

# THE NEW GENERATION OF ASSOCIATION AGREEMENTS BETWEEN THE EU AND ITS EAST EUROPEAN NEIGHBOURS

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Prof. Peter Van Elsuwege (Ghent University)

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The [EU-Ukraine Association Agreement] is **the most ambitious agreement the EU has ever offered to a non-Member State**. It is a milestone in the history of our relations and for Europe as a whole. In Kiev and elsewhere, people gave their lives for this closer link to the European Union. We will not forget them”.

(H. Van Rompuy, 27 June 2014)



# Outline

- Background to the new Association Agreements (AAs) with Ukraine, Moldova and Georgia
  - The Eastern Partnership (EaP) as part of the European Neighbourhood Policy (ENP)
- From Partnership and Cooperation Agreements ...
  - Political and legal context
  - Objectives and evaluation
- To a new generation of Association Agreements
  - Political and legal context
  - What is new?
- Conclusion: a new model of integration without membership?

# Background

- Patten/Solana 'Wider Europe' paper of August 2002
  - Need for new contractual relations with the EU's eastern neighbours
- ENP Strategy Paper COM (2004) 373 final
  - "European Neighbourhood Agreements"
- ENP Action Plans
  - "Ukraine - enhanced agreement"
- Eastern Partnership
  - Polish-Swedish initiative June 2008 – formally launched in May 2009 (Prague declaration)
  - Ukraine, Moldova, Belarus, Georgia, Armenia, Azerbaijan
  - Political association, economic integration and legislative approximation

# From Partnership and Cooperation Agreements ...

- concluded in 1990s with all CIS countries (except Belarus) to support economic and political transition process (for initial period of 10 years)
- introduction of GATT legal principles (MFN, etc).
- multi-level institutional framework but only possibility to adopt recommendations (no binding decisions!)
- no free trade arrangement (only 'evolutionary clause' in PCAs with Russia, Ukraine and Moldova)
- soft provision on legal approximation
- framework agreement with limited direct legal consequences (exception: Art. 23 PCA Russia cf. *Simutenkov* case)

# To Association Agreements

- *Article 217 TFEU (ex art 310 EC):*

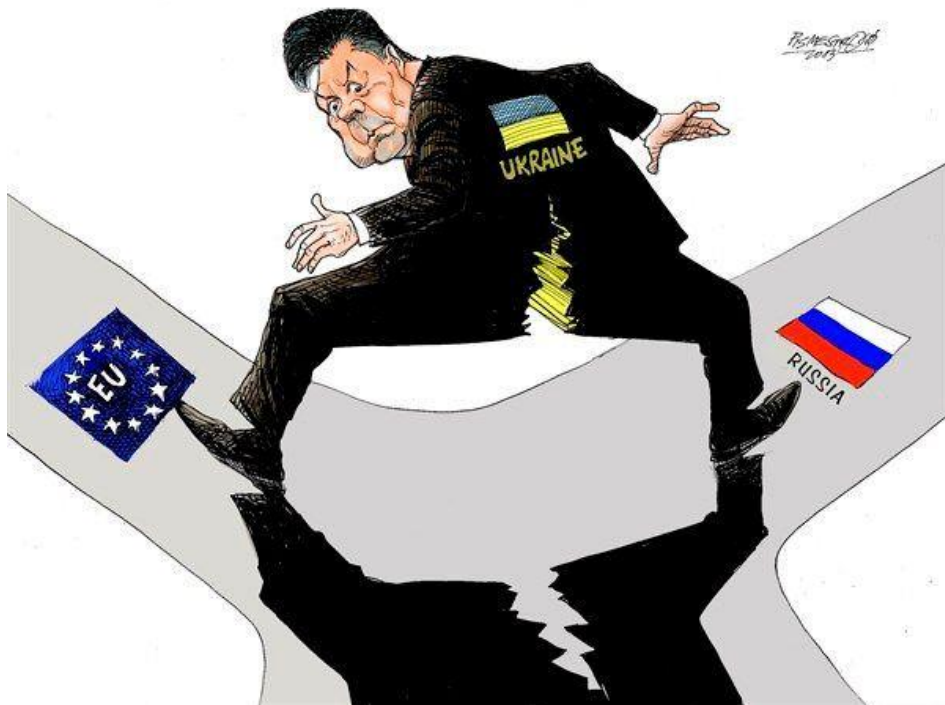
“The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure”

- *ECJ definition of ‘association’ (case 12/89 Demirel):*

*“the agreement ... is an association agreement creating special, privileged links with a non-member country which must, at least to a certain extent, take part in the Community system’.*

