

THE LEGAL FRAMEWORK OF
EU ENLARGEMENT
AND NEIGHBOURHOOD POLICIES

CLEER Summer School, 27 June 2022 (online)

CONTENT

- The Treaty framework
- The policy framework: ENP/EaP vs. enlargement
- The EU-Ukraine as a case study

I. THE TREATY FRAMEWORK

ARTICLE 49 TEU

- ▶ Any **European State** which respects the **values referred to in Article 2** and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. **The conditions of eligibility agreed upon by the European Council shall be taken into account.**
- ▶ The **conditions of admission** and the adjustments to the Treaties on which the Union is founded, which such admission entails, **shall be the subject of an agreement between the Member States and the applicant State.** This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

CASE 93/78 MATTHEUS VS. DOEGO

- These provisions lay down a precise procedure encompassed within well-defined limits for the admission of new member states, during which **the conditions of accession are to be drawn up by the authorities indicated in the article itself**
 - Thus **the legal conditions for such accession remain to be defined in the context of that procedure without its being possible to determine the content judicially in advance**
- EU enlargement as a Member State driven process !**

ARTICLE 8 TEU

1. The Union shall develop ***a special relationship*** with ***neighbouring countries***, aiming to establish ***an area of prosperity and good neighbourliness***, founded on ***the values of the Union*** and characterised by close and peaceful relations based on cooperation.
2. For the purposes of paragraph 1, the Union may conclude ***specific agreements with the countries*** concerned. These agreements may contain ***reciprocal rights and obligations as well as the possibility of undertaking activities jointly***. Their implementation shall be the subject of periodic consultation

ARTICLE 8 TEU VS. ART. 217 TFEU

Article 217 TFEU (ex art 310 EC):

The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.

ECJ definition of ‘association’ (case 12/89 *Demirel*):

‘the agreement ... is an association agreement creating special, privileged links with a non-member country which must, at least to a certain extent, take part in the Community system’.

