



Alexander Duleba et al.

INTEGRATION WITHOUT MEMBERSHIP

Potential and limits of Ukraine's
Association with the EU



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The publication has not been proofread.

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Ukrajinsko-slovenský inštitút
humanitných iniciatív



Co-financing



Published within the project “Sharing European integration know-how and CBC experience between Slovakia and Ukraine as well as Norway and Russia, Ukraine,” CBC 01014. The project is co-financed by the Norwegian Financial Mechanism and the State budget of the Slovak Republic. Program SK08 – Cross-Border Cooperation: “Slovakia – Ukraine: Cooperation across the Border.”
www.norwaygrants.org

ISBN 978-80-89356-68-3

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Preface

The aim of this publication is to explore modalities for improving institutional mechanisms for the EU–Ukraine cooperation under the Association Agreement with the Deep and Comprehensive Free Trade Area (AA/DCFTA). The agreement provides contractual framework for achieving political association and economic integration of Ukraine with the EU. In other words, it facilitates integration of Ukraine into the single market of the EU through the harmonization of its respective national legislation and institutions, however, without granting political membership. Nevertheless, economic integration of Ukraine and the dynamic nature of its AA/DCFTA, which includes harmonization with the existing, but also newly adopted *acquis communautaire*, will create a constant pressure on the institutional framework for the EU–Ukraine cooperation and Ukraine's capacity to work with the EU. This publication examines existing similar contractual frameworks between the EU and third countries, i.e. EEA (European Economic Area) Agreement of the EFTA countries (European Free Trade Area – Norway, Island and Lichtenstein), contractual model of the so-called Swiss bilateralism, Customs Union with Turkey, Stabilisation and Association Agreements with the Western Balkan countries and the former European Association Agreements with Central Eastern European countries, with the aim to identify lessons that might be useful for Ukraine in implementing its Association Agreement concluded under Eastern Partnership Program.

In the first chapter (1.1) Alexander Duleba (Director of the Research Center of the Slovak Foreign Policy Association) aims to explore nature of Ukraine's Association Agreement, first, in the context of the development of EU differentiated integration policy since early 1990s, and second, in comparative perspective with other existing contractual frameworks for the EU relations with third countries that include their partial integration into the common space of four freedoms, however, without formal political membership. In particular, he looks at experiences of the EEA agreements (Norway, Island, and Lichtenstein) as well as Switzerland, which interacts with the EU under the framework of circa 120 bilateral agreements. Both the EEA and Swiss models of differentiated integration provide for the highest existing level of the access of third countries to the EU institutions and its policy making process. Another reason for his special attention to the experiences of EFTA countries with the EEA Agreement comes from the fact that the EEA model of differentiated integration is similar to the AA/DCFTA of Ukraine especially when it comes to range of economic integration and the volume of the EU legislation that has to be transposed to the national one. At the same time, there are significant differences between EEA countries and Ukraine when it comes to access to the EU institutions and policy-shaping within the EU.

In the second chapter (1.2) Vladimír Bilčík (Senior Researcher at the Research Center of the Slovak Foreign Policy Association) offers analytical overview of Slovakia's experiences in the area of harmonization with *acquis communautaire* focusing on pre-accession phases of Slovakia's EU integration process, i.e. association (since 1993) and accession (2000–2004). He aims at outlining lessons learned by Slovakia that might be useful for Ukraine's integration with the EU under the provisions of its respective Association Agreement. Finally, in the third chapter (1.3) Oleksandr Sushko (Research Director of the Institute for Euro-Atlantic Cooperation, Kyiv) examines new institutional framework for cooperation of Ukraine with the EU laid down by the current Association Agreement in comparative perspective with the former PCA (Partnership and Cooperation Agreement) institutional arrangement.

The second part of this publication analyses dynamics of economic cooperation, foreign trade and FDI (Foreign Direct Investment) since 1993 between, first, Ukraine and the EU (chapter 2.1 by Yaroslav Zhalilo, Senior Researcher at the Institute for Economics and Forecasting of the National Academy of Sciences of Ukraine), and second, Ukraine and Slovakia, and finally, neighbouring border regions, i.e. Transcarpathian Region of Ukraine and Eastern Slovakia (chapter 2.2. by Martin Lačný, Lecturer at the Institute of Political Sciences, School of Arts of the Prešov University). Authors of the second part of this publication look at development dynamics of economic relations at the above three levels examining economic factors but also evolving contractual framework at each of the above three levels, including impact of previously concluded agreements (pre-AA/DCFTA contracts) on trade, FDI and economic cooperation since 1993. Even though it is too early to analyse impact of DCFTA on economic cooperation and trade between the EU and Ukraine, including Slovakia and Ukraine, authors of this part of the publication aim to identify opportunities brought by AA/DCFTA as well as outline some basic scenarios for further development of economic cooperation and foreign trade of Ukraine with the EU/Slovakia and neighbouring border regions.

Finally, this publication includes a summary of policy recommendations on further improvement of institutional framework for the EU–Ukraine cooperation under AA/DCFTA with the aim to support economic cooperation and trade of Ukraine with the EU/Slovakia/neighbouring regions, including boosting its integration process with the EU. We do believe that this publication will, first, contribute to better understanding of a nature of the Association Agreement of Ukraine in the context of EU differentiated integration policy, second, identify potential for improvements of the existing institutional framework for Ukraine's cooperation with the EU, including in the area of foreign trade and economic cooperation, and finally, inspire practitioners engaged in Ukraine's relations with the EU and Slovakia.

