3 DCFTAs

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

Demystifying the Association Agreements

Review of the Trilogy of Handbooks:

on the EU's Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with Georgia, Moldova and Ukraine

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Abstract

This paper reviews the three Handbooks on the Association Agreement between Georgia, Moldova and Ukraine, respectively. It examines the role of the Association Agreements in the Europeanisation of the three countries. The paper draws attention to the dual role of the Agreements, namely, as frameworks for both economic integration and modernisation. The paper analyses the content of the Handbooks and draws attention to the complex and varied nature of the legal commitments made by the association countries. In the final section, it focuses on the process of implementation of the Agreements and the considerable challenges this presents for the EU and the three countries in question.

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Review of the Trilogy of Handbooks:*

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Introduction

The EU is the most legalised international organisation in the world. Not only it has an extensive and sophisticated corpus of law (*acquis communautaire*) but it also engaged in the export of its laws to other states. EU's foreign policy exemplifies a 'transformative engagement through law' (Magen, 2007: 362).

The scope and intensity of the export of the *acquis* varies greatly across the countries and regions. The latest and most interesting widening of the EU legal space is taking place to a select group of Eastern neighbours – Georgia, Moldova and Ukraine. The mechanism is the Association Agreements (AA) with the Deep and Comprehensive Free Trade Areas (DCFTA).

The conclusion of the AA-DCFTAs represents a shift in the EU's eastern policy: they offer an advanced market access while ensuring the long-term modernisation and development of the neighbour countries thereby underpinning their 'European choice'. However, this fundamental change takes the EU and partner countries into uncharted territory: a sophisticated and complex corpus of rules developed within the EU is now being used to modernise countries struggling to reform (with the partial exception of Georgia) on their own accord. In other words, a body of detailed and complex legislation is imported by a 'third country' for the purposes of cooperation and development.

From the EU side, it offers an alternative to enlargement, while the partners are driven by a plethora of political, security, cultural and economic motives, comparable to East-Central European countries. But in contrast to the latter, they are to be included in EU's legal space below the 'threshold of membership' (Wolczuk, 2016).

Because of their ambition and complexity, the Agreements pose a challenge of an entirely new order for policy makers and experts. To understand the impact of the AA-DCFTA, they need to grasp the content of the agreement and its domestic implementation. This is not an easy task: to gauge the transformative power of the EU's foreign policy one needs to examine changes to the institutions and decision making of the partner countries.

The Trilogy of Handbooks is indispensable in this respect. The Handbooks were delivered under the auspices of the Centre for European Policy Studies (CEPS) by national teams of

* See references at the end for full titles.

researchers in Georgia, Moldova and Ukraine with the support of the Swedish International Development Agency (SIDA).[1]

Each handbook offers a systematic, accessible guide to the content of the Agreements and sheds light on the implementation process. No similar guidance has been produced, despite the notable demand: an EU expert working on the implementation of the AA in Ukraine referred to the Handbook as a 'bible'.[2]

This review has several aims: first, to elucidate the significance of the AA-DCFTA and to explain the challenges to understanding its content; second, to analyse the content and assess it from a comparative perspective; and, finally, to explore the process of implementation and, while doing so, to identify key challenges.

Step Change: from the ENP to DCFTA

The need for the Handbooks reflects a major upgrade in the EU's relations with the three countries in question. The AAs are novel types of agreements, so the literature on the other integration-oriented agreements, such as the EFTA or Swiss-style sectoral agreements, are of relatively limited relevance. The AAs need to be studied in their own right.

For over a decade the Eastern neighbours have participated in a framework of relations with the ENP. The ENP was described as 'a bureaucratic response to a political question'.[3] The political question was where the final borders of the EU should be drawn. Eschewing the answer, the ENP is to facilitate the projection of the EU's 'normative power' in the Union's neighbourhood by offering the neighbours credible and effective integration without membership. Thus, by lowering the barriers between the EU and its neighbourhood, the ENP is to serve as an alternative to enlargement, with the aim of reducing the membership aspirations of neighbouring states. The policy allows the extension of the internal modes of governance beyond the borders of the EU, while minimising the effects on the internal functioning of the Union. If during enlargement the EU endeavoured to create 'ideal members' (Mayhew 2000), the ENP aims to create 'ideal neighbours'. Thus, from the very beginning ambiguities and tensions were built into what carried the promise of being the most ambitious and sophisticated *foreign* policy ever launched by the EU.

