



*Understanding the EU's Association Agreements
and Deep and Comprehensive Free Trade Areas
with Ukraine, Moldova and Georgia*

An Introduction to the Association Agreements between the EU and Georgia, Moldova and Ukraine

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Abstract

The three Association Agreements and DCFTAs with Georgia, Moldova and Ukraine are extremely complex and ambitious treaties, with extensive political, economic and legal content. The texts themselves are not easy reading, to say the least, and the general reader will not easily be able to form a good understanding of their contents. The present note offers therefore a short summary, as the beginning of a three-year project to examine and explain the Agreements in some depth (see www.3dcftas.eu for detail).

The Agreements have two immediate impacts: first in marking politically the 'European choice' of the three countries; and secondly in the economic sphere elimination by the EU of almost all tariffs on imports from the partner states, years ahead of their own tariff dismantling. For the longer run the Agreements amount to a charter for the modernisation of their economies, with extensive commitments to adopt regulatory norms and standards of the EU. There are several more specific and complementary agreements with the three countries to join in important EU programmes on a par with the member states, such as the scientific research programme Horizon 2020, and sector-specific agreements such as for civil aviation. Overall the Agreements lay out the path for deep political and economic integration of the partner states with the EU.

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Introduction

This short analysis gives an overview of the three **Association Agreements** that the EU signed with Georgia, Moldova and Ukraine in 2014.¹ The legal texts, which have the status of international treaties, are themselves extremely long and complex, which make it difficult for the reader to understand the overall picture. There are around 50 chapters, with as many annexes adding further detail. The Ukrainian text totals over 2000 pages in the EU's Official Journal. The chapters are of highly differentiated character: some operationally specified and legally binding, some not; some of major political significance, others very technical matters; some of major economic significance, others not.

Despite this complexity and heterogeneity, the Agreements are defining the terms of basic political and economic objectives, and legal instruments for achieving them, notably:

- Identification of the three partner states with fundamental European political values for democratic systems, the rule of law, human rights and fundamental freedoms
- Cooperation in the area of common foreign and security policy and in the area of freedom, security and justice
- Far-reaching liberalisation of almost all bilateral trade between the EU and the three countries
- Modernisation of the three economies in line with the EU regulatory standards (i.e. as in EU legislation and standards).

The three agreements with Georgia, Moldova and Ukraine are largely the same but with some significant differences. The Ukraine text was negotiated first, and then served as template for the other two. As for differences, Georgia had already liberalised unilaterally a large part of its trade with the entire world before the Association Agreement negotiations, and as a result the Georgian DCFTA includes almost no exemptions with regard to tariff-dismantling of trade in goods (contrary to the Ukrainian DCFTA). Moldova for its part pursued during the negotiations a 'maximalist' approach in order to underline its EU membership aspirations, committing itself to all relevant EU law, which explains why several annexes in its Agreement include more EU law compared to the other two.

The Association Agreements incorporate **Deep and Comprehensive Free Trade Areas (DCFTAs)**, and the two names are sometimes used interchangeably. This is because the EU has many Association Agreements of different kinds, but so far only the three Association Agreements with Georgia, Moldova, and Ukraine include such ambitious DCFTAs. To clear up this point from the start, the DCFTAs are just one important part of the texts that define core trade policy provisions. The DCFTAs include also the most strictly binding parts of the Agreements, and hence a tendency to suggest that they are the essence of the Agreements. But this is an oversimplification since the Agreements contain much material on domestic policy reform that is not trade-related, as illustrated in Box 1 which outlines the different titles of the EU-Ukraine Association Agreement.

