes it difficult to hold meetings or efficiently carry out activities between meetings; rights, duties and responsibilities of NTSEC members are unclear; understaffing and insufficient qualification of secretariat personnel hamper the adequate 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 suspensions of the NTSEC's work clearly have an impact on the status and state of social dialogue in Ukraine. Informal consultations outside the framework of the NTSEC do take place at times with regard to new labour legislation. This further undermines the status of the NTSEC, underlining the urgent need to revise its status, adjust legislative provisions concerning its establishment and provide more specific definition of its powers, tasks and functions.

# ▶ 03

**Summary of social dialogue  
practices globally, in the EU,  
and in selected countries**

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### 3.1. Global characteristics of national social dialogue mechanisms

Peak-level social dialogue mechanisms, i.e. mechanisms that operate at the highest, national level occur in different forms. However, different features can be identified from these mechanisms, which may guide the ongoing debates in Ukraine.

►Table 4: Characteristics of national social dialogue institutions globally<sup>21</sup>

| Countries | National Social Dialogue Institution |     | Type               |    | Number of members  |    |
|-----------|--------------------------------------|-----|--------------------|----|--------------------|----|
| 187       | Yes                                  | 160 | Tripartite         | 98 | 5 – 30             | 78 |
|           | Info not available                   | 27  | Tripartite +       | 31 | 31 – 60            | 24 |
|           |                                      |     | Bipartite +        | 8  | More than 60       | 20 |
|           |                                      |     | Bipartite          | 2  | Irregular          | 5  |
|           |                                      |     | Info not available | 48 | Info not available | 61 |

Given Ukraine's EU candidate status, a closer look at peak-level social dialogue mechanisms in the 27 EU member states may also be helpful.

►Table 5: Characteristics of national social dialogue institutions within the 27 EU member states<sup>22</sup>

| Countries | National Social Dialogue Institution |    | Type               |    | Number of members  |   |
|-----------|--------------------------------------|----|--------------------|----|--------------------|---|
| 27        | Yes                                  | 25 | Tripartite         | 13 | 5 – 30             | 7 |
|           | Info not available                   | 2  | Tripartite +       | 6  | 31 – 60            | 6 |
|           |                                      |    | Bipartite +        | 2  | More than 60       | 4 |
|           |                                      |    | Bipartite          | 3  | Irregular          | 1 |
|           |                                      |    | Info not available | 3  | Info not available | 9 |

### 3.2. Civil and social dialogue within EU governance structures

The European Economic and Social Committee (EESC) stands as one of the two advisory bodies within the European Union, alongside the Committee of the Regions. Established by the Treaty of Rome in 1957, the EESC was designed to be a corporatist element in the Community, and is tasked with representing the voice of organized civil society in Europe. Comprising 344 members nominated by EU Member States, the EESC represents employees, employers, and various societal interests. Internally, the EESC is organized into three groups: the employers' group, the workers' group, and the 'various interests' group. Legislative proposals are handled by six commissions, mirroring parliamentary committees, structured around related policy areas.

The EESC has the obligation to provide advice to the Council and the European Parliament before the first reading of a policy proposal. These policy areas encompass the internal market, environment and sustainable development, agriculture, employment, social policy, cohesion policy, youth and education, vocational training, research and innovation, culture, health, transport and energy, consumer policy, and trade. In other policy domains, the Commission, the Council, or the European Parliament can seek opinions from consultative committees or the EESC.

The EESC engages with the legislative/policy process through three avenues:

- mandatory consultation in specific policy areas.
- optional opinions requested by the Commission, the Council, or the European Parliament when deemed appropriate.
- independent initiatives where the two committees issue opinions on their own accord.

<sup>21</sup> Composed from informal information available within the ILO.

<sup>22</sup> Ibidem

Despite the long tradition of the EESC and its crucial role in social dialogue in the EU, it is important to highlight two key facts:

1. The role of the institution is rather limited in influencing EU policies and legislative proposals. Research from 2012<sup>23</sup> found that more than 40% of the proposals made by consultative committees (EESC and CoR<sup>24</sup>) were not taken on board by the EU institutions. When they exert influence, it is under certain conditions, such as the speed with which they produce recommendations, the quality of the recommendations and the resonance with the addressees' prior beliefs.
2. There are tripartite bodies at the EU level which facilitate tripartite social dialogue, while bipartite social dialogue is happening only between trade unions and employers' organizations.

At the EU level, European social partner organizations operate in cross-sectoral and sector-specific tripartite and bipartite social dialogue platforms. Tripartite social dialogue at the EU level takes two forms: the Tripartite Social Summit, aligning with Council meetings, and the Macroeconomic Dialogue, established in 1999. The Summit involves EU leaders and relevant cross-sector social partners, meeting twice a year before European Council sessions. The Macroeconomic Dialogue facilitates discussions between social partners and EU representatives, aiming for coordinated monetary, fiscal, and structural policies.