Alexander Duleba

1.1 Ukraine's Association Agreement in the context of differentiated integration of the EU: a comparative perspective

Alexander Duleba

The aim of this chapter is to examine potential and limits of the institutional framework for Ukraine's integration with the EU under AA/DCFTA agreement. It seeks to explore nature of Ukraine's Association Agreement, first, in the context of the development of EU differentiated and/or flexible integration policy towards its neighbourhood since early 1990s, and second, in comparative perspective with other existing contractual frameworks for the EU relations with third countries that include their partial integration into the single market and a common space of four freedoms, however, without formal political membership.

Association Agreement of Ukraine likewise similar agreements of Georgia and Moldova concluded under the Eastern Partnership Program follow the logics of the so-called differentiated and/or flexible integration of the third countries, which the EU has been following since early 1990s when it concluded European Economic Area (EEA) Agreement with the EFTA countries – Norway, Island and Lichtenstein. Differentiated and/or flexible integration of the third countries means that they are granted access to the EU single market and/or some of its sectorial policies against their commitment to adjust respective national legislation, regulatory framework and institutions with the *acquis communautaire* and the EU practices.¹ In addition to the EEA model, there are also other contractual frameworks, which allow for partial integration of third countries with the EU, including the contractual model of the so-called Swiss bilateralism, Customs Union with Turkey, Stabilisation and Association Agreements with the Western Balkan countries, As-

¹ The concept of differentiated and/or flexible integration is used to be applied also for conceptualizations of a multi-speed EU. In this intra-EU context it reflects the fact that the basic treaty of the EU under "enhanced cooperation" provision (introduced first by the Amsterdam Treaty in force since 1999) allows formation of groups of member states willing to go faster and deeper in their integration in some sectorial policies without all member states taking part. See K. Holzinger, F. Schimmelfennig, "Differentiated integration in the European Union: many concepts, sparse theory, few data," *Journal of European Public Policy*, 19, 2012, 2, pp. 292–305.

sociation Agreements with Eastern Partners, and finally, Association Agreements with the Southern neighbours in the Mediterranean region. For the purpose of this study, we include into the list of examined contractual frameworks also former European Association Agreements with Central European countries, which ended in their accession to the EU in 2000s as they present important study case for transforming association into full-fledged membership.

The differences between the above contractual frameworks can be identified following the two key indicators: first, a range of harmonization and/or approximation of the third country with the *acquis communautaire*, and second, institutional arrangement for involvement of the third country into the policy-shaping process within the EU and/or modalities for the third country's possibilities to influence formation of the EU legislation, which consequently they are committed to transpose into their national legal framework. Sandra Lavenex (2011) identifies types of the EU agreements with the third countries that include exporting of the EU rules and norms following two dimensions: first, *regulatory boundary* and/or a degree to which the EU rules are extended to third countries, and second, *organizational boundary*, which determines how far regulatory extension is accompanied by organizational inclusion relating to possibilities of respective countries to participate in the determination of relevant *acquis*.²

Following the analysis of dynamics of the EU integration process since early 1990s, including its both versions, i.e. full-fledged integration with political membership and the differentiated one, which means an access of the third country to the EU single market or selected sectorial areas of the EU common space of four freedoms, however, without political membership, as well as differences between existing contractual frameworks for the EU cooperation with partially integrated countries, this chapter tries to explore modalities for eventual improving of institutional mechanisms for the EU–Ukraine cooperation laid down by the current Ukraine's Association Agreement.

1.1.1 UKRAINE'S ASSOCIATION AND DYNAMICS OF EUROPEAN INTEGRATION: A GEOPOLITICAL CONTEXT

The EU–Ukraine Association Agreement was signed by EU Heads of State and Government and President of Ukraine Petro Poroshenko in Brussels on June 27, 2014. This has happened as an outcome of dramatic events in Ukraine, which were brought on by the decision of the former President of Ukraine Viktor Yanukovych not to sign the Association Agreement with the EU at the Vilnius summit of Eastern Partnership in November 2013. In response, massive protests in Kyiv, which left many casualties, forced President Yanukovych to back down in Febru-

² S. Lavenex, "Concentric circles of flexible "European" integration: A typology of EU external governance relations," *Comparative European Politics* Vol. 9, No. 4–5, September 2011, pp. 372–93.

ary 2014. However, what has been originally called “Ukrainian crisis” has turned soon into “Russian–Ukrainian crisis” when Russia started to occupy Crimea at the end of February 2014.

In this text we argue that what is still called in the EU discourse a “Ukrainian crisis” is not an ad hoc episode somewhere far away in Eastern Europe, which will cease rather sooner than later and the EU will again re-establish pragmatic and “business as usual” deal with Russia under leadership of President Vladimir Putin. We argue that Russian–Ukrainian crisis, which started in 2014, does have direct consequences for the future of the EU as an arch of the European integration project. Moreover, we argue that it does have an epochal meaning, which challenges capacities of the European communities/EU to act as a *transformative and integrative actor* in Europe, capacities that the EC/EU has been developing starting from the late 1970s. In case of Ukraine’s Association Agreement it happened for the first time in the history of the EC/EU enlargement that an integrative contract it offered to a partner country has, first, brought up a political revolution in a given country, and second, the third country applied a military force against it in order to prevent the implementation of the EU contract. Thus, the current Russian–Ukrainian crisis marks three decades of the European integration project based on the EC/EU and brings fundamental question about its future. The latter will depend on the way the EU copes and will be coping with an *external* Russian–Ukrainian crisis as it will have profound impacts on its both own *internal* structure and a future role in European affairs.