The Agreements are now the overarching framework for relations between the EU and the three partner states. They replace the out-dated Partnership and Cooperation Agreements, which were international agreements that the European Community negotiated with the post-Soviet countries in the early nineties, and which entered into force in the late nineties. Moreover, several sectoral policies are – or will be – managed by separate agreements or

¹ This short introductory note is to be followed by three book-length, much deeper analyses of the Agreements, separately for Georgia, Moldova and Ukraine, to be published in mid-2016 in English and the national languages of the partner states.

policy initiatives. Important examples are found in the areas of energy policy, visa negotiations, and civil aviation, which are referred to in the Agreements, while their detailed substance is set out in other texts. For the purposes of the present note a comprehensive approach is followed, covering also this significant activity that is supporting the objectives of the main Association Agreements.

Box 1. Structure of the EU-Ukraine Association Agreement

Title	
I	General Principles
II	Political Dialogue and reform, Foreign and Security Policy
III	Justice, Freedom and Security
IV	Trade and related matters: Deep and Comprehensive Free Trade Area (DCFTA)
V	Economic and sector cooperation
VI	Financial cooperation
VII	Institutional, General and Final Provisions
	Annexes

Political and economic objectives

The overarching political and economic objectives are set out at the beginning of the Agreements. At the highest level the objectives are to support the ‘**European choice**’ of the partner states, to achieve high quality democracy, rule of law and respect for human rights, and an efficient and competitive market economy. These very comprehensive objectives are to be implemented with the aid of a large amount of ‘approximation’² by the partner states of EU legislation in many but not all policy domains.

The issue of the ‘European choice’ of the three partner states is covered in the Agreements with language of political compromise. Georgia, Moldova and Ukraine all express their strategic objectives to become full EU member states. The EU’s own founding treaty says that any European State that respects the democratic values of the EU has the right to apply for membership³, while also indicating that specific agreements may be made with neighbouring countries⁴. However there is no consensus among EU member states at the present time over how the aspirations of the three partner states for full membership should be handled. Some member states favoured recognising explicitly the ‘membership perspective’ in the Agreements, but many others preferred to be more cautious in order not to raise premature expectations. As a result, the Association Agreements do not include an explicit membership perspective but they neither do they preclude such a scenario in the (relatively distant) future. The cautious attitudes reflect the challenging prospect of further expansion of the EU. The EU’s enlargements of 2005 and 2007 into central and eastern Europe have on the whole worked out very positively, but the full implications of further

² ‘Approximation’ is the term used for the adoption of legislation by the partner states that is in line with the corresponding EU legislation.

³ Article 49 of the Treaty on European Union

⁴ Article 8 of the Treaty on European Union

enlargement, including for the remaining non-EU Balkan states, for the functioning of the EU system are not yet maturely worked out. In addition the future development of the EU system as a whole, and notably for the Euro system, is subject much on-going political debate. The texts of the Agreements indicate that the further integration of the partner states with the EU will depend on progress in convergence with the EU in political, economic and legal areas.

The crucial objective in the Agreements for democratic institutions to assure respect for **core European values** is only defined in general terms, reflecting the fact that the EU has not itself codified legally the content of democracy, in part because democracy has so many variations. However for human rights there is a well-developed codification of human rights law, but this has been done at the level of the Council of Europe's European Court of Human Rights, of which all EU member states and the three partner states are full members, and the Agreements rely on this. The Agreements provide for the detailed monitoring of democratic institutions, including the rule of law and human rights. Respect for these democratic values is considered in the Agreements to be of such 'essential' importance that in the event of their grave abuse the Agreements may be suspended.

The Agreements also endorse international security norms, such as defined in the Helsinki Final Act of 1975 and provide for **political dialogue** over all relevant foreign and security policy issues. High on the agenda here are the priority concerns of all three of the partner states for their territorial integrity (i.e. with respect to Abkhazia, South Ossetia, Transnistria, Crimea, and the Eastern Donbass). The substance of these problems is not developed in the Agreements, but is to be treated in the processes of political dialogue.

Similarly the issue of **corruption**, and anti-corruption strategies, are considered to be of paramount importance, but are not explicitly defined in detailed terms in the Agreements. However in substance, several specific chapters are key components of anti-corruption policies (such as for public procurement and competition policy, on which more below).

