



**Participation of small and medium-sized business  
in bargaining with public authorities  
in the process of shaping social and labour policies**

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*The contents of this publication are the sole responsibility of the group of authors and the opinions expressed in it are not to be understood as in any way reflecting an official opinion of the European Union or the International Renaissance Foundation.*

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## **LIST OF ABBREVIATIONS**

- USAID** — the United States Agency for International Development  
**SSC** — the State Statistics Committee of Ukraine  
**SRS** — the State Regulatory Service of Ukraine  
**EU** — the European Union  
**KVED** — Classification of economic activities in Ukraine  
**CMU** — the Cabinet of Ministers of Ukraine  
**LEV** — the USAID Leadership in Economic Governance program  
**MEDT** — the Ministry of Economic Development and Trade of Ukraine  
**SMB** — small and medium-sized business  
**SME** — small and medium-sized enterprise  
**NMCS** — the National Mediation and Conciliation Service of Ukraine  
**NTSEC** — the National Tripartite Social and Economic Council of Ukraine  
**TTSEC** — territorial tripartite social and economic council  
**ST** — sole trader

## INTRODUCTION

Small and medium-sized business (SMB) is a basis for economic development, employment and creation of new jobs and the key source of budget revenues in any country.

The relevant regulatory and legal framework builds on the term “small and medium-sized enterprise”. Small and medium-sized enterprises include businesses with up to 250 employees, up to EUR 50 million of annual income as well as sole traders. In the Ukrainian context, the terms “small and medium-sized business” and “small and medium-sized enterprise” share the same acronym — SME. This makes the two terms equal and fails to demonstrate the important role played by sole traders (ST) in small and medium-sized business.

In this study, SME will be used as abbreviation for small and medium-sized enterprises, and SMB — as abbreviation for the whole sector of small and medium-sized business (legal entities and sole traders).

SMB’s share in Ukraine’s economy is as large as 99%. SMB employs 79.1% of Ukraine’s total workforce. Therefore, public authorities should elaborate social and labour policies primarily with due consideration of the opinion of representatives of small and medium-sized business.

Ukraine’s small and medium-sized business has its unique characteristics, among which:

- High level of distrust in public authorities and NGOs in the SMB sector;
- Decentralised support infrastructure for small and medium-sized business;
- Poor management resulting from inconsistent vertical and horizontal communication between public authorities regulating the small and medium-sized business and lack of proper communication between public authorities and representatives of SMB at both the national and regional levels;
- Lack of knowledge, culture of and experience in market relations both among public authorities and in the SMB environment;
- Poor representation of SMB in the decision-making process in social and labour sector.

Taking account of these peculiarities for the purposes of reforming and regulating the social and labour sector will facilitate better communication between the business and public authorities, improve the quality of managerial decisions, increase employment rates and develop the SMB in the country.

Efficiency of the SMB policy depends on whether or not public authorities and the business have a common vision of the future in this sector. That is why the policy-making process should build on transparent and continuous cooperation between public authorities and representatives of the SMB.

## METHODOLOGY AND ORGANISATION OF STUDY

The study of participation of small and medium-sized business in bargaining with public authorities in the process of shaping social and labour policies was conducted during the period from July till November 2017.

The authors of this study conducted a *legal analysis of possibilities of participation of the SMB in bargaining with public authorities in the process of shaping social and labour policies*. For the purpose of that analysis, the following laws and regulations have been analysed:

- The Law of Ukraine on development and State support of small and medium-sized business in Ukraine;
- The Law of Ukraine on the principles of the State policy regulating economic activity;
- The Law of Ukraine on the social dialogue in Ukraine;
- The Law of Ukraine on trade unions, their rights and guarantees;
- The Law of Ukraine on employers' organisations, their associations, rights and guarantees;
- The Law of Ukraine on collective agreements and contracts;
- The Law of Ukraine on the rules of settling of collective labour disputes (conflicts);
- The Law of Ukraine on local self-government;
- The Law of Ukraine on employment;
- The Law of Ukraine on protection of labour;
- The Law of Ukraine on remuneration;
- The Decree of the President of Ukraine of 17 November 1998 on establishing the National Mediation and Conciliation Service of Ukraine;
- The Decree of the President of Ukraine of 2 April 2011 on the National Tripartite Social and Economic Council of Ukraine.

Conventions and Recommendations of the International Labour Organization (ILO) play an important role in regulating social and labour relations:

- Convention No. 87 concerning freedom of association and protection of the right to organise;
- Convention No. 98 concerning the application of the principles of the right to organise and to bargain collectively;
- Convention No. 144 concerning tripartite consultations to promote the implementation of international labour standards and Recommendation No. 152 concerning tripartite consultations to promote the implementation of international labour standards and national action relating to the activities of the International Labour Organisation;
- Convention No. 154 concerning the promotion of collective bargaining;
- Recommendation No. 91 concerning collective agreements;
- Recommendation No. 92 concerning voluntary conciliation and arbitration;
- Recommendation No. 113 concerning consultation and co-operation between public authorities and employers' and workers' organisations at the industrial and national levels;

- Recommendation No. 152 concerning tripartite consultations to promote the implementation of international labour standards and national action relating to the activities of the International Labour Organisation;

- Convention No. 163 concerning the promotion of collective bargaining, etc.

