How to Set up Effective Social Dialogue in Ukraine?

Policy paper
AUTHORS

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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AAE</td>
<td>All-Ukrainian Association of Employers</td>
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<tr>
<td>AEO</td>
<td>Association of Employers Organizations of Ukraine</td>
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<tr>
<td>Agreement on JRB of Employers</td>
<td>Agreement on establishing the Joint Representative Body of employers’ side at the national level</td>
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<tr>
<td>Agreement on JRB of Trade Unions</td>
<td>Agreement on establishing the Joint Representative Body of representative all-Ukrainian trade union organizations at the national level</td>
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<tr>
<td>CEU</td>
<td>Confederation of Employers of Ukraine</td>
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<td>CMU</td>
<td>Cabinet of Ministers of Ukraine</td>
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<tr>
<td>CSO</td>
<td>civil society organization</td>
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<td>CSP</td>
<td>EU-Ukraine Civil Society Platform</td>
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<td>EESC</td>
<td>European Economic and Social Committee</td>
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<td>EU</td>
<td>European Union</td>
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<td>FEU</td>
<td>Federation of Employers of Ukraine</td>
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<td>FTUU</td>
<td>Federation of Trade Unions of Ukraine</td>
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<tr>
<td>IE</td>
<td>Individual Entrepreneur</td>
</tr>
<tr>
<td>ILC</td>
<td>International Labour Conference</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organization</td>
</tr>
<tr>
<td>JRB of Employers</td>
<td>Joint Representative Body of Employers’ side at the National Level</td>
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<tr>
<td>JRB of Trade Unions</td>
<td>Joint Representative Body of Representative All-Ukrainian Trade Unions at the National Level</td>
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<td>NMCSU</td>
<td>National Mediation and Conciliation Service of Ukraine</td>
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<tr>
<td>NTSEC</td>
<td>National Tripartite Social and Economic Council</td>
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<tr>
<td>SIF</td>
<td>Social Insurance Fund</td>
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<tr>
<td>SME</td>
<td>small and medium enterprise</td>
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<tr>
<td>UFTUSMEW</td>
<td>Ukrainian Federation of Trade Unions of Small and Medium Enterprises’ Workers</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>UULE</td>
<td>Ukrainian Union of Leaseholders and Entrepreneurs</td>
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</table>
Social dialogue is an instrument based on the “moral obligations” of the social partners: trade unions, employers’ organizations and the state (represented by the Government), designed to fulfill the main social rights and agreements in the such areas as employment, fair wages, improvement of working and living conditions, social security, gender equality and non-discrimination, healthcare and workplace safety, minimal income guarantee for elderly people etc. The importance of conducting efficient social dialogue to ensure social standards is also stipulated by the provisions of the Association Agreement between Ukraine and the European Union. Namely, Chapter 21, Title V of the Agreement says that the Parties shall strengthen the dialogue and cooperation to ensure social standards in the named areas.

The crisis in the social and labour area in Ukraine provides basis for ineffectiveness of the current model of the social dialogue that lacks the necessary organizational, institutional, regulatory and legal resources, in order to serve as an effective tool for the country’s way out from the social and economic crisis and ensure its sustainable development.

The introduction of «representativeness» criterion in Ukraine has led to the fact that only a part of the organizations became «representative», while the rest of the trade unions and employers’ organizations of Ukraine found themselves among the so-called «unrepresentative», which means their rights and opportunities are significantly restricted in the current system of social dialogue. The procedure of delegating its powers by «unrepresentative» organizations to «representative» associations is not defined by the legislation, which in reality leads to the impossibility of delegating.

The following issues shall be highlighted as those that prevent the effective cooperation of the social partners in Ukraine.

Unregulated, contradictory and free interpretation of the provisions of the Ukrainian legislation in the area of social dialogue by the social partners:

- The National Tripartite Social and Economic Council (NTSEC) is formed by the President of Ukraine, which contradicts the norm on the formation of the social dialogue bodies, stipulated by the Law of Ukraine "On Social Dialogue" (NTSEC is created by joint decision of the sides to the social dialogue of the corresponding level or based on the initiative of any side);

- improper legislation concerning the term of office of the NTSEC members. The Law of Ukraine "On Social Dialogue" specifies that the term of office of the members of the NTSEC is six years. At the same time, organizations receive Certificates on conformity with the representativeness criteria for only five years;

- multiple membership of trade unions and employers’ organizations, which leads to duplication of organizations during confirmation of representativeness and does not allow to reflect the real percentage of representation of both trade unions and employers' organizations.(For example, seven of eight member organizations of the Confederation of Employers of Ukraine are also members of the Federation of Employers of Ukraine; two member organizations of the Association of Employers Organizations of Ukraine are simultaneously part of the Federation of Employers of Ukraine);

- goal, tasks and powers of the Joint Representative Body of Employers’ side at the national level (JRB of Employers), are determined by law in different ways. The goal and tasks of the JRB of Employers are differently set forth in the Law “On Collective Agreements” and the Law “On Employers’ Organizations,” resulting in a conflict of the laws. Also, the powers of JRB of Employers foreseen by the Law of Ukraine «On Employers’ Organizations ...» contradicts the provisions of the Law of Ukraine “On Social Dialogue», which distributes the same powers between two entities: a part goes to the side of employers (all employers’ organizations at the corresponding level irrespective of their representativeness status), the other part goes to the assembly of authorized representatives of representative organizations.
Failure to follow legislation of the social dialogue by its sides and bodies due to lack of control mechanisms

Legislation stipulates that rotation of the Head of NTSEC is done in the following order: employers - trade unions - executive bodies. The chairman of NTSEC is appointed for one-year term. **Representatives of the authorities is headed NTSEC for over 3 years thus violating the principle of rotation.**

Joint Representative Body of Representative All-Ukrainian Trade Unions at the National Level (JRB of Trade Unions) in its activities is guided by the internal documents that contradict and violate Ukrainian legislation in the area of social dialogue. The provisions of these internal documents (Agreement and Rules of Procedures) allow JRB of Trade Unions independently to deprive representative organizations of the opportunity to participate in social dialogue, which is guaranteed by the Law.

**Violation and free interpretation of the provisions of Ukrainian legislation by the entities of JRB of Trade Unions deprived significant number of the entities of trade unions to participate in social dialogue.**

**Consequences:** 15 of 21 all-Ukrainian trade unions’ associations are not able to join discussion of social and labour policy questions in the exercise of social dialogue at the national level. Representative organizations do not have the capacity to exercise their rights, while «unrepresentative» organizations, being members of the JRB of Trade Unions participate in social dialogue, thus violating the law.

Practically one-sided state regulation of the social dialogue at the national level is caused by recent practice in Ukraine when **leaders of all-Ukrainian associations of trade unions and employers’ organizations were Members of the Parliament or top officials of state authorities, and at the same time they represented the side of trade unions or employers in social dialogue (M. Volynets, A. Kinakh, V. Khara.)**

Monopolization of the right to represent the interests of employees and employers by individual entities within the sides of the social dialogue

**Monopoly of the Federation of Trade Unions of Ukraine in the JRB of Trade Unions (41 out of 61 representatives of JRB of Trade Unions).**

**Consequences:** practically one-sided policy of FTUU when making decisions by members of the JRB of Trade Unions; the impossibility of adopting alternative solutions and lack of delegates rotation for participation in international events (since the adoption of the Law "On Social Dialogue in Ukraine", the FTUU chairperson has invariably been the one and only delegate from trade unions to the annual sessions of the International Labour Conference.

The reluctance to reform the social dialogue is explained, among other reasons, by the personal interests of its individual members in distribution of the social insurance funds, which sometimes has traits of corruption. Thus, out of 260.59 million UAH allocated for the purchase of vouchers to treatment facilities by the Social Insurance Fund for Temporary Disability in 2016, 233.99 million UAH was received by the entities of "Ukr-Prof-Ozdorovnytsya" — a private joint-stock company of health and treatment institutions of trade unions of Ukraine, 92.9% stocks of which is owned by the Federation of Trade Unions of Ukraine.

**Monopolization of the representation of big business interests in social dialogue at the national level.**

**Consequence:** only big business is represented in the social dialogue, which, according to the official statistics, is only 0.02% of the business environment in Ukraine, which leads to almost complete absence of representatives of small to medium enterprises in the negotiation process.

Today, there are three options / alternatives for the further development of the social dialogue in Ukraine:

**Alternative 1.** Continue social dialogue within its current legal framework («zero option»)
Alternative 2. Reform social dialogue only in relation to involvement of civil society organizations (a «minimum reforms policy» or the one presently proposed by the social partners).

Alternative 3. Eliminate contradictions in legislation, implement compliance oversight mechanisms and responsibility for decisions («policy of effective changes»)

Considering the EU countries experience, it is important to understand that social dialogue is a modern effective tool for solving social problems, which provides ample opportunities for progress in social protection, employment, improvement of working conditions etc.
Social dialogue is an important tool in the implementation of a state social policy and a means to prevent and settle social conflicts. It helps to increase the decision-making transparency and take into account proposals of both formal and informal sides. The term «social dialogue» implies mutual communication among the social partners: trade unions, employers’ organizations and government authorities.

The essence of social dialogue is in hammering out a consolidated position, reaching a consensus and adopting agreed decisions by social dialogues’ sides (social partners) on the state socio and economic policy development and implementation as well as the regulation of labour, social and economic relations.

Participation of the social partners in the development and implementation of anti-crisis measures and reforms plays a key role in the search of a necessary balance between macroeconomic stability, on the one hand, and growth of employment and protection of most vulnerable population, on the other hand. Social dialogue has proved its effectiveness in critical periods of economic commotions. It can help:

- Introduce changes and reforms, while sticking to the principles of fairness, inclusiveness and equality
- Ensure effective interaction of the social partners, reckoning their interests in
- Increase social responsibility of business
- Achieve stable and equal relationships in the social and labour sphere

In the 1930s, Sweden was first in Europe to institutionalize social dialogue in the form of a tripartite body (Government — Employers’ Confederation — Trade Unions), which agreed basic parameters of economic and social policies, including working conditions and level of labour remuneration. Just the Swedish model was taken as a basis of the Maastricht Treaty (1992), which defined the scope of social policy at the European level as well as the principles of promoting social dialogue and partnership.