An issue of crucial interest for the citizens of the three partner states is the **free movement of people**, which links to the conditions for visa 'facilitation', and ultimately 'liberalisation' (i.e. visa-free travel). This issue is not covered in detail in the Association Agreements, but in separate dedicated agreements or policy instruments. The EU has already concluded visa facilitation agreements with the three countries, which facilitate the issuance of visas for intended stays of no more than 90 days for several groups of citizens (e.g. business people, journalists, students). Moreover, negotiations are on-going over the conditions for complete liberalisation or abolition of visa requirements (i.e. concerning document security; border management, migration and asylum; public order and security; and fundamental rights). These conditions are laid down in Visa Liberalisation Action Plans (VLAPs) and are monitored by the European Commission. Moldova was in 2013 the first country to obtain a visa-free regime.⁵

Economic policy divides conventionally between on the one hand 'macroeconomic' policy over the main instruments of fiscal and monetary policy aggregates, and on the other hand 'microeconomic' or sectoral and regulatory policies covering a wide range of both external trade and domestic policies. The Agreements are short and without precise commitments on macroeconomic policy, but very detailed on microeconomic and sectoral regulatory policies. This may at first sight seem surprising, but is explained by systemic factors.

⁵ This came into effect on 28 April 2014. From this date, the visa obligation for citizens of Moldova who hold a biometric passport and want to travel to the Schengen zone for a short stay was abolished.

In the case of **macroeconomic policy** the EU's own system is nowadays concentrated on the rules of the Euro area, whereas accession to the Euro area is not envisaged in the Agreements, being for full EU member states only. At the same time for vital issues of macroeconomic policy and financial stability the International Monetary Fund (IMF) has a key role in all three partner states, setting detailed conditions for financial assistance in the form of loans. The EU is not absent in this domain, but works to support IMF programmes, usually complementing the IMF's financial assistance with additional funding on the same conditions. But since the IMF supplies the largest amounts of funds, it has the leadership role. However, of all aid suppliers the EU contributes the largest amount of grants for specific purposes complementing the IMF-led programmes. Alongside finalisation of the Agreement with Ukraine, the EU pledged for the period until 2020 a total of 11 billion euro of grants, loans and investments, including contributions from the European Investment Bank and the EBRD. Similar funding, on a small scale of course, is made available for Georgia and Moldova.

By contrast in the broad domain of '**microeconomic**' trade, sectoral and regulatory policies the Agreements are very detailed with much EU legislation used as the benchmark for 'approximation' by the partner states. The content of these policies amounts to a wide-ranging and very substantial agenda for modernisation of the economies of the partner states. Many of these EU policies are the outcome of long negotiations and experience, where EU norms are also to a large degree representing best international practice. Many complex regulations are also being revised and updated in the EU in the light of new technologies and experience, and in this regard there are provisions in the Agreements for their technical updating. In completing their transitions from the Soviet regime to modern competitive economies the partner states have no need to 're-invent the wheel', while the Agreements allow for considerable flexibility in how far and how fast to approximate EU legislation – as the next section of this note explains in more detail.

Trade, sectoral and regulatory policy objectives

The classic corner stone of free trade agreements is the **elimination of substantially all tariffs and quantitative restrictions on imports and exports**. This is provided for in all 3 DCFTAs, but with some differences in timing and exceptions.

On its side the EU eliminated almost all tariffs immediately after signature of the agreements. The main exceptions concern agricultural products in the cases of Moldova and Ukraine, for which there are a number of products subject to tariff-free quotas (i.e. imports are only tariff-free up to specified volumes).