The Social Dialogue Committee (SDC) serves as the primary European forum for bipartite SD at the cross-industry level, convening three times annually. Comprising up to 64 representatives from equally divided employer organizations and trade unions, the SDC negotiates and adopts joint texts, plans, and follows up on joint initiatives.

The European Commission also supports Sectoral Social Dialogue Committees (SSDC), emphasizing consultation and information dissemination among sector-specific social partners. Sectoral SD committees address social implications in their sectors and promote bipartite social dialogue in different sectors. Their outcomes of negotiations can be binding for the European Commission if the social partners decide so in the majority voting. Nevertheless, non-binding joint opinions are more common, with a trend showing a decrease in binding agreements of social partners and an increase in non-binding outcomes over the past decade (Akgüç et al., 2019).

Involvement of NGOs into dialogue structures is not common in Europe and except for the EESC there does not appear to be another mechanism wherein NGOs, trade unions, and employers' organizations engage in civil dialogue within EU governance structures.

### 3.3. Current EU efforts to strengthen social dialogue and collective bargaining in member states and social dialogue within EU governance structures

Social dialogue is a fundamental principle of the European Pillar of Social Rights. The emergence of new discussions surrounding social justice, democracy, work quality, and evolving labour relations models has increased the relevance of the social dialogue systems across the EU. The European Commission aims to strengthen social dialogue at both the EU and national levels. One of the main reasons is the ongoing massive transformation of the labour market, which needs coordination to ensure that the most vulnerable will not be worse off.

In addition to setting a standard on minimum wages, the Directive on adequate minimum wages in the European Union<sup>25</sup>, aims to enhance collective bargaining coverage, requiring each member state with coverage below 80% to adopt an action plan to increase it. This implies that Central and Eastern European countries in particular are expected to take measures to strengthen their collective bargaining systems. The process of increasing collective bargaining coverage is up to the member states and it should fit the country context and should be co-created with the main stakeholders involved.

In June 2023, the Council of the European Union also adopted the Council Recommendation on strengthening social dialogue in the European Union.<sup>26</sup> It aims to support the Member States in implementing Principle 8 of the European Pillar of Social Rights (social dialogue and involvement of workers) by providing guidance on reinforcing social dialogue and collective bargaining at national level, including by making sure that social

23 The Committee of the Regions and the European Economic and Social Committee: How Influential are Consultative Committees in the European Union? [https://onlinelibrary.wiley.com/doi/full/10.1111/j.1468-5965.2012.02313.x?saml\\_referrer](https://onlinelibrary.wiley.com/doi/full/10.1111/j.1468-5965.2012.02313.x?saml_referrer)

24 The Committee of the Regions (CoR) is an advisory body of the European Union involved in a broad array of policy areas.

25 Minimum wages in the EU | EUR-Lex (europa.eu)

26 Council Recommendation of 12 June 2023 on strengthening social dialogue in the European Union (europa.eu)

dialogue frameworks are fit for the future: social partners are better involved in policy design, promoting the benefits of social dialogue; and support or capacity building of social partners. The Council has made it clear that the Recommendation will also be relevant for accession negotiations with candidate countries.

### 3.4. Summary of the law and practice analysis of social dialogue in 3 selected EU member states (Czechia, Latvia and Slovakia)

The law and practice analysis aims to provide a brief comparative law and practice analysis of tripartite social dialogue and civil dialogue in Czechia, Latvia and Slovakia. Countries were selected based on becoming an EU member after 2004, and sharing many commonalities with Ukraine, having transformed, and rebuilt their social dialogue institutions after the fall of the Soviet bloc. It is, however, important to emphasize that in the countries selected social and civil dialogue are still being developed as these are living processes that change with time. Therefore, more than a role model for Ukraine, they provide examples that can help Ukraine's constituents understand common problems across the countries (e.g. low trade union density rates, employer unwillingness to enter into collective bargaining, weak extension mechanisms and tripartism dependent on the political representation, as well as varying and underdeveloped participatory mechanisms for NGOs etc.).

These factors demonstrate that social dialogue in the region remains a process that needs to be improved and can be a useful experience for Ukraine in determining its own development path.

In all three countries, social partners hold a stable position in their interactions with the government through tripartite consultations. The institution of tripartite consultations was established in the transformative period following the fall of the Soviet Union to coordinate the newly introduced market mechanism in the economy. The decisions made by tripartite committees only have a consultative role, and the governments are usually not obliged to accept and implement them. Social partners, however, value their access to tripartite consultations as it allows them to leverage their influence in policymaking. One channel for this influence is their privileged position of commenting on legislative proposals and amendments. In addition to these official channels, social partners extensively use lobbying to advance their agenda. The tripartite body is therefore primarily valued for its exclusive access to government representatives. Financing of the tripartite body is composed of operational costs covered by the government office in all three countries and costs of participation and preparation are paid by social partners.