***Project geography: 4 regional round tables and 1 local round table were held in:***

- Kharkiv on 15 September 2017

- Odesa on 22 September 2017

- Chernivtsi on 6 October 2017

- Kyiv on 20 October 2017

- Netishyn (Khmelnyskyi Oblast) on 2 November 2017

*14 Ukrainian Oblasts and the city of Kyiv* took part in the regional round tables: Dnipropetrovsk, Zhytomyr, Ivano-Frankivsk, Kyiv, Mykolaiv, Odesa, Poltava, Sumy, Kharkiv, Kherson, Khmelnytskyi, Cherkasy, Chernivtsi, Chernihiv Oblasts.

*Those round tables gathered over 120 participants representing:*

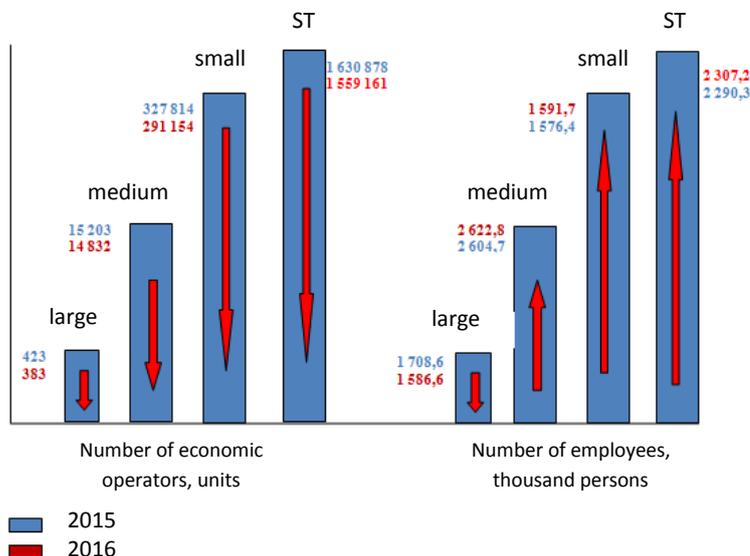
- Trade unions
- Business associations
- Employers' organisations
- Civil society organisations
- Sole traders
- Educational establishments
- Local authorities

*The participants in those round tables learned about the existing communication channels between the SMB and public authorities, discussed some practical aspects of enforcement of laws and rules regulating participation of the SMB in bargaining with public authorities and developed recommendations on enhancing institutional capacity of the SMB in bargaining with public authorities in the process of shaping the social and labour policies.*

*The obtained results were summarized during the final stage of the study.*

# 1. SMALL AND MEDIUM-SIZED BUSINESS IN UKRAINE TODAY: ITS NATURE AND ROLE IN THE ECONOMY

According to the State Statistics Committee of Ukraine, figures reported by economic operators demonstrated negative trends in 2015–2016. In 2016, the number of economic operators reduced in all sectors — among large, medium-sized, small business and sole traders (ST). At the same time, small and medium-sized businesses in Ukraine create new jobs.



**Table 1. Structural statistics on economic operators with the breakdown by their size<sup>1</sup>**

By April 2017, the number of sole traders (ST) in Ukraine had reduced by 250,000 which resulted from the amendments to laws regulating their taxation approved by the President Petro Poroshenko on 27 December 2016. According to OpenDataBot, a service for monitoring registry data of Ukrainian companies, over 300,000 ST wound up and 50,000 new were registered. According to OpenDataBot’s statistics, most closed ST came from Kyiv (44,004), Kharkiv (26,222) and Dnipropetrovsk (26,558) Oblasts<sup>2</sup>.

At the same time, those statistics do not reflect the state of affairs in Ukraine’s SMB. The breakdown into small, medium-sized and large business based on two criteria only — the number of employees and the annual income in EUR — fails to reflect what is really going on in Ukraine’s SMB.

Considerable fluctuations of currency exchange rates in Ukraine have resulted in a situation where companies with over 251 employees (in Europe, such companies are classified as large) fall into the category of “medium-sized enterprises” because their annual income is less than EUR 50 million.

According to OpenDataBot, as of August 2017, there were 2,662,353 owners and 1,500,000 companies in Ukraine. The top owners by the number of owned companies

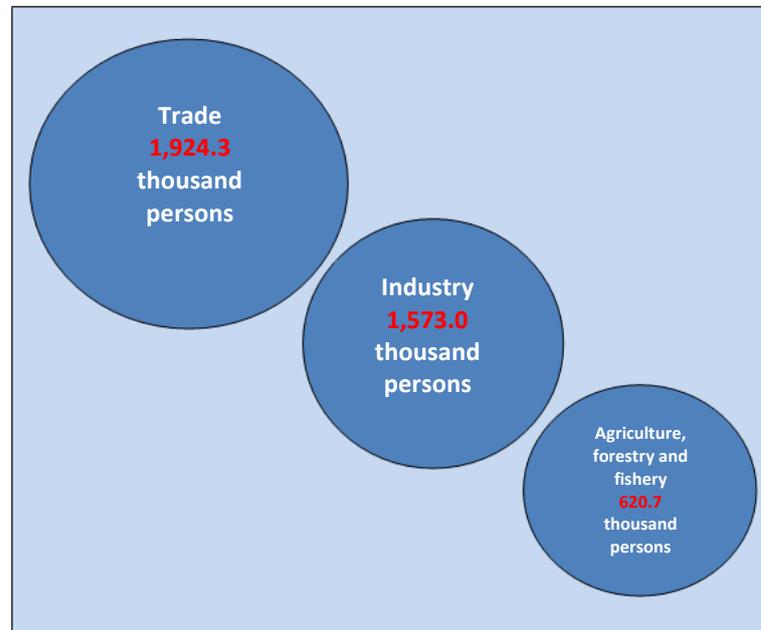
<sup>1</sup> Data provided by the State Statistics Committee of Ukraine: <http://www.ukrstat.gov.ua/>

<sup>2</sup> OpenDataBot — a service for monitoring registry data of Ukrainian companies: <https://opendatabot.com/blog/40-fopagedon-stop>

were Rinat Akhmetov (303 companies), Petro Poroshenko (76 companies), Dmytro Firtash (72) and Ihor Kolomoiskyi (45)<sup>3</sup>.