Integration of the West versus disintegration of the East

The European Communities (and the EU since 1993) have been playing a crucial role in transforming, first, fascist regimes in Southern Europe in the 1980s, and second, communist regimes in Central Europe in the 1990s. It was the EU who brought the Western Balkan countries to peace and stability by providing them with European integration perspective after the 8-year war in 1990s. The fundament of the EU transformative capacity and the core element of its external action towards authoritarian regimes in its neighbourhood over the last three decades has been the two-dimensional contractual deal which facilitated, first, democratic transformation of their institutions, and second, access to the EC/EU single market. The last three decades proved that the EU’s best foreign policy has been its enlargement. The former EU enlargement commissioner Olli Rehn grasped this role of the EU in European affairs as follows: “Enlargement has proven to be one of the most important instruments for European security. It reflects the essence of the EU as a civilian power, extending the area of peace and prosperity, liberty and democracy. The EU has achieved far more through its gravitational pull than it could ever have done with a stick or a sword.”³

³ O. Rehn, “Enlargement as an instrument of the EU’s soft power,” *European Commission*:

The Association Agreements with Deep and Comprehensive Free Trade Area (AA/DCFTA) component the EU has offered in 2008 to its six East European neighbours, including Ukraine, are of the same *European integrative* nature even if they do not include a formal provision on political membership. They do embrace economic integration of Eastern Partner countries and their full access to common integrated space of the four European freedoms. AA/DCFTAs fully correspond with the logic and nature of the EU enlargement policy developed within the last three decades. However, in Ukraine in 2014 it happened for the first time since the late 1970s that the EU and its transformative policy via expansion of its institutions and market opening to non-EU European countries has been confronted by the use of military force from side of the third country. Therefore, the Russian–Ukrainian crisis, which started by Russian occupation of Ukrainian Crimea at the end of February 2014, does have an epochal meaning not only for the direct actors of the conflict, i.e. Russia and Ukraine, but also for the EU as an actor in Europe and its capacity to deliver to European integration in the future. Should Russia be successful in stopping the EU to achieve in Ukraine what it did in Greece or Portugal in the 1980s, Slovakia and Poland in the 1990s, Bulgaria or Croatia in the 2010s, it might undermine not only external capacity of the EU to act in Europe but also the EU as European integration project as such.

However, a number of EU leaders, politicians and experts, including some V4 Prime Ministers, deeply underestimate the nature of the Russian–Ukrainian conflict. They prefer just to save jobs for their citizens and/or voters and see the EU economic sanctions against Russia as baseless and crazy.⁴ In other words, they do believe that what happened in Crimea in 2014 and what is still happening in Donbas is a local or domestic Ukrainian crisis, which does not matter so much for the EU and there is no need to pay price for it. If such thinking becomes a shaper of the EU policy towards Eastern Partnership countries and Russia in years to come it will cost the EU taxpayers much more than consequences of economic sanctions against Russia. Starting from Russia's annexation of Crimea at the end of February 2014, Ukrainian crisis turned into full-fledged European crisis. The EU cannot escape the crisis as it affects core principles of its functioning and capacity to act as an actor in Europe.⁵

SPEECH/07/642, October 19, 2007. Available online: http://europa.eu/rapid/press-release_SPEECH-07-642_en.pdf?locale=enper cent3E (accessed on March 23, 2017).

⁴ For respective statement of the Slovak Prime Minister Robert Fico see: "Slovakia nurtures special ties to Russia, despite EU sanctions," *Reuters*, May 22, 2014. Available online: <http://uk.reuters.com/article/2014/05/22/ukraine-crisis-slovakia-idUKL6N00847Y20140522> (accessed on March 23, 2017).

⁵ The arguments presented by author in this article concerning the interpretation of a nature of the recent Russian–Ukrainian crisis and its implications for the EU, including the Eastern Partnership as the EU framework policy towards the six East European countries, have been discussed at the conference *East European crisis: scenarios and EU response* organized by the Research Center of the Slovak Foreign Policy Association in Bratislava on October 27, 2014, <http://www.sfpa.sk/en/>

We argue that the recent Russian–Ukrainian conflict of 2014 and the previous Russian–Georgian conflict of 2008 are not accidental and short term episodes. They are inevitable and objective outcomes displaying long term development trends in and/or of Europe after the end of bipolar conflict. The contexts of the both above conflicts should be learned and taken into account when thinking about possible further moves in the EU Eastern policy, including future of the Eastern Partnership. If one looks back what happened over the last two decades in Europe one can see completely different integration dynamics in its Western and Eastern parts.

