Technical Note

concerning

Draft Law on Law on Amendments to Certain Legislative Acts of Ukraine Concerning Strengthening the Protection of Employees' Rights. Registered in the Parliament of Ukraine on 18.03.2021 under No. 5266.

Background and disclaimer

The comments therein have been prepared with a view to supporting the process of social dialogue on labour law reform in Ukraine. They represent technical expert opinions only and are provided without prejudice to any official comments that may be made by the Office on the final draft or by the ILO bodies responsible for supervising compliance of Ukrainian labour legislation with international labour standards. The present Technical Note does not constitute an endorsement by the International Labour Office of the opinions expressed therein.

ILO technical support in the drafting process of labour legislation seeks to increase the involvement of its primary beneficiaries – employers and workers – throughout the process of labour law reform. This reflects the core ILO principles of social dialogue and tripartism. It also expresses the letter and spirit of the ILO Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified by Ukraine. Paragraph 5(c) of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152) also emphasises the importance of consultations in relation to 'the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations'.

In addition, some of the comments below are made in light of non-ratified ILO standards, as well as Recommendations. These particular comments are provided on the understanding that, in the present context, such standards are referred to not as binding instruments, but as a useful point of reference. ILO standards are adopted by a qualified majority of delegates attending the International Labour Conference; hence their content represents internationally accepted good practice, recommended by the ILO.

The current technical support is being provided in the framework of the technical cooperation project "Rights at Work: Improving Ukraine's Compliance with Key International Labour Standards" funded by the Canadian government and implemented by the ILO.

Summary conclusions and recommendations

1. We understand that the purpose of the draft is the alignment of various provisions concerning labour rights, which are currently included in several laws, such as the Labour Code, the Law on Collective Agreements, the Commercial Code.
2. It is recommended to consolidate provisions regulating the same subject matter in a single piece of legislation so as to avoid over-regulation and legislative duplication.
3. Introducing the possibility for a physical person, who hires labour to conclude a collective agreement appears as a positive legislative development.
4. There is a need to provide further legal clarification regarding the material and personal scope of a collective agreement, which may be concluded at the level of a structural unit of an enterprise and its correlation with the collective agreement concluded at the level of the concerned enterprise.
5. It is recommended to amend the concerned provisions so that to allow trade union(s) to represent the interests of all workers working for an employer, irrespective of their contractual arrangements. According to ILO Freedom of Association and the Right to Organize Convention, 1948 (No.87), all workers with no distinction whatsoever shall be able to constitute and /to adhere to trade unions in order to defend their economic, social and professional interests.

Specific technical comments are provided in the Table below.

№	The provisions of current national legislation	The provisions of draft Law	The provisions of ILO conventions and recommendations	Discrepancies and gaps identified in draft Law
		Labour Code of Ukraine, 1971 (LC)		
1.	Article 2^1. Equality of labour rights of citizens of Ukraine Any employment discrimination, in particular violation of the principle of equal rights and opportunities, direct or indirect restriction of the rights of employees depending on race, skin color, political, religious and other convictions, sex, gender identity,	Article 2^1. Equality of labour rights of citizens of Ukraine, **non-discrimination in the field of labour** Any employment discrimination, in particular violation of the principle of equal rights and opportunities, direct or indirect restriction of the rights of employees depending on race, skin color, political, religious and other convictions, sex, gender identity,	Ukraine has ratified: Discrimination (Employment and Occupation) Convention, 1958 (No. 111). *There are no comments from CEACR on this issue.* Under the Article 2 of C111 each Member for which this Convention is in force undertakes to declare and pursue a national	Proposed amendments to the Article 2^1 of LC do not contradict the provisions of ILO instruments. In accordance with the Article 6 (3) of the Law on Principles of Prevention and Counteraction of Discrimination in Ukraine, in accordance with the article,

	sexual orientation, ethnic, social and foreign origin, age, the state of health, disability, suspicion or disease availability HIV/AIDS, marital and property status, family obligations, the place of residence, membership in trade union or other consolidation of citizens, participation in strike, the recourse or intention of appeal to the court or other bodies behind protection of the rights or provision of support to other workers in protection of their rights, reporting of possible corruption or corruption-related offenses, other violations of the Law on the Prevention of Corruption, as well as assistance to a person in the implementation of reporting, on the language or other signs which are not connected with kind of work or conditions of its accomplishment is forbidden.	sexual orientation, ethnic, social and foreign origin, age, the state of health, disability, suspicion or disease availability HIV/AIDS, marital and property status, family obligations, the place of residence, membership in trade union or other **public association**, participation in strike, the recourse or intention of appeal to the court or other bodies behind protection of the rights or provision of support to other workers in protection of their rights, reporting of possible corruption or corruption-related offenses, other violations of the Law on the Prevention of Corruption, as well as assistance to a person in the implementation of reporting, on the language or other signs which are not connected with kind of work or conditions of its accomplishment is forbidden. **The actions, as well as the restriction of the rights of employees established by this Code and other laws, which depend on the requirements inherent in a certain type of work (age, education, health status, sex) or are conditioned by the need for enhanced social and legal protection of certain categories of persons, are not considered**	policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. Article 1 of C111 as bases of discrimination race, colour, sex, religion, political opinion, national extraction, social origin. ILO Declaration on Fundamental Principles and Rights at Work declares that all Members have an obligation to promote and to realize the principles concerning the fundamental rights, namely the elimination of discrimination in respect of employment and occupation.	the following are not considered as discrimination: special protection by the state of particular categories of persons, that require such protection; carrying out of measures aimed at preservation of the identity of particular groups of people, when such measures are necessary; special requirements, provided for by the law, in respect of exercise of certain rights of persons. In accordance with the Article 3 (2) of LC, the peculiarities of labour of members of cooperatives and their associations, collective agricultural enterprises, farms, employees of enterprises with foreign investment are determined by legislation and their charters. At the same time, guarantees of employment, labour protection, labour of women, youth, persons with disabilities are provided in the manner prescribed by labour legislation.

