

Exclusive: EU concerned by Ukraine's controversial labour reforms

Friday 3 March 2023, by [ROWLEY Thomas](#), [SEMCHUK Kateryna](#) (Date first published: 28 February 2023).

European Union says Ukraine's reforms must follow international labour standards and social dialogue principles

The European Union has regularly expressed concerns about the radical labour reforms Ukraine has been trying to implement since 2020, openDemocracy can reveal.

The controversial reforms seek to deregulate what the Ukrainian government considers the outsized role of trade unions in the workplace and excessive red tape on hiring, firing and management.

But briefings dating from before and after the Russian invasion show the EU has urged the government to conduct reforms in line with international labour standards and in consultation with trade unions.

European Commission (EC) documents obtained through Freedom of Information laws expose an apparent divergence between Ukraine's reforms and the EU's 'social market economy' model, where the state seeks to broker a compromise between market forces and citizens.

The findings come as Ukraine seeks to adapt its legislation to EU regulations as part of its EU candidacy and existing association agreement – a political, trade and economic reform deal designed to bring the country closer to EU standards.

But Ukraine's homegrown reforms – which are separate from the EU harmonisation process – have been criticised by European and Ukrainian trade unions for breaching workplace legal conventions set by the UN's International Labor Organization (ILO) as well as EU labour norms.

"The Ukrainian authorities have made persistent attacks on trade union rights and sought to write them and workers out of the reform process," Jan Willem Goudriaan, the general secretary of the European Federation of Public Service Unions (EPSU), told openDemocracy.

According to a report prepared for a key [EU-Ukraine summit](#) in Kyiv on 3 February, the bloc viewed Ukraine's legislation on socio-economic reform as being at an "early stage".

"Experts say the government is taking advantage of the war to pass otherwise difficult legislation dating from 2020 and 2021. The country is currently under martial law, meaning protest is forbidden"

But behind the scenes, EU officials have sounded a critical note on Ukraine's proposals.

Ahead of a high-level meeting to discuss the EU-Ukraine association agreement in 2021, EU officials were briefed to "urge Ukraine to ensure" that the country's labour law reforms are "conducted with respect to social dialogue" and in line with ILO conventions.

That meeting followed months of increasing tension between trade unions and the Ukrainian government in 2020 over a proposed new “Law on Labour” that made a radical break from social dialogue principles, whereby employers, trade unions and government consult and coordinate on economic policy at national level.

After large-scale trade union protests, the draft law was dropped.

But the draft law has since been put back on the table, as the government in Kyiv and the ruling Servant of the People party have [pushed ahead with labour and social policy reforms](#) amid Russia’s invasion, which has put unprecedented pressure on the Ukrainian economy and state finances.

Experts say the government is taking advantage of the war to pass otherwise difficult legislation dating from 2020 and 2021. The country is currently under martial law, meaning protest is forbidden.

Other measures passed by the Ukrainian government in the past year include the introduction of zero-hours contracts and a wartime suspension of collective agreements between employers and trade unions.

Parliament has also passed powers [permitting the state to confiscate trade union property](#) – despite the fact that the ILO is overseeing two complaints over disputed union property.

Removal of workplace protections

One new labour law, first mooted in 2021 and passed by Parliament in July 2022 and signed into law in the following months, has come under particular criticism.

It provides a “parallel regime” for Ukraine’s small- and medium-sized enterprises (SMEs) – which employ up to 70% of the country’s workforce – to the national labour code, allowing them to [use minimal employment contracts](#) that treat employees and employers as ‘equal sides’ during negotiations.

The law also permits “at-will termination” of employment and the “unilateral change by the employer of essential terms and conditions” – both of which breach ILO conventions and EU directives, according to a [joint EU-ILO project](#).

A last-minute change, brought about amid pressure from national and international unions, means the legislation, which was drafted without union input, is applicable only during wartime.

Lyubomyr Chorniy, a consultant who was an expert contributor to the law, told openDemocracy that the extreme pressures of Russia’s invasion on Ukrainian businesses had made it possible to pass the law.

“It seems to me there is a window of opportunity now. It’s very difficult for business at the moment... to give [business] some kind of break, there was this idea to pass this draft law,” Chorniy said.

He argued that the law actually gives workers at Ukrainian SMEs more – not less – protection over their working hours, rest breaks, overtime and prompt payment of wages by bringing more people into official employment, and also bypasses “unjustified” bureaucracy for employers.

Some Ukrainian politicians have at times been dismissive of what they see as overregulation of the country’s workplaces – even if regulation is part of the country’s international commitments, as in the case of the ILO conventions and EU workplace directives.