The Amsterdam Treaty (1997) clearly defines the role and responsibilities of the social partners. Hence, social dialogue in the EU has become a part of its general strategy.

As international practices prove, social dialogue is a mechanism for the efficient implementation of UN and ILO documents on sustainable development. Agenda 21, adopted at the UN Conference on Environment and Development in Rio de Janeiro (1992), recognizes the important role of trade unions and employers’ organizations among key stakeholders. The 2030 Agenda for Sustainable Development (UN General Assembly, 2015) calls for encouraging effective partnership between governments, the private sector and civil society based on the partners’ experience and strategies of resource usage.

The following novel trends in social dialogue in the world are worth mentioning:

1) Extending the social dialogue subject matter by including a set of socio and economic and environmental issue
2) Extending the social dialogue subjectivity, inter alia through new forms of representation
3) Reducing the centralization level of collective bargaining regulation in the sphere of social and labour relations and coordination of the social partners’ actions
4) Emergence of institutes intended to fill social dialogue with new contents
5) Developing forms of employees’ participation in managerial decision making
6) Developing «green» jobs and innovative enterprise
7) Enhancing the role of small and medium businesses in economic development and, accordingly, their place and role in the social and labour sphere

At present, social dialogue in the EU is carried out with a focus on tasks of sustainable socio-economic development which are affected by the following factors:
- Economic globalization
- Strengthening the role of human capital
- Structural developments and employment institute transformation
- Increase in the significance of social responsibility of all social dialogues’ sides not only before their partners but before the society as a whole.

Engaging CSOs in social dialogue has become a practice in many European countries. A social dialogue model of CSO involvement through delegation by social/trade organizations and government exists in France. In Malta and Estonia, there is a practice of broad engagement of independent experts and civil society institutions to work in tripartite bodies of social dialogue (or their separate committees) to agree on issues that are outside classic tripartism (trade unions — employers — government).
The seven-year implementation of the Law «On Social Dialogue in Ukraine» [7] has proved that the dialogue among the social partners in Ukraine does not facilitate social integration of its society, formation of social solidarity and application of the openness and transparency principles in the processes of setting labour price and conditions in the country. Neither the state nor the employers and trade unions currently engaged in social dialogue undertake real responsibility for the underpriced labour and beggarly social standards in Ukraine. This social dialogue has not become an effective and essential part of the society’s political system. The social partners carry on their activities within the dialogue just formally.

Ukraine’s present model of tripartite (trade unions — employers — government) and four-tier (national, sectoral, territorial and local levels) social dialogue does not ensure the desirable effect in terms of approximate positions, consensus and agreed decisions of the sides. The European integration tasks, which Ukraine has to carry out to achieve high organizational development levels to European standards and increase the social partners’ institutional capacity, demonstrate the necessity to reform social dialogue in the country.

The social and labour crisis in Ukraine demonstrates ineffectiveness of the current social dialogue model. It does not possess necessary organizational, institutional and regulatory resources to be an effective tool for bringing the country out of the socioeconomic crisis and ensuring its sustainable development.

The main national-level social dialogue institutions in Ukraine, participation in which is based on the «representativeness» status and whose activities determine basic principles of social dialogue realization, include:

- **Joint Representative Body of employers’ side at national level (JRB of Employers)**
- **National Tripartite Social and Economic Council (NTSEC)**
- **National Mediation and Conciliation Service of Ukraine (NMCSU)**

It is worth to mention the major issues that hamper efficient interaction of these institutions and achievement of effective social dialogue in Ukraine:

- Provisions of Ukrainian legislation that govern social dialogue are conflicting and loosely construed by the social partners
- The social dialogue sides and bodies do not observe legislation since there are no mechanisms to ensure law compliance and responsibility for decisions taken by social dialogue participants both inside each of the sides and within the exercise of social dialogue on the tripartite basis
- The state regulation of social dialogue at the national level is one-way, as actions on the side of trade unions and on the side of employers are reduced to «appeasement» with respect to proposals of government authorities
- The right to represent interests of employees and employers is monopolized by certain entities inside social dialogue sides (trade unions and employers)

The systemic problems in social dialogue have a significant impact on its support by people at large. Sociological data on confidence in social dialogues’ sides illustrates the perception of how they represent and protect interests of Ukrainian citizens.

In 2001, as few as 7.6% of Ukrainians fully trusted trade unions [1]. In 2016, the proportion of respondents who fully trusted trade unions dropped to 2.2% [5].
A similar trend is also observable in the number of trade union members, which has been plummeting. The Federation of Trade Unions of Ukraine (FTUU) is country’s largest trade union association. According to data from different sources, it represented 85% to 95% of all employees organized in trade unions in Ukraine in the early 1990s and lost 77% of its members over the period of 1992 to 2017. The membership dropped from 26 million (early 1990s) to 14.4 million (early 2000s) [3] and then to 8.5 million (2011). In 2017, the FTUU declares having just 6.02 million members.

According to the social partners, the following legislated forms of social dialogue have become widespread in Ukraine at various levels:

1) Exchange of information

2) Preliminary consultations of authorities at all levels with the social partners before taking decisions; looking for approval and taking into account proposals of the social partners when drafting regulatory acts of central executive agencies

3) Participation of the social partners in the development and expert examination of draft legislation as well as national and local programs on social and economic development

4) Collective bargaining on the general, sectoral and territorial agreements

5) Participation in tripartite bodies at the local and national level, etc

This spectrum of social dialogue forms reflects supposed rather than real state of things. Of the above forms, only those ways of social dialogue are actually followed that are of an organizational character, namely participation in meetings, collective bargaining, etc.

There are no mechanisms of compliance oversight and responsibility for decisions taken within the social dialogue framework. As a result, many agreements reached by the social partners are not implemented, and it is impossible to institute oversight of their implementation. Art. 19 «Oversight and Responsibility» of the Law on social dialogue, fails to meet its intended functional purpose since it does not provide for a clear procedure for bringing social dialogue entities to account. In addition, the Law does not fill the notion «violation of legislation on social dialogue» with contents. Moreover, the official social dialogue institutions, namely the JRB of Trade Unions and the JRB of Employers, do not have a status of legal entities, what makes impossible bringing them to account judicially.

The actual one-way state regulation of social dialogue at the national level is both a cause and an effect of the ineffectiveness of legislation and social dialogue mechanisms.

Until recently, there was a practice in Ukraine when the leaders of all-Ukrainian associations of trade unions and employers’ organizations were at the same time lawmakers or top officials of state authorities and represented the side of trade unions or that of employers in social dialogue.

The leaders of Ukraine’s two largest associations of trade unions actively engaged in political activities for a long time:

● Vasyl Khara, FTUU Chairman (2008-2011), MP (2007-2012), Member of the Parliamentary faction «Party of Regions,» Chairman of the Parliamentary Committee on Social Policy and Labour

● Mykhaylo Volynets, Chairman of the Confederation of Free Trade Unions of Ukraine, MP (2007-2012), Member of the Parliamentary faction «Bloc of Yulia Tymoshenko / Batkivschyna»

As a matter of fact, this resulted in fusion of trade unions and the state and created a situation when the trade union movement’s leaders had to choose whose position they would advo-
cate in social dialogue — that of employees, as a trade union functionary, or that of the state, as an MP.

There was a similar case with employers, too. In 2006-2007, Economy Minister Anatoliy Kinakh headed the Party of Industrialists and Entrepreneurs of Ukraine and co-chaired the presidential National Tripartite Social and Economic Council on behalf of all-Ukrainian organizations of employers.

Confrontation and lack of consolidated position inside social dialogues’ sides is a usual practice in Ukrainian society. This results in the reduced effectiveness of social dialogue, since the process of negotiations between the social partners, to be effective, requires a consolidated position hammered out inside each of the sides.
By its essence, any trade union represents social, economic and labour interests of its members. Thus, all trade unions, by the very fact of their existence, are representative, i.e., able to represent interests of some part of the labour force or other.

In Ukraine, the definition of social dialogue entities at the national level on the side of trade unions and the side of employers is regulated by Art. 4(2) of the Law «On Social Dialogue in Ukraine.» In this Law, the meaningful content of the «representativeness» category is, to a significant extent, distant from its primary and authentic concept, on which the international legal practice rests. In particular, it names the total membership of a trade union a criterion of representativeness and authorizes the National Mediation and Conciliation Service of Ukraine, a state agency, to verify the fact of meeting the representativeness criterion and confirm it by issuing a certificate of representativeness with a five-year validity. This means that organizations have to reconfirm their status of a representative association every five years.

This Law provides the following representativeness criteria at the national level:

- Being an association of all-Ukrainian trade unions with 150,000 members or more;
- Being an association of all-Ukrainian employers’ organizations, at enterprises of which 200,000 persons or more are employed.

Other criteria include:

- Comprising trade unions, organizations of trade unions and associations of employers’ organizations in a majority of administrative-territorial units of Ukraine (as defined by Art. 133, par 2, of the Constitution of Ukraine);
- Comprising three or more all-Ukrainian trade unions and three or more all-Ukrainian associations of employers’ organizations [7].

Accordingly, the trade unions that were granted the «representativeness» status by the NMCSU have become «representative», whereas the rest of Ukrainian trade unions found themselves among so-called «unrepresentative», that is among those whose rights and opportunities turned out substantially limited in the current social dialogue system in Ukraine.

Social dialogue at corresponding levels is carried out in the following forms:

- Exchange of information
- Consultations
- Conciliation procedures
- Collective bargaining

The composition of entities on the sides of trade unions and employers is determined by the representativeness criteria only for participation in collective bargaining, tripartite or bipartite bodies and international activities [7].