		discrimination in the field of labour. **The laws and charters of business entities (except for joint stock companies), agricultural cooperatives, farms, public associations, religious organizations and legal entities founded by religious organizations may establish advantages for their founders (participants) and members when providing work, transferring to another job and leaving the job in case of dismissal.** **Persons who believe that they have been discriminated against in the field of labour have the right to file a complaint with state bodies, authorities of the Autonomous Republic of Crimea, local governments and their officials, Ukrainian Parliament Commissioner for Human Rights and / or the court.**		
2.	Article 11. The scope of collective bargaining at the local level A collective agreement at the local level is concluded at enterprises, institutions, organizations, regardless of the form of ownership and management, that use hired labour and have the status of a legal entity.	Article 11. The scope of collective bargaining at the local level A collective agreement at the local level is concluded at an enterprise, institution, organization, **as well as with a physical person which, in accordance with the law,** use hired labour.	Ukraine has ratified: Collective Bargaining Convention, 1981 (No. 154). *There are no comments from CEACR on this issue.* Under the Article 5 of C154, measures adapted to national conditions shall be taken to	**1.** In general, these amendments should be considered as positive. After all, the current labour legislation does not specify the possibility of concluding a collective agreement with a

	The collective agreement may be concluded in structural units of the enterprise, institution, organization within the competence of these units.		promote collective bargaining. These measures should be aimed at ensuring the possibility of collective bargaining for all employers and all groups of workers in the branches of activity covered by this Convention. The Paragraph 4 (1) of Collective Bargaining Recommendation, 1981 (No. 163) emphasize that the measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels.	physical person acting as the employer. **2.** When preparing amendments to legislative acts on this issue, it would be appropriate for the developers to pay attention to the regulation of other relations arising from collective agreements. For example, the developers ignored the Article 17 (1) of the Law on the Procedure for Resolving Collective Labour Disputes (Conflicts), according to which a strike is a temporary collective voluntary termination of work by employees (absence from work, failure to perform their duties) of an enterprise, institution, organization (structural unit) in order to resolve a collective labour dispute (conflict). That is, the given provision of the Law provides a possibility of carrying out strike only by employees of the enterprise, institution, organization (structural unit) and does not indicate such an opportunity

				for employees of a physical person who uses hired labour.
3.	Article 12. Parties to the collective agreement at the local level A collective agreement at the local level is concluded between the owner or his authorized body (person), on the one hand, and the primary trade union organization, acting in accordance with their statutes, and in their absence – the representatives freely elected at the general meeting of employees or their authorized bodies, on the other hand. If several trade union organizations have been created at an enterprise, institution, organization, they must, on the basis of proportional representation (according to the number of members of each primary trade union organization), form a	Article 12. Parties to the collective agreement at the local level **The parties to the collective agreement at the local level are:** **the employer side, the subjects of which are the employer and (or) authorized representatives of the employer, in particular, representatives of the separate structural units of the legal entity;** **the employees side, the subjects of which are the primary trade union organizations operating at the enterprise, institution, organization, separate structural units of the legal entity, unite employees of a physical person, who uses hired labour, and represent the interests of employees working on the basis of employment contracts with this employer, and in their absence – representatives (representative) freely elected by the employees for collective bargaining.** If several trade union organizations have been created at an enterprise, institution, organization **or a physical person who uses hired labour in accordance with the law,** they must, on the basis of	Information on ratified conventions is contained in the commentary to the Article 11 of LC.	**1.** The commentary to this Article is reflected in the commentary to the Article 11 of LC. **2.** Changing the wording of "united representative body" to "joint representative body" is in line with the provisions of the Law on Collective Agreements, which uses this term. It should be noted that the term "united representative body" is also used in the Article 37 of the Law of Ukraine on Trade Unions, their Rights and Guarantees for Activities, which is devoted to the representation of the interests of employees in concluding a collective agreement. In addition, the Article 37 focuses only on the representation of the collective interests of employees of enterprises, institutions and organizations. Thus, it was appropriate for the developers of the draft Law to propose amendments