On the side of the three partner states, Georgia is an outstanding case, since it scrapped most of its tariffs unilaterally already in 2006 well before the Agreement was to be negotiated, whereas Ukraine and Moldova are going to phase out their tariffs gradually over transition periods of up to 10 years. For Ukraine the start of the 'provisional application' of the DCFTA was delayed until 1 January 2016 in response to Russian pressures. However, until this date the EU unilaterally implements its DCFTA tariff commitments through autonomous trade measures. In addition, in agreement with the EU, Ukraine introduced an emergency import surcharge of 10% in 2015 in order to help cope with its acute budgetary crisis. Ukraine also phases out only gradually a number of export duties on some important commodities.

Strategically the free trade provisions should lead to the three partner states being viewed by multinational corporations as an attractive location for foreign direct investment aimed at the EU market, and more broadly integrating with European supply chains. For this major benefit to be realised will however also require serious improvements in the business climates and economic governance in the partner states, which many sectoral provisions of the Agreements should also facilitate.

Provisions are made for '**trade remedies**', such as anti-dumping duties, in the event of breach of trading rules.

The Agreements aim to eliminate so-called '**technical barriers to trade**', consisting of technical and safety standards for industrial goods, as well as agricultural and food produce.

For **industrial goods** the Agreements commit the partner states to adopt gradually the European system of technical regulations and standards. This is a huge task, given that the European standards organisations have developed as many as 28,000 such standards, whereas the former Soviet states inherited a totally different system of GOCT standards. For practical purposes the Agreements envisage a step-by-step process, with priority given to adopting a limited number of around 27 framework directives, such as for broad product categories such as 'machinery'. These directives define the essential health and safety requirements that products have to meet in rather general terms. On this basis the EU requests the standards organisations to draw up detailed standards, called 'harmonised standards', that will assure conformity with the directives (for example several hundred for 'machinery' alone), and thus allow products to be labelled with the 'CE' mark. However these standards are voluntary in the sense that a manufacturer can choose its own alternative preferred standards and submit them for recognition as meeting the essential requirements of the directives. Georgia, Moldova and Ukraine are already engaged in the long process of adopting the thousands of standards. The system is to be completed with certification and accreditation arrangements for assuring the correct implementation of the required regulations and standards, which requires an infrastructure of laboratories and expert bodies. The Agreements set out the pathway for the development of the systems in the partner states to the point when their manufacturers will be operating as if in the EU internal market, i.e. with no remaining technical barriers for trade in industrial products with the EU.

For **agricultural and food** products there is a separate body of EU law under the heading of 'sanitary and phyto-sanitary standards' (often abbreviated as '**SPS**', where the 'phyto-sanitary' element refers to plant safety). This is another complex set of technical regulations that have to be met for agri-food products to be marketed in the EU. The Agreements oblige the partner states to submit 'SPS strategies' some months after entry into force of the Agreements. These strategies, which need to be approved by the EU, will become the reference documents for the implementation of the national SPS policies. At the time of writing this process is not yet complete. In the meantime it remains open for individual exporting enterprises to request certification of their own products for the purpose of exporting to the EU according to standard procedures set by the EU for any exporting country. This requires the 'competent authorities' of the exporting states to guarantee that relevant SPS standards are being respected by the exporting enterprises, and this can be done without waiting for the comprehensive SPS strategies to be agreed and implemented, which in the best of cases will take years.

There are several chapters of the DCFTA that are not only important market-opening measures, but also impact significantly on the domestic policy reform and modernisation process. **Competition policy** is one case where EU practice is taken as a model for the partner states, although Georgia chose to give itself greater freedom over how to define its

policy, whereas Moldova and Ukraine will approximate several EU laws. Rules for **public procurement** are also set with large reliance on EU legislation, and there will be mutual market opening here implemented step-by-step with progress in approximating EU practice. Both competition and public procurement policies are important components of anti-corruption policy.

The EU attaches high importance to an ordered system of **intellectual property rights**, and this complex block of jurisprudence is given a large place in the texts. This concerns the whole system of copyright, patents, and protected brand names, including 'geographic indications'. The listing of protected branded names of wines, cheeses and other alcoholic drinks and processed foods by region of origin (such as Champagne or Roquefort cheese) takes no less than 30 pages of text. However the EU was willing in the case of Ukraine to make a concession that its producers could continue for ten years to market 'Ukrainian Champagne' and various other well-known brands.