Thus, all registered trade unions and employers’ organizations of corresponding level, irrespective of their representativeness status, are participants in social dialogue in the forms of information exchange, consultations and reconciliation procedures.

«Unrepresentative» organizations (trade unions and employers’ organizations) may be involved in social dialogue in its first three forms.

However, there is concept substitution in Ukraine resulting in the fact that «unrepresentative» organizations are not admitted to social dialogue in the forms of information exchange, consultations and reconciliation procedures, and the Government interacts only with the JRB of Trade Unions and the JRB of Employers. At the same time, due to internal contradictions inside the sides, even representative organizations are not always able to participate in the JRB of Trade Unions or the JRB of Employers.

Legislation certainly should provide for some ranking of trade unions depending on their membership (more representative, less repre-
sentative); however, the ranking itself must not deprive any trade union of its representative organization status.

Evidently, there should be certain sift-out elimination of organizations that do not have «institutional capacity» and membership structures. However, the current approach to defining representativeness in Ukraine is obsolete for the following reasons:

- Low public confidence in trade unions and employers’ organizations
- Under-regulated legislation on social dialogue
- Shadow economy and envelope wages
- Lack of consolidated position and low confidence level inside social dialogues’ sides
- No representation of small and medium businesses in social dialogue

As of early 2017, the Justice Ministry of Ukraine has registered:

- 21 associations of all-Ukrainian trade unions (only six are representative at the national level)
- Three associations of all-Ukrainian employers’ organizations (all three are representative at the national level)

Thus, 15 of 21 all-Ukrainian trade unions’ associations are not able to join discussion of social and labour policy questions in the exercise of social dialogue at the national level.

In this situation, the warnings voiced by trade unions and employers’ organizations in 2010, during the representativeness criteria development, have fully come true: «The representativeness criteria defined by Ukrainian legislator will in fact prevent development of newly established trade union organizations and employers’ organizations and their participation in social dialogue and collective bargaining, and will narrow the circle of its participants. The so-called representative status will be granted chiefly to the trade unions that are closely related to big business and state institutions. The entrepreneur-ship segment of small and medium businesses will be left beyond social dialogue and without real leverage, at least in the format as defined by this Law» [27].
**REPRESENTATIVE ALL-UKRAINIAN ASSOCIATIONS OF TRADE UNIONS AT THE NATIONAL LEVEL**

<table>
<thead>
<tr>
<th>№</th>
<th>Name</th>
<th>Certifying documents</th>
<th>The number of employees</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>2011–2016</td>
</tr>
<tr>
<td>1.</td>
<td>Federation of Trade Unions of Ukraine</td>
<td>NMCSU Decision of Sep. 19, 2011</td>
<td>8,478,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NMCSU Decision of Sep. 16, 2016</td>
<td>6,020,000</td>
</tr>
<tr>
<td>2.</td>
<td>Federation of Transport Trade Unions of Ukraine</td>
<td>NMCSU Decision of Sep. 21, 2011</td>
<td>735,242</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NMCSU Decision of Dec. 27, 2016</td>
<td>515,098</td>
</tr>
<tr>
<td>3.</td>
<td>Association of All-Ukrainian Trade Unions and Trade Associations «Yednist»</td>
<td>NMCSU Decision of Apr. 20, 2012</td>
<td>153,562</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NMCSU Decision of June 6, 2017</td>
<td>165,465</td>
</tr>
<tr>
<td>4.</td>
<td>Association of All-Ukrainian Autonomous Trade Unions</td>
<td>NMCSU Decision of Apr. 27, 2012</td>
<td>204,124</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NMCSU Decision of May 13, 2017</td>
<td>160,378</td>
</tr>
<tr>
<td>5.</td>
<td>Confederation of Free Trade Unions of Ukraine</td>
<td>NMCSU Decision of Apr. 20, 2012</td>
<td>181,600</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NMCSU Decision of May 18, 2017</td>
<td>170,851</td>
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<tr>
<td>6.</td>
<td>Ukrainian Federation of Trade Unions of Small and Medium Enterprises’ Workers</td>
<td>NMCSU Decision of Mar. 18, 2014</td>
<td>151,848</td>
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<td></td>
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<td>151,848</td>
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<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>9,904,376</strong></td>
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</table>

Since the moment of adoption of the Law «On Social Dialogue in Ukraine," the membership represented on the side of trade unions has dropped by almost 30% (in 2014, the representative trade union associations represented interests of 9,904,376 members, and in 2017, 7,183,640 members).

The total membership of all the representative trade union associations (7,183,640) accounts for just 45% of the officially employed population (15,885,800 persons according to data of the State Statistics Committee of Ukraine).
**Representative Associations of Employers’ Organizations at the National Level**

<table>
<thead>
<tr>
<th>№</th>
<th>Name</th>
<th>Certifying documents</th>
<th>Number of employees</th>
</tr>
</thead>
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<tr>
<td></td>
<td></td>
<td></td>
<td>2011-2012</td>
</tr>
<tr>
<td>1.</td>
<td>Federation of Employers of Ukraine</td>
<td>NMCSU Decision of Nov. 18, 2011</td>
<td>2,908,096</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NMCSU Decision of Nov. 3, 2016</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>NMCSU Decision of June 1, 2017</td>
<td></td>
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<tr>
<td>3.</td>
<td>All-Ukrainian Association of Employers Organizations “Confederation of Employers of Ukraine”</td>
<td>NMCSU Decision of Nov. 18, 2011</td>
<td>2,616,545</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NMCSU Decision of Sep. 2, 2016</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>6,782,986</td>
</tr>
</tbody>
</table>

**Only the two first of the three representative associations of employers’ organizations are members of the current JRB of Employers. As a result, although the total number of employees in the table is 8,321,690, in actual fact, only 5,603,629 employees’ employers are represented in social dialogue at the national level.**

The representation of employers in terms of the number of their employees has dropped by almost 20% (from 6.8 million employees in 2015 down to 5.6 million in 2017).

**Multiple membership of trade unions and employers’ organizations**

Legislation does not prohibit trade unions and employers’ organizations from being members of more than one association simultaneously. This leads to confusion when it comes to calculation of members of trade unions and employees of employers’ organizations during confirmation of their representativeness distorting real rates of representation.

Seven of eight member organizations of the Confederation of Employers of Ukraine are also members of the Federation of Employers of Ukraine. Two member organizations of the Association of Employers Organizations of Ukraine are simultaneously part of the Federation of Employers of Ukraine. And the All-Ukrainian Confederation of Housing and Utilities Employers is a member of all three representative associations of employers’ organizations (according to the information on member organizations posted on the sites of the said associations of employers’ organizations).

There are similar cases on the side of trade unions as well: four member organizations of the Federation of Transport Trade Unions of Ukraine are also members of the Federation of Trade Unions of Ukraine [20].

**The issue of the National Mediation and Conciliation Service of Ukraine powers is still not regulated**

The NMCSU is a standing state agency whose purpose is to facilitate the settlement of collective labour disputes. The NMCSU chairperson is appointed by President of Ukraine [25]. According to provisions of the Law «On Social Dialogue in Ukraine,» the NMCSU is vested with power to probe the conformity with the representativeness criteria. Thus, there is direct state intervention in determining the participant composition of the two other sides of social dialogue (and a possibility to influence self-governing organizations).

According to civil society experts, the fact that the NMCSU belongs to state agencies not only gives the state additional opportunities to form
a «comfortable» circle of social partners but also provides room for corruption [2].

There are also *contradictions in the regulations that define the NMCSU powers*:

The Law «On Social Dialogue in Ukraine» gives the NMCSU the authority to check social partners for compliance / non-compliance with the criteria of representativeness, which is a prerequisite for engaging / preventing participation in social dialogue.

On the other hand, the Regulation on the NMCSU specifies that the purpose of its activities is to facilitate the settlement of collective labour disputes. Within its mandate, the NMCSU shall take decisions that are *recommendatory rather than mandatory* [Annex 1].
Lack of a consolidated position inside the trade union side is the main cause of criticism from the other two social partners — employers’ organizations and the Government — as well as from civil society and international community.

There are following internal barriers to cooperation among trade unions:

1. Right to represent trade unions is monopolized by the JRB of Trade Unions

2. Legislation that governs social dialogue is violated and loosely construed by entities of the JRB of Trade Unions

3. Activities and powers of the JRB of Trade Unions are poorly regulated when it comes to re-confirmation by its entities of their representativeness

4. The Federation of Trade Unions of Ukraine is a monopoly within the JRB of Trade Unions

1. Right to represent trade unions monopolized by the JRB of Trade Unions

The JRB of Trade Unions presently acts as the only body of social dialogue on behalf of trade unions at the national level, recognized by its social partners (employers and the Government), other state agencies and international community. However, this status of the JRB of Trade Unions is at variance with provisions of Ukrainian legislation on social dialogue.

According to Art. 4 of the Law on social dialogue, its entities at the national level on the side of trade unions include associations of trade unions that have the all-Ukrainian status [7].

The social dialogue is carried out between its sides of corresponding level in the following forms:

- Exchange of information (finding out each other’s positions, reaching agreements, looking for a compromise and taking joint decisions on issues of economic and social policies)
- Consultations in order to identify and approximate positions of sides when they make decisions within their terms of reference)
- Reconciliation procedures (elaborating agreed decisions in compromise when drafting regulatory acts)
- Collective bargaining for conclusion of collective agreements (General Agreement at the national level) [7]

Only one of the above four forms of social dialogue, namely collective bargaining for conclusion of General Agreement, requires that organizations would meet the representativeness criteria at the national level. Art 4 of the Law «On Collective Contracts and Agreements» additionally provides that where there are several representative entities of the trade union side at the national, sectoral or territorial level they have to form a joint representative body for collective bargaining and agreement conclusion of the corresponding level [8].

From the legislative provisions it follows that the JRB of Trade Unions is only formed to conduct collective bargaining for the General Agreement conclusion and not to exercise all forms of social dialogue at the national level.