	united representative body to conclude a collective agreement. In this case, each primary trade union organization must decide on its specific obligations under the collective agreement and responsibility for their failure. A primary trade union organization that refuses to participate in a united representative body is deprived of the right to represent the interests of employees when signing a collective agreement.	proportional representation (according to the number of members of each), form a **joint** representative body **to negotiate a collective agreement by concluding an appropriate treaty and notifying the employer in writing.** A primary trade union organization that refuses to participate in a **joint** representative body is deprived of the right to represent the interests of employees when signing a collective agreement.		to the Article 37 of the Law of Ukraine on Trade Unions, their Rights and Guarantees for Activities, in terms of taking into account in its provisions of the physical person acting as the employer and the consolidation of a unified wording – "joint representative body". **3.** The developers in the draft Article 12 of LC indicates the possibility of concluding collective agreements in the separate structural units of the legal entity. In turn, it would also be appropriate for the developers to specify in the draft Law the specifics of concluding a collective agreement in such units, as well as its correlation with the collective agreement of the legal entity. **4.** The proposed edition of the Article 12 of LC, dedicated to the employees side, contains a quite complicated legal structure. That in the future may lead to an ambiguous interpretation

				of the provisions of the Article in practice. **5. According to ILO Convention no. 87, workers with no distinction whatsoever shall be able to constitute/ to adhere to trade unions in order to defend their economic, social and professional interests. Trade unions should be able to represent all workers working for the concerned employer, irrespective of their contractual arrangements.**
4.	Article 17. Duration of the collective agreement at the local level The collective agreement shall enter into force on the date of its signing by the representatives of the parties or on the date specified therein. After the expiration of the collective agreement, it shall remain in force until the parties conclude a new one or revise the existing one, unless otherwise provided by the agreement. The collective agreement shall remain in force in the event of a	Article 17. Duration of the collective agreement at the local level The collective agreement shall enter into force on the date of its signing by the representatives of the parties or on the date specified therein. After the expiration of the collective agreement, it shall remain in force until the parties conclude a new one or revise the existing one, unless otherwise provided by the agreement. The collective agreement shall remain in force in the event of a	Information on ratified conventions is contained in the commentary to the Article 11 of LC. In accordance with the Paragraph 8 of the Collective Agreements Recommendation, 1951 (No. 91), national laws or regulations may, among other things, provide for a minimum period during which, in the absence of any provision to the contrary in the agreement, collective agreements shall be deemed to be binding unless	Proposed amendments to the Article 17 of LC do not contradict the provisions of ILO instruments.

	change in the composition, structure, name of the body authorized by the owner, on whose behalf this agreement is concluded. In case of reorganization of the enterprise, institution, organization, the collective agreement remains valid for the period for which it was concluded, or may be revised by agreement of the parties. In the event of a change of ownership, the collective agreement shall remain in force for the duration of its validity, but not more than one year. During this period, the parties must begin negotiations on concluding a new or amending or supplementing the existing collective agreement. In the event of liquidation of an enterprise, institution, organization, the collective agreement is valid for the entire period of liquidation. At a newly established enterprise, institution, organization, a collective agreement is concluded at the initiative of one of the parties within three months after the registration of the enterprise, institution, organization, if the law provides for registration, or after the decision to	change in the composition, structure, name of the body authorized by the owner, on whose behalf this agreement is concluded. **In case of reorganization, change of the owner of the legal entity (separate structural unit of the legal entity) the terms of the collective agreement are valid for the term for which it is concluded, but not more than a year, unless the parties agree otherwise.** **The collective agreement remains valid for the entire period of liquidation of the employer.** **At the newly established enterprise, institution, organization, a collective agreement is concluded on the initiative of one of the parties.**	revised or rescinded at an earlier date by the parties.	

	establish an enterprise, institution, organization, if not registered.			
5.	Article 18. Extension of the collective agreement at the local level to all employees The provisions of the collective agreement apply to all employees of the enterprise, institution, organization, regardless of whether they are members of a trade union, and are binding on the owner or his authorized body, and employees of the enterprise, institution, organization.	Article 18. Extension of the collective agreement at the local level to all employees The provisions of the collective agreement apply to all employees of the enterprise, institution, organization, **physical person who, in accordance with the law, uses hired labour**, regardless of whether they are members of a trade union and are binding on **both for the employer and for employees of the enterprise, institution, organization, physical person who, in accordance with the law, uses hired labour**.	Information on ratified conventions is contained in the commentary to the Article 11 of LC. In accordance with the Paragraph 4 of the Collective Agreements Recommendation, 1951 (No. 91), the stipulations of a collective agreement should apply to all workers of the classes concerned employed in the undertakings covered by the agreement unless the agreement specifically provides to the contrary.	**1.** The commentary to this Article is reflected in the commentary to the Article 11 of LC. **2.** As noted above, developers would also be appropriate to pay attention to the specifics of the correlation of the collective agreement of a separate structural unit with the collective agreement of the legal entity and their extension to the employees.
6.	Article 22. Guarantees for the conclusion, amendment and termination of an employment contract Unreasonable refusal to hire is prohibited. According to the Constitution of Ukraine, any direct or indirect restriction of rights or establishment of direct or indirect benefits in concluding, changing and terminating an employment contract depending on origin, social and property status, race and nationality,	Article 22. Guarantees for the conclusion, amendment and termination of an employment contract **The employer has the right to freely choose among the candidates for the job (position).** Unreasonable refusal to hire is prohibited, **that is refusal without any motives or on grounds not related to the qualifications or professional qualities of the employee, or on grounds not provided by the law**.	Information on ratified conventions is contained in the commentary to the Article 2^1 of LC.	**1.** The commentary to this Article is reflected in the commentary to the Article 2^1 of LC. **2.** In general, these amendments should be considered as positive in terms of concretizing the mechanisms for implementing the prohibition of unjustified refusal to hire, stipulated by LC. For example, the current LC provides for only one