Participatory mechanisms for dialogue with NGOs differ significantly in the three countries, providing limited and selective, and therefore less transparent participation models. In Slovakia, NGOs primarily engage through a collective commenting procedure, allowing any NGO to voice its concerns and consult with the respective ministry about the law proposal. In Latvia, NGOs which are a part of the governmental council for NGOs, are considered as privileged in commenting on draft legislation. In Czechia, a less transparent advisory and working body participation system is in place, allowing selected NGOs to be part of the legislative proposal process from the beginning.

In each country there are distinct structures for engagement with social partners and NGOs, separating social and civil dialogue with the government. While social partners have well-defined structures and stable participatory mechanisms, the participatory structures for NGOs' are still being formed and vary significantly across countries. This diversity is due to the varied landscape of NGOs, which does not allow for a uniform approach like the clearly defined actors and ways of engagement seen in social dialogue structures.

► **Table 6: The position of social partners and NGOs in interactions with government and in policy-making**

|                                                                                | Czechia                                                                          | Latvia                                                                                                           | Slovakia                                                                                  |
|--------------------------------------------------------------------------------|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| Level of interaction with the government                                       | Information and consultation                                                     | Information and consultation                                                                                     | Information and consultation                                                              |
| Financial security of tripartite committee functioning                         | Operational costs – government participatory costs – social partners             | Operational costs – government, participatory costs – social partners                                            | Operational costs – government, participatory costs – social partners                     |
| Sources of Expert Capacities                                                   | Own resources, state financing and EU funds                                      | Own resources, state financing and EU funds                                                                      | Own resources and EU funds                                                                |
| Outcome status                                                                 | Non-bidding                                                                      | Non-bidding                                                                                                      | Non-binding (except statutory minimum wage increase)                                      |
| Social partners involvement in law making                                      | Compulsory comments                                                              | Compulsory comments                                                                                              | Compulsory comments                                                                       |
| NGOs involvement in law-making                                                 | Via advisory and working bodies of ministries (selective and ad hoc involvement) | NGOs with a specific status (i.e. when they are part of the Memoranda Committee) can provide compulsory comments | In certain circumstances (500 electronic signatures – NGO amendments need to be resolved) |
| Ranking in the OECD index of Stakeholder engagement for developing regulations | 31st                                                                             | 17th                                                                                                             | 4th                                                                                       |

Although recognizing the important role NGOs have in complementing the social partners in the role of experts or advocates of vulnerable groups, the law and practice report highlights that blending social and civil dialogue is not beneficial and would rather decrease the importance of both social partners and NGOs in addressing the challenges of the labour market. Instead, the country analysis suggests building efficient participatory mechanisms for NGOs and, simultaneously, maintaining and improving social dialogue mechanisms for social partners only.

### 3.5 The social partners and NGOs in Ukraine

As much of the debate in Ukraine concerning social dialogue focuses on whether to include NGOs in social dialogue, it is important to describe the spectrum of civil society organizations (CSOs) within which, both, social partners and NGOs operate but have different roles, characteristics, representativity and competencies. It is essential to first highlight that social partners as well as NGOs are understood as a subgroup of a wide range of actors and organizations within civil society. However, NGOs should be distinguished from social partners (trade unions and employers' associations) and from professional associations (PAs) which are constituency-based organizations. So, while all these types of organizations are part of civil society, their membership base, legally defined competencies and rights, capacities and field of activity differ.<sup>27</sup>

Social partners work within legally granted rights and obligations. Operating on a membership-based model, social partners represent a wide spectrum of labour-related interests. They are present at the workplace and meet defined criteria to represent the interests of their members, and through collective bargaining they set and improve the working conditions of the employees. They engage in collective bargaining and provision of legal advice (e.g., by trade unions to their members, or by employers' associations to particular employers on meeting legal requirements in employment). Additionally, social partners can engage in coordinated bargaining, e.g., at the sectoral level, and actively participate in policymaking through social dialogue and tripartite committees at the national level. The social partners are represented at the National Tripartite Social and Economic Council on an equal footing with the Government.<sup>28</sup>

Professional associations, although also membership-based, are confined to specific professions or occupations and their interests. These associations primarily advocate for certification, continuous learning, or training

27 The main differences between NGOs, social partners and professional associations are described based on the classification developed by authors for a project for the European Commission's European Neighbourhood Policy (ENP) covering among others Ukraine (Slukvin et al., 2020).