According to legislation, the power to delegate representatives of representative trade unions to social dialogue bodies belong not to the JRB of Trade Unions but to an assembly of authorized representatives of organizations and their associations entitled to participate in social dialogue at corresponding level [7].

Thus, by loosely construing legislative provisions, and because the Agreement on establishing the JRB of Trade Unions vests it with much broader range of powers than Art. 9 of the Law on collective agreements does, the JRB of Trade Unions has monopolized the right to carry on social dialogue in all of its forms.
2. Violation and loose construction of Ukrainian legislation by entities of the JRB of Trade Unions lead to depriving significant number of the trade union side’s entities of their right to participate in social dialogue

Delegation of representatives to the National Tripartite Social and Economic Council, managerial bodies of the mandatory state social insurance funds and other tripartite bodies of social dialogue, as well as for participation in international events, is also subject to application of the representativeness criteria [7]. The quotas are distributed in proportion to membership, but there should be at least one delegate from each representative organization of corresponding level [7]. As follows from these provisions, every representative organization has the right to participate in the management of the abovementioned social dialogue bodies. However, the largest associations of all-Ukrainian trade unions / members of the JRB of Trade Unions state that the latter provision does not entitle representative associations to participate in all tripartite bodies but only points out that, to comply, it will be enough to engage a delegate of a representative organization in just one social dialogue body.

The participation of representative organizations in the JRB of Trade Unions is a legally recognized right based on the representativeness status confirmed by the NMCSU. By analogy, an association should leave the JRB of Trade Unions in case of expiry of its Certificate of Representativeness (five years) or in case it so decides itself.

Internal documents of the JRB of Trade Unions, namely the Agreement and the Rules of Procedure, furnish the Body with the discretion to grant or deprive representative organizations of the possibility to exercise their right, given to them by law, to participate in social dialogue when it comes to the collective bargaining and General Agreement signing for a new period.

For example, the Federation of Small and Medium Enterprise Employees of Ukraine (FSME), which confirmed its national-level representativeness as long ago as in 2014, has become eligible for participation in the collective bargaining and General Agreement signing in accordance with the Law “On Social Dialogue”. For over three years, however, the FSME has been unable to join the JRB of Trade Unions because of a discrepancy between relevant provisions of legislation and internal documents of the JRB. On the one hand, according to Art. 4 par. 3 and Art. 6 par. 1 of the Law, an organization is automatically granted the right to conduct negotiations on the General Agreement signing on the grounds of the NMCSU certificate. On the other hand, clause 22 of the JRB Rules of Procedure (internal document) stipulates that the admittance of an organization to the JRB is decided by a two-thirds majority of delegates registered at the meeting [Annex 2].

Provisions of the Agreement on JRB of Trade Unions (internal document) also envisage that organizations failing to fulfill their obligations under the Agreement or counteract the implementation of the General Agreement may be excluded from the JRB [22].

Thus, the JRB of Trade Unions in its operation obeys not Ukrainian legislation but its internal documents, which contradict and violate the social dialogue legislation.

3. Legitimate activities of the JRB of Trade Unions are still poorly regulated when it comes to reconfirmation by its participants of their representativeness

The Law «On Social Dialogue in Ukraine» clearly defines a procedure for representative organizations to take decisions at an assembly of authorized representatives of organizations and their associations entitled to participate in social dialogue at corresponding level [7]. Before the assembly, the organizations submit copies of decisions and Certificates on conformity with the representativeness criteria, which specify the membership and the Certificate validity. This procedure disables «unrepresentative» organizations from participation in this process. Neither the Agreement on JRB of Trade Unions nor the Regulation and other internal documents regulate this issue in any way.
The loose interpretation of legislative provisions by the JRB of Trade Unions has resulted in a situation when some representative organizations have no possibility to exercise their rights, while some «unrepresentative» within the JRB are participating in social dialogue, thus violating legislation:

- Between Sep. 20 and Dec. 27, 2016, the Federation of Transport Trade Unions of Ukraine, while not being a representative trade union association, was part of the JRB of Trade Unions, and its representative held the office of the Deputy Co-Chairperson of the National Tripartite Social and Economic Council on behalf of the trade union side as well as was on the boards of social insurance funds, where representativeness is mandatory for participation;

- Between Apr. 19 and June 6, 2016, the Association of All-Ukrainian Trade Unions and Trade Associations «Yednist» did not possess the status of a representative association but was as a part of the JRB of Trade Unions, NTSEC, etc.

4. FTUU monopoly within the JRB of Trade Unions

The distribution of quotas among representative trade unions and their associations is carried out in proportion to their memberships. As a result, the status of the trade union side in social dialogue has been actually monopolized by the Federation of Trade Unions of Ukraine. Since the signing of the Agreement on JRB of Trade Unions (September 2012), the FTUU has been enjoying a «controlling interest» in the JRB: 49 of 61 votes. There is a similar situation related to the NTSEC and the boards of the social insurance funds. The Agreement stipulates that only the FTUU chairperson may be the chairperson of the JRB. This contradicts the principles that the sides should be independent and equal, constructive and collaborative, voluntary and realistic in their commitments, mutually respectful and looking for compromise decisions, as well as the principle that proposals made by the sides must be certainly considered. This also has led to lack of rotation of delegates from the trade union side to attend international events. In the seven years since the adoption of the Law “On Social Dialogue, the FTUU chairperson has invariably been the one and only delegate from trade unions to the annual sessions of the International Labour Conference.
At the national level, employers are represented in social dialogue by the Joint Representative Body of Employers’ side at the National Level (JRB of Employers).

Activities of the JRB of Employers and its basic internal cooperation mechanisms to a significant extent are unregulated by legislation. Nor there exists a consolidated position inside the side of employers at the national level. The decrease in confidence in the side of employers as a whole, the reduction of the number of employers who delegate their powers to all-Ukrainian associations of employers’ organizations, the negative dynamics of the employers coverage in social dialogue and the weak position of the employers’ side in negotiations with the government side lead to negative consequences for business in the context of the economic policy development and implementation.

There are following internal barriers to cooperation among employers’ organizations:

- Contradictions in legislative provisions as to the goal, tasks and powers of the JRB of Employers
- Lack of a consolidated position of employers’ organizations when defining participants in the JRB of Employers
- Monopolized representation of employers’ interests by big business at the national level, and unbalanced representation of small, medium and big business in social dialogue bodies on behalf of the Employers’ Side

1. Contradictions in legislative provisions as to the goal, tasks and powers of the JRB of Employers

Unlike it is the case with the JRB of Trade Unions, the powers and terms of reference of the JRB of Employers are broader and written in Art. 12 of the Law «On Employers’ Organizations, their Associations, Rights and Guarantees of their Activities» [6]. Art. 29 of this Law also regulates questions of interaction among employers’ organizations, their associations and entrepreneurs’ organizations, providing for an opportunity to broadly represent their interests within social dialogue and sign additional agreements on cooperation [6].

The goal and tasks of the JRB of Employers are differently set forth in the Law on collective agreements and the Law on employers’ organizations, resulting in a conflict of the laws:

- **Law on collective agreements**: «...to conduct negotiations and enter into agreement at corresponding level, they shall form a joint representative body» [8]
- **Law on employers’ organizations**: «The Joint Representative Body of employers’ organizations and their associations shall:

  - Coordinate activities of employers’ organizations and their associations
  - Ensure holding events within social dialogue at the corresponding level
  - Ensure representation of employers’ organizations and their associations at meetings of the Cabinet of Ministers of Ukraine, collegial bodies of ministries, other executive agencies and local governments
  - Review draft regulatory acts received from ministries, other executive agencies and local governments
  - Ensure representation of employers’ organizations and their associations at international events [6].»

The powers the Law on employers’ organizations has vested in the JRB of Employers are at variance with provisions of the Law on social dialogue, which distributes the same powers between two entities:

- A part goes to the side of employers (all employers’ organizations at the corresponding level irrespective of their representativeness status): coordination of activities, representation at executive agencies and review of draft regulations
The other part goes to the assembly of authorized representatives of representative organizations and not the JRB of Employers: ensuring representation of employers’ organizations and their associations at international events.

2. Lack of consolidated position of employers’ organizations when defining participants in the JRB of Employers

On Feb. 24, 2017, most of representative all-Ukrainian associations of employers’ organizations at the national level signed the Agreement on establishing a new JRB of Employers [24].

At the moment of the signing, the following associations were representative for conducting social dialogue at the national level:

1. Federation of Employers of Ukraine (3.7 million employees)
2. Association of Employers Organizations of Ukraine (1.26 million employees)
3. Confederation of Employers of Ukraine (2.7 million employees)

Two of the three representative associations of employers’ organizations joined the JRB of Employers: the FEU and the AEO. The third association, CEU, did not join the new JRB due to internal conflicts.

According to a statement by the CEU, the signing of the Agreement on JRB of Employers on Feb. 24, 2017 was a gross violation of Ukrainian legislation on social dialogue, and the newly established JRB is an alternative organization rather than the successor to the JRB of Employers established in 2011 [Annex 3].

Such conflicts call into question not only the capacity of the JRB to advocate interests of business in social dialogue but also the very legitimacy of the JRB.

3. The current status and development problems of the side of employers at the national level can be characterized as monopolization of employers’ interests’ representation by big business

The reasons are as follows:

The representativeness criteria prescribed by law are inconsistent with the Employers’ Side’s development conditions.

The national-level representativeness criterion (200,000 employees or more) is too burdensome and often by far and away beyond what organizations of small and medium businesses are able to provide.

As a result, since the introduction of the criteria, the number of all-Ukrainian associations of employers’ organizations has reduced (the All-Ukrainian Association of Employers, which was a signatory to the 2009 agreement on JRB, failed to prove its representativeness by the criteria). The current representativeness criteria deprive «unrepresentative» employers’ organizations of a possibility to be participants in collective bargaining and participate in social dialogue at the national level.

Poor legislative regulation and lack of clear mechanisms for delegation of powers.