	sex, language, political views, religious beliefs, membership in a trade union or other association of citizens, type and nature of occupation, place of residence is not allowed. Requirements regarding the age, level of education, health status of the employee may be established by the legislation of Ukraine.	**At the request of a person who has been refused employment, the employer must notify in writing the reason for such refusal, which must comply with part one of the Article 22 of this Code.** **Any direct or indirect restriction of employment rights when concluding, amending and terminating an employment contract is not allowed.** Requirements regarding the age, level of education, health status of the employee may be established by the legislation of Ukraine.		provision, which indicates the obligation of the employer to notify in writing the reason for refusal to hire. Under the Article 184 of the Code, it is prohibited to refuse to hire women for reasons related to pregnancy or the presence of children under the age of three, and single mothers – in the presence of a child under the age of fourteen or a child with a disability. In case of refusal to hire these categories of women, the employer is obliged to inform them of the reasons for the refusal in writing.
7.	Article 49^2. The order of dismissal of employees ... Simultaneously with the warning of dismissal due to changes in the organization of production and labour, the owner or his authorized body offers the employee another job at the same enterprise, institution, organization. In the absence of work in the relevant profession or specialty, as well as if the employee refuses to transfer to another job at the same enterprise, institution, organization, the employee, at his	Article 49^2. The order of dismissal of employees ... Simultaneously with the warning of dismissal due to changes in the organization of production and labour, the **employer** offers the employee another job at the same enterprise, institution, organization. In the absence of work in the relevant profession or specialty, as well as if the employee refuses to transfer to another job at the same enterprise, institution, organization, the employee, at his discretion, applies	Ukraine has ratified: Workers' Representatives Convention, 1971 (No. 135); Termination of Employment Convention, 1982 (No. 158). *There are no comments from CEACR on this issue* The Article 13 (1) of C158 provides that when the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall: provide the workers' representatives	Proposed amendments to the Article 49^2 of LC do not take into account cases related to consultations on the planned mass dismissals of employees in the absence of the primary trade union organization.

	discretion, applies for help to the state employment service or finds a job independently. If the dismissal is mass in accordance with the Article 48 of the Law on Employment of the Population, the owner or his authorized body shall inform the state employment service about the planned dismissal of workers.	for help to the state employment service or finds a job independently. If the dismissal is mass in accordance with the Article 48 of the Law on Employment of the Population, the **employer** shall inform the state employment service about the planned dismissal of workers. **The notification must contain information about the planned mass dismissals of employees, as defined in part two of Article 49[4] of this Code, and consultations with the elected body of the primary trade union organization (trade union representative). The notification must be submitted to the elected body of the primary trade union organization (trade union representative). In the presence of several primary trade union organizations, the notification is sent to the joint representative body formed by them on the basis of proportional representation, and in the absence of such a body – to the elected body of the primary trade union organization (trade union representative), uniting the majority of employees of this enterprise (institution, organization).**	concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out; give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment. Under the Article 3 of C135, the term "workers' representatives" means persons who are recognised as such under national law or practice, whether they are: (a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or (b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or	

	…	…	regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned. Article 14 of C158 provides that when the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out. National laws or regulations may limit the applicability of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce. In accordance with the Paragraph 20 of Termination of Employment Recommendation, 1982 (No. 166), when the	

			employer contemplates the introduction of major changes in production, programme, organisation, structure or technology that are likely to entail terminations, the employer should consult the workers' representatives concerned as early as possible on, inter alia, the introduction of such changes, the effects they are likely to have and the measures for averting or mitigating the adverse effects of such changes. To enable the workers' representatives concerned to participate effectively in the consultations, the employer should supply them in good time with all relevant information on the major changes contemplated and the effects they are likely to have.	
8.	Article 49^4. Employment of the population Employment in socially useful labour of persons who terminated employment on the grounds provided for by this Code, in case if they did not find another job themselves, shall be ensured in accordance with the Law on Employment of Population. Liquidation, reorganization of enterprises, change of ownership or	Article 49^4. Employment of the population Employment in socially useful labour of persons who terminated employment on the grounds provided for by this Code, in case if they did not find another job themselves, shall be ensured in accordance with the Law on Employment of Population. Liquidation, reorganization of enterprises, change of ownership or	Information on ratified conventions is contained in the commentary to the Article 49^2 of LC.	The commentary to this Article is reflected in the commentary to the Article 49^2 of LC.

	partial stoppage of production, entailing a reduction in the number or staff of employees, deterioration of working conditions, can be carried out only after the advance provision of information on this issue to the trade unions, including information on the reasons for subsequent dismissals, the number and categories of workers which it may concern about the timing of the dismissal. The owner or his authorized body, no later than three months from the date of the decision, shall consult with trade unions on measures to prevent dismissals or to minimize their number or mitigate the adverse consequences of any dismissal.	partial stoppage of production, entailing a reduction in the number or staff of employees, deterioration of working conditions, can be carried out only after the **submission to the elected body of the primary trade union organization (trade union representative) of the notification of the planned mass dismissals, with the relevant information (in writing) on these events, including information on the reasons for following dismissals, the average number and categories of employees, as well as the number and categories of employees that may be affected, and the date of the dismissal. The employer, no later than three months from the date of the decision on mass dismissals, shall consult with the elected body of the primary trade union organization (trade union representative) on measures to prevent dismissals, minimize them and mitigate the adverse consequences of any dismissal. If there are several primary trade union organizations, a notification is sent and consultations are held with the joint representative body formed by them on the basis of proportional representation, and in**		