Therefore, companies whose owners are top businessmen in Ukraine in the large business sector represent a lion's share in the small and medium-sized business sector as well.

Small and medium-sized business was a leader in terms of the number of employees in 2016 in the following sectors (according to KVED):



**Table 2. TOP 3 sectors of economy with the highest percentage of the employed in the SMB<sup>4</sup>**

1,573.00 thousand workers employed by industrial SME against 778.5 thousand employed by large enterprises — this proves that statistics do not reflect the real picture of the business environment. Such figures result from formal division of large business into small and medium-sized enterprises.

According to the legislation, support infrastructure for small and medium-sized enterprises consists of enterprises, institutions and organisations of any form of ownership whose activities aim to develop small and medium-sized business entities, their investment and innovation activities, promote goods (works, services) produced by them, results of intellectual activity in domestic and foreign markets.

Support infrastructure for small and medium-sized enterprises includes business centres, business incubators, innovative business incubators, R&D centres, technology transfer centres, small business support foundations, leasing companies, consulting centres, other enterprises, institutions and organisations whose key objective is supporting development of small and medium-sized business<sup>5</sup>.

According to the Ministry of Economic Development and Trade such infrastructure is mostly concentrated in the city of Kyiv as well as in Donetsk,

<sup>3</sup> OpenDataBot — a service for monitoring registry data of Ukrainian companies: <https://opendatabot.com/blog/40-fopagedon-stop>

<sup>4</sup> Data provided by the State Statistics Committee of Ukraine: <http://www.ukrstat.gov.ua/>

<sup>5</sup> Article 14(1) of the Law of Ukraine on development and State support of small and medium-sized business in Ukraine: <http://zakon2.rada.gov.ua/laws/show/4618-17>

Vinnitsia and Kharkiv Oblasts. In general, most infrastructure facilities in Ukraine are information and consulting institutions (2,660), civil employers' organisations (1,613), innovative foundations and companies (653), coordination councils (498).

As of 1 January 2017, **751 educational establishments** introduced the fundamentals of business course (such establishments mostly concentrated in Donetsk (292), Lviv (121) and Cherkasy (52) Oblasts). At the same time, only **83 educational establishments** offer **retraining and advanced training**. **21,776 seminars**, training sessions, forums, round tables and workshops were held (mostly in Donetsk, Vinnitsia and Cherkasy Oblasts) that **gathered** almost **200,000 participants**<sup>6</sup>.

The key reason why there are so many SMB support infrastructure facilities is a complex system of grant support of small and medium-sized business organisations provided by the European Union, Canada, the United States of America, Sweden etc. There are also State financial support programmes for business associations.

They mostly aim at promoting and supporting the SMB, teaching businessmen how to start their own business, legislation regulating the SMB, providing financial support to start-ups in the small and medium-sized business sector. This proves that many businessmen are involved in various projects. At the same time, there are almost no programmes to support raising of the SMB's awareness concerning the following matters: *social and labour policies in the SMB sector; the number of enterprises that survived the start-up financial support projects; the number of participants in training sessions, workshops who continued or started their business at the national and regional levels etc.*

There are few civic associations, business associations, employers' organisations, trade unions which provide training support to businesses to teach them to take advantage of the opportunities arising out of cooperation of the business with public authorities in the realm of social and labour relations. This creates an information vacuum in the business sector that prevents businesses from participating in the bargaining process.

Scattered small and medium-sized business support infrastructure facilities, poor awareness-raising activities for the SMB concerning the possibility of participation in the bargaining with public authorities result in low membership of businessmen in business associations, employers' organisations and create a negative image of trade unions as enemies, not partners of the business. This, in its turn, creates conditions that impair the establishment of trade unions in the SMB sector. *ST take no part in the process of regulation of social and labour sector. They find themselves at a point between the scopes of activity of trade unions and employers' organisations: ST who employ workers are qualified as employers, while ST working alone or engaging their family are qualified as workers. Due to seasonal nature of works and unstable economic situation ST often migrate between trade unions and employers' organisations which prevents them from permanent participating in discussions of social and labour-related matters.*

Lack of interest among representatives of SME in cooperation with business associations was highlighted in the presentation of the full text of the Report "Annual

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<sup>6</sup> Data provided by the Ministry of Economic Development and Trade of Ukraine: <http://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=0ced3c9f-a057-4852-9072-151dd387356a&title=Institutsii-SchoZabezpechuiutPidtrimkuPidprimnitstva>

Business Climate Assessment 2016” prepared within the framework of the USAID Leadership in Economic Governance program (USAID LEV)<sup>7</sup>. The study showed that only 15% of SME were members of at least one business association. SME are reluctant to join any business associations because:

48% do not need that;

26% believe that business associations protect only a small circle;

21% find no business association in their areas of interest<sup>8</sup>.

