

The Impact of War and European Accession on the Labour Law Reform in Ukraine

Yana Simutina*

Summary: Labour law reform in Ukraine has long been a complex and politicised issue. It is overdue, not only because of the dramatic economic and social changes within the country since independence but also because of external influences related to global changes in the world of work. This paper examines the challenges and imperatives of labour law reform in Ukraine under the dual pressures of war and European Union (EU) accession. Ukraine's status as an EU candidate provides an incentive for reform, even as the ongoing Russian invasion alters socio-economic priorities and labour market dynamics. Labour law reform is essential for supporting post-war recovery and should aim to achieve a balance between economic efficiency and worker protection. Policymakers need to reconcile competing priorities between business flexibility and workers' rights, while social dialogue remains crucial for ensuring fair labour laws. While some contend that wartime is not the right moment for comprehensive reforms, this paper advocates for their urgency. Post-war recovery and integration into the EU require proactive reforms in employment and labour relations. Such reforms should embody the values of the European social model, emphasising social justice as a driver of economic efficiency.

Keywords: labour law reform, deregulation, EU accession, employment policy, EU acquis, European social model, labour rights

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* Doctor of Jur. Sciences (Dr.hab), Professor, Visiting Professor at the University of Bristol (under the Researchers at Risk Fellowships Programme of the British Academy and CARA), Senior Research Fellow of Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine. Contact: yana.simutina@gmail.com

1. Introduction

Ukraine's status as an EU candidate country has made the prospect of joining the European Community a reality, encouraging further reforms and providing an incentive for Ukrainians who have demonstrated their willingness to defend their country's independence and the European path of development. At the same time, Ukraine's experience of European integration in times of war is unique. At the start of the full-scale Russian invasion, Ukraine imposed martial law, which led to restrictions on rights and freedoms, including constitutional labour rights. Along with that, and despite enormous human, financial and economic losses, the Ukrainian government has shown the determination and ability to carry out the necessary reforms required by the EU accession process, although the war is forcing policymakers to make significant adjustments to domestic socio-economic development priorities, affecting the momentum and effectiveness of progress in this direction.

The war has significantly changed the Ukrainian labour market, which requires an adequate response and appropriate action. While there was a shortage of vacancies at the beginning of the war, there is now an acute staff shortage, especially in traditionally 'male' professions.² Women, who previously rarely chose industries such as manufacturing, construction, transport, logistics, and others, are now actively filling this vacuum. This gender transformation of the labour market is unprecedented in its scale and speed. Another of Ukraine's most pressing problems is the mechanisms for the return of citizens of our country who left due to the full-scale invasion of Russia.³

Recently, the government of Ukraine has set an ambitious recovery target of 7 per cent annual GDP growth by 2032. According to various estimates, this will require 8.6 million new workers to enter the labour market.⁴ To do this, it is

² STUDENNIKOVA, I. Labor Market in Wartime: Demographic Challenges for Ukraine. *Vox Ukraine*. 2024 [online]. Available at: <https://voxukraine.org/en/labor-market-in-wartime-demographic-challenges-for-ukraine>

³ As of the end of 2023, around 4.3 million Ukrainian citizens have benefited from temporary protection status in the EU. The labour force among them is at least 1.4 million people. The approximate number of Ukrainians who left the country due to the war and still remain abroad is 6.3 million (around 16% of the population). See more: IOM. UN Migration. Pathways for Regular Migration: Perceptions of Migrant Workers and Recovery in Ukraine. 2024 [online]. Available at: https://dtm.iom.int/sites/g/files/tmzbd1461/files/reports/IOM_UKR_Pathways%20for%20Regular%20Migration_Perceptions%20of%20Migrant%20Workers%20and%20Recovery%20in%20Ukraine_July%202024.pdf

⁴ ILO. Prospects for achieving Ukraine's 2032 GDP target: a labour market perspective. 2023 [online]. Available at: <https://reliefweb.int/report/ukraine/prospects-achieving-ukraines-2032-gdp-target-labour-market-perspective-september-2023>

necessary to attract more women to the labour market, integrate people with disabilities, encourage the return of Ukrainian refugees from abroad, and effectively manage labour migration. This titanic recovery effort will require developing and implementing a comprehensive package of legal, policy and programmatic measures, which must also ensure compliance with relevant international labour standards and EU acquis.

This paper outlines the main challenges of this process, focusing on how changes to wartime legislation correlate with Ukraine's European integration commitments and highlighting existing problems in national labour law that still need to be addressed. As we shall see, it is Ukraine's European integration aspirations that have become, on the one hand, the greatest incentive for reforming labour legislation and, on the other hand, have outlined red lines for the legislator to navigate the tensions between the social and the economic rationales in the process of modernising labour legislation to meet European social standards.

2. Labour Law Reform: Why, When and How?

The reform of labour legislation in Ukraine has been a complex and politicised issue for a long time.⁵ It is overdue, given not only the dramatic changes in the economic and social spheres within the country since its independence but also external influences associated with global transformations in the world of work.⁶

In the context of this paper, it may seem reasonable to begin with a methodological question about the purpose of labour law reform. This, in turn, makes it crucial to dive deeper into examining the goals of labour law itself and think about the correlation between labour law and economic policy. Could the labour market function properly without the specific labour standards enshrined in the law and enforced in practice? Ultimately, are labour regulation and economic efficiency co-dependent? There has been a broad academic discussion of these issues in recent decades, with the background of deindustrialisation, economic crisis, COVID-19, digital transformation, and deregulation 'attacks' on labour law.⁷ At any rate, the articulation of labour law reform's goals is important for

⁵ ILO. Ukraine on its way to reform 50-year-old Labour Law. November 2020 [online]. Available at: <https://www.ilo.org/resource/news/ukraine-its-way-reform-50-year-old-labour-law>

⁶ SIMUTINA, Y. Current challenges of the Labour Law Reform of Ukraine: On the Way to European Integration. *Juridica International*. 2018, vol. 27, pp. 88–93 [online]. Available at: <https://doi.org/10.12697/JI.2018.27.09>

⁷ DEAKIN, S. The Contribution of Labour Law to Economic and Human Development. In: DAVIDOV, G., LANGILLE, B. (eds.). *The Idea of Labour Law*. Oxford, 2011, pp. 156–176.

