Revisiting the EU-Ukraine Association Agreement: A Crucial Instrument on the Road to Membership

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1 Introduction

In January 2007, the Council adopted negotiating directives for "an enhanced agreement" between the European Union (EU) and Ukraine (Council of the EU, 2007). Through this agreement, which was part of the broader policy framework of the European Neighbourhood Policy (ENP), the EU and Ukraine envisaged "an increasingly close relationship" based on gradual economic integration and deepened political cooperation. It was already mentioned at that time that "this shall not prejudice any possible future developments in EU-Ukraine relations" (Council of the EU, 2007). The remarkable ambiguity surrounding the name and the substance of the new legal framework for EU-Ukraine relations revealed the lack of consensus amongst the EU member states about the type of relationship the Union should develop with Ukraine (Hillion, 2007, p. 169; Dragneva & Wolczuk, 2025). Even though there is no legal connection between association and accession, the conclusion of association agreements with European countries is often perceived as a

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stepping-stone towards EU membership (Phinnemore, 1999). This may explain why the EU initially proposed the conclusion of a new type of 'neighbourhood agreement'. From the very start of the negotiations, the Ukrainian authorities opposed against the use of the 'neighbourhood' label for the new agreement arguing that Ukraine is a part of Europe and not of the European neighbourhood (Hillion, 2007, p. 170). Only with the adoption of a Joint Declaration on the occasion of the September 2008 EU-Ukraine Summit, it was unequivocally decided that "the new agreement between the European Union and Ukraine will be an association agreement" (EU-Ukraine, 2008).

The explicit reference to 'association' did not solve the ambiguity surrounding Ukraine's long-term membership ambitions. The text of the EU-Ukraine Association Agreement (AA) carefully avoids any direct reference to future membership perspectives for Ukraine and somewhat diplomatically observes that "the European Union acknowledges the European aspirations of Ukraine and welcomes its European choice". It does not entail any legal or political commitment towards further enlargement on behalf of the Union. The AA is thus not a pre-accession agreement such as the Stabilisation and Association Agreements (SAAs) with the Western Balkan countries, which explicitly refer to the objective of EU membership. It was rather envisaged as a legal instrument for EU integration without membership (Van der Loo, 2016). However, as will be argued in this contribution, this does not imply that the EU-Ukraine AA cannot play a crucial role in Ukraine's path to membership in the future.

After a brief reflection about the flexible legal nature of association agreements (I) and the key features of the EU-Ukraine AA (II), the role of the AA with respect to three outstanding issues will be highlighted (III). This concerns the process of further trade liberalisation, the movement of persons and the protection of minority rights. Those three areas are not exhaustively dealt with in the EU-Ukraine AA itself. Moreover, they relate to three different policy areas, which all pose distinct challenges in view of Ukraine's future membership to the EU. First, the process of trade liberalisation relates to the question of market access for Ukrainian agricultural products and the future participation of Ukraine in the EU's Common Agricultural Policy (CAP). Second, the movement of persons concerns Ukraine's full integration in the EU internal market and impacts the future status of Ukrainian nationals inside the EU. Third, the protection of minority rights is part of the political conditions for

EU membership. Taken together, the three case studies provide a varied picture of the various challenges on the road to Ukraine's membership of the EU. For each issue, the potential role of the AA will be highlighted, taking into account past experiences, in particular, regarding the Europe Agreements which were concluded with the countries of Central and Eastern Europe (CEECs) before their accession to the EU. This allows to draw conclusions about the remaining significance of the AA as a central legal instrument on the road to Ukraine's EU accession.

2 Association Agreements as Flexible Legal Instruments: The Relevant Experience of the Europe Agreements

Association Agreements between the EU and third countries are one of the most important and traditional tools of the EU's external policy. Already in the Treaty of Rome of 1957, it was foreseen that the at that time European Economic Community "may conclude with a third state, a union of states or an international organisation agreements establishing an association involving reciprocal rights and obligations, common action and special procedures".[1] In the history of the European integration process, association agreements have been concluded with a wide number of third countries around the globe. Although all association agreements differ in terms of their exact content and objectives, the common denominator is the ambition to establish a legal and institutional framework for the development of privileged relations involving close political and economic cooperation (Van Elsuwege & Chamon, 2019, p. 48).

While Article 217 TFEU is not explicit on the possible scope and depth of the privileged relation established by an association agreement, the Court of Justice noted that this provision empowers the Union "to guarantee commitments towards non-member countries in all the fields covered by the Treat[ies]".[2] As a result, the Court draws a parallel between the EU's internal scope of action and the relation it may set up with an associated country or international organisation. This implies that the instrument of association can develop in line with the evolution

[1] Article 238 of the EEC-Treaty (current Article 217 TFEU).

[2] See Case 12/86, *Demirel*, EU:C:1987:400, para 9. See also Case C-81/13, *UK v. Council*, EU:C:2014:2449, para. 61.

of EU integration itself and with the international context in which the EU operates (Hanf & Dengler, 2005, p. 294).

The privileged relationship established on the basis of an association agreement may take several forms, ranging from little more than a free trade agreement to a level of integration that comes close to membership. As Walter Hallstein, former Commission president, once declared: "association can be anything between full membership minus 1% and a trade and cooperation agreement plus 1%" (Phinnemore, 1999, p. 23). Article 217 TFEU is, in other words, a very flexible instrument allowing for a variety of ties with states interested in a formal relationship with the EU. The actual scope of the association depends on the outcome of the negotiations.

The concept of 'association' has been used in various contexts and for different purposes. Originally, there were only two types of association agreements: those preparing a third country for accession to the EU and those supporting the development of former colonies of the member states in the African, Pacific and Caribbean (ACP) region (Gaudissart, 1999, p. 7). In the 1990s this picture changed when Article 217 TFEU was used to establish privileged relations with a diverse group of neighbouring countries, which either did not aspire for EU membership, such as the EFTA states, or did not qualify for membership at all, such as the countries of the Southern Mediterranean. Moreover, the purpose of association may evolve over time. For instance, the Europe Agreements with the CEECs were initiated as an alternative to membership but later became an important vehicle for accession following their political reorientation by the 1993 Copenhagen European Council (Inglis, 2000, p. 173).

