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Article

Hiding in Plain Sight: The Legitimacy of Labour Standards Clauses in the EU–Ukraine Collaboration

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Abstract

Legitimacy is essential for compliance. Agreements between the European Union and Ukraine contain a commitment to enhance labour standards. Certain audiences view this commitment as just symbolic and reflective of the low degree of legitimacy the commitment has. All this could now change following Ukraine's requested accession to the EU.

Keywords

association agreement; EU; labour standards; legitimacy; Ukraine

Issue

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1. Introduction

Agreements between the European Union (EU) and Ukraine contain a commitment to enhance labour standards. Such a commitment can be seen as a genuine concern for the protection of the rights of workers, as a symbolic gesture to increase the acceptance of agreements, or as a means to protect the interests of partners with high labour costs to ensure they can remain competitive (van den Putte & Orbie, 2015; van Roozendaal, 2015, 2017).

We start from the premise that, especially where it concerns the international level, “without legitimacy, there is little power” (Beetham, 2013, p. 274). This article argues that this has been the case for Ukraine but also foresees that this may change as a result of its wish to become a member of the EU, as conditions for accession may apply.

The legitimization processes pertaining to the labour clauses in arrangements that the EU has concluded over the years with Ukraine are mainly rooted in one of the conditions that Beetham (1991) sees as contributing to the legitimacy of arrangements: legality. At the same

time, these arrangements only express the shared beliefs of a part of the audience addressed, lacking consent from the state as evidenced by the lack of implementation. We argue that the provision of a legal framework is a necessary but not sufficient basis for establishing legitimacy among all audiences. Without all of Beetham's conditions being fully met, the legitimacy of labour arrangements is not sufficiently strongly rooted in a shared perspective and fails to generate supportive action.

2. The Legitimacy Argument

The relationship between the EU and Ukraine is studied in this article. This relationship is analysed with the help of Beetham's (1991, 2013) social scientific approach to legitimacy, as highlighted in the introduction to this thematic issue. Beetham (2013, p. x) argues that “legitimate power is power that is rightful, because it meets certain normative criteria about how those in power have obtained their power and how they exercise it.” These normative criteria are not standards set by an outsider to the power relationship but by those involved

in it. This approach emphasises that something is legitimate “because it can be *justified in terms of* their [those involved] beliefs” (Beetham, 2013, p. 11, emphasis in the original), it concentrates on the legal embeddedness of power and actions and rules related to its exercise, on power being exercised in accordance with shared beliefs between the power holders and those on the receiving end, and consent being actively given. At the international level, however, states are authorities and audiences simultaneously and are supplemented by a global civil society (Beetham, 2013, p. 271). However, in this article, we also consider the national civil society as an audience and, therefore, we have to consider their perspective on whether the intended common goals of the arrangements, though fair procedures agreed upon, are indeed fulfilled (Beetham, 2013, p. 272). Consent also is somewhat different on an international level than on a national level, as “legitimacy is confirmed to the extent that states comply with decisional outcomes, or refrain from acting in ways which manifestly flout the institution’s rules” (Beetham, 2013, p. 272). In the case of civil society, consent or the lack thereof is, of course, expressed in different ways.

The choice for Ukraine is based upon the hypothesis that when labour standards are embedded in a comprehensive agreement—including not only a trade component but also many other elements such as security—labour policy transfer is even less likely to be successful than in trade agreements and even more likely to take on a symbolic meaning. This is because—in the eyes of the partner country to the EU agreement—the legitimacy of including labour standards is not high, and other parts of the agreement take priority. For partner countries keen to establish a relationship with the EU and seek the benefits that security and economic cooperation can bring, the inclusion of labour standards is perhaps accepted more out of necessity than willingness. In other words, labour standards are not met with open arms. Whether this line of argumentation will be sustained is studied in this article. If this hypothesis is not sustained, and policy transfer of labour standards turns out to be substantial in a comprehensive agreement such as this one, it is likely to be even more substantial in less comprehensive agreements.

By looking at the manner in which fundamental labour standards and priority conventions have been addressed in Ukraine, we assess the extent to which incorporating this value dimension into the various frameworks is more than symbolic. The proposed mechanisms, the compliance in law and practice, and the meaning of all this to the two main audiences (the Ukrainian state on the one hand and civil society, including trade union organisations, on the other) will be assessed to increase our understanding of the way in which legitimacy of international arrangements matters and are subject to change. In order to study this, we start by providing a wider perspective on EU external relations and the role of shared beliefs therein.