policymakers, who should have a clear view of what the new law is supposed to achieve.⁸

The economic impact of labour regulation has been widely debated in the literature. Some scholars argue that efforts to protect workers may inadvertently harm them and the economy by introducing rigidities and distortions in hiring decisions, potentially leading to higher unemployment. Others tend to believe that by protecting workers from arbitrary treatment, labour laws contribute to a more productive and inclusive economy.⁹ As a confirmation of the latter, the data suggest that the increase in employment protection that most countries and regions experienced during much of post-war history appeared to have no negative impact on their economies. In fact, small but positive correlations between stronger protective legislation and beneficial social and economic outcomes were found. This was seen in overall levels of employment, in increased labour productivity and in the amount of national income going to workforce wages rather than to capital profit.¹⁰ Also, as recent research shows, labour reforms that have reduced employment protection by reducing dismissal costs and facilitating the use of temporary contracts have not had the presumed positive effects on employment and unemployment rates.¹¹

One of the key purposes of labour legislation is to balance negotiating power between employees and employers to secure employees' rights. This purpose is achieved, among others, by indicating the mechanisms of social dialogue and industrial relations, which ensure that the employee is not left alone facing the employer. At its most basic, labour law is about the protection of workers. Workers, it is said, need protection because of the imbalance of power inherent in the employment relationship. Their interests may be protected either through the development of substantive standards or, alternatively, through the development

⁸ DAVIDOV, G. Articulating Labour Law's Goals: Why and How. *European Labour Law Journal*. 2012, vol. 3, no. 2, p. 133.

⁹ ADAMS, Z., BISHOP, L., DEAKIN, S., FENWICK, C., MARTINSSON GARZELLI, S., RUSCONI, G. The Economic Significance of Laws Relating to Employment Protection and Different Forms of Employment: Analysis of a Panel of 117 Countries, 1990–2013. *University of Cambridge Faculty of Law Research Paper no. 36/2018*. 2018 [online]. Available at: <https://ssrn.com/abstract=3184784> or <http://dx.doi.org/10.2139/ssrn.3184784>; TODOLÍ-SIGNES, A. *Labour Law and Economic Policy: How Employment Rights Improve the Economy*. Oxford, 2024, 178 p.

¹⁰ Legislating labour in the long run – how worker rights help economies. *University of Cambridge. Research*. 12 July 2018 [online]. Available at: <https://www.cam.ac.uk/research/features/legislating-labour-in-the-long-run-how-worker-rights-help-economies> Legislating labour in the long run – how worker rights help economies.

¹¹ ARESTIS, P., FERREIRO, J., GOMEZ, C. Does employment protection legislation affect employment and unemployment? *Economic Modelling*. 2023, vol. 126, 106437 [online]. Available at: <https://doi.org/10.1016/j.econmod.2023.106437>

of procedures through which workers can bargain or negotiate with employers on equal, or at least more equal, terms.¹² Collective bargaining and industrial relations cannot be separated from individual labour relations, as only in their interconnection they create a phenomenon known as “Labour Law”.

At any rate, a careful approach to labour reform is essential, as social peace relies on it. Before mitigating the rights and securities for employees regulated by the government, there should be an effective and potential collective representation of employees’ interests and the implementation of genuine social dialogue rather than its imitation. However, even the most ideal labour legislation alone cannot be a miracle solution to labour market imperfections. It must be part of a self-enforcing legal checks and balances system. If the labour law is to be “flexible”, it has to be complemented by other reforms, such as the reforms of the judiciary system and unemployment benefits. Ideally, reforms of unemployment benefits should take place before, or at least at the same time as the reforms of dismissal rules; the details of both should be part of the joint negotiation package. If the new labour law has to be “strict”, it has to be complemented by a reform of the labour inspectorate. It may also find its balance between “flexible” and “strict” by providing rules that can appeal to both workers and employers.¹³ Ukrainian lawmakers have failed to find this balance so far, although the debates of whose interests – business or employee – should be given preference in modernising the legal regulation of labour relations have been on the table for a long time.¹⁴

Remarkably, the labour law reform in Ukraine did not stop but instead gained momentum with the outbreak of a full-scale war of Russian aggression.¹⁵ In the first place, one of the forced measures was the adaptation of legal regulation of labour relations to the new realities of war as a response to the needs of business for its survival. Soon after Ukraine was granted EU candidate status, a significant incentive for further reforms was added to align national labour law with EU *acquis*. It should be noted that even before obtaining candidate status,

¹² SYRPIS, P. The EU and National Systems of Labour Law. In: CHALMERS, D., ARNULL, A. (eds.). *The Oxford Handbook of European Union Law*. Oxford Handbooks, 2015, p. 944-945.

¹³ ALEKSYNSKA, M. Labour Law Should Aim to be Neither Flexible nor Rigid, but to Correct Market Failures. *Vox Ukraine*. 2020 [online]. Available at: <https://voxukraine.org/en/labour-law-should-aim-to-be-neither-flexible-nor-rigid-but-to-correct-market-failures>

¹⁴ MAKOHON, O. The Potential of Improving Approaches to The Development of New and Improvement of Current Labour Legislation Within the Framework of Ukraine’s European Integration Course. Kyiv: Office of Reforms, 2023, p. 30 [online]. Available at: https://rdo.in.ua/sites/default/files/document_a4.pdf

¹⁵ For example, the Parliament of Ukraine adopted a new Law on Collective Agreements in 2023. Currently, a new Law on Collective Labour Disputes is being finalised. In the late summer of 2023, a working group under the auspices of the Ministry of Economy was established to develop a new comprehensive Labour Code. See more in Section 5.