Presently, there is no possibility to see how many representatives of the SMB are members of trade unions and employers’ organisations. Analysis of membership in those organisations can be conducted at the national, sectoral or territorial levels. Neither the pool of representatives nor the group of signatories of bilateral or trilateral agreements regulating social and labour relations have been broken down by small, medium-sized and large business.

## 2. SMB’S ROLE IN REGULATION OF THE LABOUR MARKET BY MEANS OF COLLECTIVE AGREEMENTS

In Ukraine, the business and the State usually communicate via consulting and advisory bodies. *Consulting and advisory bodies* dealing with regulation of the social and labour policies include *national, sectoral, territorial tripartite social and economic councils*.

*Social dialogue is the key instrument of regulation of social and labour relations on a tripartite basis: business — the State — workers*. The key purpose of social dialogue is studying and alignment of opinions, achieving agreement and ensuring coordinated decision-making by participants of the social dialogue regarding the elaboration and implementation of the State social and economic policies, regulation of labour, social and economic relations<sup>9</sup>.

*Regulation of social and labour relations by means of collective agreements* includes drafting and signing of collective agreements. A collective agreement is an agreement between an employer and trade union resulting from their dialogue aiming to regulate production, labour, social and economic relations as well as to harmonize the interests of workers and owners.

*Tripartite social and economic councils are the only institutions directly dealing with regulation of the social and labour sector within the triangle “business — the State — workers”*. The key task of such tripartite councils is to develop a consolidated opinion of the participants of the social dialogue on the strategy of economic and social development of Ukraine and identify ways to resolve the existing problems in this field; develop harmonized recommendations and proposals and provide them to public authorities of a respective level regarding the elaboration and implementation of the State economic and social policies, regulation of labour, economic and social relations. *As a matter of fact, such councils are platforms for the parties in social and labour relations to negotiate*.

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<sup>7</sup> Business climate and SME development: Expectations of the business (based on the results of the second Annual Business Climate Assessment): [https://www.slideshare.net/IER\\_Kyiv/2016-80646193](https://www.slideshare.net/IER_Kyiv/2016-80646193)

<sup>8</sup> The study report shows the results of survey among SME that are members of no business association.

<sup>9</sup> The Law of Ukraine on the social dialogue in Ukraine: <http://zakon2.rada.gov.ua/laws/show/2862-17>

At the same time, the above-mentioned other consulting and advisory bodies and State institutions indirectly, but considerably influence the elaboration of social and labour policies by creating a favourable environment for the SMB to develop, by improving the regulatory policy etc.

**Tripartite social and economic councils** are established at the national, sectoral and territorial levels and consist of equal numbers of representatives of participants of the social dialogue (trade unions, employers' organisations and public authorities) of a respective level based on the representation status.

At the local level (enterprises), regulation of social and labour relations builds on the bipartite social dialogue between employers and workers and does not require confirmation of the representation status.

As of 13 October 2017, Ukraine had:

*the National Tripartite Social and Economic Council of Ukraine;*

*5 sectoral councils;*

*23 territorial tripartite social and economic councils.*

The number of *city/town and rayon tripartite councils* the creation of which is not directly provided for by the Law of Ukraine of the social dialogue in Ukraine but takes place within the framework of cooperation between public authorities and the civil society at the local level varies from none to almost complete coverage of all rayons within an oblast. The following regions have the biggest numbers of city/town and rayon councils:

- ✓ Vinnytsia Oblast — 31;
- ✓ Zaporizhzhia Oblast — 21;
- ✓ Mykolaiv Oblast — 22;
- ✓ Kharkiv Oblast — 33.

While Poltava, Dnipropetrovsk and other Oblasts have no such councils at all.

*Tripartite and bipartite councils of all levels are independent from each other. The existing councils are coordinated neither vertically nor horizontally.* Moreover, **territorial-level** tripartite councils on the side of **trade unions** are represented primarily by **State-financed organisations** (in the areas of education, medicine, culture, civil service), while on the side **of employers — by manufacturers**. Thus, trade unions and employers are affected by the “deficit” of social partners at the territorial level. Thus, according to the statistics provided by the branch of the National Mediation and Conciliation Service in Mykolaiv Oblast, in 2011–2017, the branch recognized the representation status of 18 Oblast associations of trade unions and only 1 employers' organisation<sup>10</sup>. As of 20 June 2017, 2 employers' organisations and 17 trade unions were recognized to be representative in Poltava Oblast<sup>11</sup>.

The law does not require employers and workers to enter into a collective agreement, it only establishes liability for avoiding participation in the bargaining process.

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<sup>10</sup>The official website of the branch of the National Mediation and Conciliation Service in Mykolaiv Oblast: <http://нсппмиколаїв.укр/index/representativnist/0-13>

<sup>11</sup> The official website of the branch of the National Mediation and Conciliation Service in Poltava Oblast: <http://www.adm-pl.gov.ua/page/viddilennya-nacionalnoyi-sluzhbi-poserednictva-i-primirenniya-v-poltavskiy-oblasti-nspp-0>

As of 31 December 2016, **64,158 collective agreements** were concluded and registered in Ukraine covering **6,140.4 thousand workers**<sup>12</sup>.

Industry is the sector with the biggest number of workers covered by collective agreements. At the same time, it is home for the biggest number of large enterprises: 208 out of 383<sup>13</sup>. Next in the rating are *education, healthcare and social protection* where public-sector workers dominate. In those sectors, 1,334.5 thousand workers and 927.9 thousand workers respectively are covered by collective agreements. The number of workers whose wages are funded from the State budget reaches 1,323.5 thousand (95%) in education and 898.9 thousand (92.5%) in healthcare and social assistance<sup>14</sup>.