The ENP has been met with scepticism as to its structural features and effectiveness. From the early days of the ENP the view prevailed that in the absence of membership conditionality, the incentive package of the ENP would not be sufficient to drive domestic legal reform in the neighbour countries, let alone emulate the success of the Eastern enlargement (Kelley 2004, Cremona & Hillion 2006). Its key instrument was the ENP Action Plans, which contained

[1] It is worth pointing out that it is not the first time that SIDA has offers crucial support for Ukraine's integration with the EU. In 2007, SIDA supported a study 'Free Trade between Ukraine and the EU an Impact Assessment', which was delivered by the International Centre for Policy Studies (ICPS), Kyiv Ukraine.
[2] Author's interview, Kyiv, February 2017.
[3] Author's interview with a European Council official, March 2006.

general reform guidance for the neighbouring countries. They tended to contain only vague reference to adopting key aspects of the *acquis.* Both the obligations and incentives were underspecified.

Indeed, the comprehensive literature review on the ENP by Konstanyan (2016) confirms the validity of this scepticism. A weak system of incentives in the absence of a membership perspective has been consistently identified as the key flaw of the ENP. The ENP policy has not been able to stimulate comprehensive domestic change; at best, some results were delivered at a sectoral level, mainly when the EU provided clear sector-specific conditionality and tangible rewards (for example, the success of visa liberalisation in Moldova, granted by the EU in 2014).[4] Nevertheless, closer interactions under the ENP generated strong domestic demand for reform templates amongst some of the eastern neighbours.

While a membership prospect did not emerge, and if anything is more remote than ever, the EU has proceeded to a new phase of relations with the Eastern neighbours. But this time it was only with a select 'willing group, which had actually indicated an interest in deepening relations through fostering a new Agreement. Ukraine demanded such an agreement for half a decade before the EU agreed to launch negotiations in 2007. Despite its initial recalcitrance, in recognition of the need to respond to demand from the neighbours and strengthen the offer, the EU agreed to move to a new legal framework – the AA-DCFTA.

This new legal framework represents a fundamental shift from the original ENP formula relaying on 'soft law' with 'low precision and high selectivity' to 'high precision and low selectivity'. The upgraded integration offer to Ukraine was then rolled out to other Eastern Partnership countries. At first four countries negotiated the agreements with Armenia dropping out as a result of getting a sudden offer from Russia to join the Eurasian Economic Union in September 2014 (Delcour & Wolczuk, 2015; Dragneva & Wolczuk, 2017).

Why the AA-DCFTA?

The new agreements – Association Agreements with a deep and comprehensive free trade area at their core – are to advance a new type of relations between the EU and the vanguard of the 'willing' neighbours. They offer advanced and multi-faceted relations but without reaching the threshold of membership as encapsulated in the formula of 'economic integration and political cooperation'. The Agreements provide a vehicle for an unprecedented degree of wholesale export of law – 90-95% of trade-related *acquis* is included in the DCFTA part of the AA (Duleba *at al*, 2012).

The AA-DCFTAs is a truly innovative legal instrument in the EU's external relations because of their comprehensiveness, complexity and conditionality. The AAs belong to a very small group of 'integration-oriented agreements'. Because of the advanced nature of integration this

[4] For a overview of the well-structured and comprehensive process of setting conditions and monitoring see https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia_en.

entails, the AA-DCFTAs are an exceptional phenomenon in the EU's external action. They compare to the European Economic Area (EEA) Agreement, which extends the entire EU Internal Market *acquis* to the participating states, such as Norway, although with greater selectivity, they do not go as far as the EEA Agreement.