28 See: [NTSEC structure and composition \(Структура та склад - Національна тристороння соціально-економічна рада \(ntser.gov.ua\)\)](https://ntser.gov.ua)

accessibility of specific occupations such as doctors, nurses, architects etc. Unlike trade unions, professional associations usually do not address issues related to working conditions and undeclared work (although in some cases they engage in debates about working conditions as well, an example would be a doctors' professional chamber). Professional associations are not recognized as social partners and therefore cannot engage in social dialogue structures or collective bargaining. Membership in these associations is estimated at around 3.2% of all employees.<sup>29</sup>

In Ukraine, professional associations are active in promoting professional growth-oriented activities rather than labour rights and social dialogue. For instance, medical associations are categorized by specialization (e.g., dentists, nurses, surgeons, psychologists) and primarily focus on activities related to professional qualification and growth. This includes organizing seminars, lectures on disease treatment, and professional equipment fairs. Conversely, teachers' associations are divided based on teaching subjects and rarely engage with labour relations issues. In specific instances, the law designates a unique role for professional associations, as seen in the case of the Ukrainian National Bar Association (UNBA). The law grants this association the right to champion the protection of the social and professional interests of lawyers, although it does not explicitly specify labour relations as a focus. However, when examining alternative non-governmental organizations whose role is not legally defined, such as the CSO "Ukrainian Advocates' Association," labour relations do not appear in their documentation. Below we highlight examples of Ukrainian PAs, and their coverage of labour-related issues (Slukvin et al., 2020).

► **Table 7. A sample of coverage of labour-related issues of selected professional associations**

| Name                                                     | Coverage of labour-related issues <sup>30</sup>                                                                            |
|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| Association of Nurses of Ukraine                         | Awareness campaigns for occupational safety and health of nurses                                                           |
| Association of Farmers and Private Landowners of Ukraine | Employment regulations                                                                                                     |
| Ukrainian National Bar Association                       | Protection of professional activity rights provisioned by The Law of Ukraine "On the Bar and Legal Practice" <sup>31</sup> |

Source: (Slukvin et al., 2020)

NGOs, unlike social partners and professional associations, do not operate on a constituent membership basis and do not claim representativity, unlike the social partners. Nevertheless, they can mobilise and advocate for specific aspects of labour rights and protection. NGOs are often more adaptable than social partners in responding to emerging challenges because they do not operate within organisational structures involving constituency members to which to report their aims and activities. They can focus on specific aspects of the labour market and specific groups of employees (e.g. those underrepresented in trade unions such as self-employed, short-term contracts, or other multiple vulnerabilities), and can develop deep expertise in specific topics. NGOs can help and promote improvements in labour standards and working conditions by focusing on particular problems, providing expertise to individuals and the authorities, and taking the role of connecting different actors. NGOs, therefore, can complement the work of the social partners but cannot replace it.

NGOs typically also possess specialized expertise in specific labour issues such as child labour, gender discrimination, or migrant workers' rights. By cooperation with specialized NGOs, social partners can draw resources from their expertise in improving working conditions. NGOs therefore can represent an important element of participatory democracy which would allow different interest groups to have their voice in policy-making, while social partners are an important element of representative democracy, as they represent a large part of the economy, namely employers and workers and their specific interests, through their membership, first-hand knowledge, and expertise.

Reflective of these different roles, there are currently no formal, structured social dialogue mechanisms in Ukraine which bring together the social partners and NGOs. The information provided in this Chapter also illustrates that such mixed social dialogue mechanisms are generally rare.

29 (Slukvin et al., 2020)

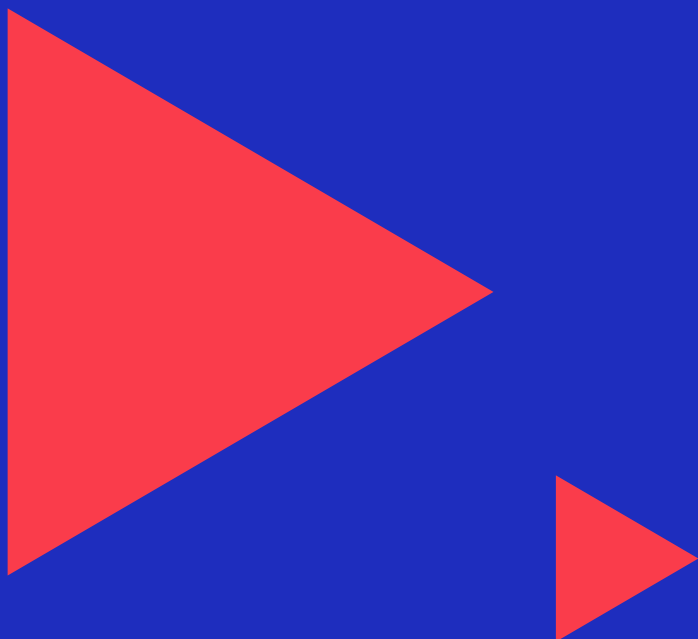
30 Based on the statutes and website information.

