



Civic Expert Council  
within the Ukrainian Part of the  
EU-Ukraine Cooperation Committee



## The Association Agreement: A pearl of great value at risk of loss

*Policy brief*



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## INTRODUCTION

The EU-Ukraine Association Agreement text processing is almost complete. Under favorable circumstances, in the span of this year, the Agreement could become a signpost for socially important reforms, ensuring the irreversibility of Ukraine's European integration, confirming the final choice in favor of the European model of social and economic development. Yet, political risks arising from erosion of democracy in Ukraine, question the results of the negotiation process and further progress.

At the moment the full understanding of the Agreement's meaning is crucial for estimation of the scale of possible losses for Ukraine's future, if the Association Agreement with the EU will be blocked for a long time.

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After a negotiation process that went on for five years, Ukraine and the EU were on the verge of signing the most wide-ranging, ambitious bilateral agreement in the history of relations between the two — the Association Agreement (AA).

In terms of its range and the areas that it encompasses, the AA is the largest international legal instrument in the history of Ukraine and the largest international agreement with a third country that the EU has ever signed.

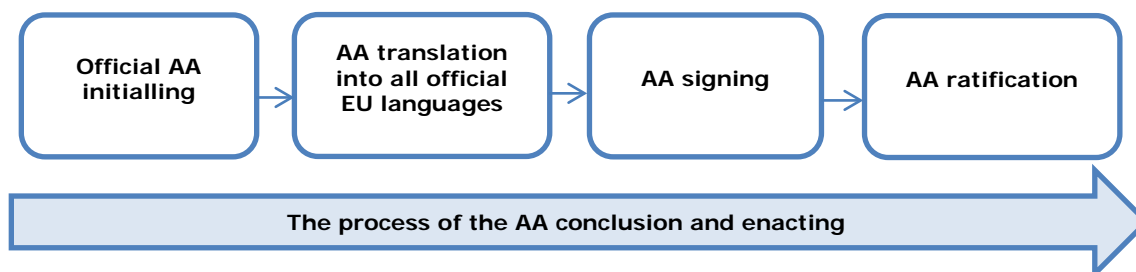
The extent of the EU acquis contained in the AA—especially the section on the Deep and Comprehensive Free Trade Agreement (DCFTA)—and are expected to be incorporated into Ukrainian law, will be unprecedented for the association agreements.

However, it will still not approaching the commitments typically made by candidate countries in order to accede to the European Union.

## I. From coming to agreement to coming into force

The two sides announced that AA negotiations had been successfully wrapped up at the Ukraine-EU Summit in Kyiv, Dec. 19, 2011.

Yet, the process of the agreement's conclusion and enacting involves several additional stages.



### Initialling

First, the AA needs to be officially initialed, which means that both sides have agreed to its wording. Initialing by the heads of the negotiating teams of the parties should only be a matter of months. Afterwards AA is translated into all official EU languages and Ukrainian language and prepared for signing. Signing the AA requires a green light from the EU Council—effectively, from the governments of all member states. After the official signing, the AA goes for ratification, which itself involves two stages.

### Ratification

Those sections whose contents fall within the EU exclusive competence (these are trade and economic cooperation) will come into force through the mechanism of the Interim Agreement, which is signed simultaneously with the AA itself and does not require ratification by the EU member states, only the approval of the EU Council and the Verkhovna Rada of Ukraine. In this way, once it comes into effect (usually within semi-annual term starting from signing), the DCFTA begins to be established between Ukraine and the EU.

For the entire AA to come into effect, especially the political sections, it needs to be ratified by EU Council (after obtaining consent of the European Parliament) and all the EU member states. This procedure can take up to several years, judging by the current EU-Ukraine Partnership and Cooperation Agreement, which was signed in 1994 but came into effect only in 1998.

## II. Political risks

The court cases against Ukraine's opposition leaders, which are seen unanimously as based on "selective justice" in the EU, and other signs that democratic processes in Ukraine are going into reverse, have put a crimp on the process of signing the AA.

Not long ago, it was generally thought that the economic sections of the AA and the DCFTA would be officially signed in the summer of 2012 and come into effect by early 2013, right now such scenario seems unreal.

The soonest that the AA might be signed will be right after the VR election, which takes place on Oct. 28, 2012—and then only if international observers, starting with the OSCE mission, deem the election in line with international standards

Most EU members consider it impossible to sign such a wide-ranging, comprehensive agreement with a country that is demonstratively ignoring its commitments in the area of democratic standards and whose Euro-integration declarations are equally demonstratively not in line with realities on the ground.

In this situation, the soonest that the AA might be signed will be right after the VR election, which takes place on Oct. 28, 2012—and then only if international observers, starting with the OSCE mission, deem the election in line with international standards.