The extensive reliance on the acquis in the Agreements serves two interrelated purposes:

Access to the single market

The main justification for EU's export of the acquis, especially in the area of the internal market, is a *functional* one. Acquiring a stake in the internal market' requires 'progressive convergence with internal market rules, coupled with stepped-up consultation and co-operation, as well as adaptation of institutional practices to EU standards' (Dodini & Fantini 2006: 511). The Union cannot open up its internal market to countries that are 'too different' without jeopardising the achievement of its economic integration and high degree of cohesion between the member states.

Because this access depends on compliance with the rules and standards of the internal market, the countries in its neighbourhood adopt significant parts of the trade-related *acquis*. This includes institutional harmonisation in the economic sphere, which is wide in scope and encompasses all major horizontal policy areas, although the degree of harmonisation differs across policy areas, being the highest for technical standards (TBT), sanitary and phyto-sanitary standards (SPS), public procurement and competition policy.

The *complexity* of the AA lies in its comprehensive nature and ambition: the aim is to achieve partners' economic integration in the EU internal market. For the EU, this kind of arrangement poses a challenge: how to ensure uniform interpretation and application of EU rules within a shared legal framework with non-members. To this end, the Association Agreement contains principles, concepts and provisions of EU law which are to be interpreted and applied *as if the third State is part of the EU,* according to van der Loo *at al* (2014). So this challenge is addressed by adopting the robust institutional system, explicit conditionality, wide-ranging mechanisms for legal approximation and a refined system for dispute settlement.

Transfer of EU rules is equated with broad developmental benefits

Implicit in the ENP is the EU's reliance on the inherent 'power of attraction' of the EU as a model of development which inspires others to emulate it. As a result, there is a strong correlation between the *acquis* and modernisation. The EU-Ukraine Handbook (2016: 2) aptly defines the Agreement as a 'charter to Ukraine's modernisation through alignment on EU norms, which generally correspond to best international practice'.

The beneficial effects of rule transfer are not limited to welfare-enhancing benefits from trade but include increased investment, enhanced competition and reduced corruption, which lead to better governance, higher economic efficiency, growth and welfare in partner countries. The process of alignment with the regulatory mechanisms as developed in the EU

are expected to transform the public policies of the neighbouring states, resulting in growth, stability and prosperity.

Therefore, the EU goes beyond this immediate *functional justification* in emphasising the broad developmental benefits in transferring EU rules. According to the Commission officials, Dodini and Fantini, these states face the choice of either adopting the EU *acquis* or developing a regulatory framework from scratch. In their view the EU model is superior to that of other international actors in terms of, first, the quality and density of its regulation; second, the comprehensiveness of the reform it entails, and, third, the degree to which it avoids controversies surrounding the activities of some international institutions (Dodini & Fantini 2006: 513).

In the case of the DCFTA, the attractiveness of EU rules stem from being offered as a ready-made corpus of rules in the absence of effective domestic policy making. In particular, the internal market acquis – the densely institutionalised area of European integration – is regarded as a template for the successful socio-economic modernisation, in view of a Commission official.

Indeed, the application of EU law has some bearing on almost every aspect of public policy-making and implementation. However, the nature of rules creates challenges for the post-Soviet states. So far granting access to the internal market and institutional harmonisation has been used by the EU to deepen economic cooperation between developed market economies, which chose to eschew EU membership, but were keen to gain access to its single market, such as Norway or Switzerland. Now the EU endeavours to export a highly regulatory model requiring an effectively functioning state to countries without the institutional capacities to enact such a model (Wolczuk, 2009). The difficulty is compounded by the lack of the legislative and administrative capacity to enact the *acquis* and the high costs involved in making regulatory adaptations in several sectors, such as environmental protection.

Given these challenges, some European officials argued that it is more appropriate to regard the DCFTA as a gradual process of economic integration, rather than a defined project of full market integration (Dodini & Fantini 2006: 512). The analysis of the Handbooks evidence the gradual and long-term nature of the process.