After the fall of the Berlin Wall, the European Community offered the prospect of association to the CEECs engaged in economic and political reform (European Commission, 1990). A new generation of association agreements, called 'Europe Agreements' (EAs) to mark their political significance, upgraded and replaced the initially concluded trade and economic cooperation agreements. The EAs introduced a political dialogue, provided for the gradual establishment of bilateral free trade areas and formed the basis for economic, cultural and financial cooperation. In addition, they contained provisions on the movement of persons, establishment, supply of services, payments, capital, competition and approximation of laws. Even though all EAs have been replaced by

accession treaties, a brief analysis of this type of agreement is relevant for understanding the mechanism of association.

Significantly, the EAs were initially conceived as alternatives to membership. This explains why the agreements concluded before the 1993 Copenhagen European Council with Poland, Hungary and Czechoslovakia did not have an explicit pre-accession orientation. It was only after the EU's political decision that the associated countries from Central and Eastern Europe could become member states upon fulfilment of political, economic and legal conditions that the EAs became de facto instruments for pre-accession. The implementation of the commitments under the EAs became an important indicator of the candidate's readiness for membership. Progress towards the objective of future membership could be discussed within the joint institutions established under the association agreement. In addition, the EAs were complemented with Protocols on conformity assessment.[3] The protocols were legally based on Article 133 EC and built upon a provision in the EAs.[4] They essentially facilitated market access by providing for (i) mutual acceptance of industrial products which fulfilled the requirements to be lawfully produced and sold on the market of one of the Parties and (ii) mutual recognition of the results of conformity assessment of these products subject to Community law and to the equivalent national law.[5] In other words, it allowed industrial products certified by the notified bodies in either the

[3] See, e.g. Protocol to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Latvia, of the other part, on Conformity Assessment and Acceptance of Industrial Products (PECA), OJ (2002) L 202/3. For Lithuania and Estonia, see: OJ (2002), L 202/21 and OJ (2003) L 120/26 respectively.

[4] Article 75 of the EA with Estonia, Article 76 (2) of the EAs with Latvia and Lithuania provided that cooperation in the fields of standardisation and conformity assessment should seek to achieve the conclusion of agreements on mutual recognition. See: Council Decision on the conclusion of an additional Protocol to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, on conformity assessment and acceptance of industrial products (PECA), OJ (2003) L 120/24. For Latvia and Lithuania: OJ (2002) L 202/1 and OJ (2002) L 202/19 respectively.

[5] See: Council Decision on the conclusion of an additional Protocol to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, on conformity assessment and acceptance of industrial products. Explanatory Memorandum, COM (2002) 608 final, OJ (2003) C 45E/210.

EU or the associated country to be placed on the market of the other Party without having to undergo further approval procedures. The sectors covered by this arrangement differed from country to country.[6] In those specific areas, the Protocols on conformity assessment created an enlarged internal market prior to accession. Hence, those protocols became "the major instrument of the pre-accession strategy in the field of the free movement of goods" (Van Elsuwege, 2008, p. 144). The mechanism of concluding protocols to the EAs, therefore, clearly illustrated the transformation of the EAs from mere association agreements into vehicles towards accession.

Remarkably, the political reorientation of the EAs did not result in a formal amendment of the initial text of the agreements to indicate the objective of future membership. Only the EAs with the Baltic States and Slovenia, which were negotiated and signed after the 1993 Copenhagen European Council, included a reference to the "accession preparation strategy". The latter agreements also included a new title on the prevention of illegal activities. The increased attention to new security threats such as irregular migration, trafficking in drugs, smuggling of nuclear materials and all forms of organised crime explains this evolution. In other words, the material scope of association agreements also depends upon the evolving societal context.

This observation also applies to the EU-Ukraine AA, which has been negotiated in a period following the EU's eastward enlargement and in the context of an emerging European Neighbourhood Policy. This explains the focus on integration without membership and conditionality in the EU-Ukraine AA. As will be argued later in this contribution, this does not exclude that this agreement becomes a central legal instrument on the road to Ukraine's EU membership. The experience of the old Europe Agreements and their political reorientation following the 1993 European Council is an important precedent for this evolution.

[6] The PECA with Estonia included electrical safety, electromagnetic compatibility, lifts, safety of toys; with Latvia electric safety, electromagnetic compatibility, toys and construction products were included and with Lithuania the PECA applied to machinery, lifts, personal protective equipment, electrical safety, electromagnetic compatibility and simple pressure vessels.

3 The Key Features of the EU-Ukraine Association Agreement

The EU-Ukraine AA is one of the most ambitious and voluminous amongst all EU association agreements with third countries.[7] It is a comprehensive framework agreement which embraces the whole spectrum of EU activities, from trade to foreign and security policy and cooperation in justice and home affairs. Of particular significance is the ambition to set up a Deep and Comprehensive Free Trade Area (DCFTA), leading to the gradual and partial integration of Ukraine into the EU internal market. This implies a far-reaching liberalisation of trade in goods and services and the abolition of non-tariff barriers through regulatory convergence with regard to issues such as the protection of intellectual property rights, competition law, rules of origin, labour standards and environmental protection. In order to ensure the effective implementation of those commitments, the AA is based upon a strict conditionality approach. Broadly speaking, two different forms of conditionality can be distinguished. On the one hand, the AA includes several provisions related to Ukraine's commitment to the common values of democracy, rule of law and respect for human rights and fundamental freedoms (Ghazaryan, 2015, p. 391). On the other hand, the part on the DCFTA is based on an explicit 'market access conditionality' implying that additional access to a section of the EU internal market will only be granted if the EU decides, after a strict monitoring procedure, that the legislative approximation commitments are adequately implemented (Van der Loo, Van Elsuwege & Petrov, 2014, p. 13). This form of conditionality is a rather unique feature of this type of association agreements and corresponds to the general approach of the ENP and the Eastern Partnership (EaP).