The collapse of the communist block helped to deepen the integration process in the Western part of Europe and it also pushed the EU to be more engaged in its neighbourhood. The former Yugoslav republics do look up to the EU as a source of stability, modernization know-how and, of course, a trade partner. Although we have seen several setbacks in their reform processes, including problems in following their EU course, they are clearly not trying to become a part of the Russian Federation. Compared to 15 in 2003, today the EU has 28 members. The successful model of integration of Greece, Spain and Portugal in the 1980s that helped them to overcome their authoritarian and fascist heritage has pressed the EU to open the perspective of enlargement also to the former communist countries (Copenhagen summit, 1993). The preparations for the “grand enlargement” to the East (2004–2007) spilled over into the EU internal agenda and pushed it for further institutional reform process since the beginning of the 1990s. The acceptance of economically and institutionally underdeveloped countries of Southern Europe in the 1980s pushed the EC/EU to develop internal cohesion policy. At the same time at the end of 1970s, the EC has insisted that legal and economic integration with the members of EFTA should come before East/West integration.⁶ Furthermore, coping with the war in the Western Balkans in the 1990s forced the EU to develop its capacities in the field of external action. Grand enlargement, which included former communist countries of Central Europe, Cyprus and Malta led to further deepening of the EU integration. The *Lisbon Treaty* (2009) and/or the institutional design of the present EU with a qualified majority as a main rule for decision-making in its crucial internal policies would hardly become a reality without still continuing fragmentation of the Eastern part of Europe after the collapse of the communist bloc.⁷

podujatia/odborne–podujatia/1145. This part of the study also draws from the author's essay: A. Duleba, “Russian–Ukrainian crisis: what next for the Eastern Partnership,” *International Issues & Slovak Foreign Policy Affairs* Vol. XXIII, No.3–4, 2014, pp. 57–70.

⁶ For this argument see e.g. D. Kennedy and D.E. Webb, “The Limits of Integration: Eastern Europe and the European Communities,” *Common Market Law Review*, 30, 1993, pp. 1095–1117 (p. 1102).

⁷ For further reading, see R. Bideleux, R. Taylor, eds, *European Integration and Disintegration: East and West*. Routledge, 1996.

In the end, looking back from the 30 years perspective, the EU is the guarantor of peace and stability in the Western Balkans preparing former Yugoslav republics for their accession. It deepened its integration through the amendments of its basic treaties. The European Communities turned into the European Union after the adoption of the Maastricht Treaty in 1993. The Schengen acquis became part of the EU basic treaty in 1999. The Euro as a common currency started to be operational in 2002. And finally, the Lisbon Treaty with significant institutional changes entered into force in 2009. The EU managed successfully the “grand enlargement” in 2004 by including eight former Eastern bloc countries together with Cyprus and Malta, which was followed by the accession of Bulgaria and Romania in 2007, and finally Croatia in 2013. The fact is that the number of member states almost doubled over last decade.⁸ And finally, in 2009 the EU made an offer to six former post-Soviet countries to deepen and to expand cooperation within the Eastern Partnership initiative, including their economic integration through the implementation of AA/DCFTAs.⁹

Let us summarize the integration dynamics in the Western part of Europe during the last three decades. European Communities launched its cohesion policy in the second half of 1980s. European Communities changed into the European Union as we know it today in 1993. EU, in fact, is 24, not 63 years old. Schengen functions since 1999 (18 years), Euro as a common currency is in the cash flow since 2002 (15 years). Before 2004, EU had 15 members, but within last decade the number of the member countries almost doubled to the current 28. EU was not an actor in the crisis of Yugoslavia in the 1990s, because it has not existed in the current shape yet. The Yugoslav war began in 1991 while the Maastricht Treaty which transformed European Communities with no common foreign policy into the European Union with Common Foreign and Security Policy entered into force in 1993. However, without a modernization offer of the EU and the European perspective, the Western Balkans would continue to be a “barrel of the gun-powder.” We can criticize the EU rightly for many things; however, the EU stays to be a unique project in all known history of the international relations. The fact that Malta with its 400,000 citizens has the equal voting rights as the 80 million Germany in decision-making about the legislation and the policies of the EU is absolutely unique fact, which cannot be found anywhere in the world and it has never before existed in the history. EU 2017 is qualitatively different project than – internally and externally – then the European Communities were before 1993. The integration dynamics of the EU over last three decades should be considered

⁸ For further reading, see E. Bomberg, J. Peterson and R. Corbett, *The European Union. How does it work?* Oxford University Press, 2012.

⁹ “Joint Declaration of the Prague Eastern Partnership Summit. Prague, 7 May 2009,” 8435/09 (Presse 78), Council of the European Union, Brussels, May 7, 2009. Available online: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/107589.pdf (accessed on March 23, 2017).

seriously in order to understand, first, why the EU offered Eastern partners political association and economic integration in 2009, and second, what might be the EU response on the current Russian–Ukrainian crisis.

In the Eastern part of Europe we got a completely different picture during the same period of time. None of the integration initiatives aimed at bringing things in order within the former Soviet Union and/or a group of former Soviet countries over the last two decades might be labelled a successful project.¹⁰ Disintegrated Soviet Union was supposed to be replaced by the Community of the Independent States (CIS), emergence of which was initiated by the then leaders of Russia, Ukraine and Belarus in December 1991. Today hardly someone recognizes the shortcut CIS. Russia and Belarus have been trying to renew a common federal state since 1994. However, today only few Russian and Belorussian experts remember that project. Yeltsin's Russia was not able to bring into existence any successful integration project in the post-Soviet area and time. Putin's Russia in 2004 managed to come to conflict with the largest ally of Russia – Lukashenka's Belarus, the same country with which Yeltsin wanted to create a federation. When we speak about the gas crisis from the today's perspective, let's not forget that it was Belarus who was a first country, which faced closing down supplies of natural gas from Russia in 2004 and repeatedly in 2007 and 2010.¹¹ First gas war between Russia and Ukraine happened in 2006 and repeatedly in 2009. On the territory of former Soviet republics, Russia used military force during civil war in Georgia in 1991 and in Moldova in 1992.¹² Russia used her military power also later in August 2008 in Georgia and in 2014 and currently against Ukraine, but this time also with annexation of part of Ukrainian territory. We don't even mention trade wars of Russia with Belarus, Georgia, Moldova and Ukraine as well as with other post-Soviet countries as they would take too much space to count them all.¹³

