

CELSI Research Report No. 39

TRADE UNIONS AND PROFESSIONAL  
ASSOCIATIONS AS CIVIL SOCIETY  
ACTORS WORKING ON THE ISSUES OF  
LABOUR RIGHTS AND SOCIAL  
DIALOGUE IN UKRAINE

AUGUST 2020

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# **Trade unions and professional associations as civil society actors working on the issues of labour rights and social dialogue in Ukraine**

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This report was elaborated within the project “Mapping Studies of Trade Unions and Professional Associations as Civil Society Actors Working on the Issues of Labour Rights and Social Dialogue in six Eastern Partnership Countries” funded by the European Union and implemented by the Central European Labour Studies Institute (CELSI).



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## Abbreviations

CIS	Commonwealth of Independent States
CSO	Civil society organization
ETUC	European Trade Union Confederation
EU	European Union
FDI	Foreign direct investment
FPU	Federation of Trade Unions of Ukraine
GRP	Gross regional product
ILO	International Labour Organization
ITUC	International Trade Union Confederation
KVPU	Confederation of Free Trade Unions of Ukraine
LCC	Law on Collective Agreements
MNC	Multi-national corporation
MP	Member of parliament
NGO	Non-governmental organization
NPGU	Independent Trade Union of Miners of Ukraine
NSPP	National Service for Mediation and Reconciliation
OHS	Occupational health and safety
OPZZ	The All-Poland Alliance of Trade Union
SOE	State-owned enterprise
The EU-Ukraine CSP	The EU-Ukraine CSP Civil Society Platform
TU	Trade union
Ukrstat	State Statistics Service of Ukraine

## Executive summary

An overall political and economic situation in Ukraine can be characterized as continuously instable, with significant gaps in democratic decision-making, which has an impact on the law enforcement, including labour law. The unstable economic situation in the country impacts the labour market significantly. Alongside a high level of unemployment and associated migration from the country, workers often face significant wage arrears and late payments of wages. There is also a significant increase of informal work, mainly in agriculture and construction sectors. In this situation, trade unions struggle with decreasing membership, lack of financial resources and lack of capacities to protect workers from unlawful practices.

Trade union landscape is variegated, according to various estimations between 100 to 200 trade unions operate at a higher (upper than the company) level. There are both traditional and modern trade unions (TUs) operating in Ukraine. While traditional TUs inherited membership base as well as property from the communist past, new trade unions were established after the fall of communism. Among new trade unions, the second largest unions in the country – the CFPU trade union – is particularly relevant. Other, smaller modern trade unions operate at the company, sector or regional level. The largest trade union confederation in the country, FPU, has about 5 million members or 70 percent from the total. Ukraine has a relatively high trade union density: despite a declining trend, density among the employed population reached 43.8 percent (7.1 million members) in 2015.<sup>1</sup> The Ukrainian crisis of 2014, emigration, rise of the private sector and informal employment contributed to the declining union density. Trade unions are mostly present in the public sector and state-owned enterprises while struggle to gain influence in the private sector. Except some exceptions, professional associations are not involved in labour rights advocacy. One of the noteworthy exceptions includes the Association of Farmers and Landowners, which advocates for elimination of informal employment in agriculture.

Ukrainian legislation stipulates fundamental trade union rights and adopts all the fundamental ILO conventions, but the implementation and enforcement of this legislation is poor. ITUC Global Rights Index rated Ukraine among countries where no guarantees of workers' rights are present<sup>2</sup>. Ukrainian trade unions are highly engaged in socio-political debates, but their leverage is low. They mostly address political representation aiming at legal

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<sup>1</sup> ILOstat. ILOSTAT Database 2019. Available at: <https://ilostat.ilo.org/>

<sup>2</sup> ITUC Global Rights Index 2019. Available at: <https://www.ituc-csi.org/IMG/pdf/2019-06-ituc-global-rights-index-2019-report-en-2.pdf>

solutions while other channels of articulation of their needs such as closer cooperation with their counterparts and strengthening impact of collective bargaining are used in limited extent. Moreover, macroeconomic stabilization measures limit the trade union impact on social and public sector policies via lobbying, social dialogue and collective bargaining at the national level.

Majority of the Ukrainian trade unions have limited financial independence to develop capacity building programmes such as advocacy activities or organizing training. Wage arrears, and reluctance of the affiliates to contribute with membership fees impose limitations on the trade union budgets.

The two biggest national trade unions, FPU and KVPU cooperate with all the major international organizations and have bipartite cooperation with EU national trade unions, while other smaller trade unions have limited opportunities for international cooperation.



## Introduction

An overall political and economic situation in Ukraine can still be characterized as instable, with significant democratic gaps in decision-making which has an impact on the law enforcement, including labour law. The unstable economic situation in the country impacts many areas of work. Alongside a high level of unemployment and associated migration from the country, workers often face significant wage arrears and late payments of wages in both public and private sectors. There is also a significant increase of informal work, mainly in agriculture and construction sectors. In this situation, trade unions and professional associations, as major civil society organizations protecting labour rights, struggle with decreasing membership, lack of financial resources and lack of capacities to protect workers from unlawful practices. Despite these organizations are in difficult situation to protect workers, they still possess important legal rights which entitle them to contribute to the improvement of working conditions regardless the political representation. Thus, it is relevant to study how their capacities and positions can be strengthened to deliver better labour rights protection to workers.

The European Union considers civil society organisations as key political actors in the development and democratization processes. A strong civil society involved in social, economic and political dialogues and capable of engaging in policy strategy is desirable to make development more effective and promote and/or strengthen democratization processes. In order to consider support for strengthening the civil society addressing labour rights, this report is a result of a mapping study of the current situation relating to trade unions and professional associations, as membership-based civil society actors in the Eastern Partnership (EaP) region with a key role in the transition to new economic labour relations and inclusive growth. The purpose of this study is to assess the potential and need for the provision of EU support to this group of civil society and provide recommendations. This report was elaborated within the project “Mapping Studies of Trade Unions and Professional Associations as Civil Society Actors Working on the Issues of Labour Rights and Social Dialogue in six Eastern Partnership Countries” funded by the European Union and implemented by the Central European Labour Studies Institute (CELSI).

The report is a result of desk research and analysis of interviews with representatives of relevant unions, professional associations and other civil society organisations operating in Ukraine. The desk research was implemented by the local expert Mykhailo Slukvin and interviews were conducted by CELSI researchers and the local expert during a mission to Ukraine in May 2019. Overall, 12 personal interviews were undertaken. All respondents were invited to declare they participate voluntarily in the interview by signing a consent form prior to starting the interview. The informant selection was guided by desk research which indicated that professional associations play a minor role in labour rights and advocacy compared to trade unions, hence, the informants are mostly trade union representatives. The consent form was translated to Ukrainian.

The mission was guided by a semi-structured interview questionnaire that included analytical questions. These questions were not raised to the respondent directly but served to guide the researcher to raise the question in a simple and clear way but be able to analyse the answer from the respective analytical perspective. Therefore, interview questions were not strictly those listed in the questionnaire. Experience shows that indeed the respondent provided a more informative and encompassing answer if we raised simple and direct questions. The interview with the EUD and the ILO did not follow the semi-structured questionnaire; instead, questions were individually adjusted. The focus of the EUD interview was the cooperation with social partners over the implementation of the Chapter 13 "Trade and Sustainable Development" of the EU-Ukraine Association Agreement discussed among social partners within the Ukrainian and European Domestic Advisory Groups (DAGs) and associated roles of social partners in specific sectors such as agriculture and EUD's expectations on the missions' findings. The interview with ILO representative evolved around assessing the general role of social dialogue in developing labour market institutions in Ukraine, ILO's support of these processes and assessment of capacities of trade unions and professional associations to play an active role in facilitating these processes. Detailed notes from all interviews are available in English.

The desk research indicated that trade unions are more involved into labour rights advocacy and activism whereas professional associations do not hold that function, hence while this report briefly covers the status of professional associations (in the section 2.7.), the focus is on trade unions.

The report is structured as follows. First, it presents the societal context in which the trade unions and professional organisations operate. The second chapter depicts the structure, size and position of the main trade unions and professional associations in Ukraine. The legislative

framework describing the current and proposed legislation related to social dialogue and evaluation of the tripartism is detailed in the third chapter. The assessment of the extent of organisation's influence and independence from the political pressure is provided within the fourth chapter. The fifth, sixth and seventh chapter discuss the financial and human resources as well as international cooperation determining the trade unions' and professionals' associations' activities and impact in the country. Finally, based on the mapping study and our analysis, the final section includes recommendations for the EU's role in supporting unions and other civil society organisations in Ukraine based on SWOT analysis.

## **1. A brief overview of the political, economic and social situation in the country**

Ukrainian politics is known for informal arrangements between the government and business tycoons. Privatization that started in the 90s favoured those with connections to the government, like red directors. By the beginning of the 2000s, the relation became reversed, the privatization winners – domestic business tycoons started to gain political influence and attain favourable economic treatment from the government, especially in the energy and industrial sector. Two Ukrainian presidents attempted consolidating the business and political networks into an authoritarian political regime, Kuchma in early 2000s, and Yanukovich in the early 2010s. So far shift to authoritarianism failed, mainly because the privatization secured some resource autonomy for diverse elite groups. That allowed the elites to side-line from the government in pursuit of their interests through financing oligarchic political parties, backing popular political protests and controlling mass media assets.<sup>3</sup> To this day, Ukraine, according to Freedom House, is classified as partly free.<sup>4</sup> The main problems remain in the functioning of the government and the rule of law: influence of oligarchs on the legislature and the government, lack of government openness and transparency, non-independent judiciary, weak due process guarantees, illegitimate use of physical force and lack of equal treatment.<sup>5</sup>

Ukrainian political parties are weakly institutionalized. Oligarch-sponsored parties (oligarchic parties) which dominate the political landscape have a pragmatic approach oriented at securing

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<sup>3</sup> Radnitz, "The Color of Money."

<sup>4</sup> "Ukraine Country Report 2009." But free in 2005-2009, according to Freedom House.

<sup>5</sup> "Ukraine Country Report 2019."

cabinets loyal to oligarch sponsors, while ideology, party program, statutes are tuned to produce a favourable electoral outcome. That being said the parties have shallow grassroots connections and credibility. In 2014-2018, after Maidan popular uprising, that aimed to oust corrupt president, politicians and launch democratic reforms, no more than 6.6 percent of Ukrainians trust to political parties. At most 8.6 percent trust to the parliament, 7.9 percent trust to courts, whereas trust to the president and the government is decreasing from two-digit numbers to one-digit numbers as their terms run out in 2019. Among other things that indicates partial progress of anti-corruption reforms (e. g., judiciary reform) and lack of socio-economic improvement for a major part of the population. Other reforms, like 2016 police reform, decentralization raised trust only temporarily. Ukrainians more noticeably invested their trust in local governments, yet the indicators are volatile, from 18 to 28 percent. The same applies to trade unions as the trust fluctuates between 12 to 23 percent. Most notably, after the Ukrainian crisis of 2014, from 40 to 46 percent of Ukrainians trust the army. Surveys point out only a few institutions that get more trust than mistrust – army, civil society organizations, volunteer organizations, and church.<sup>6</sup>

To this day trade unions have more enrolled members than any civil society organization (CSO). That is even though since the 90s the number of TU members in the population is gradually decreasing from 33 percent in the 90s to 15 percent in the 2010s. Yet, the percent of Ukrainians who consider themselves to be active members is about constant, only 3-4 percent.<sup>7</sup> One has to consider that Ukraine deals with post-Soviet legacy – the experience of one-party state forced or strictly ceremonial civic participation left the citizens cynical and reluctant to activism.<sup>8</sup> Despite the experience of two major political mobilizations in 2004 and 2013-2014, only a small share of Ukrainians are active members of any civil organization, only about 15 percent of are aware of any NGO activities.<sup>9</sup>

At the same time, exactly the Soviet-legacy institution for civil participation ensured the highest enrolment among CSOs during independence, Federation of Trade Unions of Ukraine (FPU). The biggest national trade union association – FPU accounts for 90 to 70 percent of

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<sup>6</sup> Razumkov Center, “Dovira hromadyan Ukrainy do suspil’nykh Instytutiv”; Fund of Democratic Initiatives, “Monitorynh”2018: osnovni tendentsiyi zmin hromads’koyi dumky.”

<sup>7</sup> World Values Survey, “Data & Documentation.”

<sup>8</sup> Howard, *The Weakness of Civil Society in Post-Communist Europe*.

<sup>9</sup> Pact, “2018 USAID/ENGAGE Civic Engagement Poll.” If to breakdown by specific activist topics the awareness is even lower.

total trade union membership. FPU functioned as an instrument of workers' state. To this day it has problems with fostering an advocacy-based approach to trade unionism as its members rely on its servicing benefits – discounted leisure activities, sponsorship of cultural events.<sup>10</sup> It managed to postpone swift member rate drop as it continued to enrol employees "by default" after the Soviet Union collapsed, especially in the public sector. Unfamiliar with TU functions, freshmen students usually write application to students' trade union which elevates the percentage of youth in TUs, like in TUs of medicine, education or agriculture. In practice, pensioners seldom leave TU as it provides social support in case its member experiences hardships. In the late 80s-90s, Ukrainian miners developed independent trade unions from strike committees, like miners' union NPGU (Independent Trade Union of Miners of Ukraine). It later became a basis for an alternative national centre of TU activism – KVPU (Confederation of Free Trade Unions of Ukraine). Today KVPU is known for its strike actions, protests, and overall advocacy-based approach. The peak of the protest activism came during Perestroika protest cycle as the miners were demanding wage raises. In the promise of fulfilling the agenda the strikers coalesced with pro-independence movement. Yet, as regional elites, red directors started to gain the political influence they tamed TUs allowing only selective political mobilization. Further, into the late 90s, the solidarity of the TUs was disrupted by the regionalization of socio-economic agenda.<sup>11</sup> Since then, the politicians increasingly emphasized regional interests and identities, that together with union rivalry between KVPU and FPU hampered solidarity in political and socio-economic struggles in the 2000s.<sup>12</sup>

In 1993, Ukraine started to develop a framework for tripartite dialogue. The legislation on social dialogue provisions information sharing, consultations, negotiations and collective bargaining among the government, employees, and employers. 2010 Law No. 2862-VI on Social Dialogue established representativeness criteria that allow selected unions to enter the social dialogue on territorial, sectoral and national levels. The criteria are 1) legal registration 2) a total number of members. To prove representativeness on territorial level trade union must include 2 percent of employed in the administrative-territorial level, on sectoral level – at least 3 percent of workers employed in a particular sector. To acquire representativeness on the

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<sup>10</sup> Interview UA 3; Interview UA 0.

<sup>11</sup> Mykhnenko, "State, Society and Protest

under Post-Communism." The scholar points out that Kuchma won his second presidential term as he suggested dotations for Donetsk and Luhansk oblasts (administrative-territorial units), leaving out Dnipropetrovsk oblast. According to the scholar, that substantially disrupted solidarity of the unions in the East.

<sup>12</sup> Traub-Merz and Volynets, "Trade Unions in Ukraine: History, Structure and Challenges of Workers' Representation."

national level, TU association has to get at least 150 thousand members, branches at most of the administrative-territorial units and at least three all-national unions affiliates.<sup>13</sup> After receiving an application from TUs the state authority, National Service for Mediation and Reconciliation (NSPP), has to certify representativeness within no more than 2 months. The representativeness certificate is valid for five years.<sup>14</sup> To this day, social dialogue receives criticism from the social partners, and most trade unions criticize weak leverage over the government's social policy agenda. For instance, the national level agreement rarely takes into account the TUs' position on minimum wages. That is why scholars and experts reiterate hypothesis that since the 2000s minimum wage policy is more directly driven by political cycles to win voters' preference rather than social dialogue.<sup>15</sup> In addition, as a part of social dialogue, the representative trade unions participate on a tripartite basis in the management of State social security funds and take part in commenting period of the legislative process.