Ukraine has had the opportunity to start incorporating a sufficient part of the EU *acquis* into its national legal order through the EU–Ukraine Association Agreement. However, despite the importance of this strategic agreement, it has been considered a long-term, dynamic document regulating EU-Ukraine relations, without a clear vision of further development of their relations and further steps of Ukraine's approach to EU membership even in case of its maximum possible implementation, due to the total lack of provision of membership perspectives in case of its realisation.¹⁶ Among the difficulties in meeting the requirements for implementing the EU *acquis* in the field of employment, Bogush points out the conflicting interpretations of Ukraine's obligations under the Association Agreement by representatives of the national legislative and executive authorities, who have focused on developing a neo-liberal economy.¹⁷

Still, a difficult question arises – is wartime a good moment for labour law reform? Some Ukrainian labour law academics are sceptical about the propriety of comprehensive labour law reform at the time of full-scale war and state that it is more appropriate in this stage of armed conflict to adapt labour regulation to the existing phase of the working conditions than to get ahead of it.¹⁸ On the contrary, I argue that its urgency stems from global changes in the world of work, EU integration, and postwar recovery. The continuation and successful implementation of this reform is now critical for the reconstruction, recovery, and eventual European integration of Ukraine. Moreover, one should bear in mind that both institutional changes and preparations for working within the new legal framework take time, and positive results can often be expected only in the medium and long term.¹⁹

Currently, the stakes are high for Ukraine. Ultimately, the need for a clear and unified socio-economic doctrine directly arises from a robust political doctrine – Ukraine's course towards European integration and full EU membership. This

¹⁶ FEDOROVA, A. The Role of Fulfilling the Obligations by Ukraine under the EU-Ukraine Association Agreement within its New Status of a Candidate State for EU Membership. *The Lawyer Quarterly*. 2023, 13(2), p. 178 [online]. Available at: <https://tlq.ilaw.cas.cz/index.php/tlq/article/view/551>

¹⁷ BOGUSH, L. Ukraine's European Integration: Fundamentals of Labour and Employment Regulation. *Three Seas Economic Journal*. 2023, vol. 4, no. 4, p. 12 [online]. Available at: <https://doi.org/10.30525/2661-5150/2023-4-2>

¹⁸ VENEDIKTOV, S. The Impact of the Armed Conflict on Labour Law: The Case of Ukraine. *Access to Justice in Eastern Europe*. 2023. 4 (21) [online]. Available at: <https://doi.org/10.33327/AJEE-18-6.4-n000478>

¹⁹ ILO. Collective bargaining in Germany and Ukraine: Lessons Learned and Recommendations for Ukraine. *Decent Work Technical Support Team and Country Office for Central and Eastern Europe (DWT/CO-Budapest)*. 2021, p. 7 [online]. Available at: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@europe/@ro-geneva/@sro-budapest/documents/publication/wcms_779454.pdf

demand is particularly pressing given the necessity to uphold socio-economic stability during martial law as well as in the post-war period. Such efforts should be guided, among other things, by the action plan for developing the social economy in the EU as an economy that works for people.²⁰

At this historical moment, the conceptual basis for labour law reform in Ukraine should be the achievement of values associated with the European social model, which is based on the recognition that social justice can contribute to economic efficiency and progress. The key task for labour lawyers is to persuade policymakers to rethink the nature of the balance between ‘the economic’ and ‘the social’ and to appreciate more fully the social consequences of their policies. Against the neo-liberal assumption of a big ‘trade-off’ between economic efficiency and social justice, European policy elites agree that social policy is essential in promoting economic adjustment and that there is no contradiction between economic competitiveness and social cohesion.²¹

3. Background to the Current Labour Law Reform in Ukraine

In the case of Ukraine, a clear strategy for reforming labour law and a vision of socio-economic policy in this area have not been developed, although comprehensive reform of labour legislation has always been on the agenda since Ukraine’s independence in 1991. All amendments and additions to the 1971 Labour Code inherited from the Soviet era were, if not spontaneous, then mostly a belated reaction of the legislator to regulate new relations that were rapidly developing, while legal regulation was unsuccessfully trying to catch up. All previous drafts of the Labour Code²² did not seek to change the overall paradigm of employment regulation – it remained rigid and strict, with little or no reflection of the economic, social and technological changes that society has undergone. However, even so, all attempts to adopt the new modern Labour Code have failed due to trade unions’ reluctance to even the slightest changes and lawmakers’ unwillingness to risk their political ratings. Instead, the current labour legislation,

²⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Building an economy that works for people: an action plan for the social economy”. COM (2021) 778 final [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0778>

²¹ HEMERIJCK, A. The Self-Transformation of the European Social Model(s). In: ESPING-ANDERSEN, G. (ed.) *Why We Need a New Welfare State*. Oxford, 2002, p. 173.

²² At least five attempts (in 2003, 2007, 2013, 2014 and 2019) have been made to draft and adopt a new Labour Code of Ukraine.

including numerous *ad hoc* changes, has become a complex, unbalanced array of regulations that, due to their fragmentation and conflicting nature, are easier to circumvent than to comply with.²³ In addition to the Labour Code of 1971, with the majority of initial articles substantially amended and supplemented, there is a great variety of labour laws in Ukraine. The negative side of Ukraine's contemporary labour legislation is the chaotic and non-systemic character of legal regulation improvements, which enables quite a few legal collisions. It had a significant impact on judicial practice. When the legislature lacks the political will to make the necessary regulatory changes to bring the law into line with contemporary practices, the courts sometimes take the initiative to fill the gaps.²⁴ Moreover, the effectiveness of labour legislation has been undermined at the level of enforcement – formally strong and protective legislation has hardly been enforced at the workplace level.

Businesses and policymakers often perceive labour law norms as extremely rigid, still Soviet-style, and not providing enough flexibility for employers and employees. It also contributed to the spread in society of the manipulative opinion that the current labour legislation as an external form of confirmation of the level of development of the labour law in Ukraine is an atavism of the communist regime and an obstacle and unnecessary burden for business development.²⁵ This thesis was used to justify the need to simplify and deregulate labour relations by abandoning state interference in individual contractual relations between the employee and the employer and the priority of the employment contract as a mutual agreement of the parties. Moreover, in Ukraine, deregulation of labour law was advocated with the argument that it would attract international investment and increase labour productivity.²⁶

²³ As of today, the employment and labour relations in Ukraine are regulated by a complex legal framework that sets specific standards and restrictions. ILO listed 574 pieces of Ukraine labour, social protection, and related human rights legislation.

²⁴ SHUMYLO, M. Legal Conclusions of the Supreme Court in Labor Disputes as a Factor Influencing the Evolution of Labour Law in Ukraine. In: GARCÍA MURCIA, J., RODRÍGUEZ CARDO, I. A., ÁLVAREZ ALONSO, D. (eds.). *The Impact of the Supreme Courts on the Development of Labor Law in Europe*. KRK. Oviedo, 2023, p. 369.