31 On the Bar and Legal Practice."

# ▶ 04

## Three scenarios for effective, influential and inclusive social dialogue

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## Methodology

With a view to informing decision-making concerning Ukraine's path of social dialogue, 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:
  - participation in national and local policy agenda-setting
  - consensus-building
2. instrumental and analytical effectiveness;
3. operational effectiveness.

## Terminology

**Social dialogue** encompasses<sup>32</sup> 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.

**Civil dialogue** is the interaction of government with all different civil society organizations, which may or may not include the social partners.<sup>33</sup>

**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.

<sup>32</sup> ILO working definition.

<sup>33</sup> In Ukraine one form of civil dialogue takes the shape of bipartite+ engagement. The Decree of the Cabinet of Minister of Ukraine No.996 of 03.11.2010 “On Ensuring Public Participation in the Design and Implementation of State Policy” stipulates creation of the “public councils” at a ministry, other central executive body, the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kyiv and Sevastopol city, district, rayon state administrations in the cities of Kyiv and Sevastopol. Kyiv and Sevastopol state administrations”. (Про забезпечення участі громадськ... | Від 03.11.2010 № 996 (rada.gov.ua)). The Decree mentions that the above government bodies shall ...“in accordance with the law, ensure that the position of trade unions and their associations, employers' organizations and their associations is taken into account when making decisions on issues related to the design and implementation of socio-economic policy and regulation of social and labour relations.” However, the public councils may not necessarily include the representatives of the social partners as membership in the public councils is defined through rated voting for a limited number of seats (35), and is individual.

**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.

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

| Relevance         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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|                   | Scenario A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Scenario B                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Scenario C                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Weaknesses</b> | <p><b>I. Participation in policy agenda-setting</b></p> <ol style="list-style-type: none"> <li>Neither Government nor social partners recognize the NTSEC as the most prominent national tripartite advisory and consultative body for Government and Parliament, at this time.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>There is significant overlapping and lack of legal clarity concerning the content and outcomes of various parallel forms of social dialogue.</li> <li>There is a lack of coordination among levels, roles and outcomes of various forms of social dialogue.</li> <li>There is a very poor infrastructure of trade unions and employers’ organizations at the local level.</li> <li>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.</li> </ol> <p><b>II. Consensus-building</b></p> <ol style="list-style-type: none"> <li>Large number of parties’ representatives may delay significantly the consensus-building process.</li> <li>Internal tensions, divergent agendas and lack of consensus within the social partners hamper effective social dialogue.</li> </ol> | <p><b>I. Participation in policy agenda-setting</b></p> <ol style="list-style-type: none"> <li>There is no legal framework in place for the participation of other groups of interests on equal footing with the social partners and Government.</li> <li>There is no legal definition or selection criteria of other groups of interests of civil society, which makes the selection of those representative arbitrary.</li> <li>It implies a much larger membership, which will delay even more the decision-making process.</li> <li>A lack of expertise and experience of some of the civil society groups in matters pertaining to economic, social, and labour affairs.</li> <li>Negotiation of social pacts is very difficult due to the multitude of divergent interests.</li> <li>Coordination with lower levels requires similar composition and expanded infrastructures.</li> </ol> <p><b>II. Consensus-building</b></p> <ol style="list-style-type: none"> <li>Very low potential for consensus- building, which is likely to translate into low problem-solving capacity.</li> <li>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.</li> </ol> | <p><b>I. Participation in policy agenda-setting</b></p> <ol style="list-style-type: none"> <li>There is no legal and institutional framework in place.</li> <li>There is no transparent procedure for selection of independent experts in place.</li> <li>There are no institutional or informal communication channels with Government or Parliament that would allow regular feedback.</li> <li>Negotiation of tripartite social pacts is not possible in the absence of Government representatives.</li> <li>Replication at lower levels is likely to be difficult.</li> <li>Lack of steady practice of bipartite plus dialogue.</li> </ol> <p><b>II. Consensus-building</b></p> <ol style="list-style-type: none"> <li>Very low consensus-building in case the third party is represented by various interest groups from civil society.</li> <li>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.</li> </ol> |

| Relevance            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                      | Scenario A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Scenario B                                                                                                                                                                                                           | Scenario C                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Opportunities</b> | <ol style="list-style-type: none"> <li>1. Ongoing legislative, institutional and administrative reforms can address the weaknesses and can streamline and reinvigorate the tripartite social dialogue system.</li> <li>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.</li> </ol>                                                                      | <p>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.</p> | <p>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.</p>                                                                                                                                                                                                                                                                 |
| <b>Threats</b>       | <ol style="list-style-type: none"> <li>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.</li> <li>2. Government is uninterested in seeking consensus with the social partners in the policy- and law- making processes.</li> <li>3. Social partners undermine the consensus-building process.</li> </ol> | <p>Social dialogue is diluted to the extent that it becomes meaningless and produces no result.</p>                                                                                                                  | <ol style="list-style-type: none"> <li>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.</li> <li>2. Political support is dependent on the high reputation of individual experts.</li> <li>3. Engagement of Government into dialogue decreases in the absence of legal obligation or steady practice.</li> </ol> |