Meanwhile, there are other political risks: growing pressure from the Russian Federation to get Kyiv to reject the Association Agreement with the European Union altogether and to join Russia's pet projects, the Customs Union or the Eurasian Union. Since Ukraine's membership in any customs union denies its right to conclude free trade agreements, country's membership in this alliance will disable the conclusion of Association Agreement with the European Union.



### III. Association Agreement Structure

The Association Agreement is structured as follows:

- Preamble, general objectives and principles;
- Political dialogue;
- Justice, Freedom and Security;
- Economic and sectoral cooperation;
- Energy;
- Deep and Comprehensive Free Trade Area;
- General, institutional and final provisions.

The objectives of the Agreement are defined in "**Preamble, general objectives and principles**" section.

These include establishing the association, gradual approximation between Ukraine and the EU on the basis of shared values, deepening of the economic and trade relations, including through the launched DCFTA, strengthening of cooperation in the sphere of justice, freedom and security. The principles which would constitute the core of the association, especially the ensuring of human rights and fundamental freedoms, rule of law, respect for the sovereignty and territorial integrity, inviolability of borders and independence, are also anchored. It is emphasized that further relations between Ukraine and the EU should be based on the

From a formal point of view the Association Agreement neither implies nor excludes future EU membership of Ukraine

principles of free market economy, rule of law and good governance.

This section contains provisions on the future of the EU-Ukraine relations, which were

deliberated for the longest time, until the final decision on them made during the summit on 19 December 2011. Since at this stage the European Union is not ready to provide Ukraine with a membership perspective, it was decided that the parties recognize the "European identity of Ukraine". For Ukraine, this formula serves as an indirect proof of country's European perspective, while the EU does not face the obligations that the recognition of membership perspective bears.

Thus from a formal point of view the Association Agreement neither implies nor excludes future EU membership of Ukraine. At the same time the very meaning of the Agreement clearly indicates its integration nature: as the result of implementing the Agreement, Ukraine will integrate to the EU internal market and approach closely the Copenhagen criteria for the EU membership. This will create a fertile ground for efficient raise of the question on membership and gain of the necessary support among EU member states.

**The "Political dialogue"** section contains provisions on the development and strengthening of political dialogue in various fields, which will in particular facilitate gradual convergence of Ukraine with the EU foreign and security policy. The Association Council is defined as a main bilateral body that will ensure the implementation of the Agreement.

The section outlines objectives of political dialogue. The introduction of political association between Ukraine and the EU is defined as a key point. Other objectives include the spread of international stability and security, strengthening respect for democratic values, rule of law and good governance, human rights and basic freedoms, the principles of independence, sovereignty, territorial integrity and inviolability of borders, security and defense cooperation.

Levels and formats of political dialogue are defined, including summits, ministerial and other levels.

Cooperation to promote regional stability, peace and international justice, including through the implementation of the Rome Statute of the ICC, ensuring the gradual convergence of foreign and security policies, including the Common Security and Defence Policy, conflict prevention, non-proliferation, disarmament and arms control, countering terrorism are defined as the key areas of cooperation.

The Agreement's **"Justice, Freedom and Security"** section outlines the issues of justice, law enforcement, migration management, data protection, rule of law, in particular strengthening the judicial system, improvement of its efficiency, guarantees for its independence and impartiality.

Close attention is paid to the citizens' mobility particularly through the introduction of visa-free regime after creating the appropriate conditions

In order to manage migration flows Agreement launches a comprehensive dialogue on key migration issues, including illegal and legal migration, trafficking in humans, etc. Separate articles are devoted to appropriate conditions for legal workers abroad.

The parties also undertake to cooperate in combating money laundering and financing terrorist activities, drug trafficking, organized crime, terrorism, and develop common actions in providing legal assistance in civil and criminal cases.

Close attention is paid to the citizens' mobility particularly through the introduction of visa-free regime after creating the appropriate conditions specified in the EU-Ukraine Action Plan on visa liberalization (granted in November 2010). At the same time Agreement does not substitute the Action Plan, thus the terms of visa free regime do not depend on entry into force and implementation of the Association Agreement.

The "**Economic and Sectoral cooperation**" section contains conditions, modalities and timing of approximation of Ukraine and EU legislation, Ukraine's commitment to reform the institutional capacity of relevant state authorities and principles of cooperation between Ukraine, the EU and its Member States in a number of sectors of the economy and areas of state economic policy. 27 chapters of this section foresee the appropriate actions in areas of taxation, transportation, environment, industrial policy and entrepreneurship, tourism, audiovisual policy, space exploration, health, culture, education, etc.

Implementation of this section of the Agreement will enable, foremost, an in-depth execution of the Agreement's provisions on free trade, since pursuing towards converging of the regulatory environment of Ukraine and the EU, and thus eliminating non-tariff trade barriers. Secondly, it will promote Ukraine's integration into EU internal market and the single European regulatory space in majority of sectors of the economy and social life of Ukraine.