Despite of the fact that Presidents of Belarus and Kazakhstan signed agreement on foundation of the Eurasian Union in May 2014¹⁴ – both of them from their own reasons – nothing changes the fact that in the last more than 20 years

¹⁰ O. Sushko, "The dark side of integration: Ambitions of domination in Russia's backyard," *The Washington Quarterly* Vol. 27, Issue 2, 2004, pp. 119–31.

¹¹ G. Caldioli, *Belarus – Russia Energy Disputes – Political and Economic Comparative Analysis*. PECOB's Energy Policy Studies, University of Bologna, 2011.

¹² For more see A. Mörike, "The military as a political actor in Russia: The cases of Moldova and Georgia," *The International Spectator: Italian Journal of International Affairs*, Vol. 33, Issue 3, 1998, pp. 119–31.

¹³ For further reading see B. Nygren, *The Rebuilding of Greater Russia. Putin's foreign, policy towards CIS countries*. Routledge, 2008; A. Wilson and N. Popescu, "Russian and European Neighbourhood Policies Compared," *Southeast European and Black Sea Studies*, Vol. 9, No 3, September 2009, pp. 317–31, etc.

¹⁴ N. Gvosdev, "Russia's Eurasian Union: Part of a Master Plan," *The National Interest*, June 7, 2014. Available online: <http://nationalinterest.org/feature/russias-eurasian-union-part-master-plan-10619> (accessed on March 21, 2017).

Russia was not able to offer to her post-Soviet neighbours constructive agenda, normal and long-term cooperation perspective based on the principle of equality in bilateral relations. To search for the Maltese–German example of equal status cooperation in the post-Soviet space over last 20 years would be useless activity. And this is the substantial difference between where the Western Europe is today, and where the post-Soviet space is. Deepening and widening of integration in the Western part of Europe versus continuing fragmentation in its Eastern part are main trends that are shaping pan-European agenda, including EU–Russia relations since the end of the cold war.

Comparison of the dynamics of the European integration based on the EU project and the integration attempts of the “Russian world” in the post-Soviet area in last 20 years speaks for itself. Two different European worlds had to meet one day. Exactly this building of two different European worlds clashed in Ukraine in years 2013 and since 2014 onward. We are wrong if we speak about the “Ukrainian crisis,” which presents barely accidental episode. This crisis has systemic whole-European character and it represents a confrontation of the two European worlds as they have been developing and formed in the last two-three decades. As the effort to reach their co-living was not successful and there is only one Europe in physical terms, confrontation had to happen sooner or later.

There are many myths about the EU approach to post-Soviet Russia. What is – from today’s perception of the recent Russian–Ukrainian crisis as from 2014 – rarely known is that a decade ago there was a serious effort to establish a systemic dialogue and intense cooperation between the EU and Russia. This effort was called *Common Spaces* and ran in the years of 2003–2006.¹⁵ The idea of the *Common Economic Space* was that the EU and Russia will achieve the creation of a free trade zone within 15 years. But Russia decided to depart from the free trade deal with the EU by the end of 2006. This happened due to several reasons. Russia did not like colour revolutions in Eastern Europe whereas the most of the EU member states leaders met them with sympathy. The EU did not accept Russian request for a privileged status of Gazprom on the EU’s gas markets. And of course – the then European friends of President Putin French President Chirac and German Chancellor Schröder lost their political positions in their home countries.¹⁶

Again, it has to be stressed that the EU’s offer to post-Soviet countries under the Eastern Partnership included AA/DCFTA in 2008 also because of Russia’s decision to depart de facto from the free trade deal with the EU by the end of 2006. Russia has been given an offer to join the European integration process yet

¹⁵ See A. Duleba, ed., *Searching for New Momentum in EU–Russia Relations. Agenda, Tools and Institutions*. Bratislava: Research Center of the Slovak Foreign Policy Association, 2009.

¹⁶ For analysis see D. Trenin, “Russia Leaves the West,” *Foreign Affairs* Vol. 87, No. 4, July–August 2006, pp. 87–92.

in 2003 before the EU approached with similar offer Ukraine and Eastern Partner countries in 2008. However, in his speech at the Munich security conference in February 2007 President Putin communicated his main message to European leaders as follows: we'll challenge the European system if it does not accept a privileged position of Russia.¹⁷ Russia has showed it in Georgia in August 2008 how she will be challenging the European system. Let us emphasize again that the EU offered free-trade deal to Russia already in 2003, far before it offered the similar deal to other post-Soviet states.

