



# **Targeted Surveys on application of core labour standards Ukraine**

**Written by Ergon Associates  
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**EUROPEAN COMMISSION**

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# Targeted Surveys on application of core labour standards, Ukraine

This report has been developed to provide a picture of the application of core labour standards in Ukraine. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

## Progress

- Legal framework on the core labour standards, especially non-discrimination

## Challenges

- Worst forms of child labour, including in illegal coal mining and in conflict-affected areas
- Functioning of the labour inspectorate
- Broader decent work environment
- Freedom of association and collective bargaining

## Key context

Ukraine's economy and labour market are characterised by long-standing structural constraints which affect the application of core labour standards, including poor rates of employment creation, high levels of informality (including work in ostensibly formal enterprises) and weak labour market governance. These constraints have been exacerbated by more recent developments, including the ongoing conflict in Eastern Ukraine and high rates of outward migration.

Ukraine signed an Association Agreement with the European Union in 2014 that came into full effect in September 2017 and included a commitment to approximate national legislation to EU *acquis*, including in the field of labour, non-discrimination and occupational safety and health (OSH). In addition, the Canada-Ukraine Free Trade Agreement (CUFTA) which was signed in 2016 and entered into force in August 2017, contains several additional commitments with relevance for the core labour standards and broader working conditions, particularly relating to the labour inspectorate.

In general, Ukraine's labour law is considered outdated. Key legislation dates back to the Soviet era and Ukraine is one of only two countries in Eastern Europe and Central Asia that still has in place a pre-transition Labour Code. Local trade unions and employer organisations report that the current Labour Code contains several direct gaps with respect to the ILO core conventions and contributes to a generally weak environment for applying the core labour standards by limiting incentives for firms to grow and hire, and contributing to informal employment, underemployment, and wage arrears. A new Labour Code is currently being drafted, although there is considerable uncertainty as to when it may be adopted and there is some concern that it will not adequately address gaps with the core labour standards.

In relation to enforcement, social partners and international observers, including the ILO, are broadly agreed that Ukraine's labour inspectorate, the State Labour Service, is ineffective in enforcing the laws which fall under its mandate and does not conform to the requirements of relevant ILO Conventions. One key impediment is the regular imposition of moratoriums on the performance of labour inspections. The government has also passed several decrees and legal amendments in recent years which have further restricted the functioning of the SLS, including limits on the ability of labour inspectors to undertake unannounced inspections, limits on the frequency of labour inspections at individual enterprises and curtailments on the discretionary power of labour inspectors to initiate legal procedures without previous warning. In terms of the labour inspectorate's operations in practice, the ILO, the US Department of State and local trade unions have noted concerns relating to the number, status, training and conditions of service of labour inspectors.

## **Freedom of association and collective bargaining**

National law is mostly aligned with ILO standards, with some significant exceptions, notably relating to the right to strike. Nevertheless, there are significant issues in practice and in its most recent Global Rights Index, ITUC assigned Ukraine the lowest score: '5 – No Guarantee of Rights'.

The most significant issues raised by international observers and trade unions relate to the position of 'independent' trade unions (those not affiliated with the Federation of Trade Unions of Ukraine (FPU) – Ukraine's largest trade union confederation), with numerous legal and practical hurdles preventing independent union from effectively representing their members. For example, there are widespread reports that employers refuse to recognise independent unions and that unionised workers are pressurised into withdrawing their membership of independent unions. While collective bargaining coverage is relatively high in Ukraine, trade unions report that employers frequently refuse to engage in collective bargaining with independent unions.

## **Forced labour**

The law prohibits most forms of forced and compulsory labour and there are no significant gaps relating to the legal framework. There are general concerns relating to enforcement and with the US Department of State reporting that resources, inspections, and remediation are inadequate to effectively enforce the law around forced labour.

In practice, there are reports that forced labour occurs in Ukraine. There are particular concerns relating to conflict-affected areas including that women and girls have been kidnapped for the purposes of labour trafficking and that prisoners in rebel-controlled areas are subject to forced labour. Elsewhere in Ukraine, foreign nationals are particularly vulnerable to forced labour, particularly in the construction and agriculture sectors.

## **Child labour**

Ukraine's legal framework on child labour is broadly adequate but there are some outstanding gaps with ILO core conventions, including in relation to the definition of 'light work' and permitting children under 16 to carry out vocational training involving hazardous tasks. In general, key concerns relate to the lack of appropriate enforcement, particularly in the informal economy and in separatist-controlled regions.

The most recent National Child Labour Survey (NCLS) was conducted in 2014-2015, and hence information on current practice is limited – itself an impeding factor in effectively addressing breaches. The NCLS estimated that around 264,100 children in Ukraine were involved in child labour, accounting for 5.1% of all children aged 5-18. The vast majority of children in child labour (94.5%) were employed in agriculture. US agencies and the ILO CEACR have also raised significant concerns around the prevalence of worst forms of child labour in Ukraine, including that a significant amount of internet child pornography originates in the country, that children are used in illegal coal mining, and that child soldiers are used by separatist forces in eastern Ukraine.

## **Discrimination**

Ukraine's legal framework offers relatively comprehensive protection against discrimination, although there are still some outstanding legal gaps with the relevant ILO conventions, including relating to sexual harassment and equal pay for work of equal value. There have been significant improvements to the legal framework in recent years, including, most recently, the repeal in October 2017 of a government order which had prohibited women from employment in 450 professions considered damaging to women's health, including bus driving, train driving and operating certain machinery.