²⁵ MAKOHON, O. The Potential of Improving Approaches to The Development of New and Improvement of Current Labour Legislation Within the Framework of Ukraine's European Integration Course. Kyiv: Office of Reforms, 2023, p. 39 [online]. Available at: https://rdo.in.ua/sites/default/files/document_a4.pdf

²⁶ According to ILO's Decent Work Country Program 2020–2024 for Ukraine, while modernisation of the labour legislation was needed, there was considerable risk that the proposed reforms would not properly balance the request for more flexibility and adequate labour protection and social security for workers in vulnerable situations (including women, people with disabilities, or people living with HIV). See more at: <https://www.ilo.org/resource/decent-work-country-programme-ukraine-2020-2024-0>

The need to reform labour law in Ukraine through ‘modernisation’, ‘debu-
raucratization’, and ‘deregulation’ has become a main narrative since 2019,
when the government presented the first draft of the Law on Labour²⁷ and chose
the path of decodification and replacement of the Labour Code of Ukraine by
a separate law. The concepts of the proposed bill, such as ‘equal rules in the
labour market’, ‘liberalisation of labour legislation’, and ‘providing incentives
for business’, confirmed its focus on employers’ interests.²⁸ On top of that, this
draft law moved away from the traditional codification of labour legislation,
putting forward the free regulation of the employment relationship based on
individual agreements between an employee and an employer.²⁹ Such an ap-
proach is unusual in Ukraine if we consider first the specifics of the national
civil (Romano-Germanic) legal system, with codified law (in the form of codes)
being the main characteristic feature.

The COVID-19 crisis raised the stakes for reform, as the situation called for
urgently closing legal loopholes. This is one example of the lawmakers’ reluc-
tance to update legal regulations and the slow development of domestic labour
law.³⁰ The need to remain in quarantine in the spring of 2020 necessitated chang-
es in Ukrainian labour legislation to regulate remote work. Later, it turned out
that in full-scale war conditions, the transfer of employees to remote work was
the only option for employers to organise the work process and for employees
to continue working; in fact, it has enabled many employers and employees to
preserve labour relations.

Over the last decade, Ukraine has experienced significant growth in the dig-
ital sector. Against this background, a new legal framework for IT companies
is called Diia.City was launched in 2021 by adopting the Law on Stimulating

²⁷ The powers to formulate state policy in the field of employment, labour standards, and the development of an inclusive labour market were transferred from the Ministry of Social Policy of Ukraine to the Ministry of Economy of Ukraine.

²⁸ Notably, the Government of the United Kingdom provided advisory assistance on labour law reform to support the neoliberal initiatives of labour rights deregulation promoted during 2020–2021. See more: Ukraine: UK Sponsors Deregulation of Labour Rights in Ukraine. 10 November 2021 [online]. Available at: <https://www.business-humanrights.org/en/latest-news/ukraine-uk-sponsors-deregulation-of-labour-rights-in-ukraine/>

²⁹ SIMUTINA, Y., VENEDIKTOV, S. Non-standard Forms of Employment: Trends and Prospects of Ukraine’s Legal Regulation. *E-Journal of International and Comparative Labour Studies*. 2021, vol. 11, no. 2 [online]. Available at: http://ejcls.adapt.it/index.php/ejcls_adapt/article/view/446

³⁰ YAROSHENKO, O., LUTSENKO, O. et al. Modern Trends in Labor Law: a Comparative Analysis of the EU and Ukraine. *International Journal of Legal Information*. 2023, vol. 51, no. 2, p. 148 [online]. Available at: <https://www.cambridge.org/core/journals/international-journal-of-legal-information/article/modern-trends-in-labor-law-a-comparative-analysis-of-the-eu-and-ukraine/A4CA73A8282CA3017C282CAD6FD323D6>

the Development of the Digital Economy in Ukraine.³¹ The Law introduced new legal concepts such as the ‘gig contract’, which is not legally defined or applied in other jurisdictions or EU law. In any case, the term ‘gig’ is associated with digital platforms and fragmented activities carried out outside traditional forms of employment, with irregular or additional income without labour protection. The introduction of gig contracts for IT workers, which, according to the legislator, should encourage Ukrainian IT companies to switch to formal employment of their IT workers under these contracts while retaining the tax advantages of civil contracts with individual entrepreneurs, has raised questions about the potential benefits and challenges of this employment model and the boundary between civil and labour law. Even though working arrangements under a gig contract share most of the characteristics of employment relationships, the Law has defined a gig contract not as a special type of employment contract but as a civil law contract and artificially excluded it from the scope of labour law. As a result, it automatically deprives IT workers who sign a gig contract of fundamental rights to join a trade union, to collective bargaining and to strike.³²

All of those measures mentioned above demonstrate that the government’s initiatives to reform labour legislation since 2019 in the way of deregulation have significantly strained the already tense relations between the social partners and caused a crisis of distrust in the government’s actions. Ukrainian trade unions carried out several nationwide protests against attempts by the ruling Servant of the People party to cut back on workplace and trade union rights.

4. The developments of labour legislation during the martial law

At the start of the full-scale invasion, Ukraine introduced martial law, which led to some restrictions on rights and freedoms and raised a question of their proportion to the actual needs of the labour market in the conditions of war. Describing the main features of Ukrainian wartime labour legislation, it is worth emphasising that the issue of regulating labour relations during a war of such a scale and martial law has arisen in Ukraine for the first time since the Second

³¹ Law of Ukraine on Stimulating the Development of the Digital Economy in Ukraine, no. 1667-IX, July 15, 2021. Verkhovna Rada of Ukraine. Official web portal [online]. Available at: <https://zakon.rada.gov.ua/laws/show/en/1667-20#Text>

³² See more in: SIMUTINA, Y. Flexibility or Insecurity? Exploring the Concept of Gig Contracts from Ukrainian Regulatory Experience. *Hungarian Labour Law E-Journal*. 2023, vol. 2, pp. 42–55 [online]. Available at: https://hlj.hu/letolt/2023_2_a/04_YSimutina_hlj_uj_2023_2.pdf

World War. The introduction of martial law in Ukraine led to a new stage in the development of labour law, which began after February 24, 2022. It turned out that the labour market, in which the vital interests of millions of Ukrainian citizens are intertwined, required special wartime legislation to ensure its normal functioning. The first step of the Ukrainian legislator was the adoption of the Law on the Organisation of Labour Relations under Martial Law³³, which introduced restrictions on rights and freedoms provided for in articles 43 (Right to Work) and 44 (Right to Strike) of the Constitution of Ukraine and should have prevailed over the provisions of the Labour Code during martial law.

