

# **EU-Ukraine Association Agreement: challenge of the evolution due to the candidate status**



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# EU-Ukraine Association Agreement : 10 years story



- ▶ 2007 - launching of negotiations on "new" agreement
- ▶ 2008 - negotiations on FTA started
- ▶ 2009 - Association Agenda adoption
- ▶ 2011 - negotiations finished
- ▶ 2012 - EU-Ukraine AA initialized
- ▶ ..... European Council decision (November 2013) .....
- ▶ 2014 - signing (March - political part; June - economic part)
- ▶ September 2014 - simultaneous ratification by European Parliament and Verkhovna Rada of Ukraine
- ▶ 2014 - EU unilateral decision on preferential regime
- ▶ 2015 - renewed Association Agenda (EU-Ukraine Association Council decision)
- ▶ 2016 - interim entering into force of provisions of AA (trade issues - DCFTA)
- ▶ ..... Challenges: Netherland's referendum. Brexit.....
- ▶ 1.9.2017 - EU-Ukraine AA entered into force

# Key features of the EU-Ukraine Association Agreement – keeping in mind

- EU-Ukraine AA belongs to the selected group of “integration-oriented agreements”, i. e., agreements including principles, concepts and provisions of EU law that are to be interpreted and applied as if the third State is part of the EU
- The EU-Ukraine Association Agreement, as a so-called mixed agreement
- Key features of the Association Agreements are:
  - ✓ very **broad scope** providing for multidimensional co-operation;
  - ✓ based on “more for more” model with vast legal approximation related effort required to move to the next stages – **“conditionality”**
  - ✓ dynamic approximation with Association Councils empowered to change the annexes with long lists of EU *acquis* to be complied with – is it a way of evolution?!
  - ✓ direct effect: yes or no (Council Decisions on signature: “The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals”).

# EU membership paths – candidates and negotiations

- **Turkey:** 2005 starting negotiations – breaks – last debates 2017
- **North Macedonia :** application 2004 – candidate status 2005 – membership preliminary framework negotiations 2020 – negotiations officially opened July 2022
- **Montenegro:** application 2008 – candidate status 2010 – membership negotiations 2012
- **Albania:** SAA 2006 – candidate status 2014 – proposed negotiations 2020 – negotiations officially opened July 2022
- **Bosnia and Herzegovina :** application 2016



# February 24 2022

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- Full scale invasion of rf to the whole territory of Ukraine
- European Commission communication
- «Russia's target is not only Donbas, the target is not only Ukraine, the target is the stability in Europe and the whole of the international peace order»



# Ukraine's path to the EU – war accelerator

2014  
2017

- Signing
- Entered into force

24 Febr 2022 !  
28 Febr 2022

- Full scale invasion
- official application for EU membership

07 April 2022

- Ukraine received the questionnaire necessary for acquiring the status of a candidate country for EU membership

9 May 2022

Ukraine submitted to the European Union the completed second part of the questionnaire, necessary for obtaining the status of a candidate for EU membership. (total ~ 1200 pages)

17 June 2022

- The European Commission recommended granting Ukraine the status of a candidate for EU accession - opinion on Ukraine's application for EU membership

23 June 2022

- European Council decision on the candidate status granting to Ukraine

# General scope of commitments = negotiations on all chapters

## Candidates

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### EU acquis

- 35 chapters
- Few exemptions (tailored)
- Miscellaneous provisions

## Ukraine (Association Agreement)

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### partially acquis

- AA + other international agreements
- Joint EU-Ukraine Associations
- Recommendations
- Unilateral decisions



# Dynamic approximation – how to mirror

- Unlike many other association agreements, the AA between Ukraine and the EU provides for "dynamic rapprochement". This means that approximation never actually ends whenever the relevant EU law is amended or replaced by new legislation, the Annexes to the AA may be subject to revision

- Art. 463:

«.....

*The Association Council may update or amend the Annexes to this Agreement to this effect, taking into account the **evolution of EU law and applicable standards set out in international instruments deemed relevant** by the Parties, without prejudice to any specific provisions included in Title IV (Trade and Trade-related Matters) of this Agreement».*



# special modi operandi dynamism

- DCFTA provisions:
- For example: Annex XVII REGULATORY APPROXIMATION :

*2. In order to guarantee legal certainty, the EU Party will inform Ukraine and the Trade Committee regularly in writing on all new or amended sector-specific EU legislation.*

*3. The Trade Committee shall add within three months any new or amended EU legislative act to the Appendices. Once a new or amended EU legislative act has been added to the relevant Appendix, Ukraine shall transpose the legislation into its domestic legal system in accordance with Article 2(2) of this Annex. The Trade Committee shall also decide on an indicative period for the transposition of the act*