	Trade unions have the right to make proposals to the relevant authorities to postpone or suspend or cancel measures related to the dismissal of employees.	**the absence of such a body – with an elected body of the primary trade union organization (trade union representative), uniting the majority of employees of this enterprise (institution, organization). The procedure for such consultations and implementation of recommendations is determined by the collective agreement, and in its absence – by mutual consent.** Trade unions have the right to make proposals to the relevant authorities to postpone or suspend or cancel measures related to the dismissal of employees **that are mandatory for consideration.**		
9.	Article 246. Primary trade union organizations at enterprises, institutions, organizations … If there are several primary trade union organizations at the enterprise, institution, organization, the collective interests of employees of the enterprise, institution, organization in concluding a collective agreement shall be represented by an united representative body in accordance with Article 12 of this Code.	Article 246. Primary trade union organizations at enterprises, institutions, organizations … If there are several primary trade union organizations at the enterprise, institution, organization, the collective interests of employees of the enterprise, institution, organization in concluding a collective agreement shall be represented by a **joint** representative body in accordance with Article 12 of this Code.	There are no provisions of ratified conventions on this issue.	**1.** The commentary to this Article is reflected in the commentary to the Article 12 of LC. **2.** In addition, it was appropriate for the developers of draft Law to propose amendments to the Article 246 of LC also in terms of extending its provisions to the physical persons acting as the employer.

<u>Commercial Code of Ukraine</u>, 2003 (CC)				
10.	Article 65. Enterprise management ... 7. At all enterprises using hired labour, a collective agreement must be concluded between the owner or his authorized body and employees or their authorized body, which regulates the industrial, employment and socio-economic relationships of the employees with the administration of the enterprise. Requirements for the content and procedure for concluding collective agreements are determined by the legislation on collective agreements. …	Article 65. Enterprise management ... 7. **At enterprises using hired labour, a collective agreement may be concluded, which regulates industrial, employment and socio-economic relationships between the employer and employees, their representatives. The issues of concluding collective agreements are regulated by the legislation on collective agreements.** …	There are no provisions of ratified conventions on this issue.	It should be noted that the current edition of the Article 65 (7) of CC is inconsistent with national labour legislation, the provisions of which do not establish the requirements for the mandatory conclusion of a collective agreement at an enterprise. In turn, according to the Article 4 (1) of CC, the labour relations are not the subject of regulation of this Code. Therefore, the actual consolidation of provisions on collective agreements in the Code is controversial. Thus, in order to eliminate ambiguity in law enforcement and duplication of rules in the current legislation, it is appropriate to exclude the Article 65 (7) of CC.
<u>The Law on Collective Agreements</u>, 1993 (LCA)				
11.	Article 2. The scope of collective bargaining	Article 2. The scope of collective bargaining	Information on ratified conventions is contained in the	The commentary to this Article is reflected in the

	A collective agreement at the local level is concluded at enterprises, institutions, organizations, regardless of the form of ownership and management, that use hired labour and have the status of a legal entity. The collective agreement can be concluded in structural units of the enterprise within the competence of these units. …	A collective agreement at the local level is concluded at an enterprise, institution, organization, **as well as with a physical person which, in accordance with the law, uses hired labour** (hereinafter – the enterprise). …	commentary to the Article 11 of LC.	commentary to the Article 11 of LC.
12.	Article 3. Parties to the collective agreement A collective agreement at the local level is concluded between the employer, on the one hand, and one or more trade union bodies, and in the absence of such bodies, representatives of employees elected and authorized by the employees, on the other hand. …	Article 3. Parties to the collective agreement **The parties to the collective agreement at the local level are:** **the employer side, the subjects of which are the employer and (or) authorized representatives of the employer, in particular, representatives of the separate structural units of the legal entity;** **the employees side, the subjects of which are the primary trade union organizations operating at the enterprise, institution, organization, separate structural units of the legal entity, unite employees of a physical person, who uses hired labour, and represent the interests of employees working on the basis of employment contracts with this**	Information on ratified conventions is contained in the commentary to the Article 11 of LC.	The commentary to this Article is reflected in the commentary to the Article 11 of LC. **According to ILO Convention no. 87, workers with no distinction whatsoever shall be able to constitute/ to adhere to trade unions in order to defend their economic, social and professional interests. Trade unions should be able to represent all workers working for the concerned employer, irrespective of their contractual arrangements.**