Treatment of **service sectors** on the Agreements is especially complex, given the diversity of sub-sectors and the relatively incomplete development of European and international (WTO) rules. The Agreements have certain limited provisions for services in general, i.e. covering the multitude of sub-sectors, but much more precise and commitments to approximation with EU law in selected sub-sectors, of which financial services and telecommunications are particularly important. The provisions for services in general highlight two principles: 'national treatment', meaning that service providers from the EU or the partner states operating legally in the other's territory, are entitled to the same treatment as for domestic suppliers; and 'm.f.n. treatment', meaning treatment no less favourable than for the 'most favoured' foreign country. Market access in the EU for service suppliers from the partner states, and vice versa, is agreed as a general rule. But on the EU side this is still subject to long lists of reservations that are decided by EU member states under their national competences. The three partner states are on the whole requiring fewer reservations for EU suppliers of services, with Georgia in particular making almost no reservations, meaning that its market is entirely open.

Regarding the important case of **financial services**, the Agreements list virtually the whole of EU law for approximation. In this area EU law has in recent years been drastically revised in response to the global financial crisis that began in 2008, and in the Agreements it is envisaged that the list of EU laws will be updated with regard to this on-going regulatory reform. A key law concerns the 'capital adequacy' of banks. In this respect the banking sectors of the partner states are vulnerable, especially those of Ukraine and Moldova which have been hit by their own severe financial crises. In the financial sector, as in various other domains, the Agreements set out the complete legal requirements for the partner states to be eligible for '**full internal market treatment**', i.e. for its enterprises to be treated as if they were from EU member states for the domain in question. Even if this is going to be a lengthy process, the path is defined and open.

For the **transport sector** the Agreements set out the EU's rules and regulations for all modes: road, rail, waterways, sea and air. Of these road and air transport are of special importance for links with the EU. The case of road haulage transport is complicated by the fact that access to the EU's market is subject to detailed quota provisions at the level of the member states, and the Agreements do not override these national provisions. Air transport is subject to separate civil aviation agreements, concluded with Moldova and Georgia and negotiated (but not yet signed) with Ukraine, which are important for both the opening of markets to low cost competition, and assurance of high safety standards.

The **energy** provisions of the Agreements are of exceptional importance, since this involves issues of both strategic energy security, meaning in particular the need to diversify gas supplies away from excessive dependence on Russia, as well as the reduction of the huge energy wastage that is the legacy of Soviet energy policies. The Agreements deal with trade-related energy issues, such as the prohibition of discriminatory pricing for industrial consumers, as well as domestic policies for energy saving and efficiency in household and public sectors. For these purposes the Agreements provide for approximation on a large set of EU laws, including for example the 3rd Energy Package which requires the 'unbundling' of monopolistic energy supply structures. Much of this EU law is found in the Energy Community Treaty, to which Moldova and Ukraine acceded already before signature of the Agreements, with Georgia currently an applicant also to accede to the Treaty. Consistency of the Agreement with the Treaty is assured, notably with the provision that in the event of possible conflicts of law the Treaty shall have precedence.

Another important chapter concerns **environment** policy, where there are commitments to approximate a large number of EU laws of great significance for controlling effluents that pollute the air and water supplies. Also covered are EU directives controlling the use and storage of dangerous substances, drawing on the lessons learned from some major industrial accidents (such as the Seveso disaster of 1976 in Italy). Since some of these directives will require substantial investments to be made, the implementation delays can be quite long, for example up to 7 years, while the European financial institutions can help in funding such investments.