3. The EU’s Legal Framework and the Shared Beliefs Guiding Its External Relations

Over the past decades, there has been a strong drive towards including topics in trade agreements (or trade-related parts of agreements) that were previously considered unrelated to trade. A consensus emerged where trade and other international economic transactions were seen to be embedded in the broader issues of development and sustainability. This materialised in the attention paid to labour standards. In 1995, the idea of core labour standards (CLS) was introduced at the Social Summit in Copenhagen (van Roozendaal, 2012, pp. 68–70). CLS, highlighted in the International Labour Organization’s (ILO) *Declaration on Fundamental Principles and Rights at Work* (ILO, 1998), refer to the broad principles of freedom from discrimination, freedom from forced labour and child labour, and the right to organise and bargain collectively. These principles are embedded in eight fundamental ILO conventions: the freedom of association and the right to organise (no. 87), the right to organise and collective bargaining (no. 98), forced labour (no. 29), abolition of forced labour (no. 105), minimum age (no. 138), worst forms of child labour (no. 182), equal remuneration (no. 100), and non-discrimination (no. 111). In addition, in its follow-up to the ILO (2008) *Declaration on Social Justice for a Fair Globalisation*, four conventions were identified as being of prime importance to how a labour standards system is governed: labour inspection (no. 81), employment policy (no. 122), labour inspection (agriculture; no. 129), and tripartite consultation (no. 144; ILO, 2022).

Commitment to these principles is ingrained in the legal framework of the EU, for example, in the *Charter of Fundamental Rights of the European Union* and in the *European Social Charter*, where values that should guide EU institutions and member states are explicated (Rocca, 2016), as well as in legal frameworks that formulate the EU’s external actions. Article 2 of the Consolidated Version of the Treaty of the European Union states that “the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities” (Consolidated Version of the Treaty of the European Union, 2012). With specific reference to external relations, Article 3.5 (further explicated in Article 21 of the Treaty of the European Union on the EU’s external action) reads:

In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international

law, including respect for the principles of the United Nations Charter. (Consolidated Version of the Treaty of the European Union, 2012)

These EU values are expressed in political clauses, such as human rights clauses, and added to agreements. According to Hachez (2015, p. 21), they are called political by the Commission as they are striving towards the desired situation, supported by dialogue. Examples can be found in the EU's trade and development arrangements (van Roozendaal, 2017, pp. 64–70). Since 1995, human rights clauses have been included in framework agreements as essential elements, and, in 2009, the EU confirmed its intention to include political clauses as essential elements in all its agreements with third countries (Bartels, 2014, p. 6; Council of the European Union, 2013). The definition of essential elements opens the door for “appropriate” measures against a violating country under the non-execution clause, with the most far-reaching consequence being the suspension of an agreement, although this has never been used (European Parliamentary Research Service, 2019, pp. 8–9). The incorporation as essential elements means that such clauses are either part of framework agreements of the EU with third countries, which are also cross-linked to in free trade agreements or directly part of (free) trade agreements. In the latter case, respect for labour standards is referred to in a sustainability chapter (European Parliamentary Research Service, 2019, p. 2). The fact that a choice has been made to include such a chapter in trade agreements has led some to argue that labour standards have been separated from human rights by identifying them as a sustainability issue (van den Putte & Orbie, 2015, pp. 281–282), meaning they may no longer be considered an essential element. However, even if one still considered the essential element clause applicable, it has never led to trade being restricted under trade agreements containing a human rights reference (European Parliamentary Research Service, 2019, p. 7; EU's Directorate-General for Trade, 2012). Similarly, a breach of the values prior to the conclusion of an agreement has not led to a termination of negotiations, although it may delay the adoption of an agreement (European Parliamentary Research Service, 2019, pp. 5–6).

The above demonstrates that there is a legal framework in place that expresses the values shared by EU member states (such as the importance of human rights and labour rights) which allows action to be taken if such values are violated. However, it is important to note that the mere existence of a legal framework does not mean that the EU respects labour rights (see Rocca, 2016), nor that it has led to full ratification. The EU member states have ratified the (fundamental) and priority conventions. However, apart from the priority convention on labour inspection (no. 81) and on tripartite consultation (no. 144), the other priority conventions have not been ratified by all EU members (ILO, n.d., p. 8; ILO,

2021). An important question is how this framework is conveyed in the EU agreements with Ukraine.