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

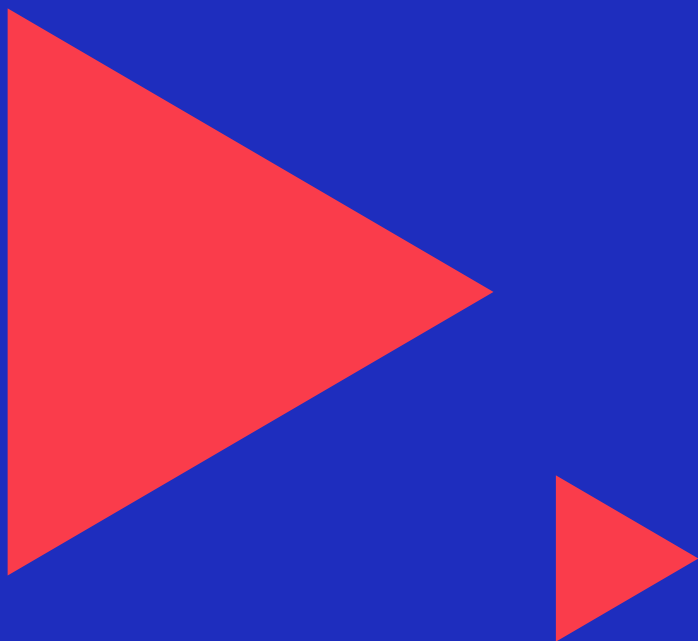
| Operational effectiveness |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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|                           | Scenario A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Scenario B                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Scenario C                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Strengths</b>          | <ol style="list-style-type: none"> <li>1. Legal and institutional frameworks are in place.</li> <li>2. Well-established internal structures for technical support (technical secretariat, specialized standing committees)</li> <li>3. Well-established working methods and an annual work plan.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | High potential to operate smoothly in case of reduced membership and availability of professional technical secretariat.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Weaknesses</b>         | <ol style="list-style-type: none"> <li>1. Low frequency of meetings.</li> <li>2. Low attendance by Government representatives.</li> <li>3. Non-observance of the rotation principle.</li> <li>4. Acute lack of human and physical resources.</li> <li>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.</li> <li>6. Internal tensions within social partners, which further delays decision-making and reduces the potential for consensus.</li> <li>7. No procedure to ensure coordination with lower levels of social dialogue.</li> <li>8. No standardized methodology for monitoring and evaluation of institutional performance.</li> <li>9. No systematic process for identifying, adopting or transferring better practices.</li> </ol> | <ol style="list-style-type: none"> <li>1. No legal and institutional framework in place.</li> <li>2. Technical support structures will require more human, physical and financial resources.</li> <li>3. Complex tasks involving multiple groups frequently result in errors, delays or delivery quality problems.</li> <li>4. Meeting frequency and attendance is likely to be poor.</li> <li>5. There is no standard way of passing information or agreeing on common goals between the groups.</li> <li>6. Disagreements or misunderstandings among various groups are frequent.</li> <li>7. Internal tensions within social partners, multiplied by those with and among the other groups.</li> <li>8. Ensuring coordination with lower levels of social dialogue is more difficult.</li> <li>9. Monitoring and evaluation of institutional performance is likely to be a challenge.</li> </ol> | <ol style="list-style-type: none"> <li>1. There is no legal and institutional framework in place.</li> <li>2. Significant financial contribution of the social partners is likely to be required.</li> <li>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.</li> <li>4. Disagreements or misunderstandings among various groups are frequent.</li> <li>5. Internal tensions within social partners, multiplied by those with and among other groups.</li> <li>6. Coordination with lower levels of social dialogue could be a challenge.</li> </ol> |
| <b>Opportunities</b>      | 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Threats</b>            | 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

## 2023/24 opinions on the three scenarios

During the interviews undertaken in 2023–2024, a range of views were expressed on the scenarios of reform of the social dialogue in Ukraine suggested in 2019. Many of them favoured scenario A, emphasizing that the National Tripartite Social and Economic Committee (NTSEC) should remain “constructed on the ILO model”, and highlight the importance of having an appointed chairman of the committee while providing improvements in the existing framework. Because of the current state of dysfunction of the NTSEC, scenario C of bipartite cooperation was considered a relevant option, mostly because the social partners without the government would be able to conclude agreements. From those who favoured scenario B, some highlighted the need for an increased role for civil dialogue, while others emphasized the need to resolve the representativity of NGOs. Some proponents of scenario B believe that this is the “European model” of social dialogue. Those who opposed scenario B suggested that civil society should perform public control rather than actively participating in bargaining. Some reservations against parallel social and civil dialogue were expressed as well.