**Table 1. Sectoral structure of Ukrainian economy in 2017**

Sector	<b>Employment by Sector</b> (in % of Total Employment)	<b>Value Added</b> (in % of GDP)
Services	60.4	50.3
Industry	24.3	24
Agriculture	15.3	10.2

*Source: World Bank Open Data.; ILO.*

In 2017 the Ukrainian economy started to recover from the 2014 drop caused by the trade war with Russia, annexation of Crimea and Donbas military conflict. After the fall of GDP in 2014-15, by 6.6 and 9.8 percent, it demonstrates 2.4 percent growth in 2016 and 2.5 and 3.3 percent growth in the two following years respectively. Table 1 demonstrates the sectoral structure of the Ukrainian economy – value added in the percentage of GDP and employment by sector. GDP composition by sector in 2017 reveals that the service sector comprises about 50 percent – that is 5 percent lower than in 2010. Manufacturing and industrial sector contracted one or two percent between 2010 and 2017. In 2017 manufacturing accounts for 12 percent and

<sup>13</sup> Law on social dialogue (LSD) of 23 December 2010.

<sup>14</sup> NSPP, “Poryadok otsinky vidpovidnosti kryteriyam reprezentatyvnosti ta pidtverdzhennya reprezentatyvnosti sub'yektiv storin.”

<sup>15</sup> Traub-Merz and Volynets, “Trade Unions in Ukraine: History, Structure and Challenges of Workers’ Representation.”

industry for 24 percent of GDP. It is likely that the industrial sector (iron and steel, chemical industry, coal mining) will further shift from heavy industries, that currently account for about two-thirds of industrial output, to light industries. Most notably, the automotive industry production contracted about 10 times between 2011 and 2017, after losing the Russian market it failed to reorient. In contrast, agricultural sector demonstrated growth, since 2010 it grew from 7 to 10 percent in 2017.<sup>16</sup>

Since 2014 under conditions of the political, social and economic crisis the 2014 government started adopting macroeconomic stabilization measures. The government released exchange rate, removed subsidies for major industries (energy, agriculture), started reforming social transfer systems (social security targeting) and optimizing public sector. Having public debt, deficits and lack of potential lenders the steps ensured compliance with IMF aid programs. In 2014-2015 Ukrainian currency lost 70% percent of value against the US dollar. That depressed purchasing power of Ukrainian wages, to this day the minimum wage is the lowest in the region. In some industries, like the steel industry, the wages declined from about 1000 in EUR equivalent to 300 EUR. Labour unions emphasize the shrinkage of purchasing power hit especially hard since energy sector reforms equated individual consumer and company prices. That means that a higher share of the shrinking wages is spent on public utilities. The situation is exacerbated by the wage arrears – in June 2019 the arrears amounted to UAH 2.718 billion.<sup>17</sup> Most of the arrears are owed to the industrial sector workers, 79.4 percent.<sup>18</sup> A breakdown also reveals that about 56 percent of the total arrears are owed to workers of economically active enterprises, about 37 percent of the total arrears owed to workers of enterprises in Donbas conflict area. The absence of high wage jobs in Ukraine and subsequent deterioration of the quality of life drives migration - 2 to 7 million Ukrainians are estimated to work abroad.

Between 2013 and 2014 unemployment grew from 7 to 9 percent which still holds.<sup>19</sup> Unemployment is the highest among youth (15-24-year-old), 16 percent. At the same time, informal employment is widespread in Ukraine. In 2016 ILO estimated that about 4 million are informally employed, that is about 24 percent of the total employment. 52 percent of informally employed were payroll employees. Informal employment was more widespread in the rural

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<sup>16</sup> “World Development Indicators: Structure of Output.” Yet, it is a low value added sector.

<sup>17</sup> “Ukrstat Database.”

<sup>18</sup> FPU, “Prozhitkovij minimum dinamika serednoji zarobitnoji plati ta stan viplati zarplati u travni-2019 roku.”

<sup>19</sup> “Ukrstat Database.”

areas (52.2 percent in 2016) and gender-wise in 2019 57.9 percent of informally employed were males.<sup>20</sup> The rate of employment in the informal sector is the highest in agriculture, 58 percent in 2016, and construction, 25 percent in 2016. Ukrainian regions demonstrate high disparities. Industrialization is more pronounced in Donbas, Trans Dnieper, Trans-Black Sea, and Trans-Carpathian areas which has direct implication for the disparities. Judging by gross regional product (GRP) figures experts point out that the disparities within Ukraine are much higher than within any EU country.<sup>21</sup> The best performing oblast has 26 times higher GRP than lowest-performing oblast.<sup>22</sup> That also manifests in wage gaps. For instance, average wage in Chernivets'ka oblast is 2 times lower than in Kyiv.<sup>23</sup>

## 2. Mapping trade unions and professional associations involved in the issues of labour rights and social dialogue

Ukraine has **traditional and modern** trade unions and some professional association (PAs). The traditional trade unions were established during the Soviet times whereas the modern union organizations emerged after the collapse of the Soviet Union. Professional associations are active in promoting professional growth-oriented activities rather than labour rights and social dialogue (see the section 2.7 dedicated to PAs). The traditional TUs are most saliently represented by FPU (Federation of Trade Unions of Ukraine) and the modern by KVPU (Confederation of Free Trade Unions of Ukraine) and smaller regional, sectoral trade unions. The modern TUs, like KVPU, emerged in response to a declared inefficiency of FPU. Often, they tag themselves as "independent" mainly to emphasize they are not alike FPU, who they believe to this day has a patron-client relationship with the state and employers, like during the Soviet times. Other examples of modern TUs include small independent or politically affiliated trade unions.

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<sup>20</sup> "Undeclared Work in Ukraine: Nature, Scope and Measures to Tackle It."

<sup>21</sup> Maksymenko, "Ukraine's Regional Economic Growth and Analysis of Regional Disparities." The scholars define industrial areas but the main administrative-territorial unit in Ukraine is oblast. Donbas (Donetsk and Luhansk oblasts), Trans Dnieper (Dnipropetrovsk, Zaporizhia oblasts), Trans-Black Sea (Odessa, Mykolaiv and Kherson oblasts, Crimea and Sevastopol'), and Trans-Carpathian (Lviv, Ivano-Frankivsk, Zakarpattia and Chernivtsi oblasts); euukrainecoop, "Social and Economic Disparities between Ukraine's Regions Far Greater than in the EU."

<sup>22</sup> "Ukrstat Database."

<sup>23</sup> Ibid. About 76 percent from the average wage.



## 2.1. Landscape of trade unions and professional associations

To this day the Soviet-legacy FPU union remains the biggest TU organization of Ukraine in terms of its membership base (see Table 2), it accounts for about 71-90 percent of trade union members. Since the independence the percent of unionized employees (trade union density) was gradually decreasing. Trade union density decreased from 56.9 in 2008 percent to 43.8 percent in 2015.<sup>24</sup> Thus, in 2015 out of 16 million employed, about 7.1 million are trade union members.<sup>25</sup>

FPU accounts for most of the membership losses – initial 26 million membership in the 90s went down to 10 million in the early 2010s. Scholars estimate that FPU was losing 700 000 members per year.<sup>26</sup> Some of the FPU losses were due to organizational and reputational reasons. The past of FPU includes lack of advocacy for workers, alliances with notorious politicians, trade union property embezzlement. As the reputational damage was done today FPU has an uneasy challenge to redeem itself especially considering that it is not uniformly weak in collective bargaining and advocacy for workers' rights. Other issues that led to a decrease of union membership or struggles with gaining new members are common for all trade unions – they were less prepared for the expansion of the private sector, rise of the service economy and informal employment.

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<sup>24</sup>Source: ILO. Last data point is 2015. No sector is restricted in forming trade unions, I provide unharmonized trade union density indicator.

<sup>25</sup> Ibid.

<sup>26</sup> Traub-Merz and Volynets, “Trade Unions in Ukraine: History, Structure and Challenges of Workers’ Representation.”

Table 2. Estimated trade union membership in 2012 and 2015

		2012		2015 <sup>27</sup>	
Trade union	Structure	Number of members	Of unionized employees	Number of members	Of unionized employees
Federation of Trade Unions of Ukraine (FPU)	44 all-Ukrainian trade unions (sectoral and professional), 26 territorial trade unions (24 oblasts, AR Crimea and Sevastopol) Education, about 1.5 million members (2019) Health care, 747 thousand members (2019) Agriculture, 400 thousand members (2019) Metallurgical and Mining Industry, 290 thousand members (2019) State employees, 200 thousand members (2019)	7,800,000	71%	5,090,000	72%
Trade Union of Railwaymen and Transport Construction Workers of Ukraine (TURU)	Eight all-Ukrainian unions of which four are also affiliated to FPU 26 territorial trade unions (24 oblasts, AR Crimea and Sevastopol)	735,242	7%	478,699	7%
Confederation of Free Trade Unions of Ukraine (KVPU)	10 all-Ukrainian unions: Mining, Railways and Transport, Education, Health 26 territorial trade unions (24 oblasts, AR Crimea and Sevastopol)	181600	2%	150-220.00	2%
Association of Autonomous Trade Unions (AATUU)	Eight all-Ukrainian unions: Transport, Food Processing, Industries, Science, Military	204124	2%	about 150.000	2%

<sup>27</sup> The percentages and absolute membership numbers in 2015 are estimated based on the following assumptions 1) The membership share of FPU is calculated using 2019 reported membership number. 2) I compare unions which were representative both in 2012 and 2015. On the national level National Service for Mediation and Reconciliation (NSPP) recognizes as representative the same national unions, which situates the unions with less than 2 to 1 percent share around the threshold of 150,000 members. 3) Last, unions that are not representative "other" beared more significant membership losses between 2012 and 2015. 4) The number includes students and retired.

		2012		2015 <sup>27</sup>	
Trade union	Structure	Number of members	Of unionized employees	Number of members	Of unionized employees
All-Ukrainian Trade Union and Trade Union Association "Unity"	Four all-Ukrainian branch unions: Police, Prison, Energy Sector, Seafarers	153,562	1%	About 150.000	1%
Federation of TU of Workers of Small and Average Enterprises of Ukraine	Five trade TU affiliates Municipal, Tourism.	about 150,00	1%	about 150,00	1%
Other		1,7 million	15%	1 million	15%
Total		10.9 million	100%	7.1 million	100%

*Sources: trade union websites, Ukrstat, ILOstat, own calculations, adopted from Traub-Merz and Volynets, "Trade Unions in Ukraine: History, Structure and Challenges of Workers' Representation."*

The previous FPU setbacks did not bring to the forefront independent unions, union density drop suggests that those who exited FPU quit trade unionism altogether. Table 2 demonstrates that even despite the two decades of FPU losses it preserves the largest share of union members, 71-72 percent from the total. The 2015 union report claims 8 million members. Given the annexation of Crimea, conflict in one of the most unionized regions – Donbas the numbers reported in 2018-2019, about 5 million, more accurately represent the membership since 2014.<sup>28</sup> That is not to mention that the 8 million membership claim looks unrealistic if to consider that the number of employed in 2015 is 16 million and ILO statistical data provide a trade union density of 43.8 percent. Hence, the reported membership for 2015 is above the estimated gross union density and is likely to be outdated. Alternatively, the reported number may include students and retired. Other national unions which meet the representativeness criteria hardly match the scale of FPU. To begin with, they have a much less diversified range

<sup>28</sup> If to exclude from the total calculations population of Crimea one has to subtract 2 million from the population of Ukraine, Donbas – 3.8 million.

of affiliate sectoral unions and less members. FPU has the widest range of affiliates as it incorporates 44 national trade unions and 26 territorial trade unions. In comparison, the second largest national union, Trade Union of Railwaymen and Transport Construction Workers of Ukraine, is a professional/occupational union and has ten times fewer members. Even KVPU, that most actively juxtaposed itself with FPU since the 90s, did not acquire larger membership and today has around 150-220 thousand members, barely enough to meet one of the national level representativeness criteria. Despite the fact that KVPU manages to incorporate a wide range of sectoral, territorial unions than other non-FPU unions, scholars point out that the TU often meets opportunistic behaviour of employees, who turn to KVPU when they need a strong activist support and to FPU when they need discounted leisure activities and other service benefits.<sup>29</sup> Typically, employees also avoid membership or quit advocacy-oriented TUs altogether realizing an increased risk of being sacked for the participation.<sup>30</sup> Adding to that, members often quit the advocacy-based TUs after successful settlement of a dispute, for instance, after wage arrears are liquidated.

## **2.2. Trade unions and society**

Surveys suggest that Ukrainians do not have high trust in trade unions. A recent 2018 poll by Razumkov centre reveals no differences in the trust across generations and sexes, 18 to 17 percent rather trust trade unions, and only 1.4-4.5 percent fully trust.<sup>31</sup> That being said not many Ukrainians would delegate to trade unions a right to represent their interests in socio-political affairs. The 2017 survey by Razumkov Centre points out that about 13 percent of Ukrainians would choose trade unions as a primary representative of their interests.<sup>32</sup>

When it comes to the demographic parameters of unionization there are noticeable generational differences among age demographics on the ground. The 2017 poll by Razumkov Centre reveals that the youngest demographic (18-29-year-old) is two to three times less involved in any trade union activities than other age groups.<sup>33</sup> Only 9 percent of Ukrainians in the youngest

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<sup>29</sup> Traub-Merz and Volynets, "Trade Unions in Ukraine: History, Structure and Challenges of Workers' Representation

<sup>30</sup> Ibid. Ukrainian law does not forbid double membership, one can join two TUs if statute allows for that.

<sup>31</sup> Razumkov Center, "Dovira hromadyan Ukrainy do suspil'nykh Instytutiv." 4.5 - is the trust among the age group 60 and above.

<sup>32</sup> "Politychna kultura ta parlamentaryzm Ukraini: Suchasnyi Stan ta Osnovni Problemy." In comparison, 18 percent choose CSOs, 21 percent choose political parties. The survey also suggests that 20 percent have a hard time choosing a primary representative.

<sup>33</sup> Yet, it is unclear whether involvement into trade unions increases with age. There are no longitudinal studies.

cohort were engaged in any trade union activity in the last 15 years. In comparison, the percent is higher among 30-39-year-old, that is 16 percent, 22 percent among 40-49-year-old, 25 percent among the 50-59 group and 20 percent among the group at the age 60 and above. Current membership composition suggests that the trend of union density decrease may continue if no changes in trade union approaches to recruitment and advocacy occur. KVPU claims an increase in the overall youth membership and a modest increase of youth at executive positions.<sup>34</sup> Some FPU professional unions, like medical workers' union, or agricultural sector union, also claim that about 35 percent of members are under 35 years.<sup>35</sup> At the same time, the agricultural sector union admits that they have trouble renewing their ranks, especially executive positions, as the average age of a territorial level union leader is 60 and above.<sup>36</sup> Medical workers might not be able to renew their membership at a proper rate because of labour emigration. While the FPU and KVPU have youth sections, it remains unclear to what extent that helps to counteract the generational drop in youth participation.