Understanding the Agreements

Despite or rather because of them being amongst the most sophisticated and complex legal agreements in the world, the AA-DCFTAs have been relatively neglected in scholarly and expert analysis (for exceptions, see van der Loo, 2015; van der Loo at al, 2014). Because of Russia's endeavours to punish Ukraine for its 'European choice',[5] the geopolitical prism – a tug of war between the EU and Russia - has dominated the analysis. Often highly normative (yet not always well informed) views prevail. For the supporters, the AA-DCFTA seems a a

[5] There is often little appreciated that with regard to trade Moldova and Georgia had been actually punished by Russia even earlier (see Cenusa et al, 2014)

quick-fix solution to the modernisation of the eastern partners, whereas critics decry it as an act of legal imperialism on behalf of the EU (Sakwa, 2014). Few experts and scholars have actually bothered to trace the origins of the Agreements, let alone to familiarise themselves with their contents.

There are prosaic reasons for the neglect – the agreements are exceedingly long and complicated. These documents are state-of-the-art in terms of EU's export of the *acquis* but largely impenetrable to readers, who are not steeped in the arcane subjects of EU's law.

At first glance, the main part of the agreement is fairly accessible – there are 486 articles in the EU-Ukraine agreement – many of them of a general nature, not that different from the Partnership and Cooperation Agreements (PCAs). But some of the articles already refer to specific EU Directives (e.g. art. 148 on public procurement in the EU-Ukraine AA-DCFTA). More frequent are the references to the Annexes for the detailed list of actual commitments with regard to legal approximation. So it is the Annexes in general and, in particular, the Annexes related to the 'Trade and Trade-Related Matters' that make the Agreements stand out - the shift in terms of precision, details and bindingess of commitments is striking in comparison to the PCAs. By extending the legal boundaries of the EU to neighbouring countries, the agreements really underscore the nature of the EU as a law-based community. Yet, their role and significance for the domestic reforms can only be gauged by the analysis of the content – namely, actual commitments made across a number of sectors.

Content

While the Agreements are necessarily couched in legal terms, their sheer length and complexity it makes them inaccessible, even for professional readers. This is where the Handbooks come in: they de-mystify the AA by explaining in an accessible style, the content of its numerous chapters and what it entails for the partner countries. The Handbooks aim to:

> make it to anyone to understand basically what each chapter of the Agreement means, in terms of both the nature of the commitments that the parties undertake and the prospects for their implementation (EU-Ukraine Handbook, 2016: ix).

In essence, they act as a one-stop-guide to the content of the Association Agreements.

The three Handbooks have an identical structure and consist of four parts:

Part I. Political Principles, the Rule of Law and Foreign Policy
Part II. DCFTA
Part III. Economic cooperation
Part IV. Institutional Provisions

Part I deals with the political (i.e. non-economic) content of the AAs and focuses on issues ranging from democracy, human rights, rule of law, antic-corruption policy and foreign and security policy. Arguably this is a 'soft law' part of the Agreement. Yet with values being defined as an essential part of the Agreement (EU-Ukraine Handbook, 2016: 10), art. 478 of the EU-Ukraine AA stipulates that violations of these principles can result in the suspension of the Agreement.

The DCFTA is the focus of Part II, which deals with the 'hard core' of the economic content of the agreements. Crucially for the reader, this part of Handbooks offers an integrated analysis – both the main part of the agreements as well as extensive Annexes are covered in each chapter. This is a massive help when analysing the agreements, otherwise reader is constantly flicking between the main part and very detailed and lengthy Annexes (some of which, rather unhelpfully, do not have page numbers).

The most advanced mechanisms of legislative approximation are found in this Part. This is because, as noted above, 'deep' economic integration requires extensive legislative and regulatory approximation, including sophisticated mechanisms to ensure uniform interpretation and effective implementation of relevant EU legislation. In particular, unlike the PCAs, the agreements are future-oriented and include several mechanisms to deal with the dynamic evolution of the incorporated EU *acquis.*

An important feature (and difference from the EEA) is that the DCFTA is premised on far-reaching conditionality: market access is subject to specific and continous monitoring of compliance. To ensure this, the national governments are obliged to provide reports to the EU in line with approximation deadlines specified in the Agreement. The monitoring procedure may include 'on-the-spot missions, with the participation of EU institutions, bodies and agencies, non-governmental bodies, supervisory authorities, independent experts and others as needed' (art.451, EU-Moldova Association Agreement).