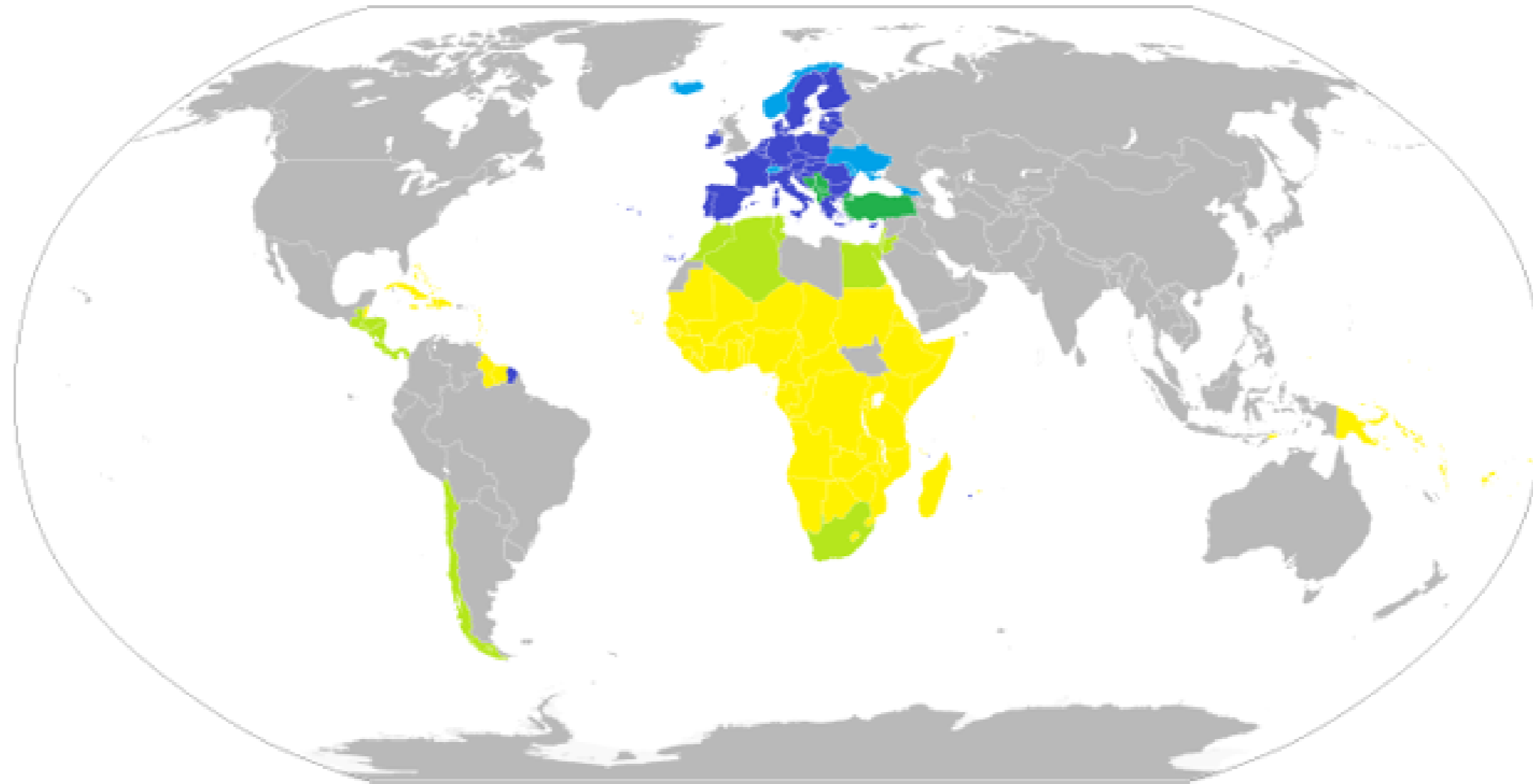


Figure 1: Map of third countries 'associated' with the EU

- EU
- EU membership alternative
- Third countries (non-ACP)
- Pre-accession
- ACP countries

Source:

[https://www.europarl.europa.eu/thinktank/nl/document/IPOL_STU\(2019\)608861](https://www.europarl.europa.eu/thinktank/nl/document/IPOL_STU(2019)608861)

Pre-accession instruments	EU membership alternatives	Privileged relationships with non-European countries
Association agreements with Turkey and Greece*	EEA	ACP countries
Europe Agreements*	Bilaterals I (Switzerland)	EMAAs
SAAAs	EaP countries (Ukraine, Moldova, Georgia)	Chile, Central America**, Mercosur***

Table 1: A typology of association agreements

* This (type of) agreement is no longer in force. ** This agreement has been signed and provisionally applied but is not yet fully into force; *** This agreement is still under negotiation.

Source:

[https://www.europarl.europa.eu/thinktank/nl/document/IPOL_STU\(2019\)608861](https://www.europarl.europa.eu/thinktank/nl/document/IPOL_STU(2019)608861)

II. THE POLICY FRAMEWORK







EU ENLARGEMENT POLICY

- 1993 Copenhagen European Council
 - ‘Copenhagen criteria’
- Pre-accession strategy
 - Regular Commission monitoring
 - (European) Council decisions
- EU accession negotiations
 - 35 chapters of the *acquis* - benchmarks

BACKGROUND

- Patten-Solana ‘Wider Europe’ reflection paper (August 2002)
 - A new legal and political framework for the Eastern neighbours as a key priority
- EaP as a (late) policy response in a different (and difficult) geopolitical context

The 6 partners

- > ARMENIA 
- > AZERBAIJAN 
- > BELARUS 
- > GEORGIA 
- > MOLDOVA 
- > UKRAINE 



Eastern Partnership

Bringing the Eastern European Partners closer to the EU

Launched in
**May
2009**

Goals

- > Promoting democracy and the rule of law
- > Supporting reforms
- > Closer political association
- > Economic integration