EU didn't respond by sanctions against Russia in case of Georgian crisis in 2008. However, it responded by a decision to offer to the countries of the Eastern Partnership opportunity to sign the Association Agreements with DCFTA, which included provisions for their economic, however, not political integration.¹⁸ European Union didn't have other choice, it had to respond somehow. In other words it responded to Russian tanks in Georgia in 2008 by a policy, which facilitates exporting of its legislation to the post-Soviet space. Conflict started in Georgia in 2008, and it continued in Ukraine in 2013 and afterwards. Long before mass protests in Ukraine started (November 2013) because of the then Yanukovich Government's refusal to sign association agreement with the EU, Russia imposed the commercial sanctions on Ukraine (summer 2013) in order to force that time President of Ukraine to step away from the signature of the agreement with the EU.¹⁹ It happened after diplomatic messages from the EU capitals started to signal (in June 2013) that imprisonment of former Prime Minister of Ukraine Yulia Tymoshenko might not prevent signing of the association agreement with Ukraine at the summit of the Eastern Partnership in Vilnius in November 2013.²⁰

A conflict "Russian tanks" vs. "European legislation" has started in Eastern Europe after Russian-Georgian war in August 2008, long before the Ukrainian events started in 2013. This conflict does have an objective and unavoidable na-

¹⁷ "Speech and the Following Discussion at the Munich Conference on Security Policy, February 10, 2007, Munich," President of Russia. Available online: http://archive.kremlin.ru/eng/speeches/2007/02/10/0138_type82912type82914type82917type84779_118123.shtml (accessed on March 21, 2017).

¹⁸ "Extraordinary European Council, Brussels, 1 September 2008. Conclusions," Council of the European Union, Brussels, October 6, 2008. Available online: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/102545.pdf (accessed on March 21, 2017).

¹⁹ R. Olearchyk, "Russia accused of triggering trade war with Ukraine," *Financial Times*, August 15, 2013. Available online: <http://www.ft.com/intl/cms/s/0/99068c0e-0595-11e3-8ed5-00144feab7de.html#axzz3Re0Z6Oym> (accessed on March 21, 2017).

²⁰ Y. Mostovaya, T. Silina, "Russkiy plan, osmyslennyy i besposhchadnyy," *Zerkalo nedeli*, August 16, 2013. Available online: http://gazeta.zn.ua/internal/russkiy-plan-osmyslennyy-i-besposchadnyy-_html (accessed on March 21, 2017); see also "O komplekse mer po vovlecheniyu Ukrainy v yevraziyskiy integratsionnyy process," *Zerkalo nedeli*, August 16, 2013. Available online: http://gazeta.zn.ua/internal/o-komplekse-mer-po-vovlecheniyu-ukrainy-v-evraziyskiy-integratsionnyy-process-_html (accessed on March 21, 2017).

ture as it mirrors more than 30 years long development integration versus disintegration trends in two parts of post-coldwar Europe.

Understanding the way the EU approaches its neighbourhood

In the end, regardless of all difficulties, including lack of flexibility when it comes to decision-making in the field of external relations, which is based on the consensus of all member states, the EU became the agenda-setter in Europe, including in its Eastern part. What the EU did for the Western Balkans within the last two decades made it the key international actor in/for Europe. The Western Balkans case illustrates the very nature of the EU as international actor as such. It is not number of tanks and military aircrafts what measures the strength of the EU in European affairs. It is a modernization offer to neighbouring countries and access to the EU market what makes the EU the strongest foreign policy actor in Europe.²¹

Before the Russian–Georgian crisis in 2008 the string of countries between EU and Russia could hardly hope for anything distantly similar to what the Western Balkans had achieved. Russia’s military intervention in Georgia in 2008 came as a shock for the EU political leaders. The military operation lasted only few days and the result was Russia’s recognition of South Ossetia and Abkhazia. The EU did not apply sanctions on Russia. Instead it revamped its Eastern policy. In September 2008 the EU member states authorized the European Commission to elaborate new ambitious offer for Georgia but also for Armenia, Azerbaijan, Belarus, Moldova and Ukraine.²²

In December 2008 the European Commission proposed launch of the Eastern Partnership, which among many other new programs and tools aimed at expanding the EU cooperation with Eastern Europe included a possibility for them to conclude AA/DCFTA.²³ Let us recall that an essence of this proposal was on table already in March 2008 when it was presented to the rest of EU members by the then foreign ministers of Sweden Carl Bildt and Poland Radek Sikorski.²⁴ At that time before the Georgia crisis in August 2008 their aim was to balance an initiative of the then French President Nicolas Sarkozy to launch the Union for Mediter-

²¹ For an overview of the existing theoretical conceptualizations of the EU as international actor, including the EU capacity to project its power in external relations (as a civilian power, normative power, and/or market power) see Ch. Hill and M. Smith, eds, *International Relations and the European Union*. Oxford University Press, 2008, 2011.

²² “Extraordinary European Council, Brussels, 1 September 2008. Conclusions,” op. cit.

²³ “Communication from the Commission to the European Parliament and the Council. Eastern Partnership,” COM(2008) 823 final, Commission of the European Communities, Brussels, December 3, 2008. Available online: http://eeas.europa.eu/eastern/docs/com08_823_en.pdf (accessed on March 23, 2017).

²⁴ “Polish–Swedish Proposal, Eastern Partnership, 23 May 2008.” Available online: <http://www.ms.gov.pl/Polish–Swedish,Proposal,19911.html> (accessed on March 23, 2017).

anean during the French Presidency in the EU Council in 2008. In other words: they tried to make sure that Eastern Europe is not lost from the EU policymaking radar. It is questionable whether Eastern Partnership with its offer for deeper integration with the EU would have ever seen the world had it not been for Russia's intervention in Georgia in 2008.