# ▶ 05

## Corrective measures required



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 dialogue<sup>34</sup> 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 to avoid misunderstanding, overlapping and conflicting results.
- b. A distinction between policy dialogue (tripartite social dialogue) and collective bargaining (bipartite social dialogue)<sup>35</sup> 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 authorities<sup>36</sup> and executive committees of local governments<sup>37</sup>, 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.

Unlike negotiations, consultations are not supposed to lead to agreements<sup>38</sup> 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.

34 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.

35 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.

36 Hereinafter referred to as LEAs.

37 Hereinafter referred to as LG ECs.

38 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>.

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 an 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".<sup>39</sup>

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.<sup>40</sup> 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.<sup>41</sup>

The elaboration of a social pact outlining the shared objectives and different roles of the government, employers and workers with regard to Ukraine's recovery and reconstruction would not only constitute a great opportunity for the constituents to engage in meaningful social dialogue and rebuilding the trust lost between them and in the process, but, more importantly, it would also make an extremely important contribution to Ukraine's future path of development.

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.

**First**, 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.

**Second**, it is suggested that the NTSEC elaborate a "social pact for recovery and reconstruction" outlining the shared objectives and policy agreements, as well as the different roles of the government, employers, and workers with regard to Ukraine's recovery and reconstruction. The conclusion of such a social pact would be the most meaningful contribution the constituents can make towards Ukraine's recovery and reconstruction and be a demonstration by all that they are willing to "step over their shadows" and rebuild the trust they lost.

## 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 negotiations<sup>42</sup> that aim to reach mutually acceptable compromise regarding draft legislative proposals. Currently, this type of process

39 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*.

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

41 *ibidem*.

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

can take place either within the specialized standing tripartite committees of the NTSEC or in 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

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

- 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.** 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' organizations<sup>43</sup>

According to the Law on Collective Agreements<sup>44</sup>, 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 practice, JRBs have replaced the NTSEC in social dialogue consultations and serve as platforms where most of the consultations of social partners are held. For example, JRBs concluded with the Cabinet of Ministers of Ukraine the two General Agreements<sup>44</sup> for the period 2016 - 2017 and 2019–2021<sup>45</sup>.

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.

The 2023 stakeholder interviews confirm that the NTSEC remains dysfunctional and that JRBs are the functioning bodies of social partners serving as communication platforms with governmental bodies when discussing legislative proposals. Although opinions on the role of the government varied from "unnecessary" to "very important" with regard to promoting tripartite consultations in the NTSEC, the government's inaction in this respect meant that, in practice, bilateral interaction in JRBs prevailed.

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 the general collective agreement, 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.

43 Hereinafter referred to as JRBs.

44 The General Agreement, concluded in accordance with the legislation of Ukraine on collective agreements and social dialogue, involves three main parties: national associations of employers, national associations of trade unions and the Cabinet of Ministers of Ukraine. It applies to 2019-2021 and comes into force from the date of its signing. No later than 12 months before the expiration of the term for which the Agreement was concluded, the Parties enter into negotiations to conclude a General Agreement for a new term. If negotiations on concluding an Agreement for a new term are not completed within 12 months, its validity continues for the period of negotiations, which is determined by the Parties.

45 General Agreement on the regulation of the basic principles and norms of implementation of socio-economic policy and labour relations in Ukraine for 2019-2021 (rada.gov.ua)