The fact that the DCFTA are subjected to permanent scrutiny reflects the essential differences between the eastern neighbours, Moldova, Ukraine and Georgia, on the one hand, and the EEA countries such as Norway, on the other, in terms of economic development, quality of governance, the rule of law etc. This strict conditionality stems from the EU's cautious approach to opening up its single market to post-Soviet countries, which have a less developed political and economic system than the EEA countries.

Part III deals with 'economic cooperation' - this is a broad chapter including 14 'sectoral' chapters, such as energy, transport, financial services, agriculture and civil society etc. Once again, this Part straddles the main parts of the Agreements as well as the Annexes, thereby, once again, saving a great deal of work for the reader, especially when dealing with particularly complex areas, such as services. This is a very-wide ranging Part, which evidences the sheer width of the agreement – it is indeed an all-encompassing and comprehensive treaty.

Part IV deals with the Legal and Institutional Provisions. The AA has a sophisticated dispute resolution mechanisms and institutional set up (chapters 29 and 30, respectively). Within the institutional set-up, a key body is the Association Council. The Council meets at ministerial level - it operates as a forum for exchange of information and is also competent to update or amend the agreement's Annexes to keep pace with evolutions in EU law.

The dynamic nature of the AA makes it distinct from its much simpler predecessors - the Partnership and Cooperation Agreements (PCAs). Whereas the PCA was essentially a fixed and static agreement – the common bodies could not change and adapt its content - the AAs provide opportunities for updates and amendments. But, as noted in the Handbooks, the revisions are only possible with regard to the Annexes – the Council cannot change the main body of the text (as this would trigger a complex procedure of ratification by the two sides, with a particularly drawn-out procedure in the EU).

This raises some interesting questions on the nature of commitments across different sectors. For example, the commitments with regard to public procurement are listed in the main body of the agreement (e.g. art.148 of EU-Ukraine agreement). This means that with regard to public procurement, the both sides cannot deviate from the commitments.

In other sectors, such as TBT or SPS, the actual scope of legal approximation can be elaborated and negotiated. This is not an accidental inconsistency. The costs of compliance with SPS and TBT are very high and need to be aligned to the priorities and capacities of the partner countries. In contrast, public procurement acquis is much more straightforward and easier to implement, while at the same time being highly sensitive in political terms. Hence, it is eminently sensible to place those commitments in the main body to eliminate any scope for self-serving interpretations by the domestic governments (often fuelled by vested interests and high rents gained when awarding public contracts).

But even when the commitments are yet to be elaborated, the partner countries face tough scrutiny. Only the Association Council (or the Trade Committee) can decide on a progressive market opening in case of sufficient implementation and enforcement by the partner countries. Significantly, recommendations or decisions of the joint institutional bodies as well as a failure to reach decisions cannot be challenged under the specific DCFTA dispute settlement procedure. This means that the non-DCFTA parts of the agreement are more open to negotiations than the DCFTA and the 'market opening' conditionality is very strict. The EU decides on the pace and scope of market opening, thereby providing the associated countries with strong incentives to comply in key sectors as a matter of priority.

Three agreements: What's the difference

At first glance, there is a high degree of uniformity across the three agreements. Indeed, the Ukrainian DCFTA which was negotiated 2008-2011 served as a template to the Moldovan and Georgian counterpart. But the agreements are not identical - there are national imprints in their contents.

The differences can only be gauged by comparing the commitments and implementation at a sectoral level. It is not only the content of the agreement but it actual implementation which determines the scale of alignment with the acquis. So the identical structure and headings in each of the Handbooks[6] may give an impression of uniformity, the Handbooks actually highlight important differences.

For example, at first, the Moldovan agreement seems less onerous than Ukrainian DCFTA. Important differences are, *inter alia*, that approximation clauses in the area of competition and 'internal market treatment' in the area of establishment of business are not foreseen under the Moldova DCFTAs. Also the provisions on trade-related energy and intellectual property rights are less detailed in the EU-Moldova agreement.