The AA does not aim at the preparation of Ukraine's accession to the EU but at the establishment of "close and privileged links" (EU-Ukraine, 2014, Article. 1(2)(a)). In other words, the key objective of the AA is to ensure Ukraine's partial integration in the EU without offering any concrete membership perspective. For this purpose, the AA contains so-called 'evolutionary' and'conditionality' clauses. These are provisions

[7] The agreement counts around 2,140 pages in the Official Journal including 7 titles, 28 chapters, 486 articles, 44 annexes, 3 protocols and a joint declaration; OJ (2014) 161/3.

with specific objectives (for instance, granting a visa-free regime, access to certain freedoms of the EU internal market), the attainment of which is conditional either on certain actions on behalf of Ukraine (such as the elimination of trade barriers and uncompetitive practices) or the effective functioning of democratic and market-economy standards (such as free and fair elections and fighting corruption). It is well known that such a process raises significant challenges in terms of EU *acquis* export, in particular, regarding the uniform interpretation and application of the shared legal framework within the legal systems of third countries. For this purpose, the AA with Ukraine introduces a reinforced institutional framework, enhanced forms of conditionality and sophisticated mechanisms for legal approximation and dispute settlement which are distinct from other existing models of integration without membership (Van der Loo, 2016).

The preamble to the agreement explicitly states that "political association and economic integration of Ukraine within the European Union will depend on progress in the implementation of the current agreement as well as Ukraine's track record in ensuring respect for common values, and progress in achieving convergence with the EU in political, economic and legal areas".[8] This link between the third country's performance and the deepening of the EU's engagement is a key characteristic of the ENP. Whereas this principle had initially been applied on the basis of soft law instruments such as Action Plans and the Association Agenda, it is now encapsulated in a legally binding bilateral agreement. Arguably, this *quid pro quo* approach also perfectly fits within the new context following the recognition of Ukraine's candidate status for EU membership. Conditionality and progress on the basis of a candidate's own merits towards meeting the pre-accession criteria is one of the core elements of the EU's enlargement policy. Hence, the broad and open-ended formulation of the EU-Ukraine AA objectives implies that this instrument can easily be adapted to the new circumstances.

In addition to the general 'common values' conditionality, the AA contains a specific form of 'market access' conditionality, which is explicitly linked to the process of legislative approximation. Of particular significance is the far-reaching monitoring of Ukraine's efforts to approximate national legislation to EU law, including aspects of implementation and

[8] Emphasis added.

enforcement (EU-Ukraine, 2014, Article. 475(2)). To facilitate the assessment process, the government of Ukraine is obliged to provide reports to the EU in line with approximation deadlines specified in the Agreement. In addition to the drafting of progress reports, which is a common practice within the EU's pre-accession strategy, 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" (EU-Ukraine, 2014, Article 475(3)). The latter option is a new and far-reaching instrument introduced precisely to guarantee that legislative approximation goes beyond a formal adaptation of national legislation.

The results of the monitoring activities are to be discussed within the joint bodies established under the AA. Such bodies may adopt recommendations on the basis of unanimity but it is only the Association Council (or the Trade Committee) which shall decide on further market opening if the parties agree that the necessary measures covered within the DCFTA part of the agreement have been implemented and are being enforced.[9] Significantly, recommendations or decisions of the joint institutional bodies as well as a failure to reach such recommendations or decisions cannot be challenged under the specific DCFTA dispute settlement procedure (EU-Ukraine, 2014, Article 475(6)). In other words, the 'market opening' conditionality is very strict. From a legal point of view, it requires the agreement of both parties to proceed. Of course, in practice, Ukraine will be the requesting party which places the EU in a powerful position to decide on the pace and scope of market opening.

Taking into account the comprehensive nature of the agreement, the underlying conditionality approach and the complex mechanisms for legislative approximation and dispute settlement, the EU-Ukraine AA occupies, together with the Moldova and Georgia AAs, a unique position within the network of bilateral agreements concluded between the EU and third countries. As such, it offers an ambitious agenda for reform which largely coincides with the EU's conditions for membership. The obligation to share the EU's common democratic values based upon regular monitoring by the EU institutions allows for a constant political dialogue on important issues such as respect for the rule of law and

[9] Art. 475 (5) EU-Ukraine AA Sometimes, the decision about market accession is specifically endowed to the Trade Committee. This is, for instance, the case with regard to services and establishment (Art. 4 Annex XVII) and public procurement (Art. 154).

the fight against corruption. In addition, the establishment of a DCFTA implies a clear-cut commitment to (partial) integration in the EU internal market, which is also one of the core requirements for membership. Accordingly, the AA belongs to the selected group of "integration-oriented agreements", i.e. agreements including principles, concepts and provisions of EU law which are to be interpreted and applied as if the third State is part of the EU (Maresceau, 2013, p. 151).

4 Key Challenges on the Road to EU Membership: What Role for the EU-Ukraine Association Agreement?

Whereas the EU-Ukraine AA provides a comprehensive framework for the development of EU-Ukraine relations, it does not exhaustively cover all remaining challenges on the road towards EU membership. This is no surprise taking into account the dynamic development of EU law and the different political context since the negotiation of this agreement. Perhaps more importantly, it is also not problematic. The experience of the Europe Agreements with the CEECs illustrates how association agreements can be re-oriented towards instruments of pre-accession without amending the text of the agreements (cf. *supra*). This is mainly due to their flexible nature and strong institutional settings, which allow for the gradual development of the established relationship. At least, the AA provides the general principles and includes key points of reference to tackle issues which are not explicitly foreseen in the agreement itself. This will be illustrated with three examples, which all concern various dimensions of EU-Ukraine relations in preparation of future membership: (i) the development of trade liberalisation beyond the DCFTA; (ii) the movement of persons and (iii) the protection of minorities.