### **2.3. Percentage of the unionized workers per industry/area of work**

Traditionally, Ukrainian industrial workers demonstrate the highest unionization. The poll conducted in 2013 by SOCIS and Institute of Sociology of Academy of Sciences of Ukraine that was studying the population defined as working-class allows to highlight some differences in unionization across four sectors: 1) industrial sector 2) transport and communication 3) construction 4) commerce and car/machinery repair etc.<sup>37</sup> According to the study, as much as 97 percent of industrial workers reported having unions at the enterprise, 40 percent of transport and communication workers, 12 percent in construction and 12 in commerce, car/machinery repair, etc. The poll indicates differences in the demand for trade unions, as 72 percent of industrial workers are positive about their necessity, 51 percent of employees of transport and communication, and only 28-31 percent of commerce and construction employees respectively. Yet, those indicators do not tell much about the performance of trade unions, only a quarter of industrial sector workers believe that trade unions significantly improve their working

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<sup>34</sup> Interview UA 3.

<sup>35</sup> “Profspilka Pratsivnykiv Ohorony Zოდovia.”

<sup>36</sup> “Profspilka pratsivnykiv agropromislovogo kompleksy.”

<sup>37</sup> Arseenko, *Rabochii Klass Sovremennoi Ukrainy*. The population is defined as working class – manual workers (skilled and unskilled labor) who live off wage or salary, do not fulfill any control or management functions and do not have their own means of production. The 2013 survey uses quota sampling accounting for the employment by sector (excluding agriculture), age and sex of the population. The sampling does not allow to examine differences within the sectors.

conditions at the enterprise level, in other industries even smaller percentage of employees can conclude the same, 15 to 19.

## **2.4. Trade unions and professional associations in the public and private sectors**

Ukrainian trade unions cover both private and public enterprises commensurate to the existence of their sectoral and territorial branches. Table 2 demonstrates the biggest trade union sectoral organizations within FPU, KVPU, and other representative unions. One cannot help but notice that a large share of their members comes from the public sector or SOEs. For example, FPU trade union of medicine and education together comprise about half of the total FPU membership base. That is disproportionate to the distribution of employment between the institutional sectors in the population. SOEs employ about 12 percent of the economically active population. The public sector employs about 12 percent of the economically active population or roughly one-fourth of the total employed.<sup>38</sup> Smaller trade unions, like 4700 thousand member "Defence of labour" also establish some primary trade unions in the private sector, including FDI financial sector enterprises.<sup>39</sup> Also, a recent case of unionization at the largest Ukrainian private postal and delivery company Nova Poshta (more than 26 thousand employees) illustrates that new private sector trade unions can refrain from any affiliation with higher-level TUs.<sup>40</sup>

Unfortunately, the existing studies do not allow us to make a reliable generalization about the differences in unionization between the public and private institutional sector, nor reliably differentiate between foreign direct investment (FDI) and non-FDI private company unionization trends. In 2016 there were fourteen thousand FDI companies which is 4.6 percent from all the companies registered. In total, the FDI companies employed 1.1 million people. In 2016 the financial sector accounted for the largest share of FDI stock, 16 percent. Wholesale and retail trade; repair of motor vehicles and motorcycles held 15 percent share of the total FDI stock and real estate, 9 percent of the total FDI stock share respectively. In contrast, the industrial sector in total accounts for about 33 percent of the FDI stock. FDI in production is

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<sup>38</sup>“Vystup Holovy SPO Ob’yednan’ Profspilok, Holovy FPU Hryhoriya Osovoho Na Chetvertomu Zasadanni Rady Federatsiyi Profspilok Ukrayiny.”; ILO, “ILOStat”.

<sup>39</sup> Interview UA 7.

<sup>40</sup> Interview UA 8.

most saliently present in the food industry, 7 percent from the total FDI stock. Metallurgy and mining account for 4 percent of the total FDI stock each. Also, the IT industry accounts for about 6 percent of the FDI stock. In contrast, agriculture accounts for 1.3 percent of the FDI stock and is likely to rely on indirect foreign investment.<sup>41</sup>

The 2013 survey by SOCIS and Institute of Sociology of the Academy of Sciences of Ukraine offers only some preliminary data about differences in unionization between the public and private sector, so as between FDI enterprises and non-FDI enterprises.<sup>42</sup> The main limitation is that the study offers a quota sampling that takes into account employment across four industries in the population of the study defined as "working class": industrial sector, transport and communication, construction and lastly commerce and car/machinery repair, etc. The study does not offer a representative sample for the institutional sectors. The sampling also does not account for variation in FDI across the sectors of economic activity. The quotas of the sample are skewed towards industrial sector disproportionately to the employment in the sector, that is 10 percent higher than in the population, which adds a potential source of distortions. Privatized industrial SOEs with FDI may have unusually high unionization, whereas private FDI companies, for example in IT may have extremely low unionization because of disguised self-employment. Considering those limitations, one nevertheless can attempt to use the study to pinpoint some differences. First, the study reveals differences in unionization potential between the private and public sector. Trade unions in the private sector play a more decisive role at FDI enterprises. The FDI enterprises demonstrate the highest unionization, 93 percent of workers at the FDI enterprises reported to have a TU. Such a high rate may be mediated by the fact that the survey reached mainly privatized state-owned enterprises (SOE) in the industrial sector. For example, former SOE, Kryvorizhstal', currently known as ArcelorMittal Kryviy Rih', has about 10 operating primary trade unions most of which were likely operating before privatization. In contrast, greenfield FDI enterprises, like Fujikura Automotive Ukraine Lviv, launched in 2016, may be harsher on TUs and prevent their operation. In 2016 the company illegally fired a TU leader and his deputy.<sup>43</sup> At public enterprises or SOEs 80-83 percent reported to have a trade union respectively. In comparison, non-FDI or sole proprietorship enterprises are less unionized, 47 and 17 percent reported to have a TU respectively.

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<sup>41</sup> Saha, Kravchuk, and Kirchner, "The Economic Impact of FDI on Ukraine." Data for 2016. Yet, experts point out that roundtrip FDI may distort the picture; "Investment Activities in Ukraine."

<sup>42</sup> Arseenko, *Rabochii Klass Sovremennoi Ukrainy*.

<sup>43</sup> "Fujikura: Lehalizovane Rabstvo v Ukrayini."

The employees at FDI private enterprises also have the highest demand for unionization as 87 percent told that they need a trade union. This percentage is somewhat lower at public or state-managed enterprises, 72-69 percent affirm they need a TU. In comparison, only 45 percent had a demand for unions at non-FDI enterprises, and only 29 percent at sole proprietorship enterprises. Finally, unions at FDI private enterprises seem to be more effective than elsewhere. 34 percent of FDI private enterprise workers affirm that trade unions significantly improved their working conditions, 22-23 percent at public or private enterprises respectively and 16 percent at state-owned private companies.

The 2013 research by SOCIS and Institute of Sociology of Academy of Sciences of Ukraine also suggests that the differences in unionization depend on the size of an enterprise. Only 10 percent of small enterprise employees (up to 15 employees) reported to have a TU, and this number goes up progressively as the size increases. It reaches 26 percent at enterprises that hire 15-50 employees. If an enterprise has 50-200 employees – 76 percent. Large enterprises with more than 200 workers have 93 percent unionization.

Hence, Ukrainian trade unions have a stronger presence in the industrial sector, to a larger extent they cover the public institutional sector and to a lesser the private sector. One is to expect the lowest unionization potential at small sole proprietorship enterprises of commerce and construction.

## **2.5. Multinational corporations and social dialogue**

While the 2013 survey suggests that FDI private sector company employees may have the highest demand for trade unions, there is an evidence that FDI private companies might not provide the best opportunities for collective bargaining.<sup>44</sup> For instance, the case of the greenfield FDI enterprise Fujikura Automotive Ukraine Lviv (launched in 2016) is known for firing trade union members, unsafe or inappropriate working conditions, non-transparent salary policies. Another example is the biggest Ukrainian steel-producing enterprise ArcelorMittal Kryviy Rih'. It challenged the registration of dispute for higher wages and took the case to court

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<sup>44</sup> Arseenko, *Rabochiĭ Klass Sovremennoĭ Ukrainy*.



purposely delaying a settlement; it incentivizes exit from trade unions using discounted leisure activity benefits. Trade union at MNC Mondelez Ukraine also reports violations of collective representation, social dialogue, and labour law.<sup>45</sup> The employer forced to take a vacation during production downtime, ignored the sectoral agreement. Adding to that it combated resistance by favouring FPU primary trade union and busting an emerging alternative primary trade union. FPU affiliate union in its turn was ignoring or delaying a call to form a representative collective organ from the alternative trade union and single-handedly negotiated collective agreement.

## 2.6. Geographical locations of trade unions/professional associations

The national Trade Unions seat in Kyiv, KVPU and FPU and most of other national representative TUs also hold regional offices. If organizational and industrial profile of a region allow, they also have offices in other administrative units – districts and/or cities. The presence of sectoral TUs that affiliate to the national TUs may vary in depending on the industrial profile of a region. Previous research identifies the following **impact of geographical location**: 1) As the union density and unionization potential depends on the sector of the economy, ownership structure, one is to expect more advocacy activity in Donbas, TransDnieper, Trans-Black Sea, and Trans-Carpathian regions than elsewhere. Yet, the impact of geographical location on social dialogue (especially territorial level) effectiveness is far from uniform. In some regions, TUs have full availability of social partners (associations of employers), in other – lack of such. For example, Mykolayivs'ka oblast has 18 TUs that are representative on the regional level, but only one representative employer organization. 2) One is to expect differences in opportunities for TU advocacy between administrative centres of oblasts (provinces), industrial towns and smaller settlements. Type of settlement can influence an extent to which state officials can engage with trade unions. Yet, it is not clear whether that variation should boost trade union capacities or ultimately compromise them. Far from providing a conclusive argument, some suggest that in smaller cities and villages, like in case of ArcelorMittal or Mondelez, the local government can contribute to effective dispute resolution whereas in bigger cities, local authorities may utilize informal ties to higher echelon politicians, administration and security forces to suppress TU activity. However, the impact of the region

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<sup>45</sup> “Pervynna profspilka ‘Svobodu Praci’ Mondelis Ukraina”; “Bil’shu shkodu zavdaye blokuvannya perehovoriv sudom, – profspilka «Arselormittal».”

may be mediated by an extent the interest of workers interfere with the interest of oligarchic groups in place (and their networks).<sup>46</sup> 4) Finally, the ongoing decentralization process may impact the social dialogue on the territorial level, the trade unions report that the decisions on public sector budgetary issues tended to be considered without consultations with the TUs.<sup>47</sup>

## 2.7. Professional associations and other non-trade union organisations defending labour rights

**Professional associations are not recognized as social partners in the legislation, therefore their participation in social dialogue is not possible.** The legislation recognizes them as civil society organizations, without granting them a special status or competences in labour issues. This is also the reason why these organizations are not advocating for the working conditions of their members, but rather focus on their professional development. Therefore, their activities and practices differ from trade unions when it comes to the articulation of their agenda and their core competences. While trade unions focus predominantly on bipartite and tripartite social dialogue in a nationally specific context and at workplace activities, professional associations tend to be more willing to involve in broader civil dialogue in order to lobby for policy changes, and in interaction with their policy dialogue involvement provide activities which contribute to professional development of their members (e.g. training, certification, information workshops).

Since the legislative and institutional framework grant rights to protect workers' interests only to trade unions, there is evidence that some of the organizations which might be assessed as professional associations were established as trade unions, e.g. lawyers and insurance agents<sup>48</sup>. Moreover, the scope of representativeness of trade unions is considerably more extensive, as professional associations tend to operate only on behalf of certain professions. These often include high-skilled professions e.g. lawyers, medical doctors, nurses and midwives, teachers, insurance agents and similar occupations with a high propensity of common interests. In contrast, trade unions represent a wider landscape of occupations and operate also in sectors where the occupational diversity is high and where the harmonization of interests across various types of occupations and workers' skill levels is more challenging.

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<sup>46</sup> Interview UA 8.

<sup>47</sup> "Decentralizatsia vlady rol ta zavdannya profspilok."

<sup>48</sup> Meinardu, M. (2019): Gewerkschaftsmonitor in Ukraine. Fridrich Ebert Stiftung. FES Briefing.

There are no complex data on the membership in particular association but according to WVS, in 2011 3.2 percent of Ukrainians were active or inactive members of PAs. There is no reliable data on how many PAs exist and how many of these organizations are currently active. Table 3 demonstrates typical cases when labour rights were incorporated into the agenda of PAs.

The associations that have the highest potential for collective action, i.e., PAs of medical professionals or lawyers, are active in promoting professional growth-oriented activities rather than labour rights and social dialogue. For example, medical associations are divided according to specialization (e. g., association of dentists, nurses, surgeons, psychologists) and mainly focus on activities for professional qualification and growth, including seminars, lectures on disease treatment, professional equipment fairs. Teachers' associations are divided based on teaching subject and barely deal with topic of labour relations. In rare cases the law provisions exceptional role of professional associations, like in case of Ukrainian National Bar Association. The law grants the association the right to foster protection of social and professional interest of lawyers without specifying the topic of labour relations. Yet, if one is to look at alternative non-governmental organizations whose role is not defined by law, like NGO "Ukrainian Advocates 'Association", the topic of labour relations is absent from its documents.

Table 3. A sample of coverage of labour related issues of selected professional associations

Name	Coverage of labor related issues <sup>49</sup>
Association of nurses of Ukraine	Awareness campaigns for occupational safety and health of nurses
Association of Farmers and Private Landowners of Ukraine	Employment regulations
Ukrainian National Bar Association	Protection of professional activity rights provisioned by The Law of Ukraine "On the Bar and Legal Practice" <sup>50</sup>

Source: The authors.

A notable exception is the Association of Farmers and Private Landowners of Ukraine. The association emerged in the 90s and represents farmers who received their lands during the

<sup>49</sup> Based on the statutes and website information.

<sup>50</sup> "On the Bar and Legal Practice."

restructuring of collective lands, currently, it has more than one hundred thousand members. Although the association's agenda incorporates the topic of elimination of informal employment in the agricultural sector, **substantial cooperation between the association and trade unions on the matters of labour relations is non-existent**. Since the organization consists primarily of small and medium farmers and landowners, it acts in its own self-interest tracing land reform and advocating its vision of agricultural policies.<sup>51</sup>

**Civil society organizations** that take up the labour rights agenda coalesce with most of the Ukrainian trade unions. Some notable examples include CSO "**Labour initiatives**" that provides legal advice, training and judicial representation of employees. For example, it helped with registration document packages for TUs, participated in drafting of anti-mobbing law. Other notable organizations visible in labour rights defence include politicized or ideological CSOs, such as leftist **Socialnyi Rukh** (Social movement). The organization is mainly active in defending labour rights of workers in Kyiv and Kryvyi Rih. Most recently it takes an active part in providing legal aid, expert and media support in the wage raise dispute between KVPU and ArcelorMittal Kryvyi Rih. Another example is the leftist '**Labour Solidarity**' trade union, which provides help to Ukrainians workers abroad, cooperating with local trade unions in Poland and Italy and planning to expand to other European countries with high presence of Ukrainian citizens working there.<sup>52</sup> Interestingly, the organization halted its activities in Ukraine due to political conjuncture that did not favour their ambitions.

While there may be other cases of CSOs, it is often hard to distinguish the former from smaller TUs, or extra-parliamentary political organizations. For example, the **far-right party Svoboda has an affiliated trade union "Svoboda praci"** (Freedom of labour) that operates in the geographical region of Dnipropetrovsk oblast.

Trade unions cooperation with international organizations such as Open Society Foundation or Fridrich Ebert Foundation are described in Section 7 on International relations.

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<sup>51</sup> Interview UA 2.