The legislation, Agreement and Regulation, which govern activities of the JRB of Employers, do not clearly define the procedure for «unrepresentative» organizations to delegate powers to «representative» associations. Legislation only envisages a possibility for employers’ organizations to represent and advocate rights and lawful interests of entrepreneurs and other economic entities at all levels of social dialogue but not their obligation to do so.

The employers’ organizations and their associations that do not meet the representativeness criteria may delegate powers to representative organizations and associations at the corresponding level to represent their interests or make proposals for consideration by relevant social dialogue bodies on their behalf. Formally, these proposals are not mandatory for consideration by the sides when shaping an agreed position and taking decisions [7].
Representation of interests of small, medium and big business at social dialogue bodies on the side of employers is unbalanced.

Since 2009, the composition of the JRB of Employers has been featuring domination of big business, whereas small business is practically deprived of representation in social dialogue at the national level.

In the 2009 Agreement on JRB of Employers, the associations of employers' organizations were positioned as follows: the Federation of Employers of Ukraine (FEU) as an association «representing interests of employers territorially,» the Confederation of Employers of Ukraine (CEU) as an association «representing interests of employers sectorally,» and All-Ukrainian Association of Employers (AAE) as an association «representing interests of small to medium businesses» [23]. The personal composition of the JRB was formed by a quota principle: seven persons from the FEU, seven from the CEU and one from the AAE. In this way, small and medium businesses, which account for a majority of registered economic entities, received the smallest quota in the JRB composition.

In the agreements on JRB establishment dated Dec. 15, 2011 and Feb. 24, 2017, no special quota for small to medium businesses was envisaged at all.

Lack of small business representation in social dialogue led to several steps made by the Government and Parliament in the second half of 2017 that put additional barriers to SME development in Ukraine, specifically:

- Increase in the minimum wage up to UAH 3,200, which was not agreed upon with the social partners and was not based on economic growth
- Increase in the tax burden on businesses (including individual entrepreneurs) by binding entrepreneurs to pay the Single Social Contribution irrespective of whether or not their entrepreneurial activities have been profitable
- Introduction of significant financial sanctions for violation of labour legislation and the principle of fairness in administrative responsibility, which have led to mass shutdowns or discontinuation of activities of individual entrepreneurs and small enterprises, resulting in jobs reduction
National Tripartite Social and Economic Council

The NTSEC, one of the main social dialogue bodies, is formed on the tripartite basis (the side of trade unions, the side of employers and the side of executive agencies). It was set up to hammer out a consolidated position, draft agreed recommendations and proposals on the development and implementation of state economic and social policies and regulation of labour, economic and social relations as well as submit these recommendations and proposals to authorities.

We think that there are the following main obstacles for efficient activities of the NTSEC:

- Improper legislation concerning the NTSEC formation procedure
- Improper legislation concerning the term of office of the NTSEC members
- Lack of compliance oversight mechanisms for NTSEC members

1. Improper legislation governing the NTSEC formation

According to international practices of the functioning of social dialogue bodies, their activities and salary of their secretariat are funded from the state budget. The Law on social dialogue provides that the «NTSEC shall be formed by President of Ukraine to conduct social dialogue» [7]. However, this provision is inconsistent with Arts. 85, 92 and 106 of the Constitution of Ukraine, which define powers of Parliament and President, and it also contradicts the norm on formation of social dialogue bodies (NTSEC is one of them), written in the very same Law, according to which the NTSEC is formed by joint decision of the sides of social dialogue at the corresponding level on the initiative of any of the sides [7].

2. Term of office of NTSEC members

The organizations that have confirmed their representativeness are engaged in the activities of the NTSEC. The Law sets the term of office of NTSEC as six years. However, the certificates of conformity with the representativeness criteria, which are issued to the organizations, have a validity of only five years [7].

A good deal of questions concerns how the personal composition of NTSEC participants is determined. Each of the sides decides on the personal composition of participants independently. Practice shows that, due to bureaucracy and complicated procedures, there are cases when representative organizations are not included in the NTSEC for a long time, whereas organizations with expired representativeness go on being its members. This is especially pronounced on the side of trade unions.

3. Lack of compliance oversight mechanisms for NTSEC members

Lack of compliance oversight mechanisms leads to inobservance by authorities and NTSEC members of norms and provisions of legislation, which governs the NTSEC operation:

- The NTSEC chairperson is appointed by President of Ukraine from among NTSEC members for one-year term [12]. According to the official site of the NTSEC as of Sep. 19, 2017, the incumbent NTSEC chairman, Pavlo Rozenko, was appointed on Feb. 18, 2015 [18]. Thus, NTSEC chairman Pavlo Rozenko, who was the Social Policy Minister at the time of his appointment, has been holding the office for two and a half years, while the term of office is set as one year.

- The NTSEC chair rotation is carried out in the following succession: employers — trade unions — government [12]. Rozenko’s predecessor as the NTSEC chairperson, Lyudmila Denysova, also was the Social Policy Minister at the time of her appointment [26]. Thus, the NTSEC chairperson was appointed from the government’s side two times running — in violation of the rotation principle prescribed by law.
SOCIAL INSURANCE FUNDS

The social insurance funds of Ukraine are also social dialogue institutions, since they are managed on parity basis by the state, representatives of the insured (trade unions) and representatives of insurants (employers’ organizations).

On Jan. 1, 2015, a process was launched to reform the social insurance funds. The Social Insurance Fund for Temporary Disability and the Social Insurance Fund for Occupational Accidents were merged.

As a result, the following three funds will function within the social insurance system:

1) Pension Fund of Ukraine;
2) Fund for Mandatory State Social Unemployment Insurance;
3) Social Insurance Fund (SIF), which will insure against temporary disability and occupational accidents, as well as will provide health insurance later on (united Social Insurance Fund).

Presently, the reorganization of these funds is still underway due to the mismatching structures of the two reformed funds. Nevertheless, the Government annually approves the SIF budget:

2016 — UAH 17.1 billion revenue and UAH 16.9 billion expenditure [15];
2017 — UAH 20.1 billion revenue and UAH 18.6 billion expenditure [16].

Representativeness have the validity of five years, whereas representatives of representative organizations are elected to the social insurance funds’ boards for six years.

Continuous conflicts and corrupt machinations in the social insurance funds, to which representative trade unions and employers’ organizations delegate their representatives, explain the real reason behind the unwillingness to reform social dialogue [13].

The questions that are raised in most cases concern unlawful and uncontrolled spending of public money by the funds and lobbying for interests of the trade unions that are on the funds’ boards.

In 2016, the Security Service of Ukraine sent an official letter to the Prime Minister of Ukraine, in which it informed him of the existence of conditions for the unlawful and uncontrolled spending of public money by the funds [Annex 4].

According to media reports, when the Executive Directorate of the Social Insurance Fund for Temporary Disability is taking decisions on providing rehabilitative treatment services to the insured and members of their families, it gives preference to facilities of UkrProfOzdorovnytsya, a private company whose shareholders include the Federation of Trade Unions of Ukraine (92.9% of shares) and the Social Insurance Fund for Temporary Disability [11]. In 2015, the Fund entered into agreements on purchase of a UAH 143.23 million worth of vouchers to treatment facilities, of which nearly UAH 136 million went to UkrProfOzdorovnytsya [9]. respective figures for 2016 are the UAH 260.59 million total amount and UAH 233.99 million to UkrProfOzdorovnytsya [10].

The contradictions in social dialogue legislation also reflect on administration of the social insurance funds. For example, Certificates of

The contradictions in social dialogue legislation also reflect on administration of the social insurance funds. For example, Certificates of
Policy Alternatives. Proposed Approach to Problem Solution

The need to reform the social dialogue in Ukraine is recognized by both the social partners and civil society organizations in Ukraine as well as international community.

Today, there are three possible policy alternatives for social dialogue in Ukraine. We will compare these alternatives by their ability to solve social dialogue issues.

**ALTERNATIVE 1.** Continue social dialogue within its current legal framework («zero option»)

This approach does not solve any of the issues that hamper social dialogue in Ukraine, and will lead in the future to the following:

- Further loss of its authority by the institute of social dialogue because of its predominantly formal content
- Absence of smaller employers’ organizations and trade unions in social dialogue, its fragmentary character and limited spread over areas of economic activities
- Reduced motivation of enterprises in new sectors to actively participate in social dialogue due to inconsistency between its subject matter and contents and the present-day’s requirements (in particular, the contents of General Agreement)
- Reduced effectiveness of social dialogue as a tool to overcome the social and economic crisis in Ukraine
- Devaluation of values and principles of civilized social dialogue
- Lack of consolidated position inside sides to social dialogue

**ALTERNATIVE 2. Reform social dialogue only in relation to involvement of civil society organizations (a «minimum reforms policy» or the one presently proposed by the social partners)**

Traditionally, the three key participants in social dialogue include trade unions, employers’ organizations and government, since social dialogue is rooted in issues of labour relations. However, such an idea as tripartism plus is gaining popularity, meaning that the traditional three partners decide to make their dialogue open and invite to it civil society organizations. Their intention is to have a broader perspective and reach consensus on issues beyond the labour relations framework (such as environment protection, protection of interests of vulnerable groups, etc.). The involvement of CSOs is of special importance due to the transition to the «green economy», which implies essential changes in models of production and consumption at all levels, and will cause changes in the labour market in terms of jobs creation, liquidation and redistribution.

The international practice has two mechanisms of engaging CSOs in the process of negotiations in the area of social and labour relations.

The first mechanism envisages that representatives of research institutions, think tanks and CSOs become members of social dialogue tripartite bodies using the quota of one of the social partners. For example, in the Netherlands, these experts are appointed by the King but do not represent the government. They are not obliged to consult the government or follow its recommendations. Representatives of the Crown include officials of the Central Bank and the Netherlands Bureau for Economic Policy Analysis. One of the Crown representatives also acts as the chairperson of the Social and Economic Council of the Netherlands. Duties of the experts include protection of public interests and search of a compromise when representatives of employees and employers cannot reach consensus.