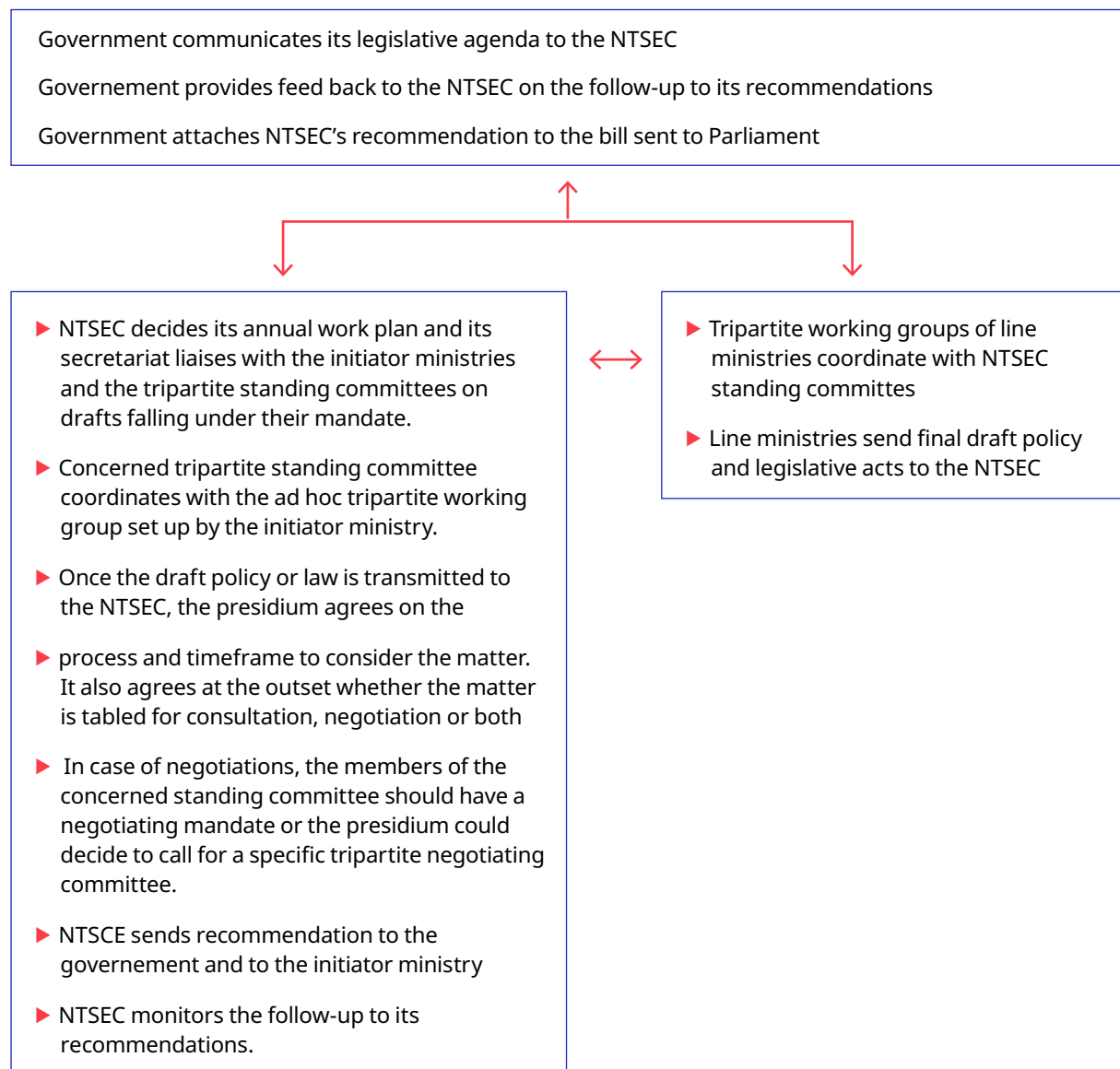
## 2. Coordination of social dialogue processes, institutions and actors

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 (TTSECs) along with newly created raion and ATC<sup>46</sup> councils. According to an interview conducted with TTSEC secretaries,<sup>47</sup> 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 TTSECs. 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 TTSECs, 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.

Alternatively, it is suggested to reduce the number of territorial economic and social councils was suggested to be considered, with a focus on larger territorial units at the oblast level. This approach would ensure effective coordination at the territorial level. Empowered by a robust mandate and integration into lower-level territorial structures, these committees would facilitate strong bottom-up and top-down articulation of social dialogue. Lower-level tripartite committees (at the raion level) would be relevant, only in areas heavily impacted by transformation processes, such as steelmaking and mining. This approach seems to fit with the provisions of the 2023 Law on Collective Bargaining as it introduces the territorial and sector-territorial level of negotiations at the regional level. The Law stipulates that “in industries in which decisions of local executive bodies or local self-government bodies regulate pay and other working conditions, territorial agreements in a separate industry may be concluded at the territorial level.”

<sup>46</sup> Amalgamated Territorial Community.

<sup>47</sup> The survey was conducted during an TTSEC 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.<sup>48</sup>

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.<sup>49</sup>

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:<sup>50</sup> 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.

In consideration of the above and the section 2.5.3, 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 join;<sup>51</sup>
  - 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).

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

49 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).

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

51 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.

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).

## 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, predetermined 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. I corrective measures suggested for Scenario A remain valid





**International Labour Office**

4 route des Morillons  
CH-1211 Geneva 22 – Switzerland  
[ilo.org](http://ilo.org)

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**ILO Office in Ukraine**

75 Zhylianska Street  
P.O. Box 2  
Kyiv, Ukraine, 01032  
E: [kyiv@ilo.org](mailto:kyiv@ilo.org)  
[www.ilo.org/ukraine](http://www.ilo.org/ukraine)