<sup>52</sup> Interview UA1

### 3. Legislative framework governing the role and functions of trade unions and professional associations in the country

Ukraine ratified all the fundamental ILO Conventions and incorporated them into national legislation. Constitutional framework protects rights for **freedom of association** and strike in the pursuit of socio-economic interests (Article 36 and Article 44). Law of Ukraine No. 1045-XIV of 15/9/1999 on Trade Unions regulates TU activity and establishes rights, guarantees, procedures for the registration and activity of TU organization irrespective of sector, occupation, and profession. The Law does any profession from forming TUs, except the restrictions that apply to military officers during service and constitutional court judges. Yet, the law was previously criticized by experts for demanding a cumbersome registration document package.<sup>53</sup> A recent change of law "On State Registration of Legal Entities and Natural Persons - Entrepreneurs" is widely criticized for complicating the registration procedure as it leads to a conflict of laws – it demands additional steps for registration and requires statutory changes from existing organizations. Small TUs argue that incurring expenses on legal documentation may be burdensome and discourage from registration.

#### 3.1 Legislative framework governing the role and functions of trade unions and professional associations in the country

The basic procedures and principles for **collective bargaining and social dialogue** were established in the first ten years of independence.<sup>54</sup> Most notably passed in 1993, Law on Collective Agreements complied with ILO Convention No. 154.<sup>55</sup> The Law sets three levels of collective bargaining – national level, territorial and sectoral level.<sup>56</sup> Labour Code provisions basic guarantees of enterprise-level collective bargaining. Contents of agreement are specified according to the levels and competencies of the parts participating including: changes in

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<sup>53</sup> On State Registration of Legal Entities and Natural Persons - Entrepreneurs.

<sup>54</sup> Zarko and ILO DWT and Country Office for Central and Eastern Europe, *Legal Framework and Current Practices of Collective Bargaining in Ukraine*. The scholar points out that the first social security program was developed the same year.

<sup>55</sup> Ibid. The scholar highlights that the first national agreement between Council of Ministers of the Ukrainian SSR and the Federation of Independent Trade Unions of Ukraine (current FPU) was signed on 30 April 1991 - before independence and the Law on Collective Agreements (LCC). Until the 1993's LCC, no sectoral or territorial agreements were provisioned by law. The contents of the 1991-1992 national agreements resembled social pact rather than a collective agreement complying with ILO Conventions №98 and 154. It is the LCC of 1993 that began to deal with industrial relations. The first national agreement that involved not only the Cabinet of Ministers of Ukraine but also employers was signed in 1997.

<sup>56</sup> Until then law did not provision sectoral and territorial agreements.

production and labour, productive employment, remuneration, compensation benefits, distribution of enterprise profits, hours of work and rest, safety conditions, housing, community, cultural and medical services, equal rights and opportunities for sexes, prohibition of discrimination. Sectoral agreements set (sub) minimum wage guarantees and wage tariffs, terms of wage funds growth. The national-level agreement sets social security standards for the population such as minimum wages and subsistence minimum.<sup>57</sup> Article 8 also mentions environmental issues. The law adheres to favourability principle.

Adopted in 2010, the Law of Ukraine on Social Dialogue is in force since 2011, the law further delineated representativeness criteria for parties of social dialogue on national, sectoral and territorial levels. Organizations that pass the threshold get the opportunities for bipartite and tripartite social dialogue – information sharing, consultations, negotiations, and collective bargaining. For TUs the general criteria for representativeness are 1) legal registration 2) a total number of members. To certify representativeness on territorial level trade union has to include 2 percent of employed on the administrative-territorial level, on sectoral level – at least 3 percent of workers employed in a particular sector. To acquire representativeness on the national level, TU association has to get at least 150 thousand members, branches at most of the administrative-territorial units and at least three all-national unions affiliates.<sup>58</sup> There is no demand of representativeness for enterprise-level collective bargaining, but in case there is more than one TU they have to form a representative body proportionally to a number of TU members. Yet, the law also provides an opportunity to bypass the joint representative organ on any level if the joint representative organ disagrees on terms of collective agreement. In that case, the TU or TU association that represents most employees on a respective level (territorial, sectoral, national) signs the agreement.<sup>59</sup> The TUs that do not meet the representativeness criteria can choose to delegate the right for bargaining on their behalf to a representative union. In the absence of primary TUs or disagreement within a joint representative organ, the employee conference decides the most acceptable draft of a collective agreement and defines a delegate (from TU or employee conference's body) who negotiates and signs an agreement.

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<sup>57</sup> The law of Ukraine of July 15, 1999 No. 966-XIV defines "Subsistence minimum – the cost of providing normal functioning of human body, set of food (further set of food products) sufficient for preserving his health, and also the minimum set of non-foods (further set of non-foods) and the minimum set of services (further set of services) for satisfying basic social and cultural needs of the of a person."

<sup>58</sup> Oblasts.

<sup>59</sup> Alternatively, if there is no TU on an enterprise level employees' general meeting can delegate a body for representing them.

Apart from Constitution that enshrines **right to strike**, the Law of Ukraine on the procedure of settlement collective labour disputes (conflicts) establishes procedures for calling a strike. According to the legislation in force, a strike is the measure of last resort and requires several steps. First elected TU organ or authorized organization of employees calls a general meeting and adopts a decision to strike if it receives most votes or two-thirds of the delegates' votes.<sup>60</sup> The demand is that the decision is formalized through minutes. Second, the head of the strike must notify the employer in written form no later than 7 days before the strike; if it is a constantly operating enterprise – no later than 15 days. Third, if workers decide to protest outside an enterprise the head of the strike has to notify local authorities 3 days prior to the event. The legislation that provisions right to strike respects national security, human rights and prohibits strikes for police and security forces, military, civil servants. The strikes are prohibited under emergency state and martial law. The law provisions compensatory measures for the workers who are prohibited to strike. Ukrainian trade unions jointly argue that the strike regulations are unreasonably restrictive. There are at least 17 laws which impose additional limitations on strikes of workers of different sectors. Because of additional regulations, the right to strike is especially hard to execute for transportation and public utility workers.

The legislation in force includes provisions on employment **non-discrimination** and prohibits all forms of forced labour. Ukraine also ratified non-discrimination Convention №111. National laws aimed to prevent gender-based discrimination are Act No. 2866-IV of 8 September 2005 to ensure equality of rights and opportunities to women and men (Text No. 561), Law No. 5207-VI of 6 September 2012 on Measures to Prevent and Combat Discrimination in Ukraine, and Law No.785-VIII of 12 November 2015 to Amend the Labour Code Regarding Harmonization of Legislation in the Sphere of Prevention of and Combating Discrimination with the Law of the European Union. The latter was passed on the condition of liberalization of EU visa regime towards Ukraine, it adds prohibition of discrimination based on sexual orientation and gender identity. Ukraine ratified fundamental ILO Conventions including on prohibition of forced labour – №29 and №105.

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<sup>60</sup> The law provisions that forced strike is illegal, so as use of force, violence or blackmailing against striking workers. Workers of a sectoral or a territorial enterprise take a decision to strike on an independent basis. Thus, decisions of sectoral or territorial bodies to call a strike have a status of a recommendation. Strike is called sectoral or territorial if it involves more than a half of employed on a respective level.

## 3.2 Implementation and oversight of legal frameworks

While a solid legal framework is in place, it suffers from poor real-life enforcement. ITUC Global Rights Index of 2019 that monitors fundamental workers' rights assigns Ukraine the second-worst score, five on the scale from 1 to 5+.<sup>61</sup> The score stands for no guarantee of the rights. Donbas conflict, post-2014 economic situation, political and social hardships hampered labour rights since 2014, yet there are serious discrepancies between the legislation and real-life enforcement that go beyond of the scope of the unfavourable conditions. Freedom for TU organization has been denied both pre and post 2014. The workers experience hardships in organizing TUs at both public and private enterprises, interference into TU statutory activities. Employers retaliate against the mere intention of TU organization using formal and informal instruments – sack employees, swap shifts, harass and so on. Collective bargaining process and its results received extensive criticism. Reports from the 2010s reiterate several issues: inconsistency between budget formulation and General agreement social standards' setting, lack of social partners (mainly employers) on a territorial and sectoral level, violation of terms of collective agreements, discrepancies between higher and lower level agreements, lack of procedures for the accession of parties to agreements.<sup>62</sup>

Most of the issues relating to implementation and enforcement of the international and national labour standards come down to corruption and lack of transparency as that creates mistrust among employers, employees and the state. For instance, national legal framework grants labour inspection a wide range of powers and functions for monitoring implementation and enforcement of labour standards, yet in 2014-2018 several moratoriums were imposed on the inspection.<sup>63</sup> The justifications are high corruption risks related to the inspections' activity and a need for barrier-free business growth conditions. More recently, in May 2019 the court repealed the decree that provisioned inspections without prior notice. At the same time, the inspection itself is understaffed, underqualified and underfinanced.<sup>64</sup> In response to registration of labour disputes at oligarch-owned enterprises, the oligarchs use their media assets to

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<sup>61</sup> "ITUC Global Rights Index 2019."

<sup>62</sup> Zarko and ILO DWT and Country Office for Central and Eastern Europe, *Legal Framework and Current Practices of Collective Bargaining in Ukraine*; Traub-Merz and Volynets, "Trade Unions in Ukraine: History, Structure and Challenges of Workers' Representation."

<sup>63</sup> Ukraine ratified ILO Conventions No. 81 and 129 in 2004. International agreements, like EU - Ukraine Association Agreement, Canada - Ukraine Free Trade Agreement, that entered into force in 2017, also provision compliance with international standards of labor inspection functioning.

<sup>64</sup> "Ukrainian Labour Inspection Legal Framework Analysis and Recommendations."



discredit the National Service for Mediation and Reconciliation (NSPP).<sup>65</sup> In addition, the employers often challenge the registration of collective disputes by NSPP in courts, during that period TUs cannot strike as technically dispute is pending. At times the owners' side takes advantage of non-independent courts. In combination, the lack of options for conciliation and mistrust to courts' decisions increases protest sentiments among workers. Yet, the right to strike is not that easy to execute, thanks to restrictive legislation employers win court cases emphasizing minor deviations from the existing procedures for calling a strike.<sup>66</sup>

### **3.3 Recent and proposed legislative amendments to labour legislation in the country**

The most widely discussed proposed legislative change since 2014 is the new Labour Code by Opposition Block deputy Mykhailo Papiev and Block of Petro Poroshenko deputy, Stepan Kubiv.<sup>67</sup> The new code is suggested to replace the existing massive Labour Code of 1971 (with amendments), inherited from the Soviet Union. The project passed the first reading in parliament in 2015 and in 2017 working group, formed by the Verkhovna Rada (Committee on Social Policy), recommended the project for the second reading and final approval.<sup>68</sup> That is despite equivocal support among trade unions, civil society, and the private sector.

Overall, the proposal is expected to affect individual and collective labour rights in both positive and negative sense. To begin with, let us summarize the risks of shrinking workers' and TUs' labour rights. First, the new code stands for permissive flexibilization of contracts, the project grants opportunity for concluding limited-duration contracts for all occupations. Second, it weakens the position of TUs at enterprise-level collective bargaining, the new code provisions negotiations only with majority membership trade union. The new labour code also

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<sup>65</sup> Interview UA 11.

<sup>66</sup> Dudin and Slukvin, "Straykuvaty ne mozhna zaboronyty? Yak ukrayins'ki robitnyky vykorystovuyut' pravo na strayk ta yaki trudnoshchi u pravovomu poli yikh spitkayut'." In addition to the restrictive procedure, there are about 17 laws that limit the right to strike for various sectors. The right to strike is especially hard to execute for transportation and public utility workers.

<sup>67</sup> Palazhiy, "Novyy Trudovyy Kodeks: Yaki Zminy Vin Prynese Pratsivnyku i Pratsedavtsyu?"; Novikov, "Trudovyi Kodeks: kompromis mozhlyvyi."

Opposition Block, formerly Party of Regions – party of power during the president Yanukovich. Head of the parliamentary committee on social policy, Sergiy Kaplin, argued that the project was formed as a compromise between the oligarch Akhmetov industrial group and the committee. Other experts suggest that it ossifies the existing status quo regarding the rights of TUs and is acceptable only for large enterprise owners. Small and middle size enterprises are to experience negative consequences of labor inspections which are provisioned by the proposal, including inspections without prior notice. Hence, they are more likely to lose their edge related to non-fair competition – unregistered workers, unofficial salary. This problem is much less critical for big enterprises.

<sup>68</sup> Pending status to this day.

allows unilateral normative acts by an employer if there is no primary TU at an enterprise. Third, it allows relocation of workers to other employers for up to 3 months without social guarantees, relocation with an open-ended term upon mutual agreement of employers and employee.<sup>69</sup> Fourth, an employer gets a unilateral opportunity to include into terms of labour contract work during national or religious holidays. Fifth, the project adds a definition of suspension. While an exhaustive list of reasons for suspension is defined in the proposal, experts point out that this gives employers an instrument for sanctioning workers who intend to defend their rights.<sup>70</sup> Moreover, the proposal adds vague definitions of grounds for firing upon the unilateral decision of an employer. That includes disclosure of commercial information, which in practice may include even clauses of a labour contract; evidence of inappropriate qualification, including non-related to professional certification; avoidance of medical examination and mandatory vaccination.<sup>71</sup> Next, the new labour code risks excluding the gender and sexual orientation non-discrimination provisions which are amended to the labour code in force.<sup>72</sup> Finally, the law provisions commission on labour disputes that is less functioning in Ukrainian context, it proposes that employers and employees participate on a parity basis and make unanimous decisions, which, if passed, have a voluntary execution status. In practice, employers may avoid the commission altogether, or rarely reach any agreement. The positive effect mostly comes down to individual rights. Yet, the new code provisions the powers of labour inspection (including inspections without prior notice), currently, the functioning relied on regulations of the government, Ministerial decrees. Second, the new code provisions that an employee can terminate labour if the wage was not paid in full for more than 7 days after due date period, or if working conditions pose a threat to health or life of an employee. Third, it provides new regulation on the remuneration of overtime work. An employer can use unpaid overtime labour only once per month. If overtime labour is used more than once per month, the employee gets double the remuneration for that period. Fourth, civil contracts get equated to labour contracts. Among other things, the new labour code provisions minimum wage calculation without consideration for bonuses and overpays, extended vacation period (28 days instead of 24). The proposal extends parenthood labour regulations to men and provisions additional probation period and firing regulations (priority for job preservation, exceptions from probation period). Lastly, the project provisions more severe liability for wage

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<sup>69</sup> “Zagrozy priynatiia trudovogo kodeksu.” Experts suggest that refusal of an employee in practice may mean getting fired.

<sup>70</sup>Ibid.

<sup>71</sup> Hence, conditions of employment may not be disclosed to TU.

<sup>72</sup> While it did not get excluded from the project for the 2nd reading, MPs can propose an amendment in parliament during the 2nd reading and remove the provision.

arrears – an employer has to pay employee percentage from the wage according to the central bank's discount rate for every day of arrear with correction for inflation index.

