

Conclusion

1 Final Conclusion

Despite the fact that the EU-Ukraine AA is considered to be “the most ambitious agreement the European Union has ever offered to a non-Member State”¹⁴⁷¹ and the historic events that it has triggered, the exact contents of this new agreement is still rather unknown. Therefore, this contribution aimed to provide a comprehensive legal analysis of this fascinating but complex agreement. The key research objective of this book was to analyse *how* (i), and to *what extent* (ii), the EU-Ukraine AA is a *new* (iii) legal instrument that integrates a third country (i.e. Ukraine) into the EU.

First, regarding the question *how* the EU-Ukraine AA integrates Ukraine into the EU, the main integration instrument of the AA, and especially its DCFTA part, are binding legislative approximation commitments. Legislative approximation is a crucial tool for economic integration into the EU (Internal Market) as it tackles non-tariff barriers and creates a level playing field for economic operators and a common legal space between the EU and Ukraine. By obliging (thus going beyond ‘best endeavours commitments’) Ukraine to apply or incorporate in its domestic legal order a predetermined selection of the EU *acquis*, the Union’s legislation is extended beyond its borders. These binding legislative approximation commitments make the EU-Ukraine AA an ‘EU integration agreement’ (Table 1). However, these obligations do not lead to the formal application of EU law in Ukraine. At the most, a set of legislation that is textually identical to corresponding provisions of EU law is applied by Ukraine in its domestic legal order, or in its relations with the EU.

These binding approximation commitments are flanked by two mechanisms, one related to market access conditionality and another related to the uniform interpretation and application of the incorporated EU *acquis*. Regarding the former, it was observed that in several chapters of the DCFTA, Ukraine will only be granted (additional) access to a section of the EU Internal Market if the EU determines, after strict monitoring procedures, that Ukraine has properly implemented its legislative approximation commitments. It is crucial that the incorporated EU *acquis* in the EU-Ukraine AA is applied and interpreted as uniform as possible. Therefore, the AA includes several mechanisms that must guarantee this objective. However, because the EU-Ukraine AA lacks the explicit objective of homogeneity, the incorporated EU *acquis*

¹⁴⁷¹ H. Van Rompuy, ‘Statement at the Signing Ceremony of the Association Agreements with Georgia, Republic of Moldova and Ukraine’, Brussels, 27 June 2014, EUCO 137/14.

and the corresponding rules of EU law do not necessarily have to be interpreted and applied identically.

Whereas the legislative approximation obligations, mainly included in the DCFTA, are an instrument for Ukraine's gradual and partial "integration" into the EU Internal Market, a limited number of other AA provisions aim to bring Ukraine closer to non-Internal Market related EU 'policies'. For example, the envisaged "convergence" in the area of CFSP will not 'integrate' Ukraine in the EU's CFSP structures, however, it is clear that these provisions aim to establish a *rapprochement* that goes beyond a mere form of 'cooperation'. Moreover, through the *common values conditionality*, the AA aims to promote its key values (e.g. full respect for democratic principles, rule of law, good governance, human rights and fundamental freedoms) to Ukraine and accelerate the deepening of political relations.

The *second* element of the key research question is to *what extent* the EU-Ukraine AA integrates Ukraine into the EU. Regarding the trade part of the AA, it was demonstrated that the scope and depth of the DCFTA's liberalisation process is exceptionally large. Most trade in goods will be fully liberalised, although there are several exceptions such as the limited number of TRQs that the EU will continue to apply on several Ukrainian agricultural products. To allow the Ukrainian market to prepare for competition with tariff-free imports from EU goods, some specific transitional or safeguard measures are foreseen in the area of, *inter alia*, the car sector, export duties and geographical indications. Moreover, the DCFTA considerably liberalises or facilitates trade in all other trade(-related) areas such as services, public procurement and energy and includes detailed rules on IPR, competition, SPS and TBT. These DCFTA provisions are comprehensive and far-reaching, however, they largely remain within the boundaries of EU's common commercial policy. The actual 'integration' into the EU Internal Market, provided by the DCFTA, is rather limited. The only DCFTA chapters where juridical persons of Ukraine will be able to integrate in the EU Internal Market and to be treated "in the same way as juridical persons of EU Member States",¹⁴⁷² are services/establishment and public procurement. The "Internal Market Treatment" in the area of services/establishment and the envisaged access of Ukrainian companies to the EU public procurement market constitute "unprecedented example[s] in allowing possible access of Ukraine, as a non EEA member to the EU Market".¹⁴⁷³

¹⁴⁷² Art. 3 Annex XVII EU-Ukraine AA.

¹⁴⁷³ Proposal for a Council Decision on the conclusion of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, COM(2013) 290 final,¹⁵ May 2013.