*+ Assessment of the transposition and implementation*

# UPDATING PROCEDURES FOR THE ASSOCIATION AGREEMENT`S ANNEXES



## ASSOCIATION COUNCIL

takes decisions within the scope of this Agreement, makes recommendations, **may update or amend the Annexes for the Agreement, taking into account the evolution of EU law**

may delegate any of its powers, including the power to take binding decisions

Article of AA	Annex(number)	The procedure of legalization
Art.463 Paragraph 1-3 Section VII "INSTITUTIONAL, GENERAL AND FINAL PROVISIONS"	XXVI TO CHAPTER 1 "COOPERATION IN THE FIELD OF ENERGY, INCLUDING NUCLEAR ENERGY"	Cabinet of Ministers of Ukraine
	XXVII TO CHAPTER 1 "COOPERATION IN THE FIELD OF ENERGY, INCLUDING NUCLEAR ENERGY"	
	XXVIII TO CHAPTER 4 "TAXATION"	
	XXIX TO CHAPTER 5 "STATISTICS"	
	XXX TO CHAPTER 6 "ENVIRONMENT"	
	XXXI "ENVIRONMENT"	
	XXXII TO CHAPTER 7 "TRANSPORT"	
	XXXIII TO CHAPTER 7 "TRANSPORT"	
	XXXIV TO CHAPTER 13 "LEGISLATION ON CORPORATE GOVERNANCE, ACCOUNTING AND AUDITING"	
	XXXV TO CHAPTER 13 "LEGISLATION ON CORPORATE GOVERNANCE, ACCOUNTING AND AUDITING"	
	XXXVI TO CHAPTER 13 "LEGISLATION ON CORPORATE GOVERNANCE, ACCOUNTING AND AUDITING"	
	XXXVII TO CHAPTER 15 "POLICY ON AUDIOVISUAL INDUSTRY"	
	XXXVIII TO CHAPTER 17 "Agriculture and Rural Development"	
	XXXIX TO CHAPTER 20 "CONSERVATION OF CONSUMER RIGHTS"	
	XL TO CHAPTER 21 "COOPERATION IN EMPLOYMENT, SOCIAL POLICY AND EQUAL OPPORTUNITIES"	
	XLI TO CHAPTER 22 "Public Health"	
	XLII TO CHAPTER 23 "Education, training and youth"	



## ASSOCIATION COMMITTEE

may delegate the authority to update or amend the Annexes for the Agreement relating to Chapters 1 (Annexes I-C and I-D), 2 (Annex II), 3, 5, 6,8 of Section IV (Trade and Trade-related Issues)



## TRADE COMMITTEE (COMMITTEE IN TRADE CONFIGURATION)

**may establish subcommittees** which may update or amend the Annexes for the Agreement:



Sanitary and Phytosanitary Management (SPS) Sub-Committee;  
Customs Sub-Committee;  
Sub-Committee on Geographical Indications (GI Sub-Committee);  
Trade and Sustainable Development Sub-Committee

# Priorities – parliamentary + governmental dimension

**Strict parliament agenda with the list of draft laws (more then 50 priority drafts)**

Constitutional justice / + High Council of Justice  
 Deoligarhization  
 National minorities  
 Anticorruption mechanisms (never ended story)