4.1 Trade Liberalisation Beyond the DCFTA: Lessons from the Ukrainian Grain Import Saga

The EU-Ukraine AA includes sophisticated clauses on legislative approximation and trade liberalisation in the part on the establishment of the DCFTA. In several DCFTA chapters, the process of legislative approximation is clearly linked to additional access to the EU internal market. For example, in the area of technical barriers to trade, Ukraine must

"incorporate the relevant EU *acquis*" in line with the timetable set out in Annex III (EU-Ukraine, 2014, Title IV, Chapter 3). It is only when the "EU Party" has determined that Ukraine has fully approximated its legislation to the listed EU *acquis* that additional access to its internal market will be offered in the form of the conclusion of an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) (EU-Ukraine, 2014, Article 57). ACAAs are a specific type of mutual recognition agreements according to which the contracting parties agree that products listed in the ACAA, fulfilling the requirements for being lawfully placed on the market of one party, may be placed on the market of the other party. The negotiation of such an ACAA is a key example of how the AA provides a platform for the further development of EU-Ukraine relations in anticipation of future membership. It opens the door to free movement of goods in industrial products and, as such, implies compliance with an important part of the EU's internal market *acquis*. Moreover, Article 463 (3) AA allows the Association Council to update and amend the annexes to the agreement in view of the evolutions in EU law and the applicable standards set out in relevant international instruments. This allows for a dynamic adaptation of the commitments and further trade integration.

Nevertheless, there are also areas which are not fully liberalised under the DCFTA provisions of the AA. This includes, amongst others, agricultural products such as cereals, pork, beef, poultry and sugar where tariff-rate quota (TRQ) are still in place. In the wake of Russia's military aggression against Ukraine, the EU adopted additional trade-liberalising measures including the temporary suspension of all outstanding tariffs for agricultural products. Whereas these measures take the form of 'autonomous trade measures' (ATM) introduced under an EU Regulation, the link with the AA is obvious (European Parliament & Council of the EU, 2022; see also Freudlsperger & Schimmelfennig, 2025). The ATM supplement the DCFTA provisions of the AA. Accordingly, they contribute to one of the main objectives of the EU-Ukraine AA, which is to establish conditions for enhanced economic and trade relations leading towards Ukraine's gradual integration in the EU internal market. Significantly, the adoption of the ATM is explicitly connected to the conditionality approach, which has been established under the AA. The entitlement of additional preferential arrangements requires compliance with the rules of origin of products and the procedures related thereto as foreseen under the AA (economic conditionality) and "Ukraine's respect

for democratic principles, human rights and fundamental freedoms and respect for the principle of the rule of law as well continued and sustained efforts with regard to the fight against corruption and illegal activities" provided for in Articles 2, 3 and 22 of the Association Agreement (political conditionality) (European Parliament & Council of the EU, 2022).

In order to protect the EU market against undesired disturbances, the Commission monitors the impact of the Regulation. If necessary, safeguard measures such as the re-introduction of customs duties can be adopted and EU member states may request the Commission to investigate the existence of serious difficulties for Union producers. On the initiative of Polish Prime Minister Mateusz Morawiecki, the Prime Ministers of five EU member states bordering Ukraine wrote a joint letter to the European Commission at the end of March 2023. They called, amongst others, for additional EU funding to support their domestic agricultural producers and suggested that "the Commission should approve [their proposed modifications] as soon as possible (as emergency measures)" (Chancellery of the Prime Minister of Poland, 2023). In a first reaction, the European Commission (2023a) acknowledged that further assistance may be necessary, in addition to the first support package worth € 56,3 million which had already been reserved for Bulgarian, Polish and Romanian farmers. However, without waiting for the Commission's full response, Poland was the first to introduce an immediate import ban on 15 April 2023, followed soon by Hungary and the other concerned EU member states (Notes from Poland, 2023).

Following those controversial member state actions (Van Elsuwege, 2023), the European Commission (2023b) adopted "exceptional and temporary preventive measures" under the safeguard clause foreseen in the ATM Regulation. This brought an end to the unilateral import bans and opened the gates to the renewal of temporary trade liberalisation and other trade concessions. On 15 September 2023, the European Commission announced the expiry of the temporary restrictions on imports of Ukrainian grain and other foodstuff in the EU. In return, Ukraine announced the introduction of an export licencing system to prevent market distortions in the neighbouring EU member states. This pragmatic solution could not prevent the re-introduction of unilateral import bans by Poland, Hungary and the Slovak Republic on certain agricultural products from Ukraine, leading to a Ukrainian request for WTO dispute consultations (World Trade Organisation, 2023; see also Haletska, 2025).

This entire episode illustrates the difficulties regarding the further trade liberalisation of agricultural products. Even though this matter goes beyond the scope of the DCFTA commitments as agreed under the EU-Ukraine AA, the latter provides a relevant point of reference for future developments. In particular, Article 29 (4) AA envisages a consultation between the parties "to consider accelerating and broadening the scope of the elimination of the customs duties on trade between themselves". For this purpose, the Trade Committee established under Article 465 AA is endowed with a competence to adopt binding decisions regarding the further elimination of customs duties. This is part and parcel of Ukraine's gradual integration in the EU internal market and, accordingly, of its pre-accession process. Arguably, the adoption of decisions in accordance with articles 29 (4) and 465 AA may provide a more structural solution for the import of Ukrainian agricultural products after the termination of the EU's autonomous trade measures (Taran, 2023).