In the *trade* sector, 273.7 thousand workers are covered by collective agreements, of which 258.0 thousand are employed by large enterprises<sup>15</sup>.

In the SMB sector, social and labour relations are very rarely regulated by means of collective agreements at the local level. One of the problems here is that small and medium-sized enterprises that are not members of employers' organisations or trade unions have no collective agreements with their employees. The right of employees to enter into collective agreements with their employers, though provided for by the legislation, has not been widely exercised in practice. That is why employees of small and medium-sized enterprises are not yet covered by agreements that could regulate their labour<sup>16</sup>.

**96 sectoral (cross-sectoral) agreements** were registered in Ukraine: industry — 17; transport — 11; construction — 13; communication — 4; agricultural complex — 7; law-enforcement authorities — 10; non-production sector — 34<sup>17</sup>.

Those also include agreements with the period of duration 2005–2006 and 2007–2009. Duration of such agreements is regulated by Article 9 of the Law of Ukraine on collective agreements and contracts, particularly by the following provision: “Upon its expiry, a collective agreement, contract remains in force until the parties enter into a new one or revise the existing one, unless such agreement, contract provides for otherwise”<sup>18</sup>. The above-mentioned agreements raise a question about the extent to which provisions adopted back in 2005–2007 are relevant today?

An interesting example is 2017 Sectoral Agreement between the Ministry of Economic Development and Trade of Ukraine, the Association of Employers in Trade and Commerce of Ukraine and the National Trade Union of Employees and Employers in Trade, Public Catering and Services. In that agreement, employers are represented by a civil society organisation — not an employers' organisation. On the one hand, this demonstrates that representatives of the SMB which enjoy the widest presence in trade seek to create common ground for the development of social and labour relations

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<sup>12</sup>Statistical collection “Labour of Ukraine 2016”, the State Statistics Committee of Ukraine: [http://www.ukrstat.gov.ua/druk/publicat/kat\\_u/publ11\\_u.htm](http://www.ukrstat.gov.ua/druk/publicat/kat_u/publ11_u.htm)

<sup>13</sup>Data provided by the State Statistics Service of Ukraine. Section “Activity of enterprises in 2016”: [http://www.ukrstat.gov.ua/operativ/operativ2013/fin/kp\\_ed/kp\\_ed\\_u/kp\\_ed\\_u\\_2016.htm](http://www.ukrstat.gov.ua/operativ/operativ2013/fin/kp_ed/kp_ed_u/kp_ed_u_2016.htm)

<sup>14</sup>Statistical collection “Labour of Ukraine 2016”, the State Statistics Committee of Ukraine: [http://www.ukrstat.gov.ua/druk/publicat/kat\\_u/publ11\\_u.htm](http://www.ukrstat.gov.ua/druk/publicat/kat_u/publ11_u.htm)

<sup>15</sup>This comparison builds on the data reported by the State Statistics Service of Ukraine in the Statistical collection “Labour of Ukraine 2016” [http://www.ukrstat.gov.ua/druk/publicat/kat\\_u/publ11\\_u.htm](http://www.ukrstat.gov.ua/druk/publicat/kat_u/publ11_u.htm) and in the section “Number of employees with the breakdown by economic activities” [http://www.ukrstat.gov.ua/operativ/operativ2013/fin/kp\\_ed/kp\\_ed\\_u/knp\\_ed\\_u\\_2016.htm](http://www.ukrstat.gov.ua/operativ/operativ2013/fin/kp_ed/kp_ed_u/knp_ed_u_2016.htm)

<sup>16</sup>Analytical materials prepared for the round table on “Social dialogue as a tool of communication between the civil society and the State”: <http://ipzn.org.ua/wp-content/uploads/2017/11/Analitichni-materialy-dlya-KVRU.pdf>

<sup>17</sup>Data provided by the Ministry of Social Policy of Ukraine: <http://www.msp.gov.ua/news/10205.html>

<sup>18</sup>The Law of Ukraine on collective agreements and contracts: <http://zakon0.rada.gov.ua/laws/show/3356-12>

and may be a good example for representatives of the SMB in other sectors. On the other hand, this precedent is a breach of legislation on the social dialogue since only employers' organisations may enter into a tripartite agreement — not civil society organisations.

**National-level** collective agreements (General Agreement) cover workers who are members of the organisations parties to such agreements. At the time when the General Agreement was signed (August 2016) it covered 9.75 million workers. As a result of the recent re-confirmation of the representation status of associations of trade unions parties to the agreement the number of members reduced by over 2.5 million, so as of 1 July 2017, the General Agreement covered only 7.031 million employees working at large enterprises and in the public sector.

At the same time, due to the gaps in regulation of the social dialogue in Ukraine, trade unions of the SMB workers were prevented from participating in the bargaining process and signing agreements at the national (Federation of Trade Unions of Workers of the Small and Medium-sized Business of Ukraine) and territorial levels (Stolytsia, Association of Trade Unions of Workers of the Small and Medium-sized Business).

As a result of “privatization” of the right to represent the interests of the national business in the social dialogue by employers' organisations many business associations that represent and protect the interests of employers or businesses and employ workers are prevented from direct participating in the social dialogue at the national and regional levels.

In the ten months of 2017, **202 collective labour disputes were registered:**

- 3 at the national level;
- 3 at the sectoral level;
- 4 at the territorial level;
- 192 at the manufacturer level<sup>19</sup>.