Employment and social policy is also subject of approximation of a substantial number of EU laws, which fall into two broad categories. The first concerns basic features of employment contract, including forms of short and long-term employment contracts and the prohibition of all forms of discrimination. The partner states inherited the Soviet labour code, which is largely obsolete and inefficient where, as in the cases of Moldova and Ukraine, it has not been comprehensively reformed. The second category of EU laws concerns safety in the work place.

Some chapters are completely non-political but still of real importance for the processes of economic reform and modernisation. An example is the domain of **statistics**, for which the complete set of methodologies of the EU statistical authority, Eurostat, is marked out for approximation. International comparability of statistics is indispensable for informed policy making.

The Agreements provide for the partner states to join in many of the EU's specialised agencies and operating programmes on a par with the EU's own member states. An important example is the scientific research programme '**Horizon 2020**', where the three countries area among the small number of European non-member states that in this field become 'virtual members'. Another programme of major importance for the three countries is the **Erasmus+**, which provides for university student and teacher exchanges on a substantial scale.

There are a number of policy domains for which there are chapters in the Agreements without operational or legal commitments, but which nonetheless aspire to cooperation through dialogue and exchange of experience. Examples are industrial policy, mining, tourism and sport. Even if the topics have their undoubted importance, in their present formulation the chapters in question seem not to be really significant.

Legal, institutional and procedural infrastructure

There is a well-developed institutional structure to oversee the implementation of the Agreements. The key body is the ministerial level Association Council, supported by an Association Committee at high-official level, and then sector-specific committees, in all or which the EU and the partner state are equally represented. In the case of Ukraine there are also regular Summit meetings at Presidential level.

Beyond being a forum for dialogue and policy review, the Association Council has certain powers. It can decide to amend annexes to the Agreement, but not the main text itself. Its various committees manage procedures for recognition of key steps in the process, such as when the fulfilment of implementation conditions has reached the levels required for easier market access, for example for the granting of 'full internal market treatment'.

Also foreseen are a Parliamentary Association Committee and a Civil Society Platform.

There are well-developed procedures for monitoring implementation of the Agreements, and for mediation or arbitration for the purpose of settling disputes.

There are many openings for the partner states to join in various EU specialised agencies and programmes.

Overall assessment

The Agreements provide short, medium and long-term pathways for the gradual political and economic integration of the three partner states with the EU.

There are two immediate and major impacts of the Agreements:

- First, they mark out clearly the 'European choice' of the partner states, with all that this means for their identification with fundamental European values, including democracy, the rule of law and respect for human rights.
- Second, the EU has opened its market for products from the partner countries. Whereas the DCFTAs with Moldova and Georgia are provisionally applied since 1 September 2014, the EU unilaterally implements the DCFTA tariff commitments towards Ukraine until the DCFTA will be provisionally applied (i.e. 1 January 2016). This means the opening of a new competitive advantage and incentive for their economies. If supported by improving business climates, the perspective is opened for the 3 states to become good sites for foreign direct investment producing exports for the EU market.

For the longer run, starting however already now:

- The Agreements amount to a charter for economic modernisation of the three partner states through alignment on European norms, many of which correspond to best international practice. The partner states do not have to 're-invent the wheel' in many technically complex areas, where the choice of regulations and standards out of line with tested international practice would be a highly costly process.
- Most of the operational commitments made by the partner states in the economic sphere are spread over a number of years, often around 3 to 7 years. This gives time for government and economic operators to adjust, while they are already given fully information what to prepare for with the references to existing EU legislation. When

these programmes are completed the partner states will for various sectors be granted 'full internal market treatment', i.e. to be treated as if a member states for the sectors in question. While the pathways are for the most part specified in terms of legal substance and timing, there are important flexibilities, for example over timing of implementing commitments. There will doubtless be debate over the optimal speed and extent of application of EU law in the light of experience, and procedures exist for the lists of commitments in the Annexes to the Agreements to be amended if both parties agree. Financial assistance is available to help with investment where there are heavy adjustment costs, with grants from the EU, and loans or investments from the European financial institutions.