The national trade unions are divided in their **attitude towards the Labour Code proposal**. FPU supports the new labour code emphasizing the positive changes related to the regulation of probation period, vacations, overtime remuneration, wage arrears and so on.<sup>73</sup> After submitting 112 proposition to the working group FPU got partially or fully approved about 78 propositions to the new labour code project.<sup>74</sup> Given the results of commenting the TU acknowledges the labour code is not flawless, but the trade union recognizes it as appropriate for regulating the contemporary labour market and encouraging formal employment. FPU argues the new code extends workers' rights and complies with ILO Conventions and the European Social Charter. Currently (July 2019), the TU awaits the second reading and promises to launch protest actions if any of their propositions get cut out. KVPU has the opposite view, the organization mainly emphasizes the negative sides of the new labour code.<sup>75</sup> It argues that many of the provisions on firing initiative of an employer, excluding minority TUs from collective bargaining and consultations, labour disputes, legalize the practical violations which exist under the labour code in force. Adding to that, KVPU emphasizes that the new code's provisions are open to legal interpretation which provides more opportunities for employers to mislead the staff. Lastly, KVPU puts special attention to the context – it argues that persistence of corrupt courts, shrinking advocacy on behalf of TUs are going to set back any positive changes if the new labour code gets adopted.

### **Proposed revision to labour legislation in December 2019**

In December 2019 the Cabinet of Ministers of Ukraine approved the draft Law "On labor," and the next day it was submitted to the parliament under No. 2708. December 27th, another draft law was also registered, No. 2681 "On amending the law on trade unions". Both proposals sparked discussions and protests on the side of trade unions and other CSOs dealing with labour rights.

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<sup>73</sup> Saenko, "Trudovyi kodeks i profspilku"; "Polozhennya proektu Trudovoho kodeksu Ukrayiny ta yoho vidminnosti vid KZpP Ukrayiny."

<sup>74</sup> Yet it is unclear which propositions were accepted and which rejected, about 78 out of 112 edits were partially or fully accepted.

<sup>75</sup> "KVPU Applied to the International Organizations on the Draft Labor Code of Ukraine."

Based on available resources we provide a list of the provisions which aim to change the current legislation concerning trade unions. Please note that the list is not exhausting and represents only the most discussed provisions which will affect trade unions. We offer an analysis of the proposed provisions in the perspective of changing trade unions power resources.

Table 4. Analysis of the proposed changes to labour legislation from December 2019 and its impact on trade unions

<b>Proposed changes to the labour law</b>	<b>Impact of power resources of the trade unions</b>
The draft states that a <b>union may be formed by no less than 10 people</b> , and there can be <b>no more than two local trade union chapters at each enterprise</b> .	Direct violation of ILO 87 convention on freedom of association
Proposed law <b>prohibits students from forming trade unions</b> at universities.	This might weaken organization power resource as trade unions often recruit students (in our interviews mostly education and healthcare TUs confirmed this practice)
<b>The employer no longer transfers union dues via an accounting department</b> - this will make it impossible to collect dues at large enterprises.	This might have serious impact on TU organizational power resources and their financial capacities
<b>The employer is released of the duty to pay social payments to the union for cultural and other types of work</b>	This change might have a positive but also a negative effect on organizing. Trade unions might lose members when they cannot provide social activities (weakening organizational power resource). But on the other hand, they may gain members if social and cultural activities are provided only to members, financed by membership fees. The positive effect, however, might not occur if they fail to collect membership fees without employer's involvement (as suggested in the previous point).
<b>Particular categories of employees</b> (managers, other leading staff - although these categories are not defined in Ukrainian law) <b>are excluded from the collective bargaining process</b> .	This will contribute to a dualization of the working conditions at the workplace. Weakening organizational power resource, decreasing bargaining coverage.
<b>The draft law also introduces the notion of "control commissions"</b> that may observe and control the union's activity, and that may include non-union members.	Potential negative impact on trade unions institutional power resource.
According to the new draft law trade unions lose monopoly and any competitive edge in collective bargaining. Besides the fact that	Serious harm in the institutional and structural power resources of the trade unions.

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the draft law limits the number of trade unions per enterprise, it provisions that **not only trade unions can sign collective and sectoral agreements.**

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The draft law also provisions that **existing collective agreements extend to new employees but for no longer than for one year since** the draft law takes effect.

Negative effect on collective bargaining coverage rates as employers often avoid CB.

According to our interviews, some (if not many) trade unions hesitate to sign new sectoral and collective agreements because they are rarely successful in getting additional benefits. At the same, time the current law provisions that a previous collective agreement is by default renewed if a new one has not been signed.

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Trade unions no longer have the right to give or withdraw consent to the dismissal of an employee, or to the imposition of a reprimand upon a union member.

Weakening trade unions organizational power, as their abilities to protect workers and members diminish.

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The draft law also states that **all union property** that belongs to them, and that came into their possession before 1991, **should be transferred to the state.**

Decreasing financial resources of the trade union might affect mostly their organizational resources.

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The draft law is to **encourage official/formal employment** (by extending types of employment).

Even though new types of contracts (outside standard employment relationship) might contribute to labour market dualization, compared to the current situation of spreading non-formal employment, it might encourage trade unions to better protect those workers, enhancing their organizational and structural power resources

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The **labor inspection and its functions get regulated by law** (currently regulated by acts and decrees).

A functioning labour inspection is an important part of labour rights protection, thus if functioning well it may help also trade unions to be more efficient in employee's protection, enhancing their organizational and institutional power resources.

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The **draft law encourages pre-trial labor dispute resolution** with the help of the National Mediation and Reconciliation Service by reducing court trial fees if mediation was firstly tried.

Similarly, to the previous point, this might encourage court appeals, an important and not often used institution for the protection of employee's rights.

Enhancing TU institutional and organizational power resources.

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Source: own compilation

According to trade unions representatives, none of the trade union organizations were involved in drafting the law. Policy dialogue and expert consultations are missing. Trade unions' main demand is that the new draft law will align with ILO conventions and the European Social Charter and related regulations. According to trade unions, the proposed law will erode workers' protection and significantly decrease trade union competencies. As our analysis of some of the proposed measures shows (Table 4), the majority of the provisions might contribute to decreasing trade unions' ability to protect workers and will weaken their organizational and institutional resources.

The reaction of trade unions on the announced legislative changes was twofold. First, they embarked on mobilization of their members, organizing rallies, protest meetings, but also roadblocking (for instance blocking the road to Poland as symbolism to blocking the road to the EU on January 23, 2020). Second, despite usual tensions between the largest union confederations, trade union representatives from these confederations jointly appealed to the international organizations where they are affiliated to create pressure on the Ukrainian government from abroad. Representatives of two confederations and two sectoral unions (public workers and construction workers) visited the International Trade Union House in Brussels in January 2020 and sought support for their claims from European and international trade union organizations including ETUC and ITUC. During the debates, they criticized the provisions that would allow firing employees without TU consultation, as well as the possibility to fire employee on the ground of 'losing trust', the increase in short term contracts and trade union members impossibility to attend training during working hours. They called for action by ETUC, ITUC and other large EU-level sectoral union federations by at least writing support letters or taking other measures, e.g. investigating the alignment of the proposed legislation with international standards set by the ILO. Interestingly, interaction with the EUD related to trade union dissatisfaction with the legislative proposals was not mentioned by the union representatives visiting Brussels. Rather, their visit gave an impression they seek support directly at Brussels-level, including the European Commission DGs and EU-level trade union organizations.<sup>76</sup>

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<sup>76</sup> Source: observations of Marta Kahancova, CELSI's project coordinator of the EaP Mapping studies, upon her participation in the discussion with the Ukrainian trade union delegation in Brussels, January 2020.

Further developments in the draft legislation and the influence of trade unions therein will be closely followed by the ILO. We recommend to the EU Delegation in Ukraine to also follow this process and possibly establish a dialogue with representative trade unions to discuss the key legislative changes and how the EUD voice the EU's claims vis-à-vis this legislation toward the Ukrainian government. In the light of EU's fundamental values in labour rights and social dialogue, derived from the European Social Charter, the proposed legislation should also be analyzed by the EUD experts and the EUD is encouraged to discuss the justification of these changes with the Ukrainian government.

#### **4. Political influence of trade unions and professional associations**

In the 2000s and early 2010s, FPU mostly succeeded in forging alliances with notorious undemocratic forces, like the presidents Kuchma and Yanukovich. Conversely, it was more politically independent during Yushchenko in 2005-2010. Former FPU president, Yuriy Kyluk, who remained loyal to Yanukovich during the anti-government protests in 2013-2014 resigned shortly after the change of power. The new FPU leadership is more cautious with coalition-building and it refrains from allying with a political force in 2014-2019.<sup>77</sup> Since 2014 FPU attempts lobbying in the legislature by addressing multiple fractions of the majority coalition – Petro Poroshenko Block, Batkivschyna (Fatherland) and Samopomich (Self Reliance).

Since the parliament of the 8th Convocation (2014-2019) was concerned with macroeconomic stabilization, optimizing spending and putting a ceiling on budget deficits, the activism of TU representatives in the field of social policy had strict limitations. To deliver its messages on a need for higher social standards and increase in public spending, FPU addressed not only the MPs but more broadly the parliamentary and ministerial committees. Much of the activism was unsuccessful. For example, the government doubled the statutory minimum wage for 2017 (from 1600 to 3200 UAH) but the minimum wage for public workers is still anchored to a

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<sup>77</sup> It is likely that happened because of political pressure and some positive incentives (e. g., regulation of public utility tariffs). During more competitive episodes of Ukrainian politics, like in 2004-2009 or 2014 and onwards FPU is more politically independent.

deprecated minimum subsistence level. FPU pointed out that in 2016, the Ministry of Social Policy calculated that the real subsistence minimum for 2016 was already the amount of the statutory minimum wage for 2017.<sup>78</sup> As the public sector still undergoes optimization reforms and the government continues to prioritize spending on security and infrastructure it is unlikely that minimum wage in the public sector gets elevated to private sector minimum wage.<sup>79</sup>

The outcomes of the 2019 presidential and parliamentary elections are unlikely to strengthen the lobbying capacities. The trade unions have very limited ability to influence public opinion and overall face low expectations from Ukrainians, thus the political cost of ignoring them is minimal. The new president Volodymyr Zelenskiy did not contact the trade unions. The parties that have a chance to enter the new parliament are not likely to establish a stronger connection with the trade unions than it was in the parliament of 8th Convocation (2014-2019). Yet, FPU tried to make their bets more recently. During the 2019 presidential campaign, FPU unofficially approved social and industrial development program of the *Batkivschyna* party leader and a candidate Yulia Tymoshenko. It is likely that FPU did so, not because of the program, experts suggest that politically all the candidates were on the leftist spectrum.<sup>80</sup> Tymoshenko was the only candidate who communicated with trade unions and had chances of winning. Adding to that, Tymoshenko's fraction (19 seats) had a history of cooperation, in 2015 FPU signed a memorandum with the fraction, which, however, had little effect on lobbying. Before the snap parliamentary election scheduled for July 2019, FPU did not officially voice any political preference. Judging from the previous FPU claims it is likely to continue its lobbying attempts by addressing multiple parties, government cabinets, and committees.<sup>81</sup>

According to experts, the new 2019-2023 parliament is likely to have the same number of agrarian lobbyists. The parties that have chances to enter the parliament have about 7 agrarian lobbyists, whereas the MPs from the agrarian parliamentary committee are mostly running at single-member constituencies and are likely to be re-elected. Currently, the Association of Farmers and Landowners informally supports *Batkivschyna* party and Yulia Tymoshenko as it

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<sup>78</sup> "Aktual'nyy Komentar. Deputaty 'Zdaly' Minimal'nu Zarplatu." The real subsistence minimum calculated by the ministry still includes outdated list of goods and services. For example, there is no Internet or mobile phone on the list.

<sup>79</sup> International Monetary Fund. European Dept., "Ukraine." According to the government's letters to the IMF.

<sup>80</sup> Gordoni et al., "Mizh Chavesom i Merkel': yaka politychna ideolohiya u maybutn'oho prezydenta Ukrayiny. Doslidzhennya." The exclusion is Petro Poroshenko. Yet one has to consider the issue of low institutionalization of Ukrainian politicians and political parties – it remains a question whether that translates into policies. For example, during the 2019 presidential election campaign, the winning candidate Zelenskiy claimed that he would terminate cooperation with IMF. Yet, later Zelenskiy started to deny accuracy of the claims.

<sup>81</sup> "Zasidannia presidii FPU."



stands for the support of small and medium agrarians – preferential VAT regime, progressive land tax, and continuing land-sales moratorium.<sup>82</sup>

The Association of Farmers and Landowners, for the whole history of its existence successfully lobbied for land-sales moratorium. On January 18, 2001, the Parliament adopted law 2242-III, which established that the owners of the land shares cannot sell, present or alienate the land plots in any other ways; however, the lands can be bequeathed or sold for the state and public needs. Since 1991 the moratorium was extended 10 times and as of 2019 it still stands. The association argues that opening of the land-sales under conditions of the persisting corruption is likely to be misused by oligarchs to concentrate the land ownership. While the moratorium puts the association in conflict with other stakeholders, like big agricultural businesses, in practice, the status quo seems to satisfy the stakeholders as at least part of them already uses loopholes that allow them to manage the lands.

Again, the farmers endorse the Tymoshenko's party because it has the highest ratings among the parties who support the land moratorium. Otherwise, the supporters of the policies are less likely to preserve their lobbying powers – the fractions that are likely to form the next majority coalition support sales of the agricultural lands.

#### **4.1. The relationship between trade unions/professional associations and political parties**

Overall, trade unions actively engage in the debates on socio-political issues. Apart from the previously mentioned forms of conventional lobbying activism, FPU, KVPU, and other smaller trade unions actively use protest tactics. In 2014-2019 the trade unions mobilized their members to protest public utility tariff raises, public sector reforms, land reform, wage arrears, and other mainly socio-economic issues. Some issues, like wage increases and public utility tariffs, facilitated coalitions among FPU, KVPU and other trade unions. As a sum of all the lobbying activism, FPU claims the following concessions: increase of minimum wages and pensions, an increase of subsistence minimum standard, government action on the development of national business and manufacturing strategy, government action on the creation of a special

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<sup>82</sup>*Ukrainskomu Fermerstvu 30 Let.*

fund for wage arrears. Still, one has a right to doubt the primary effect of the TU activism on concessions. First, many of the concessions suffer from partial or poor implementation. For example, that is the case with industrial or agricultural policy strategies. Other concessions, like wage increases, cannot be attributed to TU activities let alone. It can be pointed out that the substantial concessions materialized after 2016 as the economy started to grow and the next elections started to approach. Adding to that FPU still points out that it did not reach satisfactory concessions regarding wage arrears, public utility prices, list of occupations that have pension privileges because of harmful working conditions, student scholarship system cuts, medical reform. Thus, FPU argues that it should continue to supervise the issues and engage in lobbying activism.<sup>83</sup>

Farmers, landowners and agrarian company lobbyists themselves did not have trouble entering parliament, agrarian associations had strong representation in the 2000s and 2010s. They managed to lobby for long term state support projects for farmers and agrarians. For instance, preferential VAT regime, a program of village support for 2007-2015, fund for the support of agricultural households. In 2014-2019 the majority coalition had 30 MP representatives of small, medium and large agrarians who participated in the committee on agrarian policies and land relations.

At least officially, the presence of lobbyists for the small, middle and big agricultural businesses did not result in conflicts recently, as the agrarian associations declare that they are for a multifaceted approach. For example, that was a position of Ukrainian Agrarian Confederation. The 2014 parliamentary coalition agreement and the 2016 government strategy provisioned program for reforms of agriculture that encourages exports, small and medium landowners and farmer enterprises, sustainable rural development. According to experts, only 30 percent of the coalition agreement program is implemented because of volatility within the parliamentary fractions.<sup>84</sup> Farmers argue that removal of the preferential VAT tax regime in 2017 hit hard the farmers and its alternative is poorly suited for the needs of the small and medium landowners. The farmers argue that the new direct support program that amounts to 1 billion UAH benefited large businesses, whereas the farmers were not able to fully utilize the

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<sup>83</sup> “Postanova № P-20-2 «Pro Pozytseyu i Uchast’ Profspilok u Vyborakh Do Verkhovnoyi Rady Ukrayiny».”