Moreover, the Ukrainian grain import saga reveals that future EU accession negotiations on the Common Agricultural Policy (CAP) chapter of the *acquis* promise to be very difficult. If the EU is taking the Ukrainian membership application seriously, this implies that the integration of Ukraine into the CAP is to be prepared carefully. As suggested by Silvia Bender, German State Secretary at the Federal Ministry of Food and Agriculture, a structural reform of the CAP is needed before the start of the next funding period in 2028. The discussions surrounding the import of Ukrainian agricultural products may be a wake-up call to put this issue on the EU's (enlargement) agenda (Dahm, 2023).

Again, the experience of the EU accession of the CEECs may be relevant. Taking into account the size and the production potential of the agricultural sector in the CEECs, the Commission initiated a major reform of the CAP in 1997, as part of its Agenda 2000. This coincided with the introduction of a special instrument for agricultural pre-accession aid in order to facilitate the candidate countries' integration into the EU (European Parliament, 1998). Today, this support mechanism still exists under the Instrument for Pre-accession Assistance for Rural Development (IPARD). It is legally based on Regulation 2021/1529 establishing the Instrument for Pre-accession Assistance (IPA III), together with Commission Implementing Regulation 2021/2023 and Commission Delegated Regulation 2021/2128. The beneficiaries are EU candidate countries, which conclude bilateral financial agreements with

the European Commission. Ukraine and Moldova were not listed as beneficiary countries when the IPA III Regulation was adopted. However, their new status following the June 2002 European Council merits an amendment of this legal instrument so that these countries can equally benefit from this support on their road to membership. Significantly, the EU-Ukraine AA provides the proper legal basis for this evolution. Chapter 17 of this agreement is devoted to 'agriculture and rural development' and includes an open-ended list of cooperation objectives in this sector (EU-Ukraine, 2014, Article 404). Moreover, Article 405 of the EU-Ukraine AA provides that "the Parties shall support gradual approximation to the relevant EU law and regulatory standards" with respect to agriculture and rural development. A core list of relevant EU legislation is specified in Annex XXXVIII to the agreement. Accordingly, the AA remains the key point of reference for the integration of Ukraine in the EU's agricultural sector and for its inclusion in the EU's pre-accession assistance.

4.2 Movement of Persons: What After the Temporary Protection Status?

The AA does not provide for free movement of persons and only includes a modest section on mobility of workers, which is nothing more than a stand-still provision (EU-Ukraine, 2014, Article 18). This implies that the member states' facilities of access to employment for Ukrainian workers as they existed at the time of the entry into force of the AA cannot be reversed. In addition, the Association Council has the competence to examine the possibilities for the granting of more favourable conditions in the future. In general, however, the AA does not include specific rules on the movement of persons apart from a cross-reference to the visa-liberalisation process, which was subject to a separate procedure. From a legal point of view, the abolishment of the visa requirement is based on the amendment of the EU visa Regulation (European Parliament & Council of the EU, 2017). Taking into account the migratory and security situation in the EU, the actual introduction of the visa-free regime for Georgian and Ukrainian nationals in 2017 coincided with a strengthening of the suspension mechanism. Accordingly, a (temporary) suspension of the visa waiver can be introduced if third countries no longer fulfil the criteria which were the basis for granting visa-free status. As a result, the

conditionality approach of the AA is also applicable with respect to the visa-free regime.

The start of Russia's war against Ukraine tremendously changed the legal framework regarding the movement of persons between the EU and Ukraine. On 2 March 2022, the European Commission proposed the activation of the Temporary Protection Directive (TPD) to offer quick and effective assistance to people fleeing the war in Ukraine. Two days later, the Council already adopted the required implementing decision which entered into force on the same day (Council of the EU, 2022). As a result, these people are given a residence permit and have access to education, medical care, housing, the labour market and social welfare assistance (see Lazarenko & Rabinovych, 2025). This first-ever activation of the TPD achieved positive results, in the sense that it avoided extreme pressure on the national asylum systems of the member states while offering a quick solution to people in need of protection (European Commission (EC), 2023c). The Council extended the temporary protection on an annual basis (Council of the EU, 2024).

Nevertheless, taking into account that Article 4 of the TPD foresees that temporary protection regimes cannot continue for ever, a more sustainable approach to the question of (free) movement of persons is at stake. This is particularly relevant in light of Ukraine's EU membership perspectives and the EU member states' traditional reluctance to immediately offer free movement rights. All recent enlargement waves included relatively long and sophisticated transitional arrangements and safeguard clauses in this domain.[10]

The long-term situation of Ukrainian nationals benefitting from the temporary protection status remains ambiguous and largely depends upon the outcome of the war. In the best scenario, a situation where the Russian invasion ends in the near future, most Ukrainian nationals will be expected to return to Ukraine. In the pessimistic scenario that the war continues or the situation in Ukraine remains too dangerous and unstable, a request for international protection under the normal asylum procedures may bring

[10] For instance, for the accession of the CEECs as well as Croatia, a flexible 2 + 3 + 2 transitional period was included in the respective Treaties of accession. This allowed the member states to keep restrictions on access to their labour markets for at least two years, with a possible extension to maximum seven years following notifications to the Commission.

a solution. Alternative options, such as the creation of a new reconstruction permit for temporary protection beneficiaries from Ukraine (Asscher, 2023) or an amendment of the EU long-term residence (LTR) directive have been proposed to solve the potential deadlock (International Centre for Migration Policy Development, 2023; Meijers Committee, 2023).