Furthermore, except for the restrictions on individual and collective labour rights imposed by the adoption of special labour legislation for the martial law period, the limitation of labour rights of employees in Ukraine was carried out not only directly but also veiled by passing laws aimed at deregulation. Experts argue that conducting radical deregulation and reconstruction under wartime conditions when the scope for public debate, strikes and opposition is limited short-circuits democracy.³⁴ It is significant that although the leading group of globally influential economists (the CEPR team) supporting this policy framework recognises that ‘wartime governments [like Britain and the United States during World War 2] usually take over the allocation of resources’, they argue that Ukraine does not have the state capacity to enable this shift, that it would encourage corruption and the black market, and that Ukraine should, therefore, instead seek to incentivise private sector investment through ‘radical deregulation’.³⁵ Assessing economic and political risks to the Ukrainian war effort, Professor Cooper, in his report, outlined the negative consequences of the deregulation policy chosen by the Ukrainian authorities. He states that contrary to what people might expect, namely that war would lead to a search for solidaristic social and economic measures to shore up the Ukrainian home front, Ukrainian government policy to date has followed this experimental model of market-based allocation of resources and deregulation in a war.³⁶ Critics have claimed that deputies in the Ukrainian Parliament have used Russia’s invasion, which has displaced millions

³³ Law of Ukraine on the Organization of Labour Relations under Martial Law, no. 2136-IX, March 15, 2022. Verkhovna Rada of Ukraine. Official web portal [online]. Available at: <https://zakon.rada.gov.ua/laws/show/2136-20#Text>

³⁴ TOOZE, A. Chartbook #163: Warfare without the state – New Keynesian shock therapy for Ukraine’s home front. 22 October 2022 [online]. Available at: <https://adamtooze.substack.com/p/chartbook-163-warfare-without-the>

³⁵ Ibid.

³⁶ COOPER, L. *Market economics in an all-out-war? Assessing economic and political risks to the Ukrainian war effort*. LSE IDEAS, London School of Economics and Political Science, 2022 [online]. Available at: <http://eprints.lse.ac.uk/117570/>

inside and outside the country, as a ‘window of opportunity’ to pass potentially controversial reforms.³⁷

A significant case of labour law liberalisation was the Law on Amendments to Certain Legislative Acts of Ukraine Regarding the Regulation of Certain Non-standard Forms of Employment No. 2431, which in fact introduced only one type of non-standard employment, so-called “work on demand” or “on-call work”, namely employment contracts with non-fixed working hours, and removed general strict restrictions on dismissal of workers performing work under such contracts. While previous legislation limited the employment of short-term or temporary workers, the new law allows employers to hire up to 10 percent of their workforce on contracts with nonfixed work time as little as 32 hours per month, and to be on call each day for all work assigned. Even though zero-hours contracts have become widespread in the UK and some of their modifications exist in some European countries, they have been criticised by labour law scholars.³⁸ It is argued that on-call work creates instability and the illusion of formal employment and can pose challenges of unpredictable and insufficient hours of work and reduced earnings – all the more so if workers do not benefit from equal treatment with full-time workers in terms of remuneration. On-call workers may also face difficulties in balancing work with personal life due to the potentially high variability of work schedules.³⁹

However, the most significant wave of criticism was caused by the adoption of the Law on Amendments to Certain Legislative Acts of Ukraine on Simplifying the Regulation of Labour Relations in the Field of SME and Reducing the Administrative Burden on Entrepreneurial Activity No. 2434 (hereinafter – Law No. 2434) in July 2022. With this Law, a new concept appeared in the Labour Code – ‘a simplified regime for regulating labour relations’.⁴⁰ The simplified regime applies to labour relations that arise: a) between an employee and an employer who is a subject of a small or medium-sized enterprise (SME) with

³⁷ THOMAS, R., GUZ, S. Ukraine could abandon key labour principle. *Social Europe*, 10 August 2022 [online]. Available at: <https://www.socialeurope.eu/ukraine-could-abandon-key-labour-principle>

³⁸ FREEDLAND, M., PRASSL, J., ADAMS, A. Zero-Hours Contracts in the United Kingdom: Regulating Casual Work, or Legitimising Precarity? *Oxford Legal Studies Research Paper*, 2015, no. 11 [online]. Available at: <https://ssrn.com/abstract=25076932015>

³⁹ ILO. What are part-time and on-call work? November 2016 [online]. Available at: https://www.ilo.org/global/topics/non-standard-employment/WCMS_534825/lang-en/index.htm

⁴⁰ Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine on Simplifying the Regulation of Labour Relations in the Field of Small and Medium-Sized Entrepreneurship and Reducing the Administrative Burden on Entrepreneurial Activity, no. 2434-IX, July 19, 2022. Verkhovna Rada of Ukraine. Official web portal [online]. Available at: <https://zakon.rada.gov.ua/laws/show/2434-20#Text>

an average number of employees for the reporting period (calendar year) of no more than 250 people; or b) between an employer and an employee whose monthly salary is more than eight times the minimum wage established by law. The logic of the legislator, who proposes to expand the limits of contractual regulation for the above two categories of employees, is not fully understood. What is the reason for this (precisely defined) wage amount? The question remains rhetorical. Thus, for specific categories of employees, the legislator provides the so-called “simplified regime”, which allows employers to ignore terms of existing collective agreements in individual employment contracts and removes collective bargaining rights. The law empowers employers to negotiate almost all conditions of employment (including but not limited to wages, hours, leave, and conditions of work) through individual contracts with employees. De facto, it means removing up to 70% of the country’s workforce from protections guaranteed by statutory law. According to the State Statistics Service of Ukraine, for example, in 2020, the number of employees of medium-sized enterprises was 43% of the total number of business entities and small businesses – 35.3%. In other words, in 2020, the total number of small and medium-sized enterprises employees was 78.3% of the total number of business entities, which is 5679760 employees.⁴¹ Thus, it can be seen that a relatively large number of employees are at risk of entering into fixed-term employment contracts on terms worse than those provided for in Part 2 of Article 23 of the Labour Code. Moreover, Law No. 2434 remains discriminatory and does not comply with Article 24 of the Constitution of Ukraine and ILO Convention No. 111 on Discrimination in Respect of Employment and Occupation, as it provides for the actual division of employees into several categories with respect to the level of protection of their rights under labour law.