4. Relations Between the EU and Ukraine and the Role of Labour Standards Therein

The relationship between the EU and Ukraine has evolved from a partnership and cooperation agreement (PCA) to an association agreement (AA) with an accompanying deep and comprehensive free trade area (DCFTA) to discussions about membership. These membership considerations are all the more important now that Ukraine is confronted with an invasion by the Russian Federation.

In the 1990s, the EU concluded a PCA with many countries from the post-Soviet space—including Ukraine. The PCA between the European Communities and their member states, on the one hand, and Ukraine, on the other, was signed in June 1994 (EC, 1998). It went into effect on 1 March 1998; since February 1996, an interim agreement pertaining specifically to the trade-related aspects of the PCA was in effect (EC, 1998).

When analysing the goals of the PCA, three broad categories can be discerned. First, the European Communities and their member states aim to assist Ukraine with its process of political transformation. Secondly, the PCA focuses on economic transition, with the European side offering support to its Ukrainian counterpart as it undertakes to transform what was once a centrally-planned, state-owned economy into a market economy. Thirdly, the signatories of the PCA stress the importance of safeguarding the peace and stability of not just Central and Eastern Europe but the European continent as a whole. To this end, Ukraine's independence, sovereignty, and territorial integrity must be supported, good-neighbourly relations between the former Soviet republics have to be developed, and relevant international agreements need to be respected (PCA between the European Communities and their Member States, and Ukraine, 1998). The importance that both sides attach to political transformation and economic transition is evidenced by the fact that these dimensions are considered “essential elements” of the PCA (PCA between the European Communities and their Member States, and Ukraine, 1998, Article 2). The development of good-neighbourly relations in post-Soviet space is considered to be of great significance (PCA between the European Communities and their Member States, and Ukraine, 1998, Article 3).

What immediately becomes clear is that labour standards are not at the forefront of the PCA. While the provisions regarding human rights can be taken to include labour rights, the specific attention that the two sides devote to this topic is limited. In the PCA, the first chapter, “Labour Conditions,” comprises six articles that address the non-discrimination of Ukrainian nationals working in member states of the European Communities and vice versa, the coordination of social security, efforts

to combat illegal migration, and improvements to the working conditions for business people, respectively (PCA between the European Communities and their Member States, and Ukraine, 1998, Articles 24–29).

The AA constituted the next step in the EU–Ukraine relationship. The political part of the AA was signed in March 2014, while the economic part was signed in May of the same year. It entered into force on 1 September 2017, after already being in effect on a provisional basis in the interim years. An important part of the AA is the DCFTA. The AA necessitates changes to Ukraine’s legal framework in order to bring it into line with the relevant aspects of the EU’s *acquis communautaire* (Petrov, 2021, p. 130). The importance that both sides attach to political transformation and the safeguarding of European peace and stability is highlighted by their designation as “essential elements” (AA between the European Union and its Member States, and Ukraine, 2014, Article 2). The principles of a free market economy are considered important in that they underpin relations between the two sides, with sustainable development (among other elements) playing a key role in advancing this relationship (AA between the European Union and its Member States, and Ukraine, 2014, Article 3).

More so than was the case in the PCA, the AA addresses the issue of labour standards. It does so in two ways: by emphasising the importance of the Ukrainian side approximating its legislation to that of its EU counterparts and by including specific provisions. As part of Title IV Trade and Trade-Related Matters, Chapter 13, “Trade and Sustainable Development,” contains several articles that define what is meant by fundamental labour conventions and priority conventions. These point to relevant policies on the part of the United Nations and the ILO and tie sustainable trade to certain labour standards (AA between the European Union and its Member States, and Ukraine, 2014, Articles 289, 291–293). Concerning labour standards, of prime importance is that “the Parties shall promote and implement in their laws and practices the internationally recognised core labour standards” and that the “parties reaffirm their commitment to effectively implement the fundamental and priority ILO Conventions that they have ratified” (AA between the European Union and its Member States, and Ukraine, 2014, Article 291). Ukraine ratified both the eight core conventions and the four priority conventions on the governance of labour standards long before the AA had been signed (ILO, n.d., p. 8; ILO, 2021). That being said, the enforcement mechanisms applicable to other parts of the agreement are not applicable to Title IV Trade and Trade-Related Matters of the AA—to which Chapter 13 belongs (AA between the European Union and its Member States, and Ukraine, 2014, Article 478). This means that no sanctions can be evoked when the commitments of Chapter 13 are violated. The AA explicitly states that the sustainability issues are important for further integrating Ukraine into the EU market, although they are not considered an essential element (Petrov, 2021, p. 132).