<sup>84</sup> “Koalitsiyina Bezporadnist’ Kabminu, Rady Ta Prezidenta – Uhoda v Chastyni APK Vykonana Lyshe Na 30%.”

funds. Formerly, the agrarians unsuccessfully protested the removal of VAT regime, they engaged in all-Ukrainian roadblocks – their most notable protest tactics.

## **4.2 Political pressures on trade unions and professional associations**

Trade unions also report instances of political pressure. First, trade unions point out recently adopted and proposed legislation that interferes with the activity of trade unions provisioned by the constitution, legislation in force and international conventions. FPU highlights that between 2014-2019, some of the legislative initiatives on trade union rights were considered without consultation with trade unions. For example, the bill "On State Registration of Legal Entities and Natural Persons - Entrepreneurs".<sup>85</sup> Adding to that, in 2015 and 2018 KVPU reported cases of direct pressure from the State Security Bureau (SBU), such as surveillance and investigations of trade union activities.<sup>86</sup> Finally, FPU continuously reports about attempts of trade union property confiscation by the state.

## **5. Finances and funding of trade unions and professional associations**

Ukrainian trade unions have three financial sources. The first and most important is membership fees. The second source owes to Ukrainian labour code that provisions that employers contribute to trade unions that concluded enterprise-level collective agreements no less than 0.3 percent of wage funds for cultural, social and recreational activities. In practice the percent of the contributions is rarely higher, often employers do not contribute even the stipulated percentage<sup>87</sup>. This regulation to some extent fuels the emergence of corruption in the trade union landscape, where some quasi-union organizations were established only to benefit from this source of income without fulfilling the true role of trade unions<sup>88</sup>. Finally, the last financial source is exclusive to FPU, that is dividends from its companies.

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<sup>85</sup> "Postanova №R-4-4 'Pro Nastup Na Prava Profspilok, u Tomu Chysli Maynovi.'"

<sup>86</sup> "Survey"; "KVPU Calls to Stop Pressure on Independent Trade Unions"; "Secret Police Order Bosses to Spy on the Ukrainian Unions."

<sup>87</sup> Collective agreements can set a higher percentage.

<sup>88</sup> Meinardu, M. (2019): Gewerkschaftsmonitor in Ukraine [Trade unions monitor in Ukraine]. Fridrich Ebert Stiftung. FES Briefing.

## 5.1 Sources of funding of trade unions and professional associations

### Membership fees

FPU, KVPU and most of other TUs charge membership fees that amount to no less than 1 percent of the monthly salary. The trade unions have similar approaches to the distribution of membership fees between the vertical branches. Most of the membership fees remain at the primary level. For example, KVPU affiliate trade unions donate 15 percent from the total contributions to the centre.<sup>89</sup> The statutes of some FPU affiliates do not mention exact percentages but the principle is the same – about 50 to 65 percent of funds remain at the primary level, the rest is allocated to upper levels – territorial and national. FPU specifies the percentage of TU funds that are distributed to the centre – all Ukrainian TU affiliates contribute 0.7 percent from total membership fees, territorial trade unions contribute 0.05 UAH per member. The latest publicly released report of FPU from 2016 states that the provisions do not work in practice. The FPU budget is decreasing from 39 million UAH (three point six million EUR) in 2011 to 18 million UAH in 2015 (seven hundred thousand EUR). According to the report, in 2015 FPU planned to receive 7.3 million UAH (two hundred eighty-seven thousand EUR) in membership contributions but instead received only 48 percent – 3.7 million UAH (one hundred forty-five thousand EUR). According to 2017 interim report, the situation with membership fees did not improve.<sup>90</sup>

Professional associations in Ukraine also mainly rely on membership fees. However, the regulation concerning fees collected by professional associations is highly decentralized and dispersed, which is in strong contrast with the standardized membership fee rules applicable to trade unions. For example, in the case of the Association of Farmers and Landowners' membership fee starts at 2 UAH per Ha of land owned per year.<sup>91</sup> According to the statute, the membership fees can be used only for the statutory activity, including staff salaries. Other professional associations may have other and highly distinct regulations regarding membership fees and activities, for which the collected fees can be used.

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<sup>89</sup> Interview UA 3.

<sup>90</sup> “Postanova №7z-4 ‘Pro Zvit Kontrol’no-Reviziyanoi Komisiyi Federatsiyi Profspilok Ukrainy’”; “Informatsiya pro Diyal’nist’ Kontrol’no-Reviziyanoi Komisiyi FPU.”

<sup>91</sup> Interview UA 2.

### **Assets owned by trade unions and professional associations**

Adding to the membership fees, FPU has substantial revenues from its companies. The TU inherited property from the Soviet times, it has dividends from the companies Ukrprofzdravnytsa (92 percent of share capital) and Ukrproftur – hotels, tourism agencies, resort complexes, health resorts. In 2019 the Ukrprofzdravnytsa repaid to FPU dividends that amount to 16.2 million UAH (five hundred sixty-seven thousand EUR).<sup>92</sup> Recently the dividends were lower than projected – 101.3 percent in 2012, but 88.5 percent in 2015. That is because of loss of property due to the Ukrainian crisis 2014 and the reform of State social insurance funds. The State insurance fund reduced co-financing of Ukrprofzdravnytsa resorts since 2015. In some rare cases, other trade unions, like Trade Union of Railway and Transport Workers, also own estate – recreation complexes. Besides FPU, other trade unions do not own large properties. For example, KVPU does not have a property and relies on membership fees. In the 2000s, an agreement between KVPU and FPU allowed the former to use FPU offices, yet it broke down in the late 2000s. Allegedly, KVPU finances its office in Kyiv and the staff mostly from its membership fees.<sup>93</sup>

Compared to trade unions, **Ukrainian professional associations** do not own large assets and their income predominantly originates from membership fees. Most of the associations that were established during the Soviet times, i.e., the National Association of Journalists of Ukraine, National Writers' Union of Ukraine or the National Union of Artists inherited buildings and some state support and thus are in a more advantageous position in terms of assets. Some of them, including the National Union of Artists resort to using their buildings for business purposes, for instance, rent of hotel rooms or offices.

### **Financial independence**

Currently, FPU is not fully capable of achieving financial independence enough to properly implement all the advocacy activities. In the recent years, the FPU leadership suggested two solutions, the first is distribute more costs to the centre so that it manages spending, the second is to adjust spending on the lower levels (recommend quotas for primary expenses – lawyers, education activities, etc.). So far neither of the options met full support among the affiliates.

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<sup>92</sup> “Proekty Rishen’ z Pytan’, Vkluchenykh Do Poryadku Dennoho Zahal’nykh Zboriv, Zaproponovani Aktsioneram, Yaki Volodiyut’ Bil’sh Yak 5 Vidsotkamy Aktsiy Tovarystva.”

<sup>93</sup> Yet, some believe that KVPU received grants from international organizations for that purpose (Interview UA 7).

FPU acknowledges that the primary level trade unions often use the membership fees for payments to the trade union members, recreational activities which should be financed by the employers separately.<sup>94</sup> An assessment of financial independence of other trade unions, like KVPU, is less achievable. First, they do not publish the reports on revenues and spending. Second, they are likely to receive some assistance for the activities while not always explicitly accounting for that. Yet, it is worth considering that KVPU also has some hardships with financing its activities from the membership fees since coal mining workers experience wage arrears and the industry is contracting.

**In 2016 FPU reported that because of insufficient funds the number of lawyers, technical inspectors in 2011-2016 was decreasing 2 to 3 times, at the same time, the number of labour rights violations was rising.** Similarly, FPU could not allocate 5 percent of the budget for staff education, the actual spending is about 1-2 percent. Finally, the latest 2017 initiative of FPU – regional centres of legal aid, that if necessary, represent workers in courts, did not fully materialize for the same reasons – insufficient budgets, the reluctance of the primary TU organizations and the regional branches to aggregate necessary resources on the territorial level. By the end of 2018, there were only 5 working regional (oblast) centres out of 25 intended. According to FPU, they are reaching out to external donors for financial assistance.<sup>95</sup>

## **6. Human resources of trade unions and professional associations**

After 2013-2014 mass political mobilization subsequent political, economic and social changes almost every trade union had to reconsider its attitudes. Since 2014 FPU started a round of reflections on its previous failures to develop capacities necessary for advocacy on workers' behalf. FPU adopted 2016-2021 strategy "European choice" which among other things aims to enhance the advocacy capacities, retain the existing members, recruit younger generations and women to its staff, increase media presence and the private sector coverage.

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<sup>94</sup> “Postanova №7z-4 ‘Pro Zvit Kontrol’no-Reviziynoyi Komisiyi Federatsiyi Profspilok Ukrayiny’”; “Postanova №R-4-4 ‘Pro Nastup Na Prava Profspilok, u Tomu Chysli Maynovi’”; “Proekty Rishen’ z Pytan’, Vkluyuchenykh Do Poryadku Dennoho Zahal’nykh Zboriv, Zaproponovani Aktsioneram, Yaki Volodiyut’ Bil’sh Yak 5 Vidsotkamy Aktsiy Tovarystva.”

<sup>95</sup> Ibid.

While the central bodies of FPU have a conscious attitude towards trade unionism and strive to foster the advocacy-based approach, in practice, FPU affiliate trade unions lack the discipline of execution. The most notable **differences in the attitudes** towards trade unionism and capacities within FPU are not among the sectors but between the national centre and the lower level affiliate union branches. According to the 2018 report, over the recent years some affiliate organizations did not submit reports about conducted advocacy activities and registered labour law violations. For example, **in 2017 only 37 out of 69 regional and sectoral affiliates send reports about their advocacy activities, 9 out of which claimed no violations.** Adding to that, most of the reports did not provide a detailed description of the issues they dealt with. FPU considers that the non-reporting indicates the absence of proper activism and the fact that the TUs conceal their issues.<sup>96</sup> Moreover, FPU points out that untimely feedback makes them miss the opportunities to use international leverage over the violators. However, over recent years, FPU increased the number of civic labour inspectors (from 5,876 in 2017 to 6,478 in 2018) and developed standards for their **training. Besides the training of the civic labour inspectors, FPU also provides the staff and members with negotiation and bargaining skills training, labour rights awareness programs, a school for labour organizing, a special school for young trade union leaders.** Some of the programs feature the state partners, like the National Service for Mediation and Reconciliation (NSPP), or international partners, like ILO, Friedrich Ebert Foundation, Solidarity Centre.<sup>97</sup>

KVPU is known for activist attitude towards trade unionism but it provides less information about current capacities. KVPU's capacities are likely to vary across sectors. The partial evidence is that the website of KVPU and its media outlets cover primarily energy sector and occasionally medical and railway worker TUs. While KVPU thrives mostly because of its stake in the energy sector one can expect a decrease of the staff due to the coal mining sector contraction. Reports from the recent strategy building sessions of NGPU, an affiliate TU, suggest that the union recognizes the threat and considers expanding to other energy sector enterprises.<sup>98</sup> Adding to that they emphasize a need to increase youth and women engagement. For that purpose, KVPU provides a similar to FPU range of training activities, except the training for civic labour inspectors.

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<sup>96</sup> Ibid.

<sup>97</sup> “Postanova №R-4-4 ‘Pro Nastup Na Prava Profspilok, u Tomu Chysli Maynovi.’”

<sup>98</sup> “Stratehiya Rozvytku Nezalezhnoyi Profspilky Hirnykiv Ukrayiny Na 2016-2021 Roky.”

The capacities of agriculture professional associations vary depending on the scale, one can expect stronger capacities and skill development among large business association and youth association. Conversely, one is to expect less developed skills among small and medium farmers. Interviewed representative of Association of Farmers and Private Landowners of Ukraine argued that its members are more directly involved in production, hence have less time for advocacy activities. The association has staff lawyers but at the same time the head of association points out that often the local farmers must protect themselves against unlawful land appropriation – harassment, including threats of physical violence. **To protect themselves, the local farmers organize armed self-defence units.** The head of association argues that the regions that have organized the self-defence have fewer violations.<sup>99</sup>

## 7. International relations

The contents and intensity of cooperation with Ukrainian trade unions vary depending on their national recognition and visibility. Two of Ukrainian national trade union centres FPU and KVPU have a well-established connection to international trade union organizations. The two trade unions are members of International trade union confederation (ITUC). FPU and KVPU affiliates usually take part in international sectoral trade union organizations, for instance, IndustriALL (coal mining, steel, chemical industry, etc.), IUF (food and farm and hotel workers). Adding to that the trade unions have contacts and cooperation with ETUC, and EU national trade union organizations, like Czech, Slovak, Polish, Hungarian, French, Dutch, Swedish trade unions. Due to the conflict with Russia, Ukrainian trade unions no longer participate in CIS international TU organization – General Confederation of Trade Unions (GCTU). Ukrainian trade unions have a rich history of cooperation with ILO and more recently with EU, primarily EU-Ukraine Association body – The EU-Ukraine Civil Society Platform. Lastly, Ukrainian trade unions cooperate with foreign donors and political foundations – US founded Solidarity centre “Labour initiatives” and the German Friedrich Ebert Foundation or Rosa Luxemburg Foundation. The donors sponsor events and programs on topics such as youth engagement, negotiation skills training, legislative changes, dispute resolution, gender equality, OSH, etc. Yet, since the international organizations cooperate with the most visible

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<sup>99</sup> Interview UA 2.



national affiliates, they often dismiss smaller trade unions. **For example, our informants from smaller trade unions mention that FPU and KVPU block their participation in international organizations and respective projects and events.**<sup>100</sup>

Since FPU and KVPU are the most visible on the national level, ITUC and most of the foreign national organizations also tend to cooperate with the two trade unions. A notable example of **bilateral cooperation** emerged in 2015-2017 – the Dutch trade union 3F provided FPU with training in organizing (management), labour rights. In 2018-2019 the Dutch trade unions LO/FTF and 3F also assessed FPU's and KVPU's needs to formulate recommendations for enhancing the institutional capacities as a part of Dutch government-funded ILO project “Inclusive Labour Markets for job creation in Ukraine 2017-2022”. The project concentrates on labour market policies and governance, tripartite dialogue and collective bargaining, creation of favourable conditions for sustainable development of enterprises and entrepreneurship. The cooperation with Visegrad group trade unions deals with the labour rights of Ukrainian workers abroad. For example, FPU has contacts with Intersectoral Trade Union of Ukrainian Workers in Poland which is an affiliate of Polish OPZZ.

In addition to the Dutch funded project, ILO also runs three other projects. The first is the “Decent Work Country program 2016-2019”. The second is the EU funded project that contributes to the implementation of the EU-Ukraine Association Agreement “Enhancing the Labour Administration Capacity to Improve Working Conditions and Tackle Undeclared Work” (2017-2019). The third is the “ILO project to improve safety and health in the mining industry of Ukraine” (2017-2020).

Next, since 2015, Ukrainian trade unions participate in the EU-Ukraine Civil Society Platform (CSP) – a joint advisory body of Ukrainian civil society (employers, trade unions, and other CSOs) and European Economic and Social Committee (EESC) provisioned by the EU-Ukraine Association Agreement. Chapter 21 in the Association agreement relates to labour relations, trade and sustainable development, hence involves TU representatives. The head of FPU trade union of builders and industry of building materials, Vasyl Andreev, coordinates the EU-Ukraine CSP working group on “Employment, social policy, equal opportunities and health”.

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<sup>100</sup> Interview UA 7; Interview UA 9.