The second mechanism envisages clear delimitation between the concepts of social dia-
logue and public dialogue and the institution-
alization of the latter.

Participants in the public dialogue include repre-
sentatives of employees and employers as well
as various CSOs. Such a model exists in many
countries at the national level. It is most fully im-
plemented in the European Economic and Social
Committee (EESC), which is an EU advisory body.
The EESC comprises three groups:

- Employers
- Employees
- Other interest groups (e.g., associations that
  advocate gender equality, represent interests
  of families, women, minorities, vulnerable
  population, people with disabilities, farmers’
  associations, consumers’ associations and en-
  vironmental organizations)

The draft Law «On Amending the Law of Ukraine
‘On Social Dialogue in Ukraine’ regarding in-
volvement of social society institutions», which
was published by the Social Policy Ministry in Sep-
tember 2016, is based on the second approach.

The proposed amendments just look like a re-
form rather then they are real steps to solve
social dialogue issues.

The substitution of the social dialogue concept
for that of public dialogue will lead to legal colli-
sions due to the combination of elements from
different communicative mechanism. This, in
turn, will further aggravate the problem of poor
regulation, contradictions of legislative provi-
sions on social dialogue and their loose con-
struction by social partners.

The draft law provides for engaging CSOs in tri-
partite bodies of social dialogue, primarily, the
NTSEC activities. The Ukrainian practice demon-
strates ineffectiveness of such a mechanism.
Even on those isolated occasions when CSOs
are involved (already provided for in the NTSEC
Rules of Procedure), their proposals are ignored
in decision making.

The tripartism-based social dialogue must not
be limited to only «finding out positions of
sides.» There must be responsibility of the sides
for making and implementing their decisions.
The above approach does not contain oversight
mechanisms for compliance with legislation
and responsibility for decisions taken by partic-
ipants in social dialogue.

Proposals made by CSOs during consultations
and exchange of information are mandatory for
consideration by tripartite bodies of social dia-
logue. At the same time, CSOs have no influence
on decisions taken on their proposals, since,
unlike other participants, they are voteless.
Therefore, engaging CSOs in social dialogue in
this way will not solve the issue of extending
the circle of its participants. Nor will it solve
the problem of one-way regulation of social dia-
logue by the state at the national level through
the «appeasement» on the sides of trade un-
ions and employers in relation to government’s
proposals.

The draft law does not give CSOs rights and op-
portunities to participate in the process of deci-
sion making on the sides of either trade unions
or employers, leaving the problem of monop-
olization of the right to represent interests of
employees and employers by certain entities
inside social dialogues’ sides unsolved.

ALTERNATIVE 3.
Eliminate contradictions in legislation,
implement compliance oversight
mechanisms and responsibility for decisions
(«policy of effective changes»)

The effectiveness of social dialogue is deter-
mined by its parties’ attitude toward each other,
interest in collaboration, level of mutual trust and
willingness to understand. Reform of legislation
on social dialogue is a priority task that faces the
social partners. The drafting of amendments to
the Laws «On Social Dialogue in Ukraine,» «On
Collective Contracts and Agreements,» «On
Employers’ Organizations, their Associations,
Rights and Guarantees of Their Activities» and
«On Trade Unions, their Rights and Guarantees
of Their Activities» should be comprehensive
and attended by all interested entities on the
sides of employers and trade unions, interested CSOs and ILO experts. This will help the wide circle of participants develop a consolidated position. Such an approach will allow solving the issues of poor regulation, contradictions and loose construction of legislation on social dialogue by the social partners.

For a tripartite dialogue to be effective, its partners should try to receive as comprehensive information as possible and develop their technical capacities. It is important to involve all participants in tripartite decision making and respect them, so that trust among the partners would facilitate the implementation of the decisions.

Involvement of all social dialogue participants in the process of negotiations should take place at two levels:

The first level. Provide an opportunity for «unrepresentative» organizations to realize their right to participate in social dialogue by giving them advisory vote inside the social dialogue sides and developing a clear mechanism for delegation of powers to represent their interests to representative organizations. The implementation of this principle will allow to ensure law observance as to the right of all entities of the sides of social dialogue to participate in such its forms as exchange of information, consultations and reconciliation procedures, which do not require confirmation of the representativeness status. At the same time, it will create a kind of «compliance oversight mechanism» both inside each of the parties and on the tripartite basis.

The second level. Extend the circle of participants in social dialogue through involvement of civil society organizations. CSOs may not be an independent side of social dialogue; therefore, their participation in it is only possible within the framework of tripartite bodies. The NTSEC Rules of Procedure already contains provisions that give CSOs such an opportunity. Applying these provisions will make it possible to completely achieve the objective the sides of social dialogue set when they drafted amendments to the Law "On Social Dialogue" regarding involvement of social society institutions (as mentioned in Alternative 2).

Reducing the quantitative criteria used in the confirmation of national-level representativeness for associations of all-Ukrainian trade unions from 150,000 members down to 100,000 and for associations of all-Ukrainian employers’ organizations from 200,000 employees down to 150,000 will allow extending the circle of participants in social dialogue. By engaging representatives of SME, it will also solve the problem of one-way state regulation of social dialogue at the national level. Moreover, the extended circle of participants will eliminate monopolization of the right to represent interests of employees and employers by certain entities inside the social dialogue sides.

Thus, the implementation of the third option of social dialogue reform will ensure:

- Institutional and legal support of tripartite social dialogue
- Realization of social dialogue principles and mechanisms defined by law (possibility for representative organizations to exercise their right to participate in social dialogue and possibility for «unrepresentative» organizations to participate in such forms of social dialogue as exchange of information, consultations and reconciliation procedures)
- More broad subject matter and scope of influence of social dialogue through involvement of CSOs
- Taking into account the specifics of the country’s economic situation (economic crisis, shadow economy, household income level, SME role and significance in economic development, etc.)
Decision making transparency of the social partners

Developing a consolidated position inside the social dialogue sides

Increased trust of citizens in the social partners

Approximation to EU social dialogue standards

The main constraints of the proposed approach are that its implementation is a lengthy procedure (amending laws of Ukraine) and that it requires a consolidated position to be hammered out by a significant number of participants.

The Comparative Table below will help to understand how the proposed alternatives can assist/hamper the solution of national-level social dialogue issues.
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<td>Poor regulation, contradictions and loose construction of legislation on social dialogue</td>
<td><strong>Strengths:</strong>&lt;br&gt;- Existence of «formal» social dialogue&lt;br&gt;- «Speed» of taking joint decisions by social partners</td>
<td><strong>Strengths:</strong>&lt;br&gt;- Social partners recognize the need to reform social dialogue&lt;br&gt;- CSOs involved in social dialogue&lt;br&gt;- Attempt to apply in Ukraine European practices of interaction between government and civil society</td>
<td><strong>Strengths:</strong>&lt;br&gt;- Involvement of all interested entities of the social dialogue sides in the drafting of amendments to key legislation will ensure that rights and interests of all stakeholders are maximally taken into account and extend the number of options&lt;br&gt;- Elimination of poorly regulated/contradictory provisions in legislation&lt;br&gt;- Clear delimitation between social dialogue and public dialogue&lt;br&gt;- Involvement of all social dialogue’s participants in its implementation: both representative and «unrepresentative» trade unions and employers’ organizations&lt;br&gt;- Extended circle of participants in social dialogue through involvement of CSOs with advisory vote</td>
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<tr>
<td>2</td>
<td>Inobservance of legislation by sides and bodies of social dialogue; lack of compliance oversight mechanisms and responsibility for decisions taken</td>
<td><strong>Strengths:</strong>&lt;br&gt;- None</td>
<td><strong>Strengths:</strong>&lt;br&gt;- None</td>
<td><strong>Strengths:</strong>&lt;br&gt;- Clear compliance oversight and sanctions mechanisms embedded in legislation narrow possibilities for abuse and inobservance by entities of social dialogue sides</td>
</tr>
</tbody>
</table>