		employer, and in their absence – representatives (representative) freely elected by the employees for collective bargaining. …		
13.	Article 4. The right to negotiate and conclude collective agreements … If there are several trade unions or their associations or other authorized by employees bodies, they must form a joint representative body to negotiate and conclude a collective agreement at the local level. …	Article 4. The right to negotiate and conclude collective agreements … **If several primary trade union organizations are established at the enterprise, they must, on the basis of proportional representation (according to the number of members of each), form a joint representative body to negotiate a collective agreement at the local level by concluding an appropriate agreement and notify the employer in writing.** …	Ukraine has ratified: Workers' Representatives Convention, 1971 (No. 135). *There are no comments from CEACR on this issue.* Under the Article 5 of C135, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives.	Under the Article 3 (1) of LCA, a collective agreement at the local level is concluded between the employer, on the one hand, and one or more trade union bodies, and in the absence of such bodies, representatives of employees elected and authorized by the employees, on the other hand. In accordance with the Article 4 (2) of LSDU, the parties to social dialogue at the local level include: the party of workers, the subjects of which are the primary trade union organizations, and in their absence, representatives (representative) of employees freely elected for collective bargaining; the employer's party, the subjects of which are the employer and / or authorized representatives of the employer. The changes proposed by the developers to the Article 4

				correspond to the criteria of priority of subjects of the side of employees who have the right to collective bargaining at the local level.
14.	Article 9. The validity of the collective agreement … In the event of reorganization of the enterprise, the collective agreement remains valid for the period for which it was concluded, or may be revised by agreement of the parties. In case of change of the owner of the enterprise the validity of the collective agreement remains during its term of validity, but no more than one year. During this period, the parties must begin negotiations on concluding a new or amending or supplementing the existing collective agreement. In the event of liquidation of the enterprise, the collective agreement is valid for the entire period of liquidation.	Article 9. The validity of the collective agreement … **In case of reorganization, change of the owner of the legal entity (separate structural subdivision of the legal entity) the terms of the collective agreement are valid for the period for which it was concluded, but not more than a year, unless the parties agree otherwise.** *Excluded* In the event of liquidation of the enterprise, the collective agreement is valid for the entire period of liquidation.	**1.** Information on ratified conventions is contained in the commentary to the Article 11 of LC. **2.** In accordance with the Paragraph 8 of the Collective Agreements Recommendation, 1951 (No. 91), national laws or regulations may, among other things, make provision for requiring employers bound by collective agreements to take appropriate steps to bring to the notice of the workers concerned the texts of the collective agreements applicable to their undertakings.	**1.** The commentary to this Article is reflected in the commentary to the Article 11 of LC. **2.** In general, these amendments should be considered as positive in terms of specifying the procedure for acquainting the employees with the text of the collective agreements. For example, the current LC contains only one provision in this regard. Under the Article 29 (1) of the Code, prior to the start of work of the employee under the concluded employment contract (except for the employment contract on remote work), the employer is obliged to familiarize the employee with the collective agreement.

	At a newly created enterprise, a collective agreement is concluded at the initiative of one of the parties within three months after the registration of the enterprise, if the law provides for registration, or after the decision to establish the enterprise, if its registration is not provided.	**At the newly created enterprise, a collective agreement is concluded at the initiative of one of the parties.**		
	All employees, as well as newly hired employees, must be acquainted with the collective agreement by the employer.	**The employer is obliged to acquaint the employee with the text of the collective agreement before starting work under the concluded employment contract, as well as within a week after the conclusion of the collective agreement, making changes and additions to it. The subjects of the parties to the collective agreement are obliged to ensure permanent and unimpeded access to the collective agreement and in the manner prescribed by this agreement – the possibility of copying it. The procedure for acquainting with the text of the collective agreement, changes and additions to it is determined by this agreement.**		
	The parties to the national, sectoral or territorial collective agreement must inform citizens through the media about changes and additions to the agreement and the progress of its	**The parties to the national, sectoral or territorial collective agreement shall inform employees and employers, for whom the provisions of this agreement are**		

	implementation and ensure the placement of the text of the agreement in the media. …	**binding, about its conclusion, amendments and additions, as well as post the text of the collective agreement and information on its implementation on the official websites of parties.** …		
15.	*There is no Article 9[1] in the current LCA.*	**Article 9[1]. Extension of the sectoral (intersectoral) collective agreement** **The effect of the sectoral (intersectoral) collective agreement, its particular provisions can be extended by the central executive body, which ensures the formation of state policy in the field of labour relations, to all employers, regardless of the form of ownership, operating in the relevant sector / sectors (type / types of economic activity), in case of receiving a coordinated decision from the parties to this agreement and if the agreement:** **concluded in accordance with this Law by the central executive body (bodies) and representative subjects of the parties (in case of concluding an agreement on a bilateral basis);**	The Paragraph 5 (2) of Collective Agreements Recommendation, 1951 (No. 91) indicates the following conditions that determine the extension of the collective agreement: (a) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative; (b) that, as a general rule, the request for extension of the agreement shall be made by one or more organisations of workers or employers who are parties to the agreement; (c) that, prior to the extension of the agreement, the employers and workers to whom the agreement would be made applicable by its extension should be given an opportunity to submit their observations.	The proposed edition of the Article 9[1] of LCA requires specification, in order to ensure its compliance with the provisions of Paragraph 5 (2) of Collective Agreements Recommendation, 1951 (No. 91).