Benefits

- > Easier mobility
- > Creating jobs
- > More trade
- > More business opportunities

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NEW BILATERAL FRAMEWORK AGREEMENTS

- ***Association Agreements*** (Ukraine, Moldova, Georgia)
 - Political association, economic integration (DCFTA) and legal approximation
 - Comprehensive, conditionality, complexity
- ***Comprehensive and Enhanced Partnership Agreement*** (Armenia)
 - ‘PCA +’ or ‘AA-’

III. EU-UKRAINE ASSOCIATION AGREEMENT

“The [EU-Ukraine Association Agreement] is **the most ambitious agreement the EU has ever offered to a non-Member State**. It is a milestone in the history of our relations and for Europe as a whole. In Kyiv and elsewhere, people gave their lives for this closer link to the European Union. We will not forget them”.

(H. Van Rompuy, 27 June 2014)

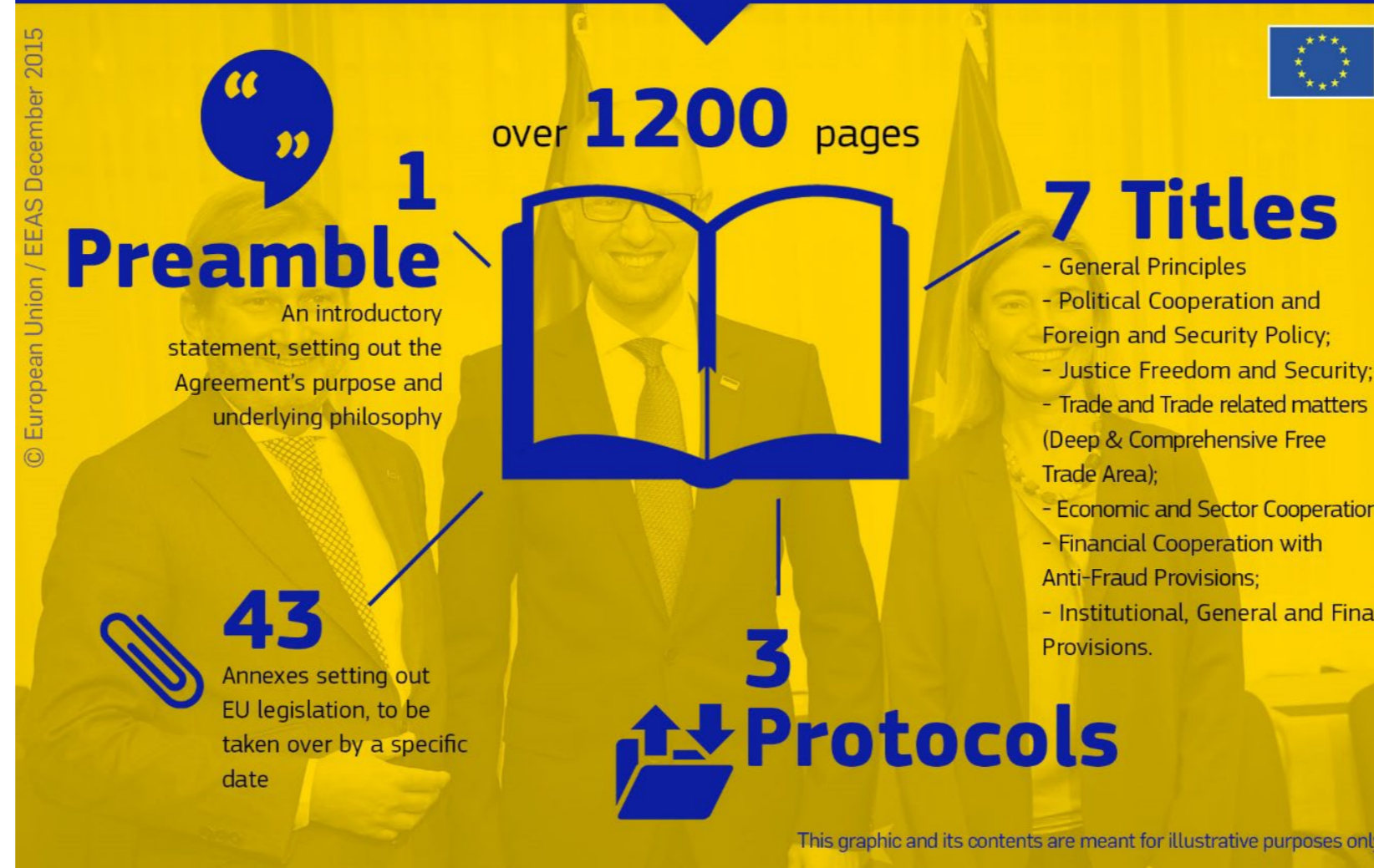


EU-Ukraine Association Agreement

The **EU – Ukraine Association Agreement** reflects the importance of **EU-Ukraine relations**. The comprehensive document, ambitious and pioneering, will support core reforms in Ukraine.

The Association Council monitors the Association Agreement periodically, this happens at least once per year.

The Association Agreement comprises



STRUCTURE OF THE AGREEMENTS

I. General Principles