However, the Moldovan agreement turns out to be very ambitious when it comes to the agriculture and SPS. The scope of legal approximation in SPS is not specified in the Agreement itself. Instead, the Agreement left it to be agreed within three months after it enters into force. As is evident from the comparing the three Handbooks, that like Georgia and Ukraine, Moldova has adopted a maximalist approach to the SPS sector. The list was worked out in 2015 and jointly adopted at a meeting of the SPS Submitted in June 2016. As argued above, this staged, country-specific approach to legal approximation is an eminently sensible approach, given the sheer scale of this sector and its importance for all the countries. Moldova's list of SPS legislation is very ambitious, covering 235 EU directives and regulations (EU-Moldova Handbook, 1916: 65).[7] Many of the directives relate to animal-based products, for which the adoption of SPS is the most onerous and costly, and yet the implementation periods are relatively short, up to five years (i.e. 2020). In a similar vein, Moldova adopted a very maximalist approach to approximating agriculture-related directives. Is it going to work? The Handbook notices that perhaps 'Moldova has made too many commitments too fast' (EU-Moldova Handbook, p.176). Indeed, the excessively ambitious list may lead to implementation delays and failures, hence – in the longer term - weaken the resolve to implement the Agreement.

As the reading of the EU-Georgia Handbook reveals, Georgia has been most cautious about commitments, but, once again, there are big differences between the sectors. As the EU-Georgia Handbook notes, Georgia undertook serious and, indeed, by post-Soviet standards, an unprecedented, unilateral liberalisation of the economy. The country stands out amongst the post-Soviet states because Georgia implemented radical economic liberalisation in the 2000s. This reduced corruption and created a favourable business environment – it is one of the very few success stories of this kind on the international arena resulting in Georgia shooting up the international rankings.

Georgia was not too keen on the DCFTA but favoured a simple, classic FTA. Yet the DCFTA was the only proposal on table. The elimination of tariffs means that there was not much left with

[6] The structure of the actual Agreements are not identical, given that, for example, In the Moldova's Agreement the DCFTA is the 5th chapter, while in Ukraine is the 4th. However, the Handbooks' structure is identical.
[7] Ukraine has committed to implementing about 255 EU directives and regulations, and Georgia - 272 acts.

regard to tariff liberalisation in EU-Georgia trade. In terms of regulatory frameworks, both Georgia's geographical location as well as pre-DCFTA reforms account for the more limited demand for, and receptivity to, EU rules. Being further away from the EU and having weaker prospects for strong trade ties with the EU, Georgia has developed a regional commercial hub function.

This domestic agenda shaped the content of the EU-Georgia Association Agreement but not in a way that is easy to grasp for the non-specialist reader – it requires careful reading of hundreds of pages in the agreement. At first glance, the EU-Georgia Agreement has much in common with the two other agreements. But there are important differences, not only due to pre-DCFTA reforms but also the underlying reform strategy pursued by the Georgian authorities. With de-regulation so vigorously pursued by Georgia for over a decade, so any re-regulation is carefully evaluated, and if needed, opposed or at least slowed or watered down. For example, Georgia's opening of the service market has gone beyond compliance with WTO commitments. While Ukraine has far-reaching harmonisation requirements in the service sector (see EU-Ukraine Handbook, 2016: 78-9), Georgia's undertakings are rather vague – indeed, the Agreement does not strictly oblige Georgia to approximate the EU legislation and 'the potential scope of further liberalisation is not specified in the Agreement' (EU-Georgia Handbook, 2016: 71).

Georgia's interest lies predominantly in reaching international – and not necessarily EU – standards *per se*. This explains the more cautious approach across the Georgian Handbook. For example, with regard to TBT, it is argued that 'it is advisable to proceed with the approximation of EU technical regulations in a gradual and careful manner, taking into account the local production and trade structure of Georgia, as quick and careless approximation could result in trade-restrictive outcomes' (EU-Georgia Handbook, 2016: 57). Similar caution is articulated in the SPS chapter of the Handbook. While the content of the agreements may not be significantly different, it is clear` in Georgia the DCFTA is not a 'blueprint' for reforms to the same extent as in Ukraine and Moldova but more a stepping stone towards the West (especially in the context of diminished chances of NATO membership).