This is by almost 16% **more** than in the same period of the previous year<sup>20</sup>.

These figures show the need to take better care of the social and labour relations at the local level.

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<sup>19</sup> According to the data provided by the Federation of Trade Unions of Ukraine: <http://www.fpsu.org.ua/napryamki-diyalnosti/virobnicha-politika-ta-kolektivno-dogovime-regulyuvannya/13143-669796>

<sup>20</sup> According to the data provided by the Federation of Trade Unions of Ukraine: <http://www.fpsu.org.ua/nasha-borotba/zagalni-novini/11226-informatsiya-pro-stan-sotsialno-trudovikh-vidnosin-kolektivni-trudovi-spori-konflikti-v-ukrajini-u-zhovtni-2016-roku>

### 3. DECENTRALISED SYSTEM OF CONSULTING AND ADVISORY BODIES IN THE SMB SECTOR AND THEIR ROLE IN SHAPING SOCIAL AND LABOUR POLICIES

Consulting and advisory bodies in the SMB sector also include:

- *public councils;*
- *the Council of Entrepreneurs under the Cabinet of Ministers of Ukraine and its regional branches;*
- *coordination councils for business development;*
- *the Business Ombudsman institution.*

*The State Regulatory Service of Ukraine and its regional branches* are among the State institutions created to support businesses in protecting their economic, social and cultural rights and legitimate interests, participating in managing State affairs and to facilitate settlement of business-related conflicts.

The above-mentioned other consulting and advisory bodies and State institutions indirectly, but considerably influence the elaboration of social and labour policies by creating a favourable environment for the SMB to develop, by improving the regulatory policy etc.

The results of activities of those institutions allow drawing parallels and identifying interrelations between the regulatory policy and the state of affairs in the social and labour realm of the SMB sector.

A **public council** is a permanent collegial elective consulting and advisory body created to ensure that the public can participate in managing State affairs, control over activities of executive bodies, that those bodies establish efficient communication with the public, that the public opinion is taken into account in the process of elaboration and implementation of the State policy.

The *number of members* of a public council is established by the statutory meeting and may not exceed *35 persons*<sup>21</sup>. In practice, however, this pretty often creates *favourable conditions for an illegal takeover of a public council* by representatives of various organisations interrelated on a personal or corporate level. Sometimes *persons with connections in public authorities are “elected” as chairmen of public councils*. In such case, the work of public councils is limited to promoting decisions of public authorities.

Minutes, statements, messages posted on websites which usually contain only general information provide some figures describing activities of public councils.

However, *it is impossible to compare quantitative and qualitative results* based on the available scarce information. Particularly, *neither public authorities nor public councils report on how many proposals and recommendations provided by the latter have been taken into account by public authorities when adopting relevant decisions, or on reasons of not doing so in case public authorities neglect proposals provided by public councils*.

**The Council of Entrepreneurs under the Cabinet of Ministers of Ukraine with its regional branches** is one of the first consulting and advisory bodies in Ukraine of

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<sup>21</sup> The Resolution of the Cabinet of Ministers of Ukraine No. 996 of 3 November 2010: <http://zakon3.rada.gov.ua/laws/show/996-2010-%D0%BF>

which the creation has laid the basis for the introduction of the practice of involving representatives of the SMB in cooperation with public authorities.

Today, the Council fails to cope with the role that both the business and the Government expected it to play. As a result, it's been de facto idle since 2014 since it is still in the process of reorganisation. The key purpose of such reorganisation is to improve the Council's organisation and performance. This process is expected to result in a ***greater number of members and expanded responsibilities***.

**Coordination council for business development** is a consulting and advisory body created at the regional or local level with the purpose to involve representatives of the business environment in the decision-making process regarding the regulation of the SMB.

According to the Ministry of Economic Development and Trade, Ukraine has a wide network of coordination councils which is rather diversified at the regional level. Today, there are 498 coordination councils in Ukraine<sup>22</sup>.

At the same time, representatives of coordination councils in most cases stay outside the national-level decision-making process where SMB-related matters are concerned. Their activities and recommendations are merely formal. *At the regional and local levels, there are no statistics on proposals and recommendations developed by coordination councils, nor on the numbers of proposals that public authorities have indeed taken into account. This makes it impossible to assess their performance.*

**The Business Ombudsman institution in Ukraine** was established with the purpose to ensure efficient systemic communication between the business and the government, public authorities, local self-governing authorities as well as enterprises owned by the State or subordinated to public authorities. As a matter of fact, the work of the Business Ombudsman Council reflects the results of cooperation between the business and public authorities.

This institution *regularly publishes annual and quarterly reports that contain information about the number of complaints, the list of public authorities against which those complaints were filed, the list of subject matters of the filed complaints.*

According to the Business Ombudsman, small and medium-sized businesses are the most frequent complainants. The share of complaints filed by representatives of the SMB in the total number of complaints varies between 63% and 80%<sup>23</sup>.