II. Political Dialogue and reform, Cooperation and convergence in the field of Foreign and Security Policy
III. Justice, Freedom and Security
IV. DCFTA
V. Economic and sector cooperation
VI. Financial cooperation
VII. Institutional, General and Final Provisions
Annexes

No explicit EU membership perspective but ...

- “acknowledges the European aspirations of Ukraine and welcomes its European choice”(preamble)
- “Ukraine is a European country that shares a common history and common values with the EU MS” (preamble)
- “this agreement shall not prejudice and leaves open future developments in EU-Ukraine relations”(preamble)
- objectives (Art.1)
... gradual “*integration*” in the EU Internal Market

TRADE AND TRADE-RELATED MATTERS

- Establishment of a free trade area over a transitional period of maximum 10 years for Ukraine and Moldova (no transition for Georgia)
- “*Comprehensive*”
 - FTA has a broad range covering all the main areas of EU-Ukraine trade relations: not only trade in goods but also liberalization of services and binding provisions on IPR, public procurement, competition, energy, SPS, etc.
- “*Deep*”
 - Legislative approximation as instrument for economic integration

The “Comprehensive” character of the FTA

- Comprehensive character of EU FTA not new (eg. Colombia and Peru (signed 2012), Chili (2003), Mexico (2000), Korea (2011), Canada (2017),...)

