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11 July 2016

Statement on the Draft Labour Code of Ukraine

The Ukrainian National Platform and Working Group 5 “Social & Labour Policies and Social Dialogue” of the Eastern Partnership Civil Society Forum are concerned about the adoption procedure and a number of provisions of the Draft Labour Code of Ukraine (hereinafter – the Draft). The Draft is pending in the Parliament of Ukraine (bill №1658) and was adopted by the Parliament in the first reading on 5 November 2015. The closed and non-transparent character of the work on this document in the Verkhovna Rada’s Committee on Social Policy is a particular cause for the concern.

Most importantly, the following provisions of the Draft do not meet Ukraine's international commitments and practices of the Member States of the European Union as the members of the International Labour Organisation:

1) Regulations that make possible keeping in place and "legitimizing" the existing practice in Ukraine, according to which the content of an employment contract is considered to be a "trade secret" (provision is included in the text of the contract itself or reflected in a separate "act of the employer"). This creates the situation when workers are practically deprived of a real opportunity to effectively protect their rights since they are precluded from informing the union to which they belong, barrister or any other lawyer about the provisions of their employment contracts.

2) Provisions that preclude the effective trade union organisations in Ukraine of opportunities from protecting individual and collective rights of their members, allowing the employer to resolve all the matters related to individual rights of workers or working conditions of a particular category of workers with the most loyal or controlled union (where they are not members), and ignore the workers’ organisation, to which they actually belong. Specifically, everywhere throughout the text of the Draft with regard to the issues, for which the employer needs to have approval of the trade union representatives or consultation with them, the phrase "elected body of the primary trade union organisation" is used in a consistent manner (with only one exception) in the singular without specifying whether this provision applies to the elected body of the trade union, to which they belong.

The Draft includes a separate Book №6 dedicated to the issue of social dialogue, however it consists of only three short articles with reference to the order of the current Laws of Ukraine "On Social Dialogue in Ukraine", "On Trade Unions, their Rights and Guarantees", "On Employers'

Organisations and their Associations, Rights and Guarantees of Their Activity", which in a number of their provisions violate the Constitution of Ukraine and the ILO Convention №87 on Freedom of Association and Protection of the Right to Organise. Therefore, the regulation of social dialogue is not included in the Draft Labour Code, it does not provide for the principles of the social dialogue, neither does it define the model of social dialogue, which will be implemented in Ukraine, nor the foundations of it (for instance, its parties, subject, relevant bodies and forms of conduct). Uncertainty on the issues of how the social dialogue will be presented in the Draft Labour Code make the implementation of other provisions of the Draft impossible, which is particularly dangerous in a decentralized governance.

It is also not acceptable that the Working Group, formed by the Verkhovna Rada's Committee on Social Policy to finalize the Draft Labour Code for the second reading, has not released officially any of its decisions or minutes during the half of a year of its activity starting from 13 November 2015. As a result, its position on the vast majority of the amendments, proposed to the Draft, remains unknown to the public ahead of the date of the formal meeting of the Committee aiming to "legitimize" the results of the Group's work.

Trade unions, employers' organisations and entrepreneurs who are not members of the Working Group but who introduced their proposals on the amendments to the Draft through the Members of Parliament are denied the opportunity to attend the meeting of the Group where these proposals are discussed and present their positions.

This situation contradicts the Eastern Partnership objectives officially supported by the Government of Ukraine that include overcoming existing economic and social inequality and gradual opening of EU labour market to Ukrainians and, in particular, the provisions on labour standards, social security, promotion of social dialogue and strengthening the capacity of the social partners in Chapter 21 "Cooperation in the Employment, Social Affairs and Equal Opportunities" of the EU-Ukraine Association Agreement.

The EaP CSF Ukrainian National Platform and Working Group 5 call on the Government and the leadership of the Verkhovna Rada of Ukraine to ensure an open and public discussion of the Draft Labour Code of Ukraine. Parliamentary hearings should be held with the wide participation of trade unions, employers' organisations and entrepreneurs, media and other interested civil society actors in order to achieve the Draft's conformity with the Constitution of Ukraine and ratified international agreements.

Members of the Ukrainian National Platform and Working Group 5 "Social & Labour Policies and Social Dialogue" of the Eastern Partnership Civil Society Forum