In the midst of the war that the Russian Federation initiated against Ukraine in February 2022, Kyiv and Brussels redefined their relationship. On 8 April 2022, the President of the EC Ursula von der Leyen presented Ukrainian President Volodymyr Zelensky with the questionnaire that the country had to fill in as the first step on the road to EU membership (“von der Leyen handed over questionnaire,” 2022). Ukraine completed this questionnaire on 17 April 2022 (“Ukraine completes questionnaire for EU membership,” 2022) and in June 2022, was granted candidate membership status (European Council, 2022). Membership of the EU is open only to countries that meet the Copenhagen Criteria. These criteria have a political component (“stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”), an economic component (“a functioning market economy and the capacity to cope with competition and market forces”), and a component that stresses the need for candidate member states to have the “administrative and institutional capacity to effectively implement the *acquis* and ability to take on the obligations of membership” (EC, n.d.). As such, Kyiv’s first steps on the road towards Brussels again stress the need for Ukraine to bring its legislation in line with the European standards, including with regard to labour standards, while also once more reaffirming the importance that Ukraine and the EU attach to political transformation, economic transition, and the safeguarding of European peace and stability.

In sum, when looking at the overall development of the EU–Ukraine relationship, the sustainability dimensions of trade have not taken centre stage. While the PCA and the AA do address trade, that is far from their only purpose. The same dynamic can be discerned concerning Ukraine’s integration into the EU. While issues pertaining to trade, sustainability, and labour standards are part of the *acquis communautaire* that Kyiv will have to adopt if it is to realise its ambitions, wider issues of political and economic transformation—not to mention security considerations—take precedence.

5. The Implementation of Fundamental and Priority Conventions in Ukraine

Even though labour standards are just one of the issues that characterise the EU–Ukraine relationship, the expectations regarding the changes in this area that cooperation could bring were ambitious. In the final impact assessment for an EU–Ukraine free trade agreement (FTA), it was stated that:

The FTA is also expected to encourage an overall improvement of working conditions, health & safety standards (via regulatory approximation) and quality of work along the lines of the decent work indicators as identified by the EU and ILO. This effect will be both direct, due to the need to adjust to and comply with EU standards and more indirect,

through the fact that the FTA will further encourage and speed up ongoing restructuring and modernisation in certain sectors which still use out-dated (and often more hazardous) technologies and production methods. (ECORYS, 2007, p. 25)

The importance of the ILO's fundamental conventions and priority conventions is clear. Especially the principles laid down in the fundamental conventions can be considered to express universally accepted values. However, sharing the belief that these labour standards matter, and ratifying the related conventions, does not mean that they are also respected and implemented. This is illustrated by the fact that the International Trade Union Confederation (ITUC) has rated the level of labour rights protection in Ukraine at level 5 (only level 5+ is worse). Compared to two of the other Eastern Partnership countries (Moldova and Georgia), labour rights protection in Ukraine is weakest (International Trade Union Confederation [ITUC], n.d.).

Therefore, there is a clear necessity for labour law reform through modernising relevant legislation, something on which both the EU and the Ukrainian side agree. As it was put in the *2020 Association Implementation Report on Ukraine by the EC*, "the Government made the modernisation of labour relations one of its priorities, committing to respect ILO labour standards and obligations undertaken under the AA" (EC, 2020, p. 17). However, in the same report, it was also noted that "labour legislation reform including the long-anticipated adoption of a new Labour Code has stalled since March 2020" (EC, 2020, p. 17). Moreover, in a joint statement, "the parties noted the necessity to bring the Ukrainian legal framework in line with and implement ILO standards" (Trade and Sustainable Development Sub-Committee, 2020, p. 1). Joint statements are made by the Trade and Sustainable Development Sub-Committee, in which high-level officials of the parties to the AA have a seat. This Sub-Committee monitors the implementation of Chapter 13 and assesses its impact (see AA between the European Union and its Member States, and Ukraine, 2014, Article 300).