# Broader (geo)political context

- Eastern Partnership vs. Eurasian economic integration: legal and political incompatibilities



# Overview of bilateral relations

- **Ukraine**
  - The Ukrainian government cancelled the planned signature of the AA on the occasion of the December EaP Vilnius summit on 23 November 2013
    - Start of the *Maidan* revolution
  - March 2014: signature of “political” chapters and autonomous trade preferences (Regulation 374/2014) ( AA remains one single instrument !)
  - 27 June 2014: signature of the remaining parts of the AA
  - Provisional application of the DCFTA part postponed until 31 December 2015
- **Georgia and Moldova:** AAs initialled at Vilnius Summit November 2013, signature 27 June 2014; provisional application since 1 September 2014
- **Armenia:** U-turn in August 2013: AA not initialled in Vilnius ; Armenia joined the EAEU on 1 January 2015
- **Belarus:** European dialogue on modernisation – Belarus is part of the EAEU
- **Azerbaijan:** Towards a ‘Strategic Modernisation Partnership’



# New Association Agreements – Key features

## Comprehensive

- 2140 pages in the *Official Journal*
- 46 annexes
- 3 protocols
- Joint Declarations

## Conditionality

- Political and market access conditionality

## Complexity

- multiple provisions on legislative approximation and dispute settlement

# Association Agreements - objectives

- To promote gradual rapprochement based on common values [...] *association with EU policies and participation in programmes and agencies*
- To provide an appropriate framework *for enhanced political dialogue* in all areas of mutual interest
- To establish conditions for *enhanced economic and trade integration* leading towards [...] gradual integration into the EU internal market, including by setting up a *Deep and Comprehensive Free Trade Area*
- To enhance cooperation in the field of Justice, Freedom and Security with the aim of *reinforcing the rule of law and respect for human rights and fundamental freedoms*

- No explicit EU membership perspective but ...
  - “acknowledges the European aspirations of [Ukraine/Moldova/Georgia] and [welcomes] its European choice”(preamble)
  - “[Ukraine/Moldova] is a European country that shares a common history and common values with the EU MS”
    - Georgia, *an Eastern European country*, shares historical links and common values with the Member States
  - “this agreement shall not prejudice and leaves open future developments in EU-[Ukraine/Moldova/Georgia] relations”(preamble)
  - Recent Council conclusions: the AA “does not constitute the final goal in EU-Ukraine cooperation”
  - but... gradual “*integration*” in the EU Internal Market (Art.1)

# Institutional framework

- Annual *summits* at highest political level (only with Ukraine)
- *Association Council* at ministerial level
  - Regular political and policy dialogue on implementation
  - With power to adopt binding decisions!
- *Association Committee* at civil servant level
  - Trade Committee and specialised subcommittees
  - With power to adopt binding decisions!
- *Parliamentary Association Committee*
- *Civil Society Platform*

# Political dialogue

- gradual *convergence* on political and security measures with the aim of [Ukraine's] ever deeper involvement into the European security area' Including a number of specific aims, *inter alia*:
  - Strengthen cooperation and dialogue on *international* security and crisis management
  - Foster practical cooperation to achieve peace, security and stability *in Europe*
  - Promote principles of independence, sovereignty, territorial integrity and inviolability of frontiers ('*good neighbourliness*')
  - Strengthen respect for democratic principles, rule of law and good governance, human rights and fundamental freedoms [...] and to contribute to *consolidating domestic political reforms*
- Cooperation in the fight against terrorism, crisis management etc.
- Commitments regarding access to ICC, non-proliferation of WMD, arms export control etc.

# Freedom, Security and Justice

- Cooperation in relation to the promotion of the rule of law, independence of judiciary, access to justice and fair trial
- Cooperation regarding migration, asylum and border management
- Prevention of organised crime, corruption and other illegal activities
- Movement of persons
  - Full implementation of visa facilitation and readmission agreements
  - A visa-free regime will be established 'in due course' provided that the conditions for well-managed and secure mobility, set out in the Action Plan on Visa Liberalisation, are in place
- Non-discrimination of legally employed workers as far as working conditions, remuneration and dismissal are concerned
  - Only in AA with Ukraine!
  - Opt-out for UK and Ireland + question of direct effect

# Trade and Trade-related Matters

- Establishment of a free trade area over a transitional period of maximum 10 years for Ukraine and Moldova (no transition for Georgia)
- “*Comprehensive*”
  - FTA has a broad range covering all the main area’s of EU-Ukraine trade relations: not only trade in goods but also liberalization of services and binding provisions on IPR, public procurement, competition, energy, SPS, etc.
- “*Deep*”
  - Legislative approximation as instrument for economic integration