In 2016, Kyiv Oblast was the region with the second largest number (11%) of complaints from the business in Ukraine (the city of Kyiv — 43%)<sup>24</sup>. At the same time, Kyiv Oblast has fewest workers protected by collective agreements (55.6%). ***Comparison of the results of activities of various institutions shows that the business environment and conditions of protection of workers are interrelated.***

Since the time of its creation, the Business Ombudsman Office received 2,762 complaints from the business. The level of satisfaction with the work of the Office among the complainants reached 98% in Q3 2017. ***It is also worth mentioning that despite the fact that the Business Ombudsman institution in Ukraine is a consulting***

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<sup>22</sup> Data provided by the Ministry of Economic Development and Trade of Ukraine: <http://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=0ced3c9f-a057-4852-9072-151dd387356a&title=Institutsii-SchoZabezpechuiutPidtrimkuPidprimnitstva>

<sup>23</sup> The official website of the Business Ombudsman Council: [https://boi.org.ua/media/uploads/annual\\_report\\_2017/annual\\_report\\_\\_2017ua.pdf](https://boi.org.ua/media/uploads/annual_report_2017/annual_report__2017ua.pdf)

<sup>24</sup> The official website of the Business Ombudsman Council: [https://boi.org.ua/media/uploads/annual\\_report\\_2017/annual\\_report\\_\\_2017ua.pdf](https://boi.org.ua/media/uploads/annual_report_2017/annual_report__2017ua.pdf)

*and advisory body, public authorities have complied with 87% of recommendations provided by the Business Ombudsman Council*<sup>25</sup>.

Therefore, during the two years of its work, the Business Ombudsman institution in Ukraine has proved to be an efficient “third force” protecting the rights of the business. The Council’s activity is in the moral framework rather than legal, i.e. decisions of the Council are advisory, not binding, but public authorities still take its recommendations into account<sup>26</sup>.

**The State Regulatory Service of Ukraine with its regional branches (SRS)** is a central executive body whose activity is regulated and coordinated by the Cabinet of Ministers of Ukraine and which implements the State regulatory policy, the policy of supervision (control) in the area of economic activity, licensing and permitting systems in the area of economic activity and deregulation of economic activity.

In 2016, 844 draft regulatory documents were submitted for the SRS’s approval — and 733 in the 10 months of 2017. Thus, the SRS is continuously communicating with public authorities dealing with regulation of the SMB. At the same time, according to the SRS, it received no feedback from public authorities which caused the *SRS to issue 5 decisions on suspension of certain regulations*<sup>27</sup>. In addition, some ministries and departments and local authorities ignored the requirement to have draft regulations approved by the SRS.

*Local self-governing authorities* appeared to encounter considerable *problems in their regulatory activity*. 90% of draft regulatory documents proposed by them in 2016 (1,287) were *improper*. In addition, the drafters almost never assessed the costs that economic operators would incur as a result of the implementation of the proposed regulatory documents<sup>28</sup>.

The SRS has concluded that the approach applied by local self-governing authorities to rule-making in 2016 was not systemic and merely formal<sup>29</sup>.

*This information provided by the SRS proves that the existing Ukrainian wide network of tripartite social and economic councils, coordination councils for business development is inefficient. 90% of low-quality draft regulatory documents submitted by local self-governing authorities is a result of poor communication between the business and public authorities at the regional and local levels. At the same time, the fact that some ministries, departments and local authorities ignore the requirement to have draft regulations approved by the SRS give rise to concern.*

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<sup>25</sup>The official website of the Business Ombudsman Council. Quarterly report (July — September 2017): [https://boi.org.ua/media/uploads/q32017/qiii\\_2017\\_ua\\_2.pdf](https://boi.org.ua/media/uploads/q32017/qiii_2017_ua_2.pdf)

<sup>26</sup> The official website of the Business Ombudsman Council. What’s wrong with the status and powers: <http://yuzhanina.in.ua/novini/item/141-institut-biznesombudsmena-v-ukraini-shcho-ne-tak-zi-statusom-i-povnovazhenniamy.html>

<sup>27</sup> **Report of the State Regulatory Service of Ukraine: achievements and plans for 2017:** <https://ckp.in.ua/events/16027>

<sup>28</sup> Analytical report on the work of the SRS in 2016: <http://www.drs.gov.ua/press-room/derzhavna-regulyatorna-sluzhba-ukrayiny-oprylyudnyla-analitychnyj-zvit-pro-svoyu-robotu-u-2016-rotsi/>.

<sup>29</sup> Analytical report on the work of the SRS in 2016: <http://www.drs.gov.ua/press-room/derzhavna-regulyatorna-sluzhba-ukrayiny-oprylyudnyla-analitychnyj-zvit-pro-svoyu-robotu-u-2016-rotsi/>.

## CONCLUSIONS

The national and regional environments in which the SMB exists significantly differ in terms of both types of a business and diversity of sectors of economy in which they work, number of employees, production volumes etc. Reforms aimed to meet the needs of the small and medium-sized business should be planned with due consideration of this diversity and in full compliance with the principle of subsidiarity according to which the mechanism of governance of society must be bottom-up, i.e. all problems that can be efficiently resolved locally should be within the competence of municipal authorities as representatives of the State closest to people.

Experience of other countries shows that business associations often can demonstrate better support to the development of the SMB than certain public authorities. That is why the *State policy* in this area should ***aim, among other things, to facilitate the development of employers' organisations and trade unions protecting the SMB, create the mechanisms of their participation in the process of bargaining with public authorities, inform representatives of the SMB about possibilities for social partners to participate in the process of bargaining with public authorities.***

Where public and non-public institutions dealing with the SMB are not highly efficient, business associations, trade unions and employers' organisations may become a feedback tool for the government to communicate with the business, a source of information about violations of workers' rights, rights of ownership and about barriers to business development.

Establishing proper communication is one of the priority objectives of the ongoing reforms in the SMB sector and should become the basis for the development of socially responsible market economy. In the process of decentralization, the importance of communication between the business and public authorities at the local level is increasing.