Interestingly, Mr. Andreev was among the Ukrainian delegation of trade unions that came to seek support at the EU-level and international trade unions in Brussels in January 2020 in Brussels. Based on the presentations/discussions among Ukrainian and European trade unionists on this occasion, the role of the EU-Ukraine Civil Society Platform was not at all mentioned. Based on direct participation in this meeting, we conclude that the Ukrainian unions do not find the CSP an important platform for seeking EU support by trade unions. Instead, if seeking EU support, the unions directly approach Brussels-based EU stakeholders. This also substantiates claims by our informants who participate in the platform and state the social issues are low priority agenda for the platform. (Interview 7)

Agricultural professional associations of farmers who received their land during the restructuring of collective lands, like the Association of Farmers and Landowners of Ukraine, currently do not list any international partners. Still, international programs also actively involve the Ukrainian Association of Farmers and Landowners into the debates about the direction of Ukrainian land reform and land market. Ministry of Agrarian Policy and Food of Ukraine provides a list of International Technical Assistance projects that includes the Government of Germany, EU, USAID.<sup>101</sup> One of the recent USAID projects – AgroInvest project 2011-2016 among other things aimed to increase the availability of funds to small and medium farmers. Ukrainian farmers also have a history of cooperation with the EU through projects of local development. Many of the international contacts involve agricultural NGOs rather than professional associations. For instance, EU-Ukraine CSP working group on economic cooperation, free trade area, cross-border cooperation includes two regional agricultural chambers which have the status of a CSO and NGOs like Agromegapolis, Ukrainian Rural Development Network. The organizations provide training and advisory services to the farmers. Ukrainian Association of Young Farmers has a history of cooperation with the international grant makers – Erasmus, USAID, Swedish International Development Cooperation Agency (SIDA), Horizon 2020, Canadian International Development Agency, European Bank for Reconstruction and Development (EBRD), COSME. Europe’s program for small and medium-sized enterprises.

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<sup>101</sup> “International Technical Assistance.”

## 8. Analytical summary

This section provides a structured analysis of the main findings of the mapping study using a resource-based analytical perspective on organizations. There are three interrelated sets of resources: *organizational*, *structural* and *institutional*, resources<sup>102</sup>. The organizational power stems from the ability to organize workers, structural power stems from the workers' position in the economy and institutional power of trade unions and professional associations is determined by the legislative norms that create the institutional framework for the operation of these organizations in a particular country (e.g. in case of trade unions - right to bargain, right to conclude a collective agreement, right to engage in policy dialogue based on distinguished representativeness criteria, or a right to strike). These resources allow trade unions and professional associations to articulate and advocate their agenda and facilitate their operation from various interrelated perspectives. Despite the fact that both unions and professional associations are membership-based civil society organizations, it is important to note that they differ in their core competencies, functions, and thus power resources:

1. **Trade unions' institutional resources are stronger when it comes to collective bargaining:** Trade unions are the only recognized actor representing workers in social dialogue and collective bargaining. Professional associations are not social partners and do not participate in social dialogue or collective bargaining. Instead, they engage in the professional development of their members and seek involvement in policy dialogue that influences regulations related to professional development.
2. Trade unions and employers' associations are the only organizations which are allowed to participate in **social dialogue** (from enterprise to national level) On the other hand, **civil dialogue** encompasses various types of organizations, including NGOs, professional associations and trade unions. Given the differences in the core competences of these organizations, it is likely that NGOs and PAs are more motivated to engage in national-level civil dialogue, while trade unions are extensively focused on social dialogue with employers and the state.
3. Trade unions are **membership-based** organizations. The number of members determines trade unions representativeness for participation in **social dialogue** (association power resource). Undoubtedly, the number of members of professional

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<sup>102</sup> Doellgast, V. L., Lillie, N., & Pulignano, V. (Eds.). (2018). *Reconstructing solidarity: Labour unions, precarious work, and the politics of institutional change in Europe*. Oxford University Press.

associations matters as well, but it does not determine their representativeness status vis-à-vis participation on any form of political/civil dialogue. In high contrast to these membership-based organizations, NGOs are interest based organizations without representing specific members or workers' groups, and their representativeness is not assessed based on membership criteria but rather based on their capacities and professional expertise.

Given the above-mentioned differences, it should be emphasized that various organizations being involved in the labour rights agenda need different approaches when it comes to the EUD's approach to cooperating with them and strengthening their power resources. In our analysis, we put a special emphasis on **strengthening the structural and organizational resources of trade unions as a necessary precondition for raising their interest in broader policy dialogue beyond the traditional bipartite and tripartite social dialogue**. We build on our experience with other post-socialist trade union movements, which similarly to the Ukrainian case, face membership decline and struggle to maintain a membership base as its core constituency and resource. As organizational power resources of trade unions in the post-socialist space diminish, they build their strength on other resources, mostly on the institutional resources, such as reliance on the legislation and legal stipulations. This places trade unions in a vulnerable position, because in order to influence legislative changes, they need to form political alliances with various other stakeholders, which further compromises their organizational resources (e.g. affiliation to particular political party may discourage workers from trade union membership)<sup>103</sup>.

Given the diversified landscape of organizations being involved in the labour rights agenda, we **stress the need to acknowledge their potential for mutual cooperation**. One of the findings from our missions was that these organizations have very limited cooperation with each other, which further fragments the scene of civil society actors, prevents a coordinated and systematic approach in defending labour rights and decreases the efficiency of the EU-Ukraine Civil Society Platform.

**The cooperation in our perspective encompasses various forms:**

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<sup>103</sup> Dörre, Klaus, Hajo Holst, and Oliver Nachtwey. "Organising-A strategic option for trade union renewal?." *International Journal of Action Research* 5, no. 1 (2009): 33-67.

- *cooperation among trade unions*: Trade union movement in Ukraine is fragmented and there is a continuous struggle between modern vs. traditional and between large vs. small trade unions. Their internal capacities are exhausted in the internal conflict instead of articulating their agenda and priorities to employers, the government, other unions and civil society organizations advocating labour rights.
- *cooperation between social partners*: Although we paid limited attention to employers' organizations in this study, our respondents pointed out a limited space for cooperation between representative trade unions and representative employers' associations and their parallel appeal to political representation instead.
- *cooperation with other labour rights organizations in the country* including PAs, NGOs and international organizations: Despite that the TUs might want to distinguish themselves from a close cooperation with activist NGOs, various form of networking and information sharing might improve their common leverage in protecting workers (for example, the cooperation of the Labour solidarity centre (NGO) with KVPU and FPU trade unions providing them training and legal services).
- *international cooperation*: International cooperation might improve organizational internal resources and enhance internal capacities when engage in international cooperation. Some of the trade unions in UA are involved in international cooperation which provides them additional source of power when it comes to addressing international level with domestic labour right regulations and application, but those are mostly the two big organizations (KVPU and FPU).

We first analyse the trade unions' current use of power resources (see Table 5). This exercise serves as an input to the second part of our analysis where we apply a SWOT analysis (see Table 6). Based on the two above-mentioned analysis, we formulate recommendations for **the EU Delegation** to better facilitate workers' rights protection through support to the local organizations in a sustainable manner.

**Table 5. Use of power resources – current situation**

<i>Power resource</i>	<i>Means</i>	<i>Current state</i>	<i>Suggestions for improvement</i>
<i>Associational power</i>	Membership recruitment	TUs do not have organizing strategies, traditional TUs often rely on "forced" recruitment among students, modern TUs recruit members at the workplace level	Enhancing TUs in recruitment techniques (incl. support for penetration techniques to non-unionized workplaces, especially in the private sector)

	Protest activities	Trade unions are still able to mobilize workers (many modern trade unions were engaged in the Maidan protests, agrarian TUs use roadblocking as a protest activity)  Also traditional trade unions partially supported – medics and teachers. Yet, as I mentioned earlier there are more recent examples of campaigns for socio-economic issues in which both modern and traditional TUs engage.	Support trade unions organizing capacities to increase their membership base
	Members' servicing activities	Traditional TUs have more resources to provide servicing in leisure time, but both modern and traditional TUs lack capacities in protecting members through legal means and legal advising	Enhancing capacities of TUs in legal protection (experts hiring and training)
	Regional structures	Only few branch trade unions have offices in the regions	Supporting development of regional structures of trade union organizations
<i>Structural power</i>	Collective bargaining	TUs bargain collectively; modern small trade unions articulate the issue of representativity at the national level, traditional articulate a need to improve negotiation techniques and information access	Enhancing TUs capacities in bargaining techniques and in analytical skills (experts hiring and training)  Support in capacity building should be open to any recognized representative trade union  Smaller trade unions should have access to materials that could enhance their capacities (any project outcomes supported by the international organizations should be disseminated among TUs and PAs)
	Understanding structural specificities of the sector/profession		Enhancing good practices, establishing dialogues with other PAs and CSOs based on sector/profession/ common ground
<i>Institutional power</i>	Labour rights legislation	Low labour law enforcement which results in a low protection of workers  Decreasing legal capacities of the trade unions	Enhancing TUs capacities to ensure up-to-date information about labour legislation  Ensure better cooperation with Mediation and Reconciliation service centre and labour inspection
	Mediation and reconciliation centre	The service is currently underfinanced	Enhancing internal capacities to make this institution respectful and independent
	Tripartite body	Questioned representativity criteria application and control	All trade unions that are claimed representative because meeting representativeness criteria should take part in political dialogue on enhancing labour rights via tripartism
	Lobbying	Lobbying mostly through alliances with political parties	Enhancing TUs capacities in associational and structural powers to be independent from political parties

The next section develops a **SWOT analysis** of trade unions' and PAs' ability to advocate for labour rights in the country. Based on this analysis we **formulate recommendations** for their support and further involvement in the promotion of labour rights in Ukraine.

**Table 6. SWOT analysis**

<b>Strengths</b> <i>Characteristics of TUs/PAs/other CSOs that give them an advantage over others to be involved in civil society development, enhancing democracy and be involved in policy dialogue.</i>	<b>Weaknesses</b> <i>Characteristics of the TUs/PAs/other CSOs that give them disadvantage relative to others to be involved in civil society development, enhancing democracy and be involved in policy dialogue</i>
<ul style="list-style-type: none"> <li>• High membership in the public sector.</li> <li>• A vivid grassroots trade unions at workplaces or at industry/region levels</li> <li>• Ability to mobilize workers (both modern and traditional trade unions)</li> <li>• Members servicing (esp. traditional trade unions provide members with leisure activities, or legal advice).</li> <li>• Modern trade unions focused on advocacy, active approach in advocating for workers' rights</li> <li>• Involvement in the discussions and reform plans with EUD (representative TUs)</li> <li>• Developed political ties (representative TUs)</li> <li>• Experience with international cooperation (all trade unions)</li> </ul>	<ul style="list-style-type: none"> <li>• Limited ability to establish trade unions in multinational companies (with some exceptions in food and automotive sectors)</li> <li>• Limited ability to formulate own agenda, trade unions put in reactive position</li> <li>• Corruption scandals discourage members from organizing</li> <li>• Lack of internal capacities, e.g. reported decrease in a number of employed lawyers in traditional trade unions</li> <li>• Majority of the PAs not concerned with labour rights of members, mostly focus on professional development of their members</li> <li>• Lack of regional structures; only few branch trade unions have offices in the regions (e.g. education TU or agriculture TU)</li> <li>• Low reliability of small TUs for international CSOs and resulting limited cooperation with such CSOs</li> <li>• Fragmented trade unions and limited cooperation among trade unions (5 representative TUs in tripartite body, even more at lower levels)</li> <li>• No cooperation between trade unions and professional associations despite common interest (e.g. in agriculture both TU and PA organizations declared a need to increase workers protection in the sector)</li> <li>• Limited cooperation with employers at the tripartite and regional level</li> <li>• Limited labour law enforcement (legal labour rights protection sometimes replaced by the activities of NGOs offering such a services)</li> </ul>
<b>Opportunities</b> <i>Elements in the environment that the TUs/PAs/other CSOs could exploit to its advantage in the future to</i>	<b>Threats</b> <i>Elements in the environment that could hamper hamper/be a barrier for TUs/PAs/other CSOs to be</i>

<i>be involved in civil society development, enhancing democracy and be involved in policy dialogue.</i>	<i>involved in development of the civil society, enhancing democracy and in policy dialogue.</i>
<ul style="list-style-type: none"> <li>• Enhancing the principles of internal democracy and enforcing obligations to the internal rules (e.g. increase reporting activities of affiliates)</li> <li>• Developing own agenda and active articulation of the agenda, enhancement of bottom-up articulation</li> <li>• Enhancing the role of mediation and reconciliation service in labour conflicts at the company and regional level</li> <li>• Enhancing internal capacities through members training</li> <li>• Support and enlarge internal staff dealing with legal and organizational issues</li> <li>• Closer cooperation of TUs with labour inspectorates and mediation and reconciliation service</li> <li>• Involvement of PAs in the dialogue about working conditions and labour rights</li> <li>• Closer cooperation of TUs and PAs with employers' organizations on specific topics (e.g. health and safety, labour market mismatch in skills and qualifications) – content-based cooperation</li> </ul>	<ul style="list-style-type: none"> <li>• Shrinking membership base and bargaining power due to liquidation/privatization of state-owned enterprises</li> <li>• Wage arrears and low labour law enforcement</li> <li>• Lack of bottom-up articulation in big TUs - "heavy structures" prevent effective member involvement</li> <li>• Unstable political situation prevents long term-cooperation</li> <li>• Corruption in the country affects also the trade unions (e.g. low control of financial activities of company level trade unions)</li> </ul>

## **9. Conclusions and recommendations for EU's possible support to trade unions, professional associations as civil society actors in the country**

### **Recommendations to the EU on effective involvement of trade unions, professional associations and other CSOs into policy dialogue and the agenda of labour rights in Ukraine**

#### **Short term strategies:**

- Benchmarking the EU's approach to cooperation with trade unions, PAs and other CSOs in Ukraine with the principles applicable to cooperation with these organizations in the current EU member states.



- **Using the EU practice as benchmark, strengthen the organizational capacities** of trade unions through targeted training and other educational/capacity building activities, providing trade union representatives access to dialogue on harmonizing the expectations of the EU with the core competences/priorities of trade unions. Also providing access to materials on EU priorities in labour issues and trade union involvement in policy dialogue, support in bargaining and negotiations, information access and legal protection. Supporting trade unions in organizing activities and campaigns (e.g. organizing campaign).
- With full understanding of the issue of representativity and reliability of small trade unions, some measures to involve smaller trade union organizations into political dialogue should be taken. We **propose capacity building activities** such as trainings, access to relevant materials, and access to consultations (e.g. legal advice) to be available also to smaller trade unions (recognized reliable trade unions – see the attached contact list). Although the EU does offer direct capacity building tools for trade unions in the EU member states without a competition-based access to grants where TUs compete with other CSOs, some extent of competition may help streamlining and selecting the alternative trade unions with true interests in trade unionism at the workplace, local, regional and national levels.
- Social partnership should be strengthened through **enhancing and motivating cooperation among social partners, including trade unions and employers' associations**. Competitive project schemes that would require a joint participation of both types of organizations may serve the purpose. Cooperation could start on topics that are least controversial and where the interests of social partners are most likely to meet, e.g., in health and safety provisions or food safety.
- **Support social partners' organization (including PAs/CSOs) in their effort to deliver common content-based solutions** through project-based schemes (e.g. food security, health and safety at the workplace)
- **Supporting sector-based cooperation:** Facilitation of cooperation among various actors within one sector (e.g. healthcare or agriculture) would help to delude mistrust among organizations and strengthen their voice for defending labour rights in the

sectors. This approach would involve also PAs, which are now not involved in the topics of labour rights (e.g. medical doctors, teachers or agriculture self-employed)

- **Possible areas of international cooperation** and support may concentrate on more intense training for regional trade union branches. Also, intense international tights of TUs and PAs might contribute to the transfer of good practices e.g. in campaigning and organizing techniques

#### **Long term strategies:**

- Enhancing the mediation and reconciliation service to be a reliable partner in social disputes might serve as a tool to facilitate law enforcement and help to improve working conditions (Currently the mediation and reconciliation service is considered underfinanced and understaffed according to our respondents).
- Supporting the role of Labour Inspectorates in enhancing labour rights (currently done by ILO in cooperation with TUs).