Whatever scenario or solution is envisaged, it appears that the rules regarding the movement of persons under the EU-Ukraine AA need to be strengthened. In this respect, the opportunities offered under Article 18(2) AA may be used to establish a common framework for the integration of Ukrainian nationals in the labour markets of EU member states. This provision allows the Association Council to examine the granting of more favourable conditions to Ukrainian workers, including facilities for access to professional training, in accordance with laws, conditions and procedures in force in the member states and in the EU. This may be regarded as an open-ended and broadly drafted provision, which may serve as a legal basis for the introduction of new initiatives in anticipation of Ukraine's EU membership. One could think about the adoption of Association Council decisions regulating the status of Ukrainian nationals in EU member states after the end of the temporary protection, which is granted following the outbreak of the war. Inspiration may be drawn from the experience of the EU-Turkey Association Agreement. The latter envisages the progressive introduction of free movement of workers between the parties.[11] Whereas this ambitious objective has not yet materialised, several decisions of the EU-Turkey Association Council developed the status of Turkish workers and their family members with respect to residence rights and social benefits. As confirmed by the Court of Justice in its abundant case law regarding the EU-Turkey Association Agreement and its implementing measures, decisions of the Association Council may qualify for direct effect in the EU legal order when the relevant provisions are drafted in clear, precise and unconditional terms (Groenendijk, 2015, p. 39).[12] This highlights how the adoption of such decisions may be instrumental to further define the legal position of Ukrainian nationals in the EU legal order, in anticipation of its future membership and the full application of free movement rights within the EU internal market.

[11] Art. 12 of the EU-Turkey AA.

[12] See: Case C-192/89, *Sevince v. Staatssecretaris van Justitie,* EU:C:1990:322, para. 19.

4.3 The Protection of Minorities: Lessons from the Baltic States' Experience

One of the most sensitive political conditions for EU membership concerns the protection of minority rights. This is an area where the EU's *acquis* is fairly limited. The EU rules on minority protection are largely confined to anti-discrimination measures, mainly due to a lack of competence to pursue a more comprehensive minority protection policy at the EU level. The result is a gap between the EU's internal standards on minority protection and the external standards which are set for EU candidate countries (Hillion, 2003, p. 715). In the framework of the EU's enlargement policy, for instance, the Council of Europe Framework Convention for the Protection of National Minorities (FCNM) is used as an external benchmark, whereas several EU member states did not yet ratify this convention.[13] This well-known discrepancy is also relevant for Ukraine's EU accession process, in the sense that the FCNM will be a key point of reference for the assessment of its compliance with this condition for membership. This can already be derived from the European Commission's Opinion about Ukraine's membership application, which observed that:

> The respect for rights of persons belonging to national minorities in the field of education and language and their representation in elected bodies in all levels of public life needs to be ensured by fully implementing the recommendations of the Council of Europe's Venice Commission on the education law, implementing those on the State language law and taking into account the last monitoring cycle of the Framework Convention on National Minorities. (EC, 2022, p. 13).

The Venice Commission (2017, paras 109–115) issued concerns about the reduction of education in minority languages in Ukraine. In particular, it criticised the envisaged introduction of a more beneficial regime for speakers of English and other official languages of the European Union in comparison to speakers of languages of other minorities (including Russian). The Ukrainian authorities' explanation that the distinction is related to Ukraine's European ambitions and the historic oppression of the Ukrainian language in favour of Russian did

[13] France did not sign the FCNM; Belgium, Greece and Luxembourg signed but did not ratify the FCNM, see: < https://www.coe.int/en/web/minorities/etats-partie > .

not convince the Venice Commission about the necessity and proportionality of the proposed measures (Venice Commission, 2019, para 44). In this respect, it is noteworthy that the Venice Commission came to another conclusion in its report regarding amendments to the Legislation on Education in Minority Languages of Latvia. In particular, the Venice Commission (2020) found that a more preferential treatment for official EU languages is justified in an EU member state, such as Latvia, in order to facilitate the Latvian citizen's rights to free movement within the EU.[14] The Venice Commission also expressly pointed at the differences with the situation of Ukraine, which is not an EU member state. Moreover, the status of Russian under the Ukrainian constitution is different in comparison to that of Latvia. Significantly, in its 2023 Opinion on the Ukrainian Law on National Minorities, the Venice Commission found that the granting of the EU candidate status to Ukraine did not change this conclusion. However, it also noted that "due to the brutal aggression of the Russian Federation against Ukraine, it would be justified to provide for a transitional period during martial law where this privileged status would not be given to the Russian language" (Venice Commission, 2023a, 2023b, para 41).

Taken together, the reports of the Venice Commission provide the background for a broader discussion about the protection of minorities as a condition for Ukraine's future EU membership. This discussion may take place within the context of the political dialogue as established under the Association Agreement. Article 4, para 2 (e) AA explicitly refers to the strengthening of human rights and fundamental freedoms, including the rights of persons belonging to national minorities, as one of the objectives of this dialogue. The fora for the conduct of this political dialogue

[14] See, in this respect, also the recent case law of the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR). In the case of *Boriss Cilevičs and others* (C-391/20), the CJEU found the Latvian legislation requiring institutions of higher education to promote and develop the national official language to be in compliance with EU law. In *Valiullina and others v. Latvia* (application Nrs. 56,928/19, 7306/20 and 11,927/20) the ECtHR ruled that legislative amendments which reduced the use of Russian as the language of instruction in Latvian public schools did not violate the European Convention of Human Rights and Fundamental Freedoms. Amongst others, the ECtHR referred to the historical context where the use of Latvian had been significantly restricted during fifty years of unlawful occupation and annexation of Latvia by the Soviet regime as a consideration to conclude that the protection of Latvian as the only official State language of the country pursued a legitimate aim.

are broadly defined in Article 5 AA and include, amongst others, a reference to the role of the Organisation for Security and Cooperation in Europe (OSCE). The latter organisation and its High Commissioner on National Minorities, in particular, played an important role in the EU pre-accession process of Estonia and Latvia. For instance, recommendations of the OSCE High Commissioner affected the gradual evolution of Estonia's and Latvia's language legislation (Van Elsuwege, 2008, pp. 275–288). Even though the challenges are not identical, due to the specific situation of the Baltic States' restoration of independence under international law, this experience nevertheless may be useful for the situation of Ukraine. At least, the EU-Ukraine AA provides ample opportunities for dialogue and monitoring in relation to the issue of minority protection.