Alongside introducing restrictions on employees’ labour rights during martial law and adopting controversial laws aimed at deregulating labour relations in the longer term, the Government has focused on tackling unemployment and increasing state support in this area. Thus, the Law of Ukraine on Amendments to Certain Laws of Ukraine Regarding the Functioning of Employment and Mandatory State Social Insurance in the Event of Unemployment During Martial Law No. 2220-IX from April 21, 2022,⁴² established several additional guarantees

⁴¹ The number of employees of large, medium, small and micro enterprises by type of economic activity in 2010-2020. State Statistics Service of Ukraine. Official web portal [online]. Available at: https://ukrstat.gov.ua/operativ/operativ2019/fin/pssg/knpsg_vsmm_ek_2010_2020_ue.xlsx

⁴² Law of Ukraine on Amendments to Certain Laws of Ukraine Regarding the Functioning of Employment and Mandatory State Social Insurance in the Event of Unemployment During Martial Law, no. 2220-IX, April 21, 2022. Verkhovna Rada of Ukraine. Official web portal [online]. Available at: <https://zakon.rada.gov.ua/laws/show/2220-20#Text>

in employment and mandatory state social insurance in case of unemployment in a particular period. The specified law introduced several novelties, including one-time financial assistance for the organisation of entrepreneurial activity, simplifying the procedure for awarding unemployment benefits, regulating the procedure for providing benefits for partial unemployment, etc.

The eRobota project was launched by the Government in July 2022 to support businesses and stimulate job creation. These are microgrant programs for starting or developing a business, grants for the creation and development of processing enterprises, planting a garden and viticulture, and greenhouse farming. Over more than a year, the state has invested UAH 4.7 billion in developing small and medium-sized businesses, creating more than 20,000 new jobs for Ukrainians, according to Yuliia Svyrydenko, First Deputy Prime Minister of Ukraine and Minister of Economy.⁴³

Another issue which policymakers have been trying to deal with despite the war is the gender pay gap. In early May, the Government of Ukraine, with the personal support of Olena Zelenska, the First Lady of Ukraine, presented the National Strategy and Action Plan to reduce the gender pay gap in the country, which stands at 18,6% compared to 13% in the European Union. In addition to constituting equal opportunities, pay equity is also a means to the recovery and post-war reconstruction of Ukraine, as the country urgently needs to increase female participation in the labour force. The Strategy and its Implementation Plan, spanning to 2030, aim to close the gap by seeking to address its root causes, such as occupational segregation, including stereotypes about gender roles, especially when it comes to women's and men's occupations and family responsibilities; gender-based discrimination, violence and harassment in the world of work; legal loopholes in equal pay and capacities of labour market institutions to implement the principle of equal pay for work of equal value, and availability and effective use of gender-disaggregated labour market data.⁴⁴

The adoption of the Law on Amendments to Certain Legislative Acts of Ukraine on Strengthening the Protection of Employees' Rights in May 2022 aimed to help overcome discrimination in employment and social policy and bring legislation in line with European standards. This Law *inter alia* obliged

⁴³ eRobota: 7,000 entrepreneurs received grants from the state for business development worth UAH 4.7 billion. Ministry of Economy of Ukraine, September 2023, Government portal [online]. Available at: <https://www.kmu.gov.ua/en/news/yerobota-7-000-pidpriyemstiv-otrymaly-hranyt-vid-derzhavy-dlia-rozvytku-biznesu-na-47-mlrd-hrn>

⁴⁴ ILO. Despite the war Ukraine keeps up the reform process: addressing the gender pay gap is high on agenda. June 2023 [online]. Available at: https://www.ilo.org/budapest/whats-new/WCMS_885044/lang--en/index.htm?fbclid=IwAR0zRuVMDmk3-ckUH3tH0Av0hK-h5jL8x5N-uGbRbQsn0G2myVKW5PWok

employers to ensure equal opportunities for employees to conclude long-term agreements and inform them about suitable vacancies; prohibited any discrimination in employment that breaches equal opportunities or restricts any employee's rights, expanded the grounds on which discrimination is prohibited; provided the right of persons who believe that they have been discriminated to file a complaint with the executive authorities, local self-government, the Ukrainian Parliament Commissioner for Human Rights and the court; clarify the definition of 'unreasonable refusal,' i. e. a refusal without any motive or on grounds not related to the qualifications or professional qualities of the employee, or on grounds not provided for by law and provided the obligation of the employer to notify in writing the reasons for the refusal at the request of the person being employed.

Summing up the above, recent developments in national labour law can be described as an equilibrium between deregulating labour relations and enhancing labour rights. In parallel with the adoption of laws restricting labour rights during martial law compared to those provided for in the Labour Code, the protection of employees in certain areas has been strengthened, intensifying the alignment of national labour legislation with the EU acquis.

5. EU accession as the benchmark for labour reform

Ukraine declared its independence from the Soviet Union in 1991 and, in 1994, signed a Partnership and Cooperation Agreement with the EU. The agreement pledged common values around democracy, human rights, and a market economy and established the prospect of a future free trade area.⁴⁵

A Ukraine-EU Association Agreement was signed in 2014 and has been in force since 2017. It created new economic and political ties between Ukraine and the EU to help Ukraine achieve 'convergence with the EU in political, economic and legal areas'.⁴⁶ The underlying aim of Ukraine's agreement was to converge its economic and legal standards with the EU's over time, building a path towards Ukraine's potential future EU membership.⁴⁷ However, since the

⁴⁵ Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine. 14 June 1994 [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=oj:JOL_1998_049_R_0003_002

⁴⁶ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. 29 May 2014 [online]. Available at: http://data.europa.eu/eli/agree_termination/2014/295/oj

⁴⁷ Ukraine has committed to align its national legislation with eight EU directives in the area of Labour Law covered by Annex XL of the Association Agreement. These are Directive 91/533/EEC on employer's obligation to inform employees of the conditions applicable to the contract or employment relationship; Directive 1999/70/EC on fixed-term work; Directive 97/81/EC on

signing of the EU-Ukraine Association Agreement in 2014, a socio-economic state doctrine in the context of European integration has not been established. In the nearly ten years following the agreement and prior to the outbreak of war, several amendments have been made to the existing Labour Code and other laws governing labour relations. Nevertheless, these amendments have been partial and fragmentary rather than comprehensive, and some have failed to effectively address the issues they were meant to resolve.