		registered without observations by the central executive body, which ensures the formation of state policy in the field of labour relations. **The procedure for extending the sectoral (intersectoral) collective agreement is approved by the Cabinet of Ministers of Ukraine.** **Information on the extension of the sectoral (intersectoral) collective agreement, its particular provisions, is published by the central executive body, which ensures the formation of state policy in the field of labour relations, and the parties to this agreement.** **Employers who are subject to the sectoral (intersectoral) collective agreement, its particular provisions, are determined by the main type of economic activity.** **The sectoral (intersectoral) agreement provisions are binding on employers to whom they apply.**		
16.	*There is no Article 19[1] in the current LCA.*	**Article 19[1]. Responsibility for failure to provide information to an employee about the conclusion of a collective agreement at the local level, amendments and additions to it**	Information on ratified conventions is contained in the commentary to the Article 9 of LCA.	**1.** The commentary to this Article is reflected in the commentary to the Article 9 of LCA. **2.** In general, this draft Article should be considered

		Persons representing the employer guilty of failing to provide the employee with information on concluding a collective agreement at the local level, making amendments and additions to it, are subject to a fine of up to ten non-taxable minimum incomes of citizens, and they are also subject to disciplinary responsibility.		as positive. But it should be noted that the developers in this case do not fully take into account the mechanisms of bringing the guilty persons to liability in the form of a fine. In accordance with the Article 20 (1) of LCA, the procedure and terms of imposing fines provided for by this Law are regulated by the Code of Ukraine on Administrative Offenses. In turn, no relevant amendments to this Code have been proposed.
The Law on Advertising, 1996 (LA)				
17.	Article 24^1. Advertising of employment services 1. It is prohibited to indicate the age of candidates in vacancy advertisements, to offer jobs only to women or only to men, except for specific work that can be performed exclusively by persons of a certain sex, to make demands that favor women or men, members of a certain race, skin color (except in cases specified by law, and cases of specific work that can be performed only by persons of a certain sex), political, religious and other beliefs,	Article 24^1. Advertising of employment services **1. It is forbidden in advertising for vacancies (recruitment) to put forward demands on the basis of race, skin color, age, sex, health status, disability, suspicion or presence of HIV / AIDS, sexual orientation, political, religious and other beliefs, membership in trade unions or other public associations, ethnic and social origin, family and property status, place of residence, linguistic and other characteristics not related to the nature of the**	Information on ratified conventions is contained in the commentary to the Article 2^1 of LC.	The commentary to this Article is reflected in the commentary to the Article 2^1 of LC.

	membership in trade unions or other associations of citizens, ethnic and social origin, property status, place of residence, by language or other characteristics. … 3. In case of violation of the requirements of this article, the advertiser pays to the Fund of Compulsory State Social Insurance of Ukraine in case of unemployment a fine of ten times the minimum wage established by law at the time of detection of the violation.	**work or the conditions of its performance.** … 3. In case of violation of the requirements of this article, the advertiser pays to the Fund of Compulsory State Social Insurance of Ukraine in case of unemployment a fine of ten times the minimum wage established by law at the time of detection of the violation. **A fine for violation of the requirements of this Article is imposed by the central executive body that implements state policy on supervision and control over the observance of labour and employment legislation in the manner established by the Cabinet of Ministers of Ukraine.** **The fine imposed by this Article is a financial sanction and does not belong to the administrative and economic sanctions defined in Chapter 27 of the Commercial Code of Ukraine.**		

The Law on Social Dialogue in Ukraine, 2010 (LSDU)				
18.	Article 4. Levels and parties of social dialogue 1. Social dialogue is carried out at the national, sectoral, territorial and local (enterprise, institution, organization) levels on a tripartite or bilateral basis. ...	Article 4. Levels and parties of social dialogue **1. Social dialogue is carried out:** **at the national, sectoral, territorial level on a tripartite or bilateral basis;** **at the local level (at the enterprise, institution, organization, as well as with a physical person who, in accordance with the law, use hired labour) on a bilateral basis.** …	Information on ratified conventions is contained in the commentary to the Article 11 of LC.	The commentary to this Article is reflected in the commentary to the Article 11 of LC.
The Law on Employment of Population, 2012 (LEP)				
19.	Article 11. The right of a person to protection against discrimination in the field of employment 1. The state guarantees the person the right to protection from any manifestations of discrimination in employment on the grounds of race, color, political, religious and other beliefs, membership in trade unions or other associations of citizens, sex, age, ethnic and social origin, property status, place of residence, language or other grounds.	Article 11. The right of a person to protection against discrimination in the field of employment 1. **The state guarantees a person the right to protection from any manifestation of discrimination in the field of employment, depending on race, color, political, religious and other beliefs, sex, gender identity, sexual orientation, ethnic, social and foreign origin, age, health status, disability, suspicion or the presence of HIV / AIDS, family and property status, family responsibilities, place of residence,**	Information on ratified conventions is contained in the commentary to the Article 2^1 of LC.	**1.** The commentary to this Article is reflected in the commentary to the Article 2^1 of LC. **2.** Under the Article 17 (3) of the Law on Ensuring Equal Rights and Opportunities for Women and Men, it is prohibited for employers in job advertisements to offer work only to women or only to men, with the exception of specific work that can be performed exclusively by persons of a certain gender, to