The nature of the problematic situation can be characterised as follows: The country's current labour legislation dates back to 1971, when Ukraine was still a part of the Soviet Union. Since 1991, the year that Ukraine declared its independence, several attempts have been made to amend what is now outdated legislation (ILO, 2020). Since the start of the 21st century, four attempts have been made to introduce a new, comprehensive labour law, in 2003, 2009, 2016, and most recently in 2019 (ILO, 2020). The adoption of a new legal framework would allow Ukraine to bring its labour laws in line with international standards. Also, as mentioned in the previous section, with approximation to European legislation being one of the goals of the EU–Ukraine partnership, the adoption of new labour laws is something that Brussels expects of Kyiv (ILO, 2020; Petrov, 2014,

p. 24). Moreover, progress concerning the adoption of a new labour code is necessary because the current lack thereof has a ripple effect in that the alignment of Ukrainian legislation to EU standards concerning occupational safety and health has also stalled (EC, 2019, p. 15).

To date, however, labour law reform in Ukraine is proceeding in fits and starts (Yarmolyuk-Kröck et al., 2019). Several (versions) of the proposed draft laws contain clauses that go against ILO and EU directives. Regarding labour inspection, much work still remains to be done (European Union & International Labour Organization, 2018; Trade and Sustainable Development Sub-Committee, 2020, p. 2). The same goes for labour union rights, where the current draft legislation is running counter to international standards regarding freedom of association and collective bargaining (EC, 2020, p. 17; Industriall Global Union, 2021). In the joint statement of the Trade and Sustainable Development Sub-Committee (2020, p. 2), the EU reiterated the importance of compliance with ILO standards regarding freedom of association and collective bargaining. Also, the drafts of the new labour law have received criticism for the following related violations (quoting ITUC, 2021):

- Excluding working people in medium and small enterprises from the protection of the general labour law;
- a lack of safeguards to ensure work contracts comply with minimum labour standards;
- the ability of employers to abuse the system and use successive fixed-term contracts; and
- a lack of compatibility with requirements to guarantee working time, rest periods, minimum daily rest, overtime and leave.

Furthermore, concerns are not only related to the implementation of conventions but also to the lack of involvement of social partners in the reform processes (European Trade Union Confederation, 2019, 2020a, 2021).

All in all, reforms are underway but not necessarily in a manner that has resulted in harmonisation with core and other international labour standards. The ILO and the EU are critical of the developments of the last few years, which means that Ukraine has to step up its game if it is to realise the newly-offered prospect of EU membership. The signing of the AA already committed Ukraine to implement the agreed-upon provisions. However, for a country that lacked the mechanism to incorporate international obligations into its national legal framework, this is not something that can be accomplished overnight (Yarmolyuk-Kröck et al., 2019, p. 21)—even without the war and its associated costs.

The lack of change that is currently hampering Ukrainian labour law reform is related, in part at least, to our earlier analysis that labour standards are far from prominent on the EU–Ukraine agenda. Also, it has to do with the toothless way in which the implementation of

labour standards is supported and monitored. Not being recognised as essential elements of the AA, labour standards have not been subject to any type of conditionality. Of course, depending on the recommendation by the EC on candidate membership status and the subsequent confirmation by the Council, this might well change as accession to the EU would be conditional on Ukraine meeting the Copenhagen Criteria. Such change has been visible in other cases. Research by Kahn-Nisser (2014) on the accession of Central and Eastern Europe countries has shown that the promise of accession to the EU and the fact that the process includes monitoring, rewarding, and naming and shaming can result in the improvement of respect for labour rights. Still, “labour rights conditionality regarding the ultimate reward of accession was rather weak: Negotiation chapters were closed, and accession was ultimately granted, despite instances of insufficient labour protection” (Kahn-Nisser, 2014, p. 387).

For now, however, we must conclude that even though the agreements with Ukraine include references to labour standards, this has not (yet) guaranteed their actual implementation. To put it into the framework of Beetham (1991, 2013), we can conclude that consent of the Ukrainian authorities is lacking. While signing the agreements and ratifying the fundamental and priority conventions provides an international legal framework and seems to underwrite the idea of a shared belief that it is important, the lack of a national legal framework and the factual situation shows that implementation is failing.