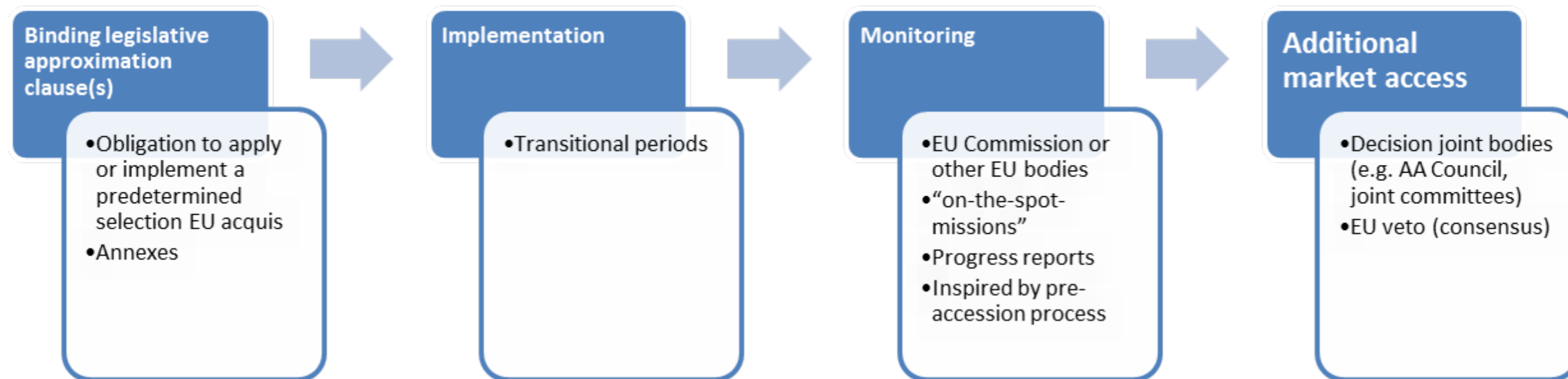
1. National Treatment and Market access for goods	9. Intellectual Property
2. Trade Remedies	10. Competition
3. Technical Barriers to Trade	11. Trade-Related Energy
4. Sanitary and Phytosanitary Measures	12. Transparency
5. Customs and Trade Facilitation	13. Trade and Sustainable Development
6. Establishment, Trade in Services and Electronic Commerce	14. Dispute Settlement
7. Current Payments and Movement of Capital	15. Mediation Mechanism
8. Public Procurement	

THE 'DEEP' CHARACTER OF THE FTAS

- Integration into (a part of) the EU Internal Market on the basis of legislative approximation
- **Binding** legislative approximation clauses
 - Tackle “behind-the-border issues” (NTB) “local manufacturers will meet the EU standards and norms simply by respecting their own rules and regulations”
 - Level playing field: a common legal space
 - DCFTA offers model for economic reform and modernisation for Ukraine, attract investment
- Unique (not realistic / feasible with other trade partners)
- Far-reaching... (sovereignty)
- Challenging... (e.g. implementation, complexity EU *acquis*)
- Costly?... (e.g. short-term vs. long term)

MARKET ACCESS CONDITIONALITY (*QUID PRO QUO*)

- In several (not all) DCFTA chapters, the third country will be granted a specific type of additional market access if it approximated to a predetermined selection of EU *acquis*
- Differentiation between various DCFTA chapters
- Only in several DCFTA chapters (services/establishment, TBT, SPS, public procurement) provisions on full integration
- Unprecedented (but inspired by pre-accession and ENP methodology, e.g. monitoring, progress reports, etc.)



IMPLICATIONS OF RUSSIAN WAR IN UKRAINE

February 28, 2022
5:35 PM GMT+1
Last Updated 2 months ago

Europe

Ukrainian president signs formal request to join the European Union

Reuters



EU enlargement [+ Add to myFT](#)

Georgia and Moldova apply to join EU

Diplomats voice caution about complex process as Ukraine war triggers wave of applications for membership



Macron calls for new European body and warns Ukraine of EU wait

French president says European Union 'cannot be the only way to structure the continent'



📷 Emmanuel Macron speaking in Strasbourg, where he dampened Kyiv's hopes of a speedy entry into the EU. Photograph: Anadolu Agency/Getty

Emmanuel Macron has called for a new political organisation to unite democracies on the European continent, as he warned that Ukraine would probably not join the EU for several decades.

The Guardian, 9 May 2022

FURTHER READING

- P. Van Elsuwege, ‘The EU and its neighbours’, in: R. Wessel and J. Larik, *EU External Relations Law*, Hart, 2020, 437-460
- P. Van Elsuwege, G. Van der Loo, ‘Legal basis in relation to international agreements (EPCA with Kazakhstan)’, *CMLRev* (2019) 1333-1353.
- P. Van Elsuwege, G. Van der Loo, R. Petrov, ‘The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument’, *EUI WP* (2014)
- P. Van Elsuwege, G. Van der Loo, ‘The EU-Ukraine Association Agreement as a Stepping-Stone towards EU membership?’, *EU Law Live* (2022)

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