The Association Agreements offered to Eastern Partners mean that they will adopt about 95 per cent of the EU economic and trade related legislation and commit to respecting democratic rules and political freedoms.²⁵ Successful legal harmonization under AA/DCFA will in fact make them a part of the EU single market.

In June 2013 strong signals from the EU capitals came that Association Agreement with Ukraine could be signed at the Vilnius summit in November 2013 despite of continuing misunderstandings with Yanukovych government concerning imprisonment of former Prime Minister Yulia Tymoshenko.²⁶ Russia was shocked as it thought neither Ukraine nor Georgia or Moldova would be ever ready to conclude such agreement with the EU. Moscow responded by imposing trade sanctions against Ukraine in August 2013 with the aim to persuade the then President Yanukovych that signing the agreement with the EU is not a good idea.²⁷ In November 2013 President Putin agreed to provide 15 billion US dollars loan and to lower gas prices to Yanukovych government if he decides not to sign the agreement.²⁸ Finally, Russia started military invasion to Crimea at the end of February 2014 a couple of days after Yanukovych was overthrown by the Maydan revolution. Let's remember that protests in Ukraine started in November 2013

²⁵ Author's interview with the representatives of the DG Trade of the European Commission who were members of the EU negotiating team for the talks on AA/DCFTA with Ukraine. Interview has been done in Brussels on December 5, 2012. For analysis see A. Duleba, V. Benč, V. Bilčík, *Policy Impact of the Eastern Partnership on Ukraine. Trade, energy, and visa dialogue*. Bratislava: Research Center of the Slovak Foreign Policy Association, 2012. Available online: <http://www.sfpa.sk/dokumenty/publikacie/372> (accessed on March 2, 2017). The European Commission has outlined the nature of a Deep and Comprehensive Free Trade Agreement in its Communications on "Strengthening the ENP" of December 4, 2006 – COM(2006)726, "A Strong ENP" of 5 December 2007 – COM(2007)774, and, in particular, in its non-paper on the "ENP – a path towards further economic integration." Available online: http://ec.europa.eu/world/enp/pdf/non-paper_economic-integration_en.pdf (accessed on March 21, 2017).

²⁶ See Y. Mostovaya, T. Silina, "O komplekse mer po vovlecheniyu Ukrainy v yevraziyskiy integratsionnyy process," *Zerkalo nedeli*, August 16, 2013. Available online: http://gazeta.zn.ua/internal/o-komplekse-mer-po-vovlecheniyu-ukrainy-v-evraziyskiy-integratsionnyy-process_.html (accessed on March 21, 2017).

²⁷ "Ukraine and Russia. Trading Insults," *Financial Times*, August 24, 2013. Available online: <http://www.economist.com/news/europe/21583998-trade-war-sputters-tussle-over-ukraines-future-intensifies-trading-insults> (accessed on March 21, 2017).

²⁸ "Ukraine suspends talks on EU trade pact as Putin wins tug of war," *The Guardian*, November 21, 2013. Available online: <http://www.theguardian.com/world/2013/nov/21/ukraine-suspends-preparations-eu-trade-pact> (accessed on March 21, 2017).

because the then Ukrainian leaders decided not to sign the agreement with the EU.²⁹ Russia has shown she is ready to apply any means she has in order to stop the economic integration of Ukraine with the EU.

EU prime ministers, including those who are against EU sanctions on Russia adopted in the context of the recent conflict, repeat that they want just one main thing: more jobs for their citizens and consequently their voters. More jobs are possible if we have more trade and investment. It might happen that Prime Minister of Portugal could fully disagree with Prime Minister of Poland when it comes to evaluation of various political aspects of the EU relations with Russia or Ukraine and vice versa when it comes to evaluation of the EU interest in Northern Africa. However, Prime Minister of Portugal and Prime Minister of Poland agree that if there is any possibility in the EU external relations with third countries for a contractual deal which facilitates expansion of single market of the EU, e.g. brings more trade, investments and jobs, it is a good deal. In other words, the offer to Eastern Europe was made with a perspective that the deal is a win-win and would benefit everyone.

Prime Ministers of all member states agreed that Eastern Europe should be offered Association Agreements with DCFTA. There are always groups of member states, which securitize that or other issue in international relations trying to get it on the common EU agenda. However, the practice of the EU decision-making in the field of external relations shows that more successful are those members who manage to connect a given securitized issue with economic benefits for all member states. Therefore it often happens that expansion of single market becomes the key common ground for finding consensus among the member states in the field of the EU external relations. One can like or dislike the way the member states make decisions in the field of the EU foreign policy; nevertheless that's the reality of the EU internal decision-making process. This way, the EU looks like a heavy-footed elephant on international scene that might be characterized as follows: it takes too much time for him to start to move, however if it starts to move it is very difficult to stop him.³⁰ The EU responded on Russian tanks in Georgia in 2008 by a consensual decision to expand single market to the post-Soviet area. In other words, the EU elephant decided to move to post-Soviet area after war in Georgia. And that's why the EU is a direct part of the Russian-Ukrainian conflict and should adjust both its institutions and policies to approach the prob-

²⁹ "Ukraine's revolution and Russia's occupation of Crimea: how we got here," *The Guardian*, March 5, 2014. Available online: <http://www.theguardian.com/world/2014/mar/05/ukraine-russia-explainer> (accessed on March 21, 2017).