6. Procedures and Compliance: The Role of Civil Society and Trade Unions

There has been much criticism on how the EU is enforcing labour standards—or rather, failing to do so—through agreements including trade components. All kinds of consultation and monitoring mechanisms are in place, but except for fostering dialogue, results are limited. Article 299.2 of the AA (AA between the European Union and its Member States, and Ukraine, 2014) calls for the establishment of an advisory group of “independent representative organisations of civil society in a balanced representation of employers and workers organisations, non-governmental organisations as well as other relevant stakeholders.” A Domestic Civil Society Advisory Group has been formed on the EU and Ukrainian sides. Besides meeting domestically, the Domestic Advisory Groups (DAGs) of the parties to the agreements come together once a year to discuss the matters relating to sustainable trade. Article 469 (AA between the European Union and its Member States, and Ukraine, 2014) also foresees the establishment of a more general Civil Society Platform that can make recommendations on the implementation of the agreement.

The introduction of these mechanisms serves mainly to draw attention to the continuing lack of imple-

mentation, and the concerns echo the above criticism. During the third meeting of the EU–Ukraine Civil Society Platform (2016, p. 3), civil society demanded:

[T]he implementation of international labour standards and EU *acquis*—both in law and practice—on social policy, employment and labour, workplace compliance, occupational safety and health, collective bargaining regulation, social dialogue, labour legislation reform in order to balance the interests of the social partners and protect the rights of workers in compliance with the ILO fundamental and priority (81, 122, 129, 144, 167) conventions.

The meeting called attention to the fact that around six million Ukrainian workers are unprotected, the minimum wage is extremely low, there are problems concerning the implementation of conventions 81 and 129 on labour inspection, and limitations to the right to strike and collective dispute settlement. In addition, it was pointed out that the new labour legislation drafted at the meeting did not include anti-discrimination clauses (EU–Ukraine Civil Society Platform, 2016). Arguments around the same line were made in 2017 and 2018 (EU–Ukraine Civil Society Platform, 2017, 2018).

Similarly, the Ukraine DAG, established in 2018, meets with the European DAG yearly in a civil society forum (Bureau of Social & Political Developments, 2018). Joint statements are available for the last three of the five meetings held. The picture that emerges from them is not very different from those in other civil society contexts (European DAG & Ukrainian DAG, 2019, 2020, 2021). It is once again emphasised that Ukraine violates obligations stipulated under the AA and DCFTA. Some small highlights seem to be that national tripartite consultation mechanisms to facilitate social dialogue have been re-established. However, the expectations regarding its mandate and influence are clearly limited (European DAG & Ukrainian DAG, 2021). On the procedural and institutional levels, other shortcomings are identified. First, the DAGs are not invited by the Trade and Sustainable Development Sub-Committee (comprising government officials). Also, the DAGs do not have the capacity to work efficiently, and they condemn the lack of transparency of the Sub-Committee, which inhibits the work of the DAGs. Additionally, the group of experts still needs to be established by Ukraine (European DAG & Ukrainian DAG, 2021).

The procedural and institutional shortcomings are not specific to the operation of the Ukraine DAGs (see Christeljik Nationaal Vakverbond, 2021), and this is also confirmed in a study on the functioning of DAGs by Martens et al. (2020). They show that the DAGs under the specific agreements have no influence and limited monitoring capabilities, but they do meet and can be part of a dialogue. This leads, amongst others, to the conclusion that “DAGs are not considered to be merely a tool for legitimising trade agreements. Given their multiple

weaknesses, however, there remains a risk that they may relapse into mechanisms that serve to legitimise free trade” (Martens et al., 2020, p. 4). Despite all kinds of difficulties, “Non-EU DAGs appreciate the potential leverage enabled by the European Commission and EU DAGs” (Martens et al., 2020, p. 5).

The above shows that different civil society and trade union audiences participate in the institutional settings of the AA. This can be seen as evidence of consent, indicating that legitimacy is still conveyed to the AA. This consent, however, is flanked by strong criticism of the lack of changes the AA achieves. At the same time, one could also argue that the lack of implementation shows a lack of consent from the other audience—the Ukrainian government. While there is a body of shared beliefs concerning labour standards, as evidenced by the acceptance of the concept of CLS and governance standards and by the ratification of the associated conventions, it can only be concluded that the legitimacy is flawed as this body of shared beliefs has not found its way to the law and practice on labour standards Ukraine. This leads to a situation where one could see the symbolism of the acceptance of the labour clause but at the same time the lack of willingness to actually implement it; in fact, this can be viewed as a lack of expression of consent from the official side.