Halyna Tretiakova, a Servant of the People MP and the head of the parliamentary committee on social policy, has [criticised](#) the ILO, claiming its focus on collective rights is a barrier to Ukrainians striking over individual employment agreements, preventing the protection of their employment rights through more flexible means.

“We have to re-examine the obligations of the state, and they have to match the capacity of the state at this specific historical moment,” Tretiakova [told openDemocracy last year](#).

More recently, she accused unions of using the ILO in their resistance to reforms. The UN agency, Tretiakova [said](#) on 15 February, was also “pushing the dying theories of Marx and Lenin” onto Ukraine.

EU commitment to international labour standards

Ukrainian trade union leaders have told the EU that they understand the need to limit workplace rights during wartime but are worried about the long-term consequences of deregulation. The reforms have so far “mostly resulted in the deterioration of employment conditions”, according to a December [‘needs assessment’](#) by the Council of Europe.

The EU’s diplomatic arm, the European External Action Service, responded in June, telling EPSU that it would “stay firm on its commitments to European and ILO [labour] standards” on Ukraine’s reforms. Currently, the EU funds a [project](#) with the ILO on safe and healthy work in Ukraine.

That same month, the EU commissioner for jobs and social rights, Nicolas Schmit met with Ukrainian trade union leaders in Brussels, where he “stressed the importance of social protection, dialogue and workers rights as a cornerstone of the European social market economy”, according to minutes obtained by openDemocracy.

Schmit said he would raise union leaders’ concerns over the wartime reforms, and the [lack of a role for trade unions in Ukraine’s reconstruction efforts](#), with the EC’s president, Von der Leyen. He also encouraged Ukrainian unions to write to Von der Leyen directly.

Social dialogue principles

Earlier this month, an EU [report on alignment between Ukrainian and EU law](#) noted that “attention” should be paid to “impacts of the introduction of new labour legislation on social dialogue”, which it said should be strengthened.

The EU spokesperson for economic and financial affairs, jobs and social rights, Veerle Nuyts, told openDemocracy that the EU “pays close attention to labour reforms in Ukraine” and “makes use of any available opportunity to discuss these important issues”.

The EU “underlined” the necessity of meeting EU and ILO standards under Ukraine’s association agreement and candidacy for EU membership, Nuyts said.

Ukraine’s Foreign Ministry agreed; a spokesperson told openDemocracy that the “alignment and realisation of internationally recognised labour standards... is one of the main tasks” in the EU-Ukraine association agreement.

According to Nuyts, “Ukraine has been constructively engaging with the EU on its alignment with applicable European directives as part of its wider labour reform” in recent months.

But a European diplomat who has worked in Ukraine told openDemocracy on condition of anonymity

that they didn't think it was the European Commission's "intention to give Ukrainian reformers a green light" on labour reform – but nor does it plan to stop them.

"No one is pushing the European Commission on Ukraine's labour reforms. It's just not an issue," the official said, pointing out that the EU had "never" made a public statement on Ukraine's labour law changes.

Goudriaan, general secretary of EPSU, told openDemocracy that the EU minutes and briefing notes "suggest that [EU] attention is perfunctory at best... and this makes it easy for Ukraine to dismiss its international obligations on workplace rights".

Ukraine's own [draft plans for post-war reconstruction](#) have, so far, reflected an intention to abandon social dialogue principles. Outlines released in August state clearly that the country plans to move to a model of "non-interference of the state in dialogue between trade unions and employers".

Chornyi told openDemocracy that he believed social dialogue was "undoubtedly an important mechanism", with a track record in EU states, – and that it should "one day start working in Ukraine".

But, he said, it would require Ukraine's economy to undergo a structural transformation, including the development of more active trade unions.

Ukrainian social policy analyst Natalia Lomonosova previously [told](#) openDemocracy that she feared that the government's radical wartime socio-economic policy could exacerbate the vulnerable situation of millions of Ukrainians displaced by Russia's war.

The anonymous European diplomat's summary was stark: "We are witnessing the breakdown of the social state in Ukraine.

"Everything apart from the military is now outsourced internationally. Social affairs are more and more outsourced to international donors – which is why international donors should pay more attention to this," they added.

"The [Washington Consensus](#) has never been more alive than in Ukraine. It is Ukrainian-initiated, but in the West we accepted it," the European official said, referring to the policy of pushing developing states to move away from state regulation and towards the free market. "And for Ukraine, this is a way to get closer to the West, and to fight the local oligarchs."

The EU told openDemocracy it would "follow up as appropriate to ensure that commitments under [Ukraine's] association agreement are properly upheld."

Kateryna Semchuk
Thomas Rowley

[Click here](#) to subscribe to ESSF newsletters in English and/or French.

P.S.

Open Democracy

<https://www.opendemocracy.net/en/odr/ukraine-european-union-labour-law-reform/>