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EU-ILO Project

“Towards safe, healthy and declared work in Ukraine”



Project is funded by European Union

Civil Society Platform (AA) meeting

Liberalization of the Ukrainian legislation “à la Ukrainienne”

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Tuesday / 29 / June / 2021

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► Features of the labour relations liberalization trend

- **Ultraliberal** and **unbalanced** (“from the 8 to 80”), instead of a more balanced approach (e.g., Flexicurity)
- Based on **wrong** and **biased assumptions**, such as:
 - Employers and workers and have the **same bargaining power**, therefore:
 - ✓ **Commercial** or **civil law** (rather than labour law) **should apply to employment relationships**;
 - ✓ No need for social dialogue, collective bargaining and consultation of employers’ or workers’ representatives: the **workers should negotiate directly** with their **employers**, through individual contracts
 - All regulation (not only the excessive or inadequate) and its enforcement puts “**pressure on employers**” (especially on “FOPs”), therefore:
 - ✓ Need for “**deregulation**” and **exclusion of “FOPs**” from its application;
 - ✓ Need to **take out** the **powers** and **limit activities** of public **authorities** that **promote** and **enforce compliance** with legislation (also supported by the excuse and argument that they are corrupted);

► Visible consequences of the liberalization trend

- Transfer - from the labour code (and from collective agreements) -, to individual labour agreements, of the main rights and obligations of the parties to the employment relationship (including their termination conditions)
- Reduce and/or eliminate the applicability of collective agreements;
- Exclusion of large portions of employers and workers from the scope of the labour legislation (e.g. Code of Labour Laws, law on leaves and law on labour protection);
- Exclusion of specific employers from the scope of labour inspection;
- Limitation of the powers and activities of labour inspection, for example:
 - Preventing labour inspectors from entering freely and without prior notice at any hour any workplace liable to inspection;
 - Limiting the duration, frequency and scope of inspection visits;
 - Remove the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings;
 - Limiting the power of labour inspectors to impose fines to situations where their orders to correct infringements were not complied.

▶ Outputs of the liberalization trend – some examples

- ▶ 1. **Exclusion of large portions of employers and their workers** from the scope of application of legislation on labour relations and on OSH:
 - **Draft law 5371** - small or medium-sized companies with no more than 250 workers, as well as workers whose monthly wage rate is higher than eight statutory minimum wage rates would no longer be covered by labour and occupational safety and health legislation.
 - **Draft law 5054-1** - excludes natural persons performing work under a labour agreement from the scope of application of labour legislation.

These two draft laws are in contravention of EU Directives 91/533/EEC and 2019/1152, and of ILO Recommendation 198

► Outputs of the liberalization trend – some examples

- ▶ 2. **Transfer** of the regulation of **essential aspects** of the employment relationship (that should be either ruled by law and/or by collective agreements) to **individual labour agreements**:
 - **Draft laws 5371, 5161, 5161-1 and 5388** – foresee that essential aspects of the employment relationship should be regulated within individual labour agreements (even with less favourable conditions than provided for in labour code or applicable collective agreements) in areas such as: working time, remuneration, OSH, regulations and limitations on the use of fixed term contracts and their renewal, conditions for the termination of employment relationships, etc.

These provisions contravene: EU Directives 91/533/EEC, 1999/70/EC, 2019/1152, 89/391/EEC, 91/383/EEC, 92/85/EEC, 97/81/EC, 2009/104/EC and 2003/88/EC; and a number of ILO Conventions, including fundamental convention 98.

► Outputs of the liberalization trend – some examples

► 3. Limitation of the activity and restriction of powers of labour inspectors:

- ME draft Law "On Amending Some Legislative Acts on the Procedure of State Supervision (Control) of Compliance with the Labour Legislation":
 - Restrict the power of labour inspectors to enter freely and without prior notice at any hour to any workplace liable for inspection;
 - Limits the duration, frequency and scope of inspection visits;
 - Remove the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings;
 - Restricts the power of labour inspectors to impose fines to situations where their orders to correct infringements were not complied.
- **Draft law 5054-1:** Excludes the activities of "individual entrepreneurs" from the scope of labour inspection

► Outputs of the liberalization trend – some examples

► 3. Limitation of the activity and restriction of the powers of labour inspectors:

- **Draft law 5161-1:** limits the discretionary power of inspectors to give warning and advice instead of instituting or recommending proceedings, imposing that a warning shall be applied when infractions are practiced by certain legal persons and individual entrepreneurs.
- **Draft law 5371:** provides that companies cannot be required to present documentation on matters regulated by labour agreements to inspectors (making it impossible to monitor compliance with laws and obligations, in particular on labour, social security, employment and occupational safety and health)
- **ME Draft Law “On Occupational Safety and Health of Workers”:** provides that fines can only be imposed in case of employer’s failure to comply with the labour inspector’s order for elimination of violations, thus taking out the general prevention effect from inspection activity (the fact that employers tend to comply with regulations to avoid being fined).

These restrictions contradict, among others, Article 4 of Directive 89/391/EEC, Article 9 of ILO C155, and ILO Priority Conventions C81 and C129

► Impact on AA commitments

- ▶ Draft laws Nos. 5054, 5054-1, 5161, 5161-1, 5388 and 5371 as well as ME draft laws on “Occupational Safety and Health of Workers” and “On Amending Some Legislative Acts on the Procedure of State Supervision (Control) of Compliance with the Labour Legislation”
 - Contain provisions which are contrary to EU Directives 89/391/EEC, 91/383/EEC, 91/533/EEC, 92/85/EEC, 1999/70/EC, 2003/88/EC, 2009/104/EC and 2019/1152 and to ILO fundamental (C98), priority (C81 and C129) and technical (C155) Conventions
 - Contravene Article 291 of AA, according to which Ukraine undertook to “*promote the development of trade in a way that is conducive to full and productive employment and decent work for all and to effectively implement the ratified fundamental and priority ILO Conventions*”
 - Contravene Article 296 of AA, according to which Ukraine committed itself to “*uphold the current levels of protection*”, “*not to fail in the effective enforcement of its labour laws*”, and “*not to weaken or reduce the labour protection afforded by its laws*”
 - Contravene Articles 424 of AA, according to which Ukraine undertook “to ensure gradual approximation to EU law, standards and practices in the area of employment, social policy and equal opportunities”, as set out in Annex XL to the AA.

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[Issue #2 \(December 2020\)](#)



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Q&A



▶ **Contacts**

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Thank you for your attention!





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