However, enforcement and implementation of relevant legislation has lagged behind. For example, although the 'Law on Ensuring Equal Rights and Opportunities for Women and Men' and the 'Law on Preventing and Combating Discrimination' both contain provisions relating to responsibility for violations, actual mechanisms for bringing infringers of these legislative acts to criminal, administrative or even disciplinary liability are reportedly absent.

In terms of the situation in practice, the majority of stakeholder reports relate to gender discrimination, particularly during recruitment processes and on the basis of pregnancy and maternity. Civil society organisations and international observers, including the UN Committee on Economic, Social and Cultural Rights, have also reported issues relating to national and ethnic minorities, disability, HIV/AIDS status, sexual orientation and relating to internally displaced persons.

## **Other working conditions**

Structural weaknesses in the labour market significantly affect the application of core labour standards and national prospects pertaining to decent work. According to the EU-Ukraine Civil Society Platform and the ILO, the situation has deteriorated in recent years due to factors such as the ongoing conflict in Eastern Ukraine and high rates of outward migration, as well as a general lack of government actions or initiatives to address these issues. Specific issues raised by social partners and other key stakeholders are set out in the table below.

**Occupational safety and health.** Stakeholders, including the ILO, have raised concerns with various aspects of Ukraine's legislation on OSH. In general, concerns relate to the complexity of the legislation, which is made up of a high number of separate laws and regulations, resulting in significant administrative, bureaucratic and financial burdens, particularly compared to the level of capacity and resources available to ensure compliance.

According to the ILO, limitations on the power and autonomy of the labour inspectorate are a major impediment to promoting and enforcing OSH legislation, and OSH outcomes have been severely affected by repeated moratoriums on the functioning of the labour inspectorate. The provision of continual training to labour inspectors on OSH issues is scarce, and this is particularly problematic in light of the continual development of OSH legislation and the planned adoption of EU acquis on OSH. Overall, there are significant concerns relating to the situation in practice, particularly relating to informal workers and the mining sector.

**Wages.** There are significant issues relating to wage arrears and wage theft. According to latest figures, wage arrears are growing over time and have reached UAH 1.9 billion (approx. EUR 54 million), over half of which are in the provinces of Luhansk, Donetsk and Kharkiv (USDOS, 2017). There are particular concerns with the extent of wage arrears in the coal sector.

**Maternity Protection.** A local NGO has raised concerns that restrictive laws relating to the employment of pregnant women and women with children below the age of 3, including that they are not allowed to carry out overtime work or business trips limit women's participation and progression in employment. In practice, a study by UNDP and the Office of the Ukrainian Parliament Commissioner for Human Rights showed that women are sometimes not paid maternity leave in accordance with the law, and that employers do not always guarantee the same or similar work on return from maternity leave.

**Social security coverage.** While the legal coverage of the Ukrainian social security system is almost universal, international observers have noted that effective coverage is lower due to the prevalence of informal employment and undeclared work. Specific concerns have also been raised regarding access to pension and other social security payments for internally displaced persons and for those currently residing in rebel-controlled territories.

## Status of ratification and reporting

Ukraine has ratified all eight ILO fundamental (core) labour conventions without reservations and maintains their ratification. Ukraine has also ratified all four ILO governance (priority) conventions. Ukraine is up-to-date with all of its reporting obligations to the monitoring bodies of the ILO in relation to these conventions.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2017): Noted contradictory requirements in the Civil Code and the Law on Trade Unions relating to the point at which a trade union officially acquires legal personality. Noted significant restrictions on the right to strike including relating to the threshold for a decision to call a strike, restrictions for public servants and sanctions for striking workers. Expressed concerns relating to the constitutional prohibition on judges joining trade unions.
	C98	<i>No specific application issues raised.</i>
Forced Labour	C29	(2017): Expressed the need for more effective enforcement relating to forced labour.



	C105	(2017): Noted that punishments involving forced labour can be imposed in circumstances which contravene the Convention, including for holding or expressing political views, for violation of labour discipline and for participation in strike action.
<b>Child labour</b>	C138	(2017): Noted that children who are 15 years old may perform “light work” with a parent’s consent but that legislation does not define what constitutes light work activities.  (2017): Noted that the Labour Code (and the new draft Labour Code) provide that children of 15 years of age may exceptionally be authorised to work with the consent of their parents and that this is contrary to the minimum age for admission to employment specified by Ukraine upon ratification of C138 (16 years).
	C182	(2017): Noted concerns for children in conflict areas in Eastern Ukraine and for children who have been internally displaced by the conflict.
<b>Discrimination</b>	C100	(2015): Noted that while the law requires employers to ensure “equal pay for men and women for work involving equal skills and working conditions”, that this falls short of “equal remuneration for men and women for work of equal value” set out in C100.
	C111	(2015): Noted some gaps in relevant legislation, including that the legal definition of sexual harassment offers incomplete protection because it only covers situations where the victim is in a subordinate position to the harasser.

## References

ILO CEACR, [Observations and Direct Requests for Ukraine](#).

USDOS, 2017, [Country Reports on Human Rights Practices for 2016 – Ukraine](#).