**Weaknesses/risks:**<br>- Complicated and lengthy procedure for engaging representative organizations in social dialogue<br>- Impossibility for «unrepresentative» organizations to exercise their law-granted right to participate in social dialogue because of lack of a mechanism<br>- Reduced motivation for enterprises in new sectors to actively participate in social dialogue due to inconsistency between its subject matter and contents and the present-day’s requirements<br>- Further violation of social dialogue legislation by social partners<br>- Low effectiveness of decisions taken within the social dialogue framework «Formal» reporting on the implementation of reached arrangements<br>- Additional barriers to the conduct of social dialogue due to absence of clear mechanisms in legislation for CSOs involvement<br>- Leading to legal confusion because of equating social and public dialogues<br>- Drafting of amendments to legislation will require a lot of time. Still, there are risks that political groups will influence the final contents of draft laws for reasons of political expediency<br>- It is difficult to develop a consolidated position while considering proposals and comments of a great number of participants<br>- Unwillingness of the current social partners to reform legislation on social dialogue<br>- Difficult to reach a consolidated position due to existence of a «controlling interest» inside social dialogue sides
<table>
<thead>
<tr>
<th>№</th>
<th>Issue</th>
<th>ALTERNATIVE 1</th>
<th>ALTERNATIVE 2</th>
<th>ALTERNATIVE 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>One-way state regulation of social dialogue at the national level</td>
<td><strong>Strengths:</strong> Declaring existence of a consolidated position of the sides of social dialogue</td>
<td><strong>Strengths:</strong> Declaring existence of a consolidated position of the sides of social dialogue</td>
<td><strong>Strengths:</strong> Reduced quantitative criteria used in the confirmation of national-level representativeness will allow extending the circle of participants in social dialogue and solve the «appeasement» issue</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Weaknesses/risks:</strong> Low effectiveness of social dialogue as a tool to overcome the social and economic crisis in Ukraine Devaluation of values and principles of civilized social dialogue</td>
<td><strong>Weaknesses/risks:</strong> When taking social and labour policy decisions, needs and interests of businesses and employees are not reflected objectively</td>
<td><strong>Weaknesses/risks:</strong> Reserving the function of verifying conformity with the representativeness criteria for the NMRC does not eliminate the risk of direct intervention of the state in determining the participant composition of two other sides to social dialogue (and a possibility to influence self-governing organizations)</td>
</tr>
<tr>
<td>4</td>
<td>Monopolization of the right to represent interests of employees and employers by certain entities inside social dialogue sides (the side of trade unions and the side of employers)</td>
<td><strong>Strengths:</strong> None</td>
<td><strong>Strengths:</strong> None</td>
<td><strong>Strengths:</strong> Ensured right of «unrepresentative» organizations to participate in social dialogue by giving them advisory vote inside the social dialogue sides and developing a clear mechanism for delegation of powers to represent their interests to representative organizations will allow ensuring law observance as to the right of all entities of the sides of social dialogue to participate in some of its forms. At the same time, it will enhance the «compliance oversight mechanism» both inside each of the sides and on the tripartite basis; Extended circle of participants will eliminate monopolization of the right to represent interests of employees and employers by certain entities inside the social dialogue sides.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Weaknesses/risks:</strong> Diluting the essence of social dialogue as a negotiation process aimed at developing a consolidated position of business, employees and government in the sphere of social and labour policy Lack of consolidated position inside the social dialogue sides Domination of big business interests in decision making within the social dialogue framework Absence of smaller employers’ organizations and trade unions in social dialogue, its fragmentary character and limited spread over areas of economic activities Further loss of its authority by the institute of social dialogue because of its predominantly formal contents</td>
<td><strong>Weaknesses/risks:</strong> CSOs involvement will not solve the issue</td>
<td><strong>Weaknesses/risks:</strong> A risk still persists that this mechanism will be rigged by internal acts developed by the sides of social dialogue (Agreement and Regulation on JRB, etc.)</td>
</tr>
</tbody>
</table>
The current social partners are the key subjects of social dialogue reform in Ukraine. Listed below are the main tasks to be performed to reform social dialogue.

For the JRB of Trade Unions and the JRB of Employers:

1. **Develop and approve new versions of the Agreements on JRB** that will contain the following provisions:
   - Automatic admittance to the respective JRB of organizations that have been issued a Certificate of Representativeness at the national level and have applied for JRB membership
   - Giving advisory vote to «unrepresentative» organizations for their participation in JRB meetings so that to enable them to realize such social dialogue forms as information exchange, consultations and reconciliation procedures
   - Take provisions that violate legislation and rights of trade union associations off the Agreement text:
     - Voting for admittance/exclusion of representative organizations to/from the JRB of Trade Unions
     - «Controlling number» of votes possessed by one organization
     - Excess of statutory powers by the JRB of Trade Unions; etc

2. **Hold consultations attended by all interested entities on the sides of employers and trade unions, CSOs, ILO experts, etc. on drafting amendment to the Laws «On Social Dialogue in Ukraine,» «On Collective Contracts and Agreements,» «On Employers’ Organizations, their Associations, Rights and Guarantees of their Activities» and «On Trade Unions, their Rights and Guarantees of their Activities.** Consider the following questions in particular:
   - Hammering out a clear mechanism for vesting representative organizations and their associations with powers to represent interests of the organizations and their associations that do not meet the representativeness criteria (we suggest the following mechanism: the organizations that confirmed their representativeness at the sectoral level may delegate the powers to represent them at the national level to representative organizations in accordance with their membership specified in the NMCSU decision);
   - Elaborating a mechanism of bringing to account for the failure to comply with provisions of Ukrainian legislation on social dialogue;
   - Changing the representativeness criteria to align them with the present-day social and economic situation (for associations of all-Ukrainian trade unions, from 150,000 members down to 100,000, and for associations of all-Ukrainian employers’ organizations, from 200,000 employees down to 150,000);
   - Quotas for representation of entities of the side of trade unions and the side of employers in social dialogue bodies:
     - Make it clear that the quotas are distributed among representative trade unions and their associations in proportion to their membership, and among representative employers’ organizations and their associations in proportion to the number of their employees, while every representative organization/association of corresponding level being entitled to having at least one representative to each of social dialogue bodies;
     - Provide that no organization may have an absolute majority inside any of the social dialogue sides (this will allow avoiding monopolization inside the sides);
     - When defining quotas for entities of the employers’ side to participate in social dialogue bodies, specially provide for quotas for representatives of small to medium business.
     - Participation in international events. Participants representing the sides of trade unions and employers should be defined based on the rotation principle;
Engaging CSOs in activities of social dialogue tripartite bodies.

**For the JRB of Employers:**

Hold consultations with employers associations to the following effects:

- Extend the operation of the Law «On Employers’ Organizations, their Associations, Rights and Guarantees of their Activities» to entrepreneurs’ associations (which represent interests of employers, including the individual entrepreneurs who use hired labour) whose charters envisage participation in social dialogue;

- Provide that the employers’ side at the national level of social dialogue will comprise associations of organizations of employers, including the individual entrepreneurs who use hired labour, provided that their charters envisage participation in social dialogue and they have the status of all-Ukrainian;

- Provide that the composition of the employers’ side’s entities (organizations of employers, including the individual entrepreneurs who use hired labour, and their associations, provided that their charters envisage participation in social dialogue) for participation in collective bargaining, tripartite or bipartite bodies and international events will be determined depending on the number of their employees in proportion to the total number of employees, as a representativeness criterion.

**Before these amendments to legislation come into effect:**

- Grant advisory vote to «unrepresentative» organizations for their participation in JRB meetings of trade unions and employers so that to enable them to realize such social dialogue forms as information exchange, consultations and reconciliation procedures based on the principle «one organization — one seat.»

**For the Social Policy Ministry:**

- Ensure law compliance oversight in social dialogue

- Develop and bring to discussion proposals on the legislative regulation of powers and procedure for appointment of NMCSU and NTSEC members (chairperson and secretariat)

**For the National Tripartite Social and Economic Council:**

- Ensure execution of art. 1.3.4 of the NTSEC Rules of Procedure: «The meetings may be attended by representatives of state authorities and civil society organizations, who were invited for consideration of certain questions...»

- Revise the procedure and criteria for forming the personal composition of the sides

- Strictly abide by the rotation principle in NTSEC chairmanship


Інформаційний сайт «Наші гроші» // [Електронний ресурс]. — Режим доступу: http://fru.ua/ua/membership/members/branch


Annex 1
Response of the Ministry of Justice of Ukraine to an information inquiry concerning NMCSU owners
Враховуючи вищезазначене, Навічона служба посередництва і примирення не належить до кола органів, акти яких підлягають державній реєстрації в Міністерстві юстиції України.

Заступник Міністра –
керівник апарату

Ганна ОНИЩЕНКО
ВИЯТГ ІЗ ПРОТОКОЛУ № 31
ЗАСІДАННЯ СПІЛЬНОГО ПРЕДСТАВНИЦЬКОГО ОРГАНУ
РЕПРЕЗЕНТАТИВНИХ ВСЄУКРАЇНСЬКИХ ОБ’ЄДНАНЬ ПРОФСПІЛОК
НА НАЦІОНАЛЬНОМУ РІВНІ
(СПО ОБ’ЄДНАНЬ ПРОФСПІЛОК)

16 травня 2016 року
14-30 год.

Київ, Праця «Укрпрофзакорганізація», зал засідання, 16 поверх

Присутні члени СПО об’єднань профспілок: Осовий Г.В., Українець С.Я., Арандівський Ю.З., Лобченко О.О., Максимчук В.С., Остапенко Л.В., Андрєєв В.М., Бакулей І.Г. (Арандівський Ю.З.), Буглак В.І., Бутенко М.О. (Малій О.І.), Вакуленко В.М. (Хмарьський С.Г.), Гатаулін І.Ф. (Скворцов В.С.), Гербеда В.В., Дмитрішин В.І., Дорудка Г.В., Дудник В.О. (Цехмейстер В.Ф.), Єфіменко О.І., Жугаєвич Я.В., Козич М.І., Землянська Н.Г., Карван Н.Г., Кірєв М.І. (Лобченко О.О.), Коваль В.М., Копаничук С.І. (Шишна О.В.), Кривов’язий С.Й. (Петренко О.О.), Кубраченко А.В., Матов В.О. (Прудніков П.В.), Мойсюк В.С., Ольховець Г.А. (Вопілов О.М.), Офіцеров Г.Г., Перелігіна Л.Ф. (Гайдук Г.М.), Петров М.М., Романюк О.І., Романюк С.М. (Коваль В.М.), Рябко О.І., Сібільов В.Д., Сопелкін І.С. (Самосуд С.В.), Стародуб М.М. (Мазур Н.В.), Тарачук А.О. (Уланов В.М.), Тюткін В.І., Черниш О.А., Чубай М.П., Ясько Т.Д. (Макаренко К.К.), Бризгалов С.О. (Колосюк Г.В.), Онишук А.С. (Колосюк Г.В.), Бубняк В.М., Волинець М.Я., Капустинський О.А., Левицька Н.А., Мельник В.І., Мірошницюк Д.Т., Слюсерський М.В. (Мельник В.І.), Ткачов В.М., Широков А.І.

Всього: 54 особи (у тому числі за дорученнями – 18)

Члени Секретаріату СПО об’єднань профспілок: Колосюк Г.В., Мельник В.І., Михценко О.М., Приходько В.І.

ПОРЯДОК ДЕННИЙ

1. Про прийняття до складу СПО об’єднань профспілок Федератії профспілок працівників малого та середнього підприємництва України.

2. Про прийняття до складу СПО об’єднань профспілок Федератії профспілок працівників малого та середнього підприємництва України.