In terms of the 'starting points' it is clear that Georgia is an outlier amongst the post-Soviet countries, most of which persist with having complex and inconsistent regulatory frameworks. In Moldova, for example, 'there are contradictions in the current Moldovan legislation, which obstruct EU entities from opening representative offices, even if technically it was permissible from the first day of Moldova's accession to the WTO [in 2001]', as noted in the Handbook (EU-Moldova Handbook 2016: 76). This means that over a decade and half, Moldova had been reluctant to revise its legislation in line with WTO commitments and it was only the EU's pre-negotiation conditionality which triggered the process of modernisation of its regulatory framework in earnest. In many respects the Moldovan economy still faces a real challenge of adjustment to competitive conditions, something Georgia already experienced in the 2000s. Therefore, it remains to be seen if, for example in the case of the service industry in Moldova, the DCFTA will result in greater compliance than the accession to the WTO. Overall, for

Moldova and Ukraine, the agreements offer much more reform guidance and hence the demand for 'reform templates' is much stronger. The AA-DCFTA provides a stimulus and obligation i.e. a renewed impetus for domestic change and compliance.

Challenges of Implementation

For each of its Parts, the Handbooks provide an overview of the implementation of the AA. Indeed, the picture is exceedingly complicated and requires sector-by-sector analysis. The Handbooks provide ample evidence of this being a process whereby the implementation of the DCFTA and sectoral commitments is strongly conditioned by priority, capacities and resources of the associated countries. Thereby, the Handbooks demonstrate the diverse implementation pathways.

In Moldova and Georgia the so-called 'key recommendations' issued by the EU prior to the launch of DCFTA negotiations provided a substantial impetus to legal approximation in certain areas, such as SPS. Paradoxically, while Ukraine was a frontrunner in terms of opening the negotiations first, the EU used opening of negotiations as a 'carrot' to trigger pre-negotiation compliance in Moldova and Georgia (as well as Armenia). As a result these countries became more advanced in some sectors than Ukraine.

For all three countries, agriculture is a key economic sector. Yet the adoption of international standards for food safety has been slow and challenging. The Soviet system relied on the GOST-based system. Replacing it with EU standards has proven more complex and difficult to achieve than expected in the post-Soviet countries (even those which made a commitment to move to a WTO-compliant system upon joining the WTO). The implementation of SPS remains a major challenge for all the partners. The implementation of the AA requires partner countries to bear significant economic and social costs which governments cannot fail to take into account. But there is an underlying problem of vested interests and considerable inertia amongst state bureaucracies.[8] In addition, institutional coordination is a particularly significant problem in these countries. State institutions in charge of food safety suffer from limited resources and administrative capacity, and a lack of modern technical equipment. While Moldova took on a maximalist approach to SPS, the biggest and most urgent challenge to Moldova's development is the adaptation of fragmented and isolated rural areas to the requirements of a modern economy.[9]

Overall, the implementation is complicated by two interrelated factors:

The first one is the suitability of the *acquis* to serve as an appropriate blueprint for reforms in non-member states at a different stage of development. This suitability was already questioned during enlargement. As Grabbe (2003) pointed out, the EU's rules were never designed as a development agenda for poorer countries; instead they are the results of

[8] On the role of the oligarchs see, for example, Kononczuk at al, 2017.

[9] Interestingly, Moldova has made even more extensive commitments with regard to TBT, which is even more surprising given the size of the country and its economic profile.

negotiations, agreements and compromises between the member states on common rules for themselves developed in an incremental way over decades of European integration.

This generates a pivotal (yet rarely confronted) question as to how the *acquis,* developed in the process of economic integration of EU member states, can be transferred selectively to non-member states to facilitate their participation in the internal market. Indeed, some Commission officials argued that in the neighbourhood context transferring the *acquis* wholesale would be unwise, unrealistic and – in some aspects – unaffordable' (Dodini & Fantini, 2006; Herdina, 2007).