**The key barriers to establishing efficient communication between representatives of the SMB and the State include:**

*Poor communication between representatives of the SMB and public authorities within the framework of communication platforms at the national and territorial levels.* Communication platforms are independent from each other. They have neither vertical nor horizontal interaction. As a result, the current reforms are not socially responsible, the shadow economy is growing, and representatives of the SMB demonstrate low participation in the bargaining process.

*Poor knowledge and skills among the communicating parties.* 21,776 seminars, training sessions, forums, round tables and workshops were held and gathered almost 200 thousand participants, while there is no programme for the development of the SMB social and labour policy.

*Decentralized network of institutions regulating the SMB.*

The SMB in Ukraine is regulated at the national and regional levels. Over 600 public and non-public institutions deal with the regulation of the SMB, including the matters directly or indirectly relating to social and labour relations. This causes overlapping of functions and tasks among consulting and advisory bodies and public institutions; creates a situation in which representatives of the SMB are involved in the

activities of several institutions simultaneously, which, in its turn, affect their performance and reduces the efficiency of the efforts taken.

*Lack of social partners.* Representation criteria applicable in Ukraine create an obstacle for most organisations in the SMB sector and prevent them from participating in the social dialogue. At the same time, those organisations that confirmed their representation status suffer from the “deficit” of social partners at the national, sectoral and especially territorial levels.

*Inconsistent reforms.* Low participation of representatives of the SMB in the process of bargaining with public authorities, poor vertical and horizontal communication between public authorities result in inconsistent reforms. This, in its turn, causes distrust among businesses to public authorities and business associations, and the scope of work of public authorities reduces primarily to mitigating the negative effect of market defects with the purpose to support a competitive environment.

*Lack of reports that could show the interrelation between quantitative and qualitative indicators.* In most cases, it is impossible to compare qualitative and quantitative results of activity of institutions serving as communication platforms for the business and the State at the national and regional levels due to lack of reports on the results of such communication, reasons for neglecting proposals and recommendations submitted to public authorities. The Business Ombudsman institution is an exclusion — its official website contains detail quarterly and annual reports.

## **RECOMMENDATIONS ON ENHANCING INSTITUTIONAL CAPACITY OF SMB IN UKRAINE**

Resolution of the key problems preventing from establishing efficient communication between the business and public authorities will facilitate the strengthening of institutional capacity of small and medium-sized business in Ukraine.

*Recommendations on strengthening institutional capacity of the small and medium-sized business in bargaining with public authorities in the process of shaping social and labour policies include the following:*

### *For the Cabinet of Ministers of Ukraine:*

- Introduce amendments into regulations of the Cabinet of Ministers of Ukraine to bind public authorities to take account of opinions of tripartite bodies participating in the social dialogue when making decisions regulating social and labour relations.
- Instruct ministries and other central executive authorities to take into account opinions of tripartite bodies participating in the social dialogue when making decisions regulating social and labour relations.
- Introduce amendments into laws and regulations on consulting and advisory bodies in the SMB sector to set unified indicators/criteria for quarterly and annual reports. This will allow analysing the results of communication between representatives of the SMB and public authorities.
  - Reduce the number of institutions dealing with the SMB-related matters.
  - Establish vertical and horizontal communication between public authorities regulating the SMB.

- Introduce provisions in the legislation on clear distribution of functions and tasks among non-public institutions dealing with communication between the business and public authorities.

***For the Ministry of Economic Development and Trade of Ukraine:***

- Implement reforms bottom-up. It means that regional peculiarities of the SMB should be primarily taken into account for the purposes of drafting national strategies and programmes. National strategies and programmes should be developed on the basis of summarized recommendations and proposals prepared at the regional level. Today, Ukraine applies the opposite approach — programmes and strategies are firstly developed at the national level and then adopted by regions.

- Recommend to local self-governing authorities to take into account social and labour policy issues when drafting regional strategies for the development of the small and medium-sized business in Ukraine.

***For the National Tripartite Social and Economic Council of Ukraine:***

- Develop recommendations on establishing communication between tripartite bodies participating in the social dialogue and other institutions regulating the SMB.

- Establish vertical and horizontal communication between bodies participating in the social dialogue at the national, sectoral and territorial levels.

- Develop recommendations on involving representatives of the SMB in the social dialogue based on the European practices.

***For the participants in the social dialogue:***

- Hold awareness-raising campaigns, training (workshops, training sessions) activities for businesses to inform them about the existing communication channels between the business (and its representatives) and the State in the context of social and labour relations, possibilities to join those channels.

- Develop proposals on amending the Law of Ukraine of the social dialogue in Ukraine for the following purposes:

- Involve civil society organisations (business associations) in activities of tripartite bodies participating in the social dialogue, with advisory vote.

- Allow signing sectoral (cross-sectoral) and territorial agreements with non-representative organisations participating in the social dialogue where there are no representative ones.

- Develop unified indicators/criteria for quarterly and annual reports to be prepared by bodies participating in the social dialogue: NTSEC, sectoral councils, TTSEC.

- Introduce amendments into Article 9 of the Law of Ukraine on collective agreements and contracts to establish that upon its expiry, a collective agreement, contract remains in force until the parties enter into a new one or revise the existing one, unless such agreement, contract provides for otherwise. Setting of clear terms of duration of collective agreements (2–3 years) will help boost the activities of social partners and facilitate the drafting and signing of collective agreements compliant with the existing social and economic conditions.