**Energy cooperation provisions** of the Association agreement foresee the implementation of harmonized legal framework for industry in Ukraine and the EU. The provisions reinforce common principles for this regime, partially taken from the energy legislation of the EU, namely the principles of distribution of production functions, transportation, transit and final sale of energy materials, the principles of non-discrimination, national treatment of companies of the parties, transparency of procedures for permits and licenses for mining, transportation and distribution of energy materials.

Thus if there are differences between the legal regimes established by the Agreement and the provisions of the Energy Community, the latter shall prevail. These provisions should ensure, in particular, compliance with any types of gas settlements between Ukraine and Russia to European

standards, in particular to prevent monopolization of transit and distribution networks.

**The section on Deep and comprehensive free trade area** deals with the following main areas: trade in goods, including technical barriers to trade, tools of trade protection, sanitary and phytosanitary measures, trade facilitation and customs cooperation; administrative cooperation in the field of customs, rules of origin, trade relations in the energy sector, establishment and investment of services, recognition, capital movements and payments; competition policy (antitrust and state aid measures); intellectual property rights including geographical indications, government procurement, trade and sustainable development, transparency, dispute settlement.

DCFTA envisages the trade liberalization in both goods and services, liberalization of capital movements and to some extent - the movement of labor. A distinctive feature of EU-Ukraine FTA is a comprehensive approach for approximation of Ukrainian sectoral laws and regulations (on transport, energy, services, agriculture, etc.) to the relevant EU standards. This greatly supports an elimination of non-tariff (technical) trade barriers between Ukraine and the EU and provides expanded access for Ukrainian exporters to the EU internal market and vice versa - European exporters to the Ukrainian market.

Launching of the Civil Society Platform is foreseen in order to involve civil society to the implementation of the Agreement. This provision is quite innovative for the association agreements with the European countries and creates preconditions for deep and systematic involvement of the public sector to the entire spectrum of relations between Ukraine and the EU

**General, institutional and final provisions.** This section introduced new formats and levels of cooperation between Ukraine and the EU after the entry into force of the Agreement, including Summits, Association Council, Association Committee and Parliamentary Committee on the Association. The mechanisms for monitoring and disputes resolving are also designed.

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Due to the unlimited duration of the Agreement the possibility of its comprehensive review was envisaged, including revision of its goals, within

five years from its entry into force, and at any time by mutual consent. This provision creates conditions for possible formal defining of more ambitious goals (first and foremost, the membership perspective) if Ukraine demonstrates tangible progress in Agreement implementation and the EU feels internal preconditions for adopting such a decision.

#### IV. Institutional Policy and Coordination: How to prepare for AA implementation?

Despite all these political risks and, indeed, to reduce their impact, Ukraine needs to begin to prepare for the practical application of the AA now. There are at least 4 models of institutional support for European integration policy in general and AA implementation in particular.

<b>Model A</b>	<b>Decentralized</b> , as it currently is. This means that most functions related to coordination will be the responsibility of the Ministry of Foreign Affairs (MFA).
<b>Model B</b>	<b>Highly centralized or “presidential.”</b> The center for developing policy is the department for European integration set up directly in the Presidential Administration.
<b>Model C</b>	<b>Centralized or “Cabinet-based.”</b> The recent example of how the Coordinating Bureau for European and Euro-Atlantic Integration operated as part of the Secretariat of the Cabinet of Ministers demonstrated that the function of horizontal coordination of European coordination can quite successfully be handled by a sub-unit that is part of the Government’s apparatus.
<b>Model D</b>	<b>A central executive body (CEB) with special status.</b> In 2008, the idea of setting up a centralized system for coordinating European integration in Ukraine was raised for the first time, similar to such bodies in former and current candidates for EU accession. But narrow agency-specific interests in key ministries got in the way of any concrete decision in this regard.

At this point, in considering the issue of institutional support for European integration, it's worth looking at the way Ukraine has prepared for the EURO 2012 football championships as an example. Over 2010–2011, the country overcame the growing gap in preparations for the championship games by setting up a strict chain-of-command, both vertical and horizontal, among government agencies that were responsible for handling all matters tied to preparations for EURO 2012.

Should the Cabinet of Ministers of Ukraine begin to channel all the activities of a proper European integration coordinating body through the First Vice Premier—this agency could be called, say, the National Agency or the Ministry for European Integration, it really doesn't matter—the likelihood of positive results from its activities will be very high compared to the first three models.

Before any of these four models is selected and worked out in detail, the first step should be to establish a collegial body headed by the President of Ukraine that will consider all strategic issues in Ukraine-EU relations and will approve any decisions regarding priority objectives in European integration.

There are two options for doing so:

- setting up a State Council on European Integration, as proposed by the Verkhovna Rada, among others;
- vesting the Economic Reform Committee with the function of reviewing European integration issues and amending its Provisions accordingly.

Either of these alternatives is acceptable, although the second one looks considerably more effective as it resolves the long-overdue question of combining both the management of reforms and the coordination of European integration in a single entity.