For the civil society organisations and trade unions, the lack of progress does not seem to lead to a lack of legitimacy of the AA. For example, the Ukrainian civil society declared that:

We consider the Agreement a comprehensive, holistic and indivisible document, which, in its totality, not only ensures political rapprochement between the EU and Ukraine, but also guarantees support to the reforms that are vital for the future development of Ukraine. (Eastern Partnership Civil Society Forum, n.d.)

And, in 2020, trade unions from Ukraine and the EU stated that:

We fully support the European aspirations of Ukraine and its efforts for better integration with the European Union, but deplore the lack of respect by the government—as seen in its economic and social “reforms”—for the values and principles of the European Union. (European Trade Union Confederation, 2020b)

The AA is also welcomed in terms of its role in advancing development and reforms on socio-economic issues and development (European Trade Union Confederation, 2018). Still, as a consultation among civil society organisations in the context of the Eastern Partnership showed, there is a strong feeling that the EU prioritises security above human rights (Eastern Partnership Civil Society Forum, 2019).

7. Conclusion: What is The Meaning of the References to Labour Standards? The Support and Enforcement of Shared Beliefs

We started this article with the argument that international agreements (and parts thereof) need legitimacy even more than national arrangements because means of coercion are largely absent. Without legitimacy, certain parts of agreements are there but hiding in plain sight, as it were. They derive their importance from being integrated and, simultaneously, are easily ignored. At the same time, we also hypothesised that in comprehensive agreements not all parts are of equal importance, leading to a situation where they can be easily ignored. When labour standards are embedded in a comprehensive agreement including not only a trade component but also many other elements such as security, labour policy transfer is not likely to be successful and more likely to take on a symbolic meaning.

This article showed that this argument was backed up by the empirical evidence presented and that the hypothesis was confirmed in this single case. On the national level, there is a clear lack of compliance in law and practice with the labour standards enshrined in the AA. Amongst the EU and Ukraine, labour standards did not have any priority in the context of so many other issues that were raised. The role of geopolitics has become more prominent in relation to the EU’s trade policies. While this aims to make the EU’s trade policy more in line with its foreign policy in general, it may not necessarily contribute to its formulated values in the labour domain, Orbie (2021) argues. The case of Ukraine does not seem to point in an opposite direction.

This leads to a situation where the mere existence of a legal framework as embodied in the AA which claims to express beliefs shared between the EU and Ukraine related to the importance of labour standards does not mean that the ways in which it is executed lead to the achievement of the goals. Kyiv’s track record to date when it comes to the implementation of CLS testifies to this. The crux of the matter is whether those with power to actually implement the much-needed changes subscribe to the values that are supposed to guide the EU–Ukraine relationship. The Ukrainian government seems to undervalue the need to conform to international regulations and conventions. And without such consent of the Ukrainian state, one wonders whether there were ever beliefs shared beyond their symbolic value, either between the EU and Ukraine, or shared between the Ukrainian state and civil society. Clearly, the labour standard’s references in the AA are much more legitimate to civil society organisations. While the AA may not be the panacea leading to desired outcomes, the situation would not be better without it.

Until the war broke out, this lack of implementation of the labour standards clauses did not affect the legitimacy of the AA as a whole. And, if it had, the war itself would have weakened any legitimacy challenges to the

AA as derived from the weak adherence to labour standards. Civil society organisations on the Ukrainian side still expressed consent to the AA and its labour standards clause; in fact, they seem to welcome the involvement of the EU through the agreement, even with its shortcomings. This ties in with the wider trend in support of European integration. Polling suggests that since March 2014 a slim but steady majority of Ukrainians favour integration into the EU over accession to other forms of international economic cooperation (Center for Insights in Survey Research, 2021, p. 52). Undoubtedly, the war and the prospect (however distant) of membership have increased support for the EU still further. And it is the EU candidate membership that can be a game changer when it comes to the implementation of fundamental and priority conventions.

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Conflict of Interests

The authors declare no conflict of interests.

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