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## Annexes

### A. List of key trade unions, professional associations and other organisations

Sector	No.	ORGANISATION						
		Name (English)	Name (country language)	Type (TU/PA/other)	Main sector(s) of operation	Level of operation	Number of members (2018)	Number of staff/employees (2018)
PUBLIC SECTOR	1	State Employees' Union of Ukraine	Профспілка працівників державних установ України	TU	public administration	National, sectoral	208100	8
	2	Culture Workers' Union of Ukraine	Профспілка працівників культури України	TU	culture	National, sectoral	148900	6
	3	Education and Science Workers' Union of Ukraine	Профспілка працівників освіти і науки України	TU	education	National, sectoral	1530000	17
	4	Health Workers' Union of Ukraine	Профспілка працівників охорони здоров'я України	TU	health care	National, sectoral	747600	17
	5	Housing and Municipal, Local Industry, Consumer Services Workers' Union of Ukraine	Профспілка працівників житлово-комунального господарства, місцевої промисловості, побутового обслуговування населення України	TU	municipal	National, sectoral	197200	9
	6	Pension Fund Workers' Union of Ukraine	Профспілка працівників Пенсійного фонду України	TU	social services	National, sectoral	21000	2
	7	Social Sphere Workers' Union of Ukraine	Профспілка працівників соціальної сфери України	TU	social services	National, sectoral	61200	4
	8	Independent TU of miners of Ukraine	Незалежна профспілка гірників України	TU	mining	National, sectoral	n/a	5
	9	All-Ukrainian TU of servicemen, veterans and other people	Всеукраїнська профспілка військовослужбовців, ветеранів та інших осіб	TU	military	National, sectoral	n/a	n/a
	10	TU of workers of the National Academy of Sciences of Ukraine	Профспілка працівників Національної академії наук України	TU	science	sectoral	37258 (2011)	n/a
	11	TU Police of Ukraine	Профспілка атестованих	TU	police	sectoral	50000	n/a



		працівників органів внутрішніх справ						
12	TU of employees of The Armed Forces of Ukraine	Профспілка працівників Збройних Сил України	TU	The Armed Forces of Ukraine	sectoral	n/a	43	
13	All-Ukrainian TU of Employees of State Fiscal Service	Всеукраїнська професійна спілка працівників органів державної фінансової служби	TU	fiscal service	sectoral	26903	38	
14	TU of Customs Officers of Ukraine	Професійна спілка працівників митних органів України	TU	customs service	sectoral	n/a	n/a	
15	All-Ukrainian TU of Athletes, Employees of the Fields of Physical Culture and Sports, Youth Policy and National-Patriotic Education	Всеукраїнської профспілки спортсменів, працівників сфер фізичної культури і спорту, молодіжної політики та національно-патріотичного виховання	TU	sports	sectoral	n/a	n/a	
PRIVATE SECTOR	1	Aircraft Builders' Union of Ukraine	Профспілка авіабудівників в Україні	TU	aviation	National, sectoral	55000	10
	2	Aviation Workers' Union of Ukraine	Профспілка авіапрацівників України	TU	aviation	National, sectoral	18500	6
	3	Automobile and Agricultural Machine Building Workers' Union of Ukraine	Профспілка працівників автомобільного та сільськогосподарського машинобудування України	TU	heavy industry	National, sectoral	36500	4
	4	Road Transport and Road Economy Workers' Union of Ukraine	Профспілка працівників автомобільного транспорту та шляхового господарства України	TU	transport	National, sectoral	42200	6
	5	All-Ukrainian Lawyers' Union of Ukraine	Всеукраїнська профспілка адвокатів України	TU	law	National, sectoral	1400	1
	6	Agro-industrial Complex Workers' Union of Ukraine	Профспілка працівників агропромислового комплексу України	TU	agriculture	National, sectoral	400000	5
	7	Nuclear Energy and Industry Workers' Union of Ukraine	Профспілка працівників атомної енергетики та	TU	energy	National, sectoral	60500	33

		промисловості України					
8	Construction and Building Materials Industry Workers' Union of Ukraine	Профспілка працівників будівництва і промисловості будівельних матеріалів України	TU	construction	National, sectoral	60300	5
9	All-Ukrainian Union of Producers and Entrepreneurs	Всеукраїнська профспілка виробників в і підприємців	TU	SME	National, sectoral	3100	4
10	Coal Industry Workers' Union of Ukraine	Профспілка працівників вугільної промисловості України	TU	mining	National, sectoral	74600	11
11	Gas Facilities Workers' Union of Ukraine	Профспілка працівників газових господарств України	TU	energy	National, sectoral	45900	3
12	Geology, Geodesy and Cartography Workers' Union of Ukraine	Профспілка працівників геології, геодезії та картографії України	TU	geodesy	National, sectoral	10200	3
13	Energy and Electro-technical Industry Workers' Union of Ukraine	Профспілка працівників енергетики та електротехнічної промисловості України	TU	energy	National, sectoral	122500	8
14	Communications Workers' Union of Ukraine	Профспілка працівників зв'язку України	TU	communication	National, sectoral	78800	3,5
15	Innovative and Small Enterprises Workers' Union of Ukraine	Профспілка працівників інноваційних і малих підприємств України	TU	SME	National, sectoral	4000	3
16	Space and General Engineering Workers' Union of Ukraine	Профспілка працівників космічного та загального машинобудування України	TU	heavy industry	National, sectoral	24800	3,5
17	Forest Industries Workers' Union of Ukraine	Профспілка працівників лісових галузей України	TU	forestry	National, sectoral	10900	3
18	Forestry Workers' Union of Ukraine	Профспілка працівників лісового господарства України	TU	forestry	National, sectoral	68700	5
19	Machine Builders and Metalworkers' Union of Ukraine	Профспілка працівників машинобудування та металообробки України	TU	heavy industry	National, sectoral	79300	5
20	Machine Builders and Instrument	Профспілка машинобудів	TU	heavy industry	National, sectoral	10000	3,5

	Makers' Union of Ukraine	ників та приладобудівників України					
21	Metallurgical and Mining Industry Workers' Union of Ukraine	Профспілка трудящих металургійної і гірничодобувної промисловості України	TU	metallurgy	National, sectoral	289200	33
22	Youth Housing Complexes and Local Government Committees Workers' Union of Ukraine	Профспілка працівників молодіжних житлових комплексів та комітетів місцевого самоврядування України	TU	municipal	National, sectoral	1000	1
23	Sea Transport Workers' Union of Ukraine	Профспілка робітників морського транспорту України	TU	transport	National, sectoral	30600	17
24	Oil and Gas Industry Workers' Union of Ukraine	Профспілка працівників нафтової і газової промисловості України	TU	energy	National, sectoral	94600	8
25	Defence Industry Workers' Union of Ukraine	Профспілка працівників оборонної промисловості України	TU	heavy industry	National, sectoral	20900	3
26	Radio-electronics and Engineering Workers' Union of Ukraine	Профспілка працівників радіоелектроніки та машинобудування України	TU	heavy industry	National, sectoral	18900	4
27	Fishing Industry Workers' Union of Ukraine	Профспілка працівників рибного господарства України	TU	fishery	National, sectoral	18200	4
28	Ukrainian River Transport Workers' Union	Українська профспілка працівників річкового транспорту	TU	transport	National, sectoral	10000	5
29	Consumer Cooperatives Workers' Union of Ukraine	Профспілка працівників споживчої кооперації України	TU		National, sectoral	28300	4
30	Shipbuilding Workers' Union of Ukraine	Профспілка працівників суднобудування України	TU	heavy industry	National, sectoral	20800	4
31	Taxi Drivers' Union of Ukraine	Професійна спілка таксистів України	TU	transport	National, sectoral	8600	3
32	Textile and Light Industry Workers' Union of Ukraine	Профспілка працівників текстильної та легкої промисловості України	TU	light industry	National, sectoral	12700	2

33	All-Ukrainian Union of Workers and Entrepreneurs in Trade, Catering and Services	Всеукраїнська профспілка працівників і підприємців торгівлі, громадського харчування та послуг	TU	services	National, sectoral	40800	3
34	All-Ukrainian Independent Transport Workers' Union	Всеукраїнська незалежна профспілка працівників транспорту	TU	transport	National, sectoral	19700	7
35	Ukrainian Federation of Trade Union Organisations - Foreign Investments Enterprises, Partnerships, Organisations and Institutions Workers' Union of Ukraine	Українська федерація профспілкових організацій – профспілка працівників підприємств з іноземними інвестиціями, господарських товариств, організацій та установ	TU	SME	National, sectoral	3800	3
36	All-Ukrainian Union 'Football of Ukraine'	Всеукраїнська профспілка «Футбол України»	TU	sport	National, sectoral	1200	6
37	Chemical and Petrochemical Industries Workers' Union of Ukraine	Профспілка працівників хімічних та нафтохімічних галузей промисловості України	TU	chemistry	National, sectoral	59900	7
38	All-Ukrainian independent TU "Labour protection"	Всеукраїнська незалежна профспілка "Захист праці"	TU	trades, communications, media, bank, food industry etc.	National, sectoral	4000	n/a
39	TU of entrepreneurs and employees "Unity"	Професійна спілка підприємців та найманих працівників "Єдність"	TU	entrepreneurship	National, sectoral	n/a	n/a
40	TU of railwaymen and transport builders of Ukraine	Професійна спілка залізничників і транспортних будівельників в Україні	TU	railway and transport building	sectoral	341400	22
41	All-Ukrainian TU "Federation of Trade Unions of Aircraft Workers of Radar, Radio Navigation and Communications of Ukraine"	Всеукраїнська профспілка "Федерація профспілок авіапрацівників радіолокації, радіонавігації і зв'язку України"	TU	aircraft	sectoral	n/a	n/a
42	Independent sectoral TU of power engineering of Ukraine	Незалежна галузева професійна спілка енергетиків України	TU	power engineering	sectoral	63000	n/a

43	Free Trade Union of Machinist of Ukraine	Вільна профспілка машиністів України	TU	engineering	sectoral	n/a	n/a
44	All-Ukrainian TU "Ridna Zemlia" [Native Land]	Всеукраїнська профспілка "Рідна земля"	TU		sectoral	n/a	n/a
45	All-Ukrainian trade union "Stolitsya - Regiony"	Всеукраїнська професійна спілка «Столиця-Регіони»	TU	housing and municipal	sectoral	85500 (2017)	n/a
46	All-Ukrainian independent trade union of sports trainers, instructors-methodologists and professional athletes	Всеукраїнська незалежна профспілка спортивних тренерів, інструкторів-методистів та професійних спортсменів	TU	sports	sectoral	n/a	n/a
47	All-Ukrainian TU of Computer and Information Technology Employees	Всеукраїнська профспілка працівників сфери комп'ютерних та інформаційних технологій	TU	IT	sectoral	1394	n/a
48	TU Ukrainian Migrant / Labor Solidarity	Профспілка Український мігрант / Трудова солідарність	TU	almost all	national	n/a	n/a
49	Association of Farmers and Private Landowners of Ukraine	Асоціація фермерів та приватних землевласників України	Association	agriculture	sectoral	n/a	n/a
50	Federation of TU of Workers of Small and Average Enterprises of Ukraine	Федерація профспілок малого і середнього підприємництва	TU federation	entrepreneurship	national	n/a	n/a
51	Ukrainian Association of Young Farmers	Українська асоціація молодих фермерів	other /PA	agriculture	sectoral	n/a	n/a
52	Association "Wine-growers and Wine-makers of Ukraine"	Асоціація «Виноградари та винороби України»	PA	agriculture	sectoral	n/a	n/a
53	Federation of Trade Unions of Ukraine	Федерація профспілок України	TU confederation	almost all	national	4800000	74
54	Federation of Trade Unions of transport workers of Ukraine	Федерація професійних спілок транспортників України	TU confederation	transport	national	341400	23
55	Confederation of Free Trade Unions of Ukraine	Конфедерація Вільних Профспілок України	TU confederation	almost all	national	n/a	n/a
56	Union of All-Ukrainian autonomous trade unions (OVAP)	Об'єднання всеукраїнських автономних профспілок (ОВАП)	TU confederation	almost all	national	n/a	n/a

57	Federation of Marine TUs of Ukraine	Федерація морських професійних спілок України	TU federation	marine sphere	sectoral	24000	n/a
58	All-Ukrainian Union of Food Workers, Processing Industry and Allied Industries	Всеукраїнська профспілка працівників харчової, переробної промисловості та суміжних галузей	TU	food industry	sectoral	n/a	n/a
59	Free Trade Union Railwaymen of Ukraine	Вільна профспілка залізничників України	TU	railway	sectoral	n/a	n/a
60	All-Ukrainian Independent Trade Union "Trydiashchi" [Workers]	Всеукраїнська незалежна профспілка «Трудящі»	TU	unspecified	sectoral	n/a	n/a
61	Free Trade Union of Medical Workers of Ukraine	Вільна профспілка медичних працівників України	TU	healthcare	sectoral	n/a	n/a
62	All-Ukrainian Professional Union of Workers in the Field of Higher Education	Всеукраїнська професійна спілка працівників сфери вищої освіти	TU	education	sectoral	1807	n/a
63	Ukrainian Airline Pilots' Association	Всеукраїнська професійна спілка пілотів	TU	airlines	sectoral	n/a	n/a
64	Association of Livestock Owners of Ukraine	Асоціація тваринників України	PA	stockbreeding	national, sectoral	n/a	n/a
65	Agrarian Union of Ukraine	Аграрний союз України	PA	agriculture	national, sectoral	n/a	9
66	Meat Industry Association	Асоціація М'ясної галузі	Industry association	stockbreeding	sectoral	n/a	n/a
67	Ukrainian Fruit and Vegetable Association	Українська плодовоовочева асоціація	Industry association	agriculture	sectoral	n/a	4
68	Ukrainian Agrarian Confederation	Українська аграрна конфедерація	PA	agriculture	national	1000000	n/a

## B. List of interview and codes

No.	Name of the organisation (in English and the local language)	Type of organisation	Private/public
1.	Trade union "Labour solidarity"	TU	Public/private
2.	Association of Farmers and Private Landowners of Ukraine	PA	Private
3.	Confederation of Free Trade Unions of Ukraine (CFTU)	TU	Public/private
4.	ILO	International organization	Not applicable
5.	Federation of Trade Unions of Ukraine (FPU), agriculture sector	TU	Public/private
6.	Federation of Trade Unions of Ukraine (FPU) automotive sector	TU	Public/private
7.	All-Ukrainian independent trade union «Labour defence»	TU	Public/private
8.	NGO "Labour initiatives" (Solidarity center)	CSO	Private
9.	Federation of trade unions of workers of small and average enterprise of Ukraine	TU	Private
10.	FPU TU of Medical workers	TU	Public
11.	National mediation and reconciliation service	Governmental agency	Public
12.	CFPU Medical workers	TU	Public



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