As of 2022, the results of the implementation of commitments in the field of social policy, organisation and regulation of labour relations were estimated at 54%, which was one of the lowest indicators of the corresponding screening against the background of the overall progress in the implementation of the Association Agreement.⁴⁸ In the Analytical report following the Commission's Opinion on Ukraine's application for EU membership submitted in 2023, Ukraine obtained the lowest assessment of the process of approximation to the EU *acquis* in the social policy and employment field due to significant shortcomings in its labour legislation. According to the Commission, approximation with the EU *acquis* on health and safety at work is limited. Undeclared work and wage arrears need to be addressed. There is also a need to improve social dialogue. Ukraine's legislation is not aligned with EU gender equality legislation and needs further alignment with EU legislation on non-discrimination in employment. The labour inspection system needs to be improved.⁴⁹ As Fedorova and Hamulák point out, the European Commission's Opinion, together with the Analytical Report, are comprehensive documents analysing the country's legal and constitutional framework and the implementation of a wide range of the EU *acquis*. They actually

part-time work; Directive 91/383/EEC on OSH for fixed-term work; Directive 98/59/EC on collective redundancies; Directive 2001/23/EC on transfers of undertakings; Directive 2002/14/EC on informing and consulting employees; Directive 2003/88/EC on working time. Also, within the framework of the Transport area of Annex XXXII of the AA with regard to labour rights in transport, Ukraine has committed to approximate its national legislation with three EU directives. These are: Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities; Directive 1999/63/EC on the organisation of working time of seafarers; Directive 1999/95/EC on the enforcement of provisions concerning seafarers work hours on board ships calling at Community ports.

⁴⁸ Office of the Deputy Prime Minister for European and Euro-Atlantic Integration of Ukraine. Report on the implementation of the Association Agreement between Ukraine and the European Union in 2022. 2023 [online]. Available at: https://eu-ua.kmu.gov.ua/wp-content/uploads/report_2022_-1.pdf

⁴⁹ European Commission. Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council Commission Opinion on Ukraine's application for membership of the European Union. (SWD(2023) 30 final) [online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_30_Ukraine.pdf

represent a new road map for determining the further steps of adaptation of the Ukrainian legislation to the EU acquis.⁵⁰

On 23 June 2022, the European Council officially approved Ukraine's status as a candidate to join the EU, beginning the long road towards EU membership. In December 2023, the European Council opened accession negotiations for Ukraine. This is a significant step with essential implications for Ukraine and the EU. In March 2024, EU leaders welcomed Ukraine's progress toward membership. On 14 June 2024, EU ambassadors agreed in principle on the negotiating framework for Ukraine's accession.

The case of Ukraine is unique as it got the membership perspective while the war is still ongoing. Moreover, Ukraine is the first country to start the accession that was, and still is, considered by some as a post-Soviet country.⁵¹ The Baltic countries are not perceived as 'purely' post-Soviet. This means that the EU's decision to grant such a status has been a geopolitical one. At the same time, it is futile and even dangerous to expect any 'geopolitical discounts' on reforms or accession as they would not help either Ukraine or the EU but rather weaken both. On the contrary, the geopolitical significance would probably require even higher standards for Ukraine in terms of both quality and speed of reforms.⁵² This momentum should be reinforced. The European Council's December 2023 decision to open accession talks but adopt the negotiating framework and start actual talks only when further reforms are completed was fair. The symbolic meaning of this decision will further the efforts to improve governance in Ukraine. At the same time, the history of EU enlargement demonstrates that the strongest motivation for difficult reforms is a credible and predictable accession process based on merit.⁵³

⁵⁰ FEDOROVA, A., HAMULÁK, O. The Approximation of the Ukrainian Social Legislation to the EU Acquis in Times of War. *Eastern Journal of European Studies*. 2024, vol. 15, p. 182 [online]. Available at: <https://doi.org/10.47743/ejes-2024-S108>

⁵¹ Since the beginning of Russia's full-scale aggression, the requirement to de-Sovietise legislation has been recognised as one of the components of Ukraine's political doctrine. In particular, according to the Law of Ukraine on De-Sovietisation of Legislation of 21 April 2022, No. 2215-IX, a significant number of acts of legislation of the USSR and the Ukrainian SSR were declared inapplicable in Ukraine due to inconsistency with the Constitution and legislation adopted after the declaration of Ukraine's independence. The Law introduced a number of amendments to the Labour Code of Ukraine and established that the Government should develop and submit to the Parliament a new Labour Code of Ukraine.

⁵² KLIMKIN, P., MIKLOS, I. Why Ukraine delayed integration and reforms. And why it's high time to get serious. 13 January 2023 [online]. Available at: <https://cepr.org/voxeu/columns/why-ukraine-delayed-integration-and-reforms-and-why-its-high-time-get-serious>

⁵³ DARVAS, Z., DABROWSKI, M., GRABBE, H., MOFFAT, L., SAPIR, A., ZACHMANN, G. Ukraine's path to European Union membership and its long-term implications. *Policy Brief*. Issue

To help Ukraine with its recovery, reconstruction, and modernisation efforts, the EU has launched a new support mechanism for the years 2024 to 2027. The Ukraine Facility is a dedicated instrument that will allow the EU to provide Ukraine with up to €50 billion in stable and predictable financial support during this period. The Facility underlines the EU's commitment to supporting Ukraine in the face of Russia's ongoing war of aggression and on its path towards EU membership.⁵⁴

Admittedly, after Ukraine gained EU candidate status in June 2022, the vector of labour law reform changed from deregulation to deeper harmonisation with EU standards and practices in employment, social policy and equal opportunities. A clear indication of this is the Ukraine Plan 2024-2027, presented by the Ukrainian government to implement the Ukraine Facility. It identified priority areas of reform and the primary means of their implementation, in particular, improved functioning of the competitive labour market, offering jobs with decent working conditions by modernising labour and labour safety legislation in line with the EU *acquis*, ensuring an enabling environment for bipartite and tripartite social dialogue, as well as strengthening the capacities of social partners. Moreover, the full functioning of the labour inspectorate will be restored as soon as circumstances allow, and its legal framework modernised in line with international labour standards on labour inspections ratified by Ukraine.⁵⁵