5 Conclusions

This contribution revisited the EU-Ukraine AA in order to assess its role in the process of Ukraine's application for EU membership. This agreement has been negotiated against the background of the unfolding ENP. As a result, it remains silent about any membership perspectives and envisages a form of integration without membership on the basis of a strict political and internal market conditionality approach. Nevertheless, this does not undermine the significance of the AA as a crucial instrument on the road towards Ukraine's future EU membership. This is due to the following reasons.

First, by its very nature, the AA is a comprehensive framework agreement which allows for the dynamic development of EU-Ukraine relations. In particular, the competences endowed to the joint institutions established under the AA allow for the adoption of complementary instruments such as the Agreement on Conformity Assessment or the adoption of legally binding decisions defining the status of Ukrainian nationals on the EU labour market. Moreover, the broadly defined political dialogue could be helpful in tackling the sensitive question of minority protection.

Second, the reorientation of an association agreement from an alternative to membership into a pre-accession instrument is not new. This also happened with the first generation of Europe Agreements concluded with the CEECs. In comparison to the EU-Ukraine AA, the latter was even less developed in terms of scope and ambition. For instance, the agreement with Ukraine includes more sophisticated provisions on legislative approximation, with detailed annexes defining the core EU rules and standards.

The Association Council has the competence to adapt those annexes in light of the evolving EU *acquis* and the new context following Ukraine's recognition as a candidate for membership.

Third, even in those areas which are not explicitly covered under the EU-Ukraine AA, the latter plays a role as an important point of reference. This has been illustrated on the basis of three case studies (liberalisation of trade in agricultural products, rules on movement of persons and protection of minority rights). In all areas, which cover distinct challenges on the road to Ukraine's future EU membership, it has been illustrated how the AA remains relevant. With respect to trade in agricultural products, the open-ended clauses on cooperation and legal approximation defined in Chapter 17 and Annex XXVIII serve as the basis for Ukraine's integration in the CAP. This may coincide with increased pre-accession assistance under the Instrument for Pre-Accession Assistance for Rural Development. As far as the movement of persons is concerned, the extension of the temporary protection regime may coincide with Association Council decisions regarding the residence and social security rights of Ukrainian workers and their families. For the question of minority protection, the political dialogue established under the AA may be instrumental to discuss the implications of ongoing reforms—amongst others in the education sector—to ensure their compliance with the standards set through the case law of the CJEU, the ECtHR and the Venice Commission of the Council of Europe. Taken together, these examples illustrate that even without a formal amendment to the text of the AA, this legal instrument is of crucial significance in the process leading to Ukraine's accession to the EU. It constitutes the core point of reference, which can be supplemented with tailored sectoral pre-accession instruments and initiatives.

References

Asscher, L. (2023). Integration of people fleeing from Ukraine in the EU. Note to the Commission, Retrieved 29 March 2024 from https://ec.europa.eu/social/BlobServlet?docId=26894&langId=ene

Chancellery of the Prime Minister of Poland. (2023), Joint letter on Ukrainian imports and the EU Internal Market. https://www.gov.pl/web/premier/wspolny-list-bulgarii-wegier-polski-rumunii-i-slowacji-w-sprawie-srodkow-przeciwdzialajacych-negatywnym-skutkom-zwiekszonego-przywozu-produktow-rolnych-z-ukrainy-na-rynek-ue

Council of the EU. (2007). Directives for the negotiation of a new Enhanced Agreement between the EU and Ukraine, doc. 5463/07, 22 January 2007.
Council of the EU. (2022). Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, OJ (2022) L 71/1.
Council of the EU. (2024). Implementing Decision (EU) 2024/1836 of 25 June 2024 extending temporary protection as introduced by Implementing Decision (EU) 2022/382, *OJ (2024) L 1836*.
Dahm, J. (2023). Germany wants EU to prepare farm funds for enlargement. https://www.euractiv.com/section/agriculture-food/news/germany-wants-eu-to-prepare-farm-funds-for-enlargement/
Dragneva, R., & Wolczuk, K. (2025). Integration and modernisation: EU's Association Agreement with Ukraine. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war"*. Palgrave Macmillan.
European Commission. (1990). Association agreements with the countries of Central and Eastern Europe: A general outline. COM (90) 398 final.
European Parliament. (1998). Agriculture and enlargement. *Briefing No. 27*. https://www.europarl.europa.eu/enlargement/briefings/27a2_en.htm
European Parliament and Council of the EU. (2017). Regulation (EU) 2017/850 of 17 May 2017 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (Ukraine). *OJ (2017) L 133/1*.
European Parliament and Council of the EU. (2022). Regulation (EU) 2022/870 of 30 May 2022 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part. *OJ (2022) L 152*.
European Commission. (2022). Opinion on Ukraine's application for membership of the European Union. COM (2022) 407 final.
European Commission. (2023a). Commission presents support measure worth € 56,3 million for Bulgarian, Polish and Romanian farmers. https://agriculture.ec.europa.eu/news/commission-presents-support-measure-worth-eu563-million-bulgarian-polish-and-romanian-farmers-2023-03-20_en#:~:text=Worth%20%E2%82%AC56%2C3%20million%20financed%20by%20the%20agricultural%20reserve,imbalances%20on%20their%20planting%20decisions
European Commission. (2023b). Implementing Regulation (EU) 2023/903 of 2 May 2023 introducing preventive measures concerning certain products originating in Ukraine. *OJ (2023) L 114*.

European Commission. (2023c). Temporary protection for those fleeing Russia's war of aggression against Ukraine: One year on. COM (2023) 140 final.

EU-Ukraine. (2008). EU-Ukraine summit. Doc 12812/08. Retrieved 4 May 2024 from https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/102633.pdf

EU-Ukraine. (2014). Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. *OJ (2014), L 161*.

Freudlsperger, C., & Schimmelfennig, F. (2025). War and boundary formation: The Russo-Ukrainian war and European integration. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war"*. Palgrave Macmillan.