**OVERALL PROGRESS FOR THE PERIOD OF 2014-2021:**

CMU

**62%**

of tasks were completed

VRU

**53%**

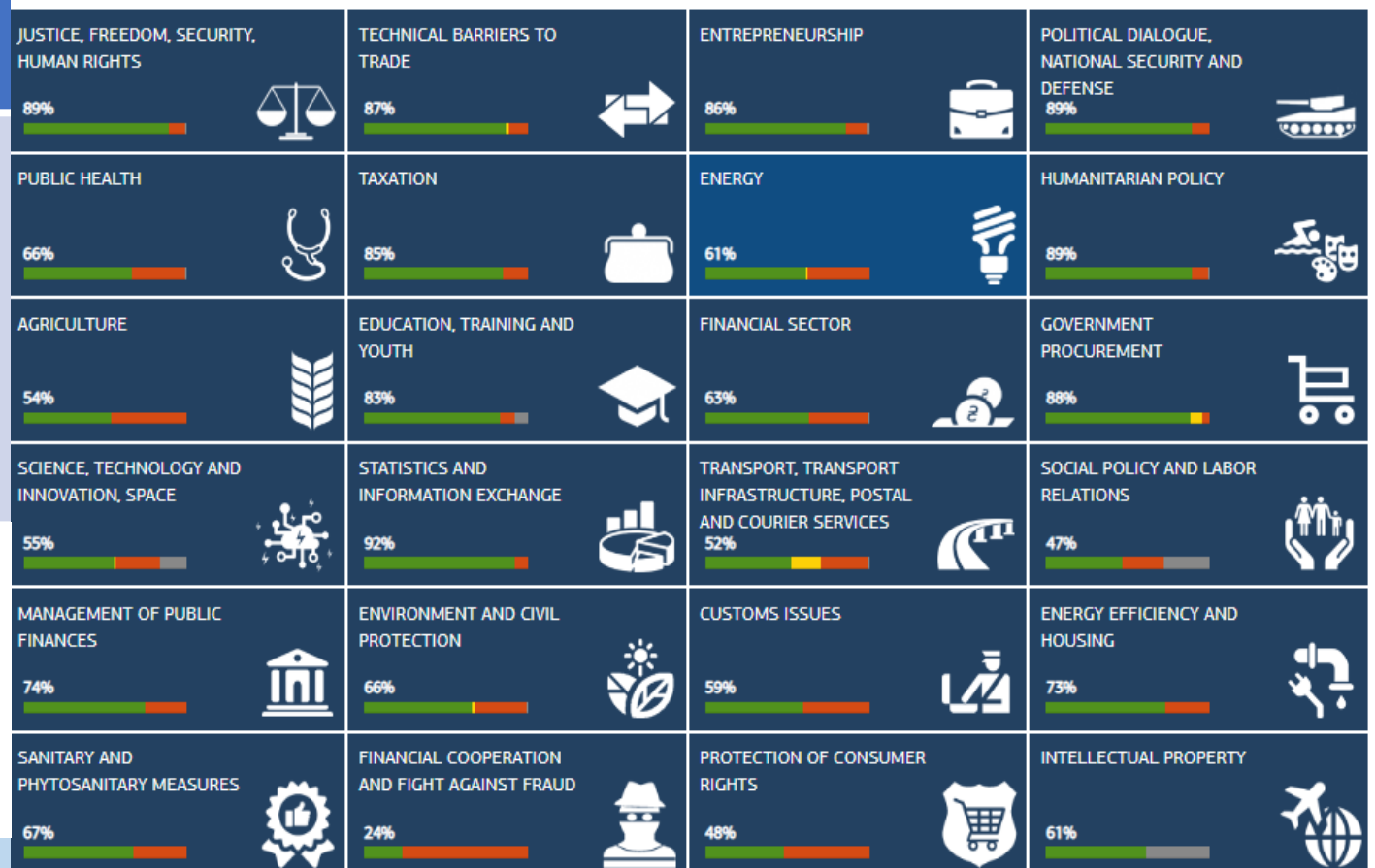
of tasks were completed

Other public authorities

**52%**

of tasks were completed

**Pulse of the Agreement – governmental office**



# ECJ jurisprudence - how to use

- Art 6 Annex XVII :

«Insofar as the provisions of this Annex and the applicable provisions specified in the Appendices are identical in substance to corresponding rules of the Treaty on the Functioning of the European Union and to acts adopted pursuant thereto, those provisions shall, in their implementation and application, be interpreted in conformity with the relevant rulings of the Court of Justice of the European Union.».

## *Art. 153:*

*.....due account shall be taken of the corresponding case law of the European Court of Justice and the implementing measures adopted by the European Commission as well as, if this should become necessary, of any modifications of the EU acquis occurring in the meantime.*

## *Art. 264:*

The Parties agree that they will apply .....using as sources of interpretation the criteria arising from the application of Articles 106, 107 and 93 of the Treaty on the Functioning of the European Union, including the relevant jurisprudence of the Court of Justice of the European Union, as well as relevant secondary legislation, frameworks, guidelines and other administrative acts in force in the European Union.

# Reviewing – current state

- EU-Ukraine Association Council Decision № 1/2019

On amendments to the Annex XXVII

- Decision of Customs Subcommittee N 1/2018

On replacement of Protocol I concerning the definition of the concept of "Originating Products" and methods of administrative co-operation EU-Ukraine

- Association Council Decision N 1/2018

On amendments to Annex I-A to Chapter 1 Elimination of custom duties

- EU-Ukraine Association Agreement Trade Committee Decision N 1(2018)

Annex XXI – A to Chapter 8 Indicative time schedule for institutional reform, legislative approximation and market access


- EU-Ukraine Association Agreement Trade Committee Decision N 2/2018

On the recalculation of the schedule for the abolition of export duties due to the Annex I-C to Chapter 1  
Schedules of export duty elimination Annex I-D to Chapter 1 Safeguard measures for export duties



# Agreement Renewal and Further Steps

## Quo Vadis?

- Update of approximation acts (update of Annexes)
- Cooperation in criminal and civil matters (Article 24 "Legal cooperation") - **are existing norms sufficient?**
- Access to the internal market
- Political indicators: Czech Presidency (Ukraine-Czech summit), December EU-Ukraine Summit (road map), ambitious plans for 2023
-  Compliance with the Copenhagen and Madrid criteria