		membership in a trade union or other public association, participation in a strike, appeal or intention to apply to a court or other authorities to protect their rights or provide support other employees in the protection of their rights, on linguistic or other grounds not related to the nature of the work or the conditions for its performance.		put forward various requirements, giving an advantage to one of the sexes, to demand from persons getting a job, information about their personal life, plans for the birth of children.
	2. Implementation of measures for additional assistance in employment of certain categories of citizens is not considered discrimination.	2. Implementation of measures for additional assistance in employment of certain categories of citizens is not considered discrimination.		
	3. It is forbidden in job advertisements to indicate age restrictions of candidates, to offer work only to women or only to men, with the exception of specific work that can be performed exclusively by persons of a certain gender, to make demands that prefer one of the articles, and also to require persons who are employed to provide information about personal life.	**3. It is forbidden in vacancy announcements (employment) to indicate the requirements specified in the Part 1 of this Article, to offer work (employment) only to women or only to men, with the exception of specific work that can be performed exclusively by persons of a certain gender.**		
	Restrictions on the content of vacancy announcements (admission and work) and liability for violation of the established procedure for their	Restrictions on the content of vacancy announcements (admission and work) and liability for violation of the established procedure for their		

	distribution are established by the Law on Advertising.	distribution are established by the Law on Advertising.		
20.	Article 48. Mass dismissal of employees at the initiative of the employer 1. Mass dismissal at the initiative of the employer (except in the case of liquidation of a legal entity) is a one-time or during: 1) one month: dismissal of 10 or more employees at the enterprise, institution and organization with a number of 20 to 100 employees; dismissal of 10 and more percent of employees at the enterprise, institution and organization with a number of 101 to 300 employees; 2) three months – dismissal of 20 percent or more of employees at the enterprise, institution and organization, regardless of the number of employees. 2. Indicators of mass dismissals, measures to prevent them and to minimize negative consequences are set by collective agreements concluded at the national, sectoral, local and regional levels.	Article 48. Mass dismissal of employees at the initiative of the employer **1. Mass dismissal at the initiative of the employer is within one month:** **1) dismissal of 10 or more employees from the employer with the number of employees from 20 to 100;** **2) dismissal of 10 or more percent of employees from the employer with the number of employees from 101 to 300;** **3) dismissal of 30 or more employees from the employer with the number of employees from 301 to 1000;** **4) dismissal of 3 or more percent of employees from the employer with the number of employees from 1001 and more.** 2. Indicators of mass dismissals, measures to prevent them and to minimize negative consequences are set by collective agreements concluded at the national, sectoral, local and regional levels.	Information on ratified conventions is contained in the commentary to the Article 49^2 of LC.	Proposed amendments to the Article 48 of LEP do not contradict the provisions of ILO instruments.

	3. The development of a set of measures to ensure the employment of employees to be dismissed is carried out by the relevant executive authorities and local governments with the participation of the parties to the social dialogue. 4. If the mass dismissals have led to a sharp rise in unemployment in the region or in the territory by three or more percentage points during the reporting period, the situation in the labour market is considered a crisis. To take measures to prevent a sharp rise in unemployment during the mass dismissal of workers, special commissions may be formed in accordance with the procedure established by the Cabinet of Ministers of Ukraine.	**3. A set of measures to ensure the employment of dismissed employees is developed** by the relevant executive authorities and local governments with the participation of the parties to the social dialogue. **4. If the mass dismissal of employees causes an increase in unemployment in the region or in the relevant territory by three or more percentage points during the reporting period, during such mass dismissal special commissions may be formed in accordance with the procedure established by the central executive body that ensures the formation of state policy in the field of employment and labour migration to take measures to prevent rapid growth of unemployment.** **5. The provisions of this Article do not apply to mass dismissals, which must take place in accordance with employment contracts concluded for a specific period or for specific purposes (unless the dismissal occurs before the expiration of the term or the fulfillment of the terms of the employment contract).**		

21.	Article 50. Participation of employers in ensuring employment of the population … 3. Employers are obliged: 1) provide decent working conditions that meet the requirements of legislation in the field of wages, labour protection and labour hygiene; 2) take measures to prevent mass dismissals, including by consulting with trade unions to develop appropriate measures to mitigate their impact and reduce the number of dismissals;	Article 50. Participation of employers in ensuring employment of the population ... 3. Employers are obliged: 1) provide decent working conditions that meet the requirements of legislation in the field of wages, labour protection and labour hygiene; 2) take measures to prevent mass dismissals, including by consulting with trade unions to develop appropriate measures to mitigate their impact and reduce the number of dismissals, **in order to develop appropriate measures aimed at mitigating their consequences and reducing the number of dismissed workers.** **For this, the employer, during consultations, but no later than three months before possible dismissals, submits to the elected body of the primary trade union organization (trade union representative)** **The notification of the planned mass dismissal, with the relevant information (in writing) on these events, including information on the reasons for following dismissals, the average number**	Information on ratified conventions is contained in the commentary to the Article 49^2 of LC.	The commentary to this Article is reflected in the commentary to the Article 49^2 of LC.

		and categories of employees, as well as the number and category of employees that may be affected, and the date of the dismissal. If there are several primary trade union organizations, a notification is sent to the joint representative body formed by them on the basis of proportional representation, and in the absence of such a body – to the elected body of the primary trade union organization (trade union representative), uniting the majority of the employees of the given employer. The procedure for such consultations and implementation of recommendations is determined by the collective agreement, and in its absence – by mutual consent;		
	…	…		
	5) conduct preliminary consultations with the primary trade union organization with which a collective agreement has been concluded, involve employees of other employers, including employees of economic entities that provide employment services.	*Excluded*		