СЛУХАЛИ: заступника Голови СПО об’єднань профспілок, голову Мандатної комісії СПО об’єднань профспілок Широкова А.І., який повідомив про заяву Федератії профспілок працівників малого та середнього підприємництва України про вступ до СПО об’єднань профспілок.
ВИСТУПИЛИ:

Рой В.Є., який поінформував членів СПО про діяльність Федерациї профспілок працівників малого та середнього підприємництва України, зокрема наявність галузевої угоди в сфері туризму та готельного господарства тощо.

Приходько В.І., поінформувала, що згідно п. 4.22. Регламенту СПО об'єднань профспілок від 15 жовтня 2012 року № 2-3.1 «... для прийняття до складу СПО об'єднань профспілок, рішення вимагає наявність 2/3 голосів зареєстрованих на засіданні».

Осовий Г.В., Українець С.Я.

Голова СПО об'єднань профспілок Осовий Г.В. поставив проєкт рішення на голосування.

Голосували: «за»-29, «проти»-8, «утрималося»-9

Рішення не прийнято.

Голова СПО
об'єднань профспілок
підпіс
Г.В. Осовий

[Заголовок]

[Прикмета]

[Заголовок]

[Прикмета]

[Заголовок]

[Прикмета]
Заява

Як одні із керівників Спільного представницького органу Сторони роботодавців
на національній рівні, що діє відповідно до Угоди про утворення Спільного
представницького органу сторони роботодавців на національному рівні від 15.12.2011
року (далі - Угода про утворення СПО в 2011 році), вимушени публічно заявити, що на
сьогоднішній день соціальний діалог в Україні перебуває в критичному стані, що
іється в спробах його ведення з групним порушенням чинних законодавства та
фундаментальних основ соціального діалогу.

24 лютого 2017 року Федерацією роботодавців України (ФРУ) та Об’єднанням
організацій роботодавців України (ООРУ) вперше чинній Угоді про утворення СПО
в 2011 році було створено альтернативне об’єднання, яке також отримало назву
«Спільного представницького органу сторони роботодавців на національній рівні».

Вважаємо, що дана подія ставить під загрозу увесь подальший розвиток
соціального діалогу на національному рівні. Одностороннє розірвання ФРУ Угоди про
утворення СПО в 2011 році повністю руйнує соціальний діалог, ставить під сумнів
Генеральну угоду та принципи соціального діалогу, які в ній закладені.

Підписуючи Угоду про утворення СПО в 2011 році, Федерація роботодавців
України та Контфедерація роботодавців України (далі - Сторони СПО) взяли на себе
зобов’язання будувати ділові та конструктивні відносини, поважати одну одну, вижити
захищати щодо угодження позиції шляхом переговорів, консультацій тощо. (ч. 2 Угоди).

Угода про утворення СПО в 2011 році не містить положень, що передбачають її
припинення в односторонньому порядку і забороняє членство в інших аналогічних
об’єднаннях на національному рівні, залучаючи єдиний можливий шлях для її
припинення через правонападінським підписання нової Угоди.

Чинна Угода про утворення СПО в 2011 році відповідно до діючого
законодавства передбачає всі можливості припинення до неї будь-якого
репрезентативного на національному рівні об’єднання роботодавців, зокрема і
Об’єднання організацій роботодавців України. І, як підтвердження цього,
представники ООРУ як протягом декількох років беруть участь в роботі СПО та були
і є делеговани до органів соціального діалогу.

ООРУ була запропонована можливість використати цивілізовані форми ведення
соціального діалогу, передбачени Законом України «Про соціальний діалог в Україні»,
tа провести консультації в рамках робочої групи з направління змін до статутних
dокументів про утворення СПО в 2011 році.

На жаль аргументи щодо можливості зміни чинної Угоди про утворення СПО в
2011 році, а також щодо проведення консультації повноважних представників
об’єднані організацій роботодавців на національному рівні, не були очікуті.

Враховуючи все вищезазначене, заявляємо:

2. Всі рішення, які будуть прийнятись за результатами утворення СПО від 24.02.2017 р. є нічимними та такими, що грубо порушують чинне законодавство та принципи соціального діалогу, та можуть бути оскаржені в судовому порядку.

З метою відновлення конструктивної роботи СПО роботодавців на національному рівні, звертаємося до органів державної влади, міністерств, відомств та соціальних партнерів направляти на погодження проекти нормативно-правових актів та інших документів на адресу: 04080, м. Київ, вул. Турийська, 31, оф. 1., тел.: info@employers.org.ua.

В силу нічимних у правовому розумінні рішень учасників зібрання 24 лютого 2017 р. звертаємося до всіх сторін соціального діалогу з вимогою діяти високої в межах законодавства України з соціального діалогу, не провокувати аналогічні події в інших сферах та ігнорувати будь-які рішення, прийняті утворенням 24.12.2017 р. так знаним СПО роботодавців.

З метою врегулювання ситуації у русі роботодавців та недопущення переходу до вирішення її у судовому порядку, звертаємося до Федерacji роботодавців України, Об’єднання організацій роботодавців України повернутись до переговорного процесу та провести узгоджувальні консультації у відповідності до ст. 8 Закону України «Про соціальний діалог в Україні».

З повагою

Перший Заступник Голови Спільного Представницького органу сторони роботодавців на національному рівні О. Мірошниченко

Заступник Голови Спільного Представницького органу сторони роботодавців на національному рівні В. Биковець

Заступник Голови Спільного Представницького органу сторони роботодавців на національному рівні О. Шевчук
Щодо інвестування Фонду соціального страхування

Шановний Арсенію Петровичу!

Службою безпеки України отримано інформацію про існування передумов до незаконного та безконтрольного витрачення державних коштів Фонду соціального страхування з тимчасової втрати працевлаштування (ЄДРПОУ 25885944) та Фонду соціального страхування від нещасних випадків на виробництві та професійних захворювань (ЄДРПОУ 00613764).

Законом України “Про загальнообов’язкове державне соціальне страхування” (у редакції від 01.01.2015, далі – Закон 1) передбачено утворення Фонду соціального страхування України (далі – Фонд) шляхом злиття Фонду соціального страхування від нещасних випадків на виробництві та професійних захворювань України (далі – Фонд 1) та Фонду соціального страхування з тимчасової втрати працевлаштування (далі – Фонд 2).

Для забезпечення процедури реорганізації фондів соціального страхування Верховною Радою України 03.11.2015 прийнято Закон України “Про внесення змін до Закону України “Про загальнообов’язкове державне соціальне страхування” (далі - Закон 2).

Відповідно до Закону 1 та Закону 2 на Фонд покладено обов’язок фінансування витрат і зобов’язання забезпечення діяльності виконавчих дирекцій та робочих органів Фонду 1 та Фонду 2 і до завершення заходів з їх реорганізації та взяття заходів з раціонального та ефективного використання майна, що перебувало на балансі виконавчих дирекцій та робочих органів вищезазначених фондів, реалізацію надлишкового майна, яке не використовується.

Для вирішення наведених питань діяльності та розробки нормативно-правової бази Фонду керівництву Фонду 1 та Фонду 2 необхідно провести відповідну роботу щодо забезпечення Фонду службовими приміщеннями, організації засідання правління, підготування проектів постанов правління та інше.
Водночас службові особи Фонду 1 та Фонду 2, а саме: директор виконавчої дирекції Фонду 1 Акопян В.С. і голова комісії з реорганізації Фонду 2 та ліквідації Виконавчої дирекції Фонду 2 Сітайліо В.С. створюють перешкоди у діяльності Фонду, а саме відмовляють у доступі до приміщень, де знаходяться адміністрації виконавчих дирекцій Фонду 1 та Фонду 2, наданні інформації, необхідної для розробки документів Фонду, тощо.

За наявною інформацією дії вищезазначених осіб спрямовані на безконтрольне управління бюджетами Фонду 1 та Фонду 2, сумарний розмір яких складає понад 15 млрд грн щорічно.

Так, не зважаючи на процедуру ліквідації, Виконавча дирекція Фонду 2 замовила послуги з оновлення програмного забезпечення на суму понад 35 млн грн для функціонування бази даних.

Разом з тим всупереч Закону 1 керівництвом Фонду 2 видано наказ від 15.12.2015 № 354-ос “Про припинення Виконавчої дирекції Фонду 2 шляхом ліквідації, створення ліквідаційної комісії Виконавчої дирекції Фонду 2 та затвердження персонального складу цієї комісії”, яким передбачено ліквідувати Фонд 2, а не реорганізувати, що тягне за собою негативні наслідки для працівників у вигляді звільнення, а також для майнових інтересів Фонду 2, оскільки під час ліквідації відсутне правонаступництво та будь-які зобов’язання, в тому числі майнові.

Ліквідаційною комісією Фонду 2 відповідно до зазначеного наказу планується провести інвентаризацію майна Фонду 2, а також майна, що підтверджує корпоративні права в інших юридичних особах.

За наявними даними такі дії спрямовані на штучне зниження балансової вартості навчального майна з метою його реалізації за зниженою вартістю, що може завдати економічних збитків Фонду 2.

Зазначене призводить до затягування процесу реорганізації Фонду 1 та Фонду 2 і створює передумови до розтрати їх майна та коштів.

Враховуючи викладене, з метою оптимізації витрат державних коштів та ефективного використання державних фінансових ресурсів вважаємо за доцільне:

- посилити роль Міністерства соціальної політики України під час ліквідації Фонду 1 і Фонду 2 та їх регіональних відділень шляхом прийняття окремого нормативного документа;

- Державній фінансовій інспекції України провести ревізію використання коштів Фонду соціального страхування з тимчасової втрати працевлаштності та Фонду соціального страхування від нещасних випадків на виробництві та професійних захворювань у період з початку дії змін до Закону України “Про згальновоб’язкове державне соціальне страхування” по теперішній час та забезпечити сприяння у проведенні вказаних ревізій керівництвом Фондів;
— Фонду державного майна України здійснити оцінку рухомого і нерухомого майна Фонду соціального страхування з тимчасової втрати працездатності та Фонду соціального страхування від нещасних випадків на виробництві та професійних захворювань та їх регіональних відділень.

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