# The “Comprehensive” character of the FTA

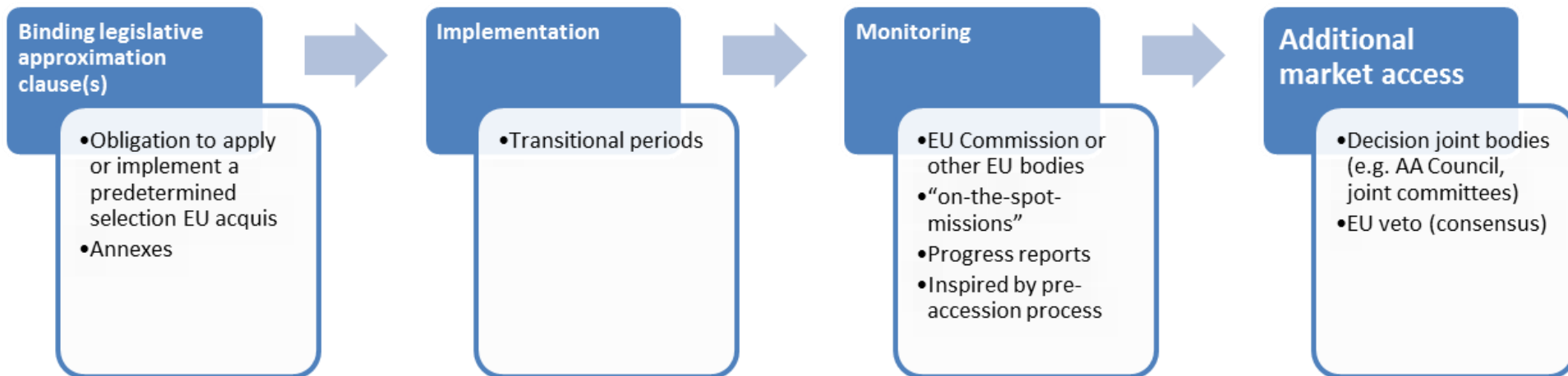
- Comprehensive character of EU FTA not new (eg. Colombia and Peru (signed 2012), Chili (2003), Mexico (2000), Korea (2011), Canada (-),...)

1. National Treatment and Market access for goods	9. Intellectual Property
2. Trade Remedies	10. Competition
3. Technical Barriers to Trade	11. Trade-Related Energy
4. Sanitary and Phytosanitary Measures	12. Transparency
5. Customs and Trade Facilitation	13. Trade and Sustainable Development
6. Establishment, Trade in Services and Electronic Commerce	14. Dispute Settlement
7. Current Payments and Movement of Capital	15. Mediation Mechanism
8. Public Procurement	



# The 'deep' character of the DCFTA

- Integration in EU Internal Market under the condition of legislative approximation (*market access conditionality*)



<i>DCFTA Chapter</i>	<i>Link approximation with market access?</i>	<i>Scope Acquis defined</i>	<i>Procedure to amend scope of acquis</i>	<i>Explicit Obligation ECJ conform interpretation</i>	<i>Monitoring procedure</i>
<b>Technical barriers to Trade</b>	Conclusion ACAA	No	No	No	Basic
<b>SPS</b>	"Determination of equivalence"	No, but "Comprehensive Strategy"	Basic	No	Basic
<b>Services (4 sections)</b>	Internal Market Treatment	Yes, + timetable	Detailed	Yes	Detailed
<b>Public Procurement</b>	Market Access	Yes, + timetable	Yes	Yes	Basic

# Conclusions – most ambitious agreements ever concluded ?

- AA's political part: ambitious but not innovative (comparable to SAAs/EMAAs)
- DCFTA: “gradual integration into the EU Internal Market?”
  - Exceptionally deep and broad FTA
  - Unprecedented features: market access conditionality and legislative approximation
  - Actual “integration” into the EU Internal Market limited (and conditional)
    - Not comparable to the European Economic Area!
- The proof of the pudding is in the eating...
  - Effective implementation ?
  - Divergent expectations ?
  - Impact of the Russia factor ?

## Further information

G. Van der Loo, P. Van Elsuwege and R. Petrov,

*The EU-Ukraine Association Agreement. Assessment of an innovative legal instrument,*

EUI Working Paper LAW 2014/09

[http://cadmus.eui.eu/bitstream/handle/1814/32031/LAW%20 WP\\_2014\\_9%20.pdf](http://cadmus.eui.eu/bitstream/handle/1814/32031/LAW%20WP_2014_9%20.pdf)