However, there is no theory of *selective* rules transfers in terms of impact both on the internal market and domestic change in non-member states. This means that for the AA-DCTA countries, EU and domestic officials and experts are tasked with devising feasible and cost-effective pathways to implementation. The modes of implementation, and hence pace of integration with the EU, need to be worked out on a country-by-country, sector-by-sector bases. The Handbooks chart the emerging differences in the national approaches and the differentiated progress.

The second issue is related to the very high costs of implementation in some of the sectors, such as SPS and environmental protection. Given the absence of the membership perspective, many scholars argue that rules transfer should be preceded by carefully calculated cost-benefit analyses (see Kolesnichenko at al, 2008; Adarov & Havlik, 2016). The *selective* rules transfer allows the costs to be offset against the more immediate benefits in terms of increased exports. As was the case during enlargement, the AA-DCFTAs rely on deferred gratification: 'rule transfer now, benefits later'. In other words, they require the front-loading of costly and politically sensitive reforms.

However, the value of aligning with the acquis differs from sector to sector, and – within sectors – between different issues. But this requires detailed knowledge of the *acquis* which is an inherently dynamic concept with no fixed-in-stone meaning and content (Magen, 2007). Yet partner countries have limited knowledge and capacity to make an informed assessment of the optimal sequence for legal approximation. Therefore, much guidance and assistance is needed from the EU during the implementation of the AA-DCFTA. It is important to avoid the risk of overburdening the governments in some of the poorest countries in Europe with multi-stranded, overambitious reforms. However, somewhat surprisingly there has been very few comprehensive, deep regulatory impact assessment across different sectors.[10] Therefore, unsurprisingly, as a rule, the Handbooks do not discuss the costs of implementation.

This is especially important in the political and economic context of the eastern neighbourhood states. What are nominally technocratic issues in the EU can be highly

[10] One example is an assessment of the costing of compliance with the environmental obligations of the AA-DCFTA is a study done within an assistance project to Ukraine (Semėnienė et al, 2014). Based on the experience in accession countries, it is estimated that the DCFTA countries would require public and private investment for full environmental clean-up in line with the EU norms in the region of €1000 per capita, of which about 70% will be needed from public funding.

consequential in distributive terms in partner countries. This is because of 'dual' realities: formal institutions which are captured by vested interests. Regulation of issues such as food safety standards, public procurement, anti-monopoly or state aid goes to the heart of the functioning of the political regime, especially where they are based on the principles of patronage and rents rather independence of regulating bodies. In each associated country, the implementation of the AA creates winners and losers, and it is the latter who tend to mobilise to block the implementation.

Having said that, the EU can successfully guide reforms in non-members in a structured and sequenced way. Moldova's notable achievement of visa liberalisation in 2014 – followed by Georgia and Ukraine in 2017 – demonstrate what can be achieved with a clear focus, prioritisation and targeted assistance, even with relatively limited resources.

In recognition of these challenges, the EU-Ukraine Handbook soberly notes:

> the Agreement, with its DCFTA, is no magic wand with which to cure Ukraine's political system and economy of all their problems. However, its provisions do engage with a substantial part of Ukraine's political and economic reform agenda (EU-Ukraine Handbook, 2016: 3).

This is an apt summary, given Ukraine's long-standing lack of a reform agenda.

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Overall, the Handbooks offer a one-stop guide to the Association Agreements – the authors painstakingly analysed the incredibly complex Agreements to deliver a compact and accessible overview to all those who need to grasp their contents. The national teams also shed light on the salience of the content for domestic reforms. Even though the Handbooks are not meant to be read like a book, the reader who does so is rewarded with a panoramic overview of the sheer scale and ambition of the AA-DCFTA. The Handbooks offer a plethora of pivotal insights into the Agreements while at the same time they throw up a number of important questions.

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The Ukrainian book is also available in the Ukrainian and Russian languages, that for Georgia also in Georgian, and that for Moldova also in Romanian and Russian languages. Hard copy books of the English texts can be obtained from Rowman and Littlefield, and all texts are freely downloadable at www.3dcftas.eu.

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