The key element of the comprehensive labour reform in Ukraine is the new Labour Code – a draft of the new and qualitatively different legal act instead of the Labour Code adopted in 1971. It is believed that recodification of the labour law would bring legal certainty and transparency into the labour market, where the relationship between employees and employers would become more predictable and balanced, and the flexibility of the law would stimulate economic growth and encourage the creation of new jobs. Since September 2023, the Ministry of Economy has been drafting a new Labour Code with the help of a group of leading labour law scholars. The draft Code consists of six books regulating the entire range of individual and collective labour relations, including the procedure for resolving individual and collective labour disputes and occupational safety and health. One of the books of the draft code defines an updated framework for the labour inspectorate and corrects the shortcomings that hinder its effective

no. 05/24, March 2024 [online]. Available at: https://www.bruegel.org/system/files/2024-03/PB%2005%202024_2.pdf

⁵⁴ European Commission. The Ukraine Facility. Supporting Ukraine's recovery, reconstruction, and path towards EU accession [online]. Available at: https://commission.europa.eu/topics/eu-solidarity-ukraine/eu-assistance-ukraine/ukraine-facility_en

⁵⁵ Ukraine Plan 2024–2027 [online]. Available at: <https://www.ukrainefacility.me.gov.ua/wp-content/uploads/2024/03/ukraine-facility-plan.pdf>

functioning. Significant changes are introduced in concluding employment contracts, rest periods and annual leave, employees' liability (for example, Soviet era phenomena such as 'disciplinary' liability of the worker is abolished). The draft Labour Code expressly provides models of possible agreements on remote work and individually agreed working time regimes. This 'soft' provision makes it easier for the parties to engage in a dialogue with the purpose of being flexible in adapting the employment contract to their needs.

The reform aims not only to approximate the labour law to current practice and increase legal certainty but also to balance business flexibility with new forms of employee protection. Re-codification should not only bring changes in working time but also regulate forms of atypical work. The new Code ought to modernise the employment relationship in a much broader perspective – to revive the spirit of cooperation both at individual and collective levels, to increase the judicial protection of employees, to allow for broader acceptance of technologies, investment in human capital and respect for the employee's personal life and their family commitments. However, given that the adoption of a new Code can be a long and complicated process, as the failure of all previous drafts has shown, the question is whether the reform will be implemented in the near future.

To effectively address the challenges of ensuring labour market sustainability amidst Russian armed aggression and martial law, it is vital to utilise the full range of proven tools and mechanisms, including social dialogue and collective bargaining. In 2023, a working group was established at the National Mediation and Conciliation Service to draft a revised version of the Law of Ukraine on social dialogue. The group is developing conceptual approaches to the new law, recognising that the existing model of social dialogue, in place since 2010, does not adequately meet the current challenges faced by social partners or the requirements of the future, particularly regarding the country's post-war recovery and Ukraine's integration into the EU.

The alignment of national labour legislation with the EU *acquis* seeks to gradually adapt the content of national regulatory legal acts through the introduction of organisational, legal, social, economic, political, and technical standards by specially authorised state bodies in accordance with the requirements set for Ukraine before its accession to the EU. These actions aim to establish a common system of legal regulation of labour relations in the EU and Ukraine, taking into account the social realities of the state. This means that the result of the adaptation is to adjust Ukrainian labour legislation to a state that will cooperate with the EU labour legislation based on shared principles and standards.⁵⁶ However,

⁵⁶ KOTOV, V., HORNOSTAI, O., LEONTIEVA, L., MANHORA, V., ALIMENKO, O. Advancing Labor Legislation in Alignment with European Integration Standards. *Multidisciplinary Reviews*.

successful implementation requires more than simply copying EU directives. A proper understanding and careful application of EU labour law is essential to avoid accusations of non-compliance with the EU *acquis*. Ukraine should study the evaluative norms of EU law and adopt best practices to integrate European labour standards into its legal framework effectively.⁵⁷

6. Conclusion

It may sound paradoxical, but the full-scale war and later the EU candidate status have given impetus to the acceleration of labour law reform in Ukraine. The recent development of national labour legislation, especially since the outbreak of full-scale war, can be described as a tightrope walk between the restriction of some labour rights and the simultaneous strengthening of others through numerous legislative amendments. The latter appears to be driven primarily by the prospect of Ukraine's accession to the EU and the need to fulfil its obligations to align legislation.

Ukraine's experience in times of war shows the challenges and difficulties of balancing its EU integration commitments with the need to keep the business and economy afloat. This appears to be an even more difficult task in the social and employment field, given the pre-war labour market problems, which have only become more complicated since the outbreak of full-scale war. Nevertheless, recognising that the only way forward for Ukraine is to join the European family, its values and principles, the Ukrainian policymakers ultimately should have the capacity and political will to implement the necessary reforms to bring the level of protection of collective and individual labour rights up to EU standards. The restoration of all labour rights and their effective enforcement should be an integral part of Ukraine's post-war future. This is essential not only for fulfilling Ukraine's EU membership obligations but also for creating the favourable conditions for the return of Ukrainian refugees and ensuring decent work.

Based on the experience of Central and Eastern European countries that joined the EU during the 'Big Bang' enlargement in 2004, it is extremely important to carry out reforms and prepare for the 'European rules of the game' at the accession stage. One essential dimension of EU membership is integrating the social partners into EU-level representation structures through trade unions,

2024 [online]. Available at: <https://doi.org/10.31893/multirev.2024spe025>

⁵⁷ RYM, O., KOSOVYCH, V. The Value of Formally Undefined Norms in the National Legislation Approximation to EU Labour Standards: The Case of Ukraine. *Hungarian Journal of Legal Studies*. 2023, p. 532 [online]. Available at: <https://doi.org/10.1556/2052.2023.00455>

employers' organisations, and social dialogue during the EU accession process. Therefore, building a strong social dialogue at the national level and aligning national labour laws and practices as far as possible with EU law is crucial to making the post-war and post-accession transition period less disruptive and ensuring sustainable development and peace.

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