Gaudissart, M. A. (1999). Réflexions sur la nature et la portée du concept d'association à la lumière de sa mise en œuvre [Reflections on the nature and scope of the concept of association in light of its implementation]. In M.F. Christophe Tchakaloff (Ed.). *Le concept d'association dans les accords passés par la Communauté : Essai de clarification [The concept of association in agreements made by the Community: Attempt to clarify*]. Bruylant. https://www.dgsi.pt/bpgr/bpgr.nsf/305fde3cddf188ab802569660044179b/07d025521fc760e4802568c1004da021?OpenDocument

Ghazaryan, N. (2015). A new generation of human rights clauses? The case of Association Agreements in the Eastern Neighbourhood. *European Law Review, 40*(3), 391–410.

Groenendijk, K. (2015). The Court of Justice and the development of EEC-Turkey association law. In: D. Thym & M. Zoeteweij-Turhan (Eds.). *Rights of third-country nationals under EU Association Agreements. Degrees of free movement and citizenship*. Brill-Martinus Nijhoff, 39–61. https://doi.org/10.1163/9789004300064_004

Haletska, N. (2025). Legal aspects of EU-Ukraine bilateral trade relations during the full-scale war: More trade liberalisation, but under conditions. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war"*. Palgrave Macmillan.

Hanf, D., & Dengler, P. (2005). Les accords d'association [Association agreements]. In J.-V. Louis & M. Dony (Eds.), *Commentaire Megret: Relations Extérieures [Megret Commentary: External Relations]*. Editions de l'Université de Bruxelles [Editions of the University of Brussels], 1–45.

Hillion, C. (2003). Enlargement of the European Union. The discrepancy between membership obligations and accession conditions as regards the protection of minorities. *Fordham International Law Journal, 27*(2), 715–740.

Hillion, C. (2007). Mapping-out the contractual relations between the European Union and its Neighbours: Learning from the EU-Ukraine 'Enhanced Agreement.' *European Foreign Affairs Review, 12*(2), 169–182.

Inglis, K. (2000). The Europe Agreements compared in light of their pre-accession orientation. *Common Market Law Review, 37*(5), 1173–1210.

International Centre for Migration Policy Development. (2023). Responding to displacement from Ukraine: Options to remain when EU temporary protection ends. *Discussion Paper*. Retrieved 29 March 2024 from https://www.icmpd.org/file/download/59847/file/ICMPD%2520Discussion%2520Paper_Options%2520to%2520remain%2520when%2520EU%2520temporary%2520protection%2520ends.pdf

Lazarenko, V., & Rabinovych, M. (2025). Collective protection for Ukrainians in the EU: Laws, practices and implications for EU and Ukrainian policies. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war"*. Palgrave Macmillan.

Maresceau, M. (2013). Les accords d'intégration dans les relations de proximité de l'Union européenne. [Integration agreements in the proximity relations of the European Union]. In C. Blumann (Ed.). *Les frontières de l'Union européenne. [Border of the European Union]*. Bruylant, 151–192. https://lib.ugent.be/en/catalog/pug01:4284893?i=3&q=%22Claude+Blumann%22&search_field=author

Meijers Committee. (2023). *Comment on what will happen when the temporary protection scheme for refugees from the War in Ukraine ends*. https://www.commissie-meijers.nl/wp-content/uploads/2023/07/230714-Meijers-Committee-Comment-on-End-of-Ukraine-Temporary-Protection-Scheme-.pdf

Notes from Poland. (2023). Poland introduces immediate ban on Ukrainian agricultural imports. *Notes from Poland*. https://notesfrompoland.com/2023/04/15/poland-introduces-immediate-ban-on-ukrainian-agricultural-imports/

Phinnemore, D. (1999). *Association: Stepping-stone or alternative to EU Membership?* Sheffield Academic Press.

Taran, S. (2023). EU-Ukraine wartime trade: overcoming difficulties, forging a European path. *European Policy Centre Discussion Paper*. Retrieved 29 March 2025 from https://www.epc.eu/content/PDF/2023/EU-Ukraine_wartime_trade_DP.pdf

Van der Loo, G., Van Elsuwege, P., & Petrov, R. (2014). The EU-Ukraine Association Agreement: Assessment of an innovative legal instrument. *EUI Working Papers Law* 2014/09. https://cadmus.eui.eu/handle/1814/32031

Van der Loo, G. (2016). *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area. A new legal instrument of integration without membership*. Brill-Martinus Nijhoff.

Van Elsuwege, P. (2008). *From Soviet republics to EU member states. A legal and political assessment of the Baltic states' accession to the EU*. Brill-Martinus Nijhoff.

Van Elsuwege, P., & Chamon, M. (2019). The meaning of 'association' under EU law. A study on the law and practice of EU association agreements. *Study for the AFCO Committee of the European Parliament*. https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2019)608861

Van Elsuwege, P. (2023). The Ukrainian grain imports saga. A cynical example of realpolitik. *Verfassungsblog*. https://verfassungsblog.de/the-ukrainian-grain-imports-saga/

Venice Commission. (2017). Opinion No. 902/2017 (Ukraine) on the provision of the law "On Education". CDL_AD52017)030.

Venice Commission. (2019). Opinion No 960/2019 (Ukraine) on the law "On supporting the functioning of the Ukrainian language as the state language." CDL-AD(2019)032.

Venice Commission. (2020). Opinion No. 975/2020 (Latvia) on the recent amendments to the legislation "On education in minority languages." CDL-AD(2020)12.

Venice Commission. (2023) Opinion (Ukraine) "On the Law of National Minorities (Communities)". CDL-AD(2023)021.

World Trade Organisation. (2023). Ukraine initiates WTO dispute complaints against Hungary, Poland and Slovak Republic, Retrieved September 21, 2023 from https://www.wto.org/english/news_e/news23_e/ds619_620_621rfc_21sep23_e.htm