³⁰ Author's inspiration by a metaphor of "the EU as elephant on international scene" comes from the writing by M. Emerson with N. Tocci, M. Vahl and N. Whyte, *The Elephant and the Bear. The European Union, Russia and Their Near Abroad*. Brussels: Centre for European Policy, 2001. Available online: http://aei.pitt.edu/32565/1/4_The_Elephant_and_the_Bear.pdf (accessed on March 21, 2017).

lem. Definitely, it will take some time for it, but it is of critical importance for the EU that it happens the same way as it has been happening over the last three decades.

1.1.2 CONCEPTUALIZING DIFFERENTIATED AND/OR FLEXIBLE INTEGRATION

Most of academic studies theorizing on correlation between the deepening of the European integration process within the European Communities/European Union and its enlargement through the export of its norms and rules to the third countries agree that the turning point for the approximation of both processes has been the creation of the European Communities' single market through the adoption of the Single European Act in 1986 (SEA; in force since July 1, 1987). The SEA was the first major revision of the 1957 Treaty of Rome, which, first, transformed the former European Communities into a united European Community thus breaking it through to the European Union (Maastricht Treaty 1992; in force since November 1, 1993), second, it set the objective of establishing a single market by the end of 1992, and finally, it established European Political Cooperation, the forerunner of the EU Common Foreign and Security Policy. The SEA (Article 13) defined the internal market as "an area without internal frontiers in which the free movement of goods, services, persons and capital is ensured."³¹

Sieglinde Gstöhl (2007) argues that it was the Community's main trading partners, especially the United States and the EFTA countries that placed the external dimension of the SEA on the political agenda by voicing concerns over the effects that the completion of the internal market would have on them.³² In an attempt to dispel their fears, the Hannover European Council in June 1988 declared that the internal market should not close in on itself but "be open to third countries" in conformity with GATT provisions and "seek to preserve the balance of advantages accorded, while respecting the unity and the identity of the internal market". In October 1988 the European Commission set out the principle that establishment of the single market by 1992 would be of benefit to member states and third countries alike, that it would not mean protectionism, that the Community would meet its international obligations, and that it would help strengthen the multilateral system on a reciprocal basis.³³

³¹ "Single European Act," *Official Journal of the European Communities*, No L 169, 29.6.87, p. 169/7.

³² S. Gstöhl, *Political Dimensions of an Externalization of the EU's Internal Market*. Brugge, Natolin: College of Europe, EU Diplomacy Papers 3/2007, p. 5.

³³ "Conclusions of the Presidency of the Hanover European Council," June 27–28, 1988. *Bulletin of the European Communities*, No. 6/1988, pp. 164–167, p. 165; "Europe 1992: Europe World Partner." Information Memo P-117, Brussels, 19. 10. 1988. Spokesman's Service of the European Commission. Both EC documents are quoted here from Gstöhl, 2007, op. cit.

Furthermore, Gstöhl (2007) documents growing understanding by the EU institutions in the course of time that there is a direct correlation between the internal market and its external dimension. Thus, the Commission stresses that globalization “increasingly blurs the distinction between the internal and external markets” and that the challenge for the SEA was “to respond to the dynamism and change that flows directly from Europe’s engagement with the world economy”. The internal market will never be “finalised” or “complete” because it is constantly adapting to new realities and because gaps remain, rules are not always fully implemented and enforced, and new types of barriers emerge as markets evolve. Moreover, for the internal market to function properly, the EU must ensure that its principles are adequately reflected in international relations. Together with the member states, the Commission promotes internal market norms when negotiating international agreements or enlargements, in regulatory dialogues with third countries and in the international fora dealing with internal market policies such as the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO) or the Basel Committee on Banking Supervision. Gstöhl (2007) also notes that together with the end of the Cold War that gave rise to a spread of market economies and neoliberal policies, the completion of the internal market triggered a series of preferential EU agreements with third countries as well as efforts of regionalization in other areas of the world.³⁴

As already referred above David Kennedy and David Webb (1993) argue that at the time of establishing single market and transforming EC into the European Union, Brussels has insisted that legal and economic integration between the EC and the members of EFTA, – especially after the decision of the three former EFTA countries, i.e. Austria, Finland and Sweden to accede to the EU by mid 1990s, – should come before the “grand enlargement” that would include former communist states from Central Eastern Europe (CEE). Therefore EC engaged in talks with the remaining EFTA members, i.e. Norway, Island, Lichtenstein and Switzerland, with the aim to identify modalities for their integration into the single market, while consequently it offered CEE countries the conclusion of European Association Agreements.³⁵

Sandra Lavenex (2011) summarizes that since the 1990s, the EU has engaged into the active promotion of its *acquis communautaire* to third countries and international organizations. This development is most notable in the EU neighbourhood, where the EU has devised alternative forms of integration below the threshold of membership. The launch of the European Economic Area (EEA) in

³⁴ Gstöhl, 2007, op. cit., p. 6, reference source: “A Single Market for Citizens. Interim report to the 2007 Spring European Council,” Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Brussels, COM(2007) 60 final, February 21, 2007, p. 3.

³⁵ Kennedy, Webb, 1993, op. cit., p. 1102.

1992 was to offer the members of the European Free Trade Association (EFTA) participation in the single market despite these countries' decision not to formally join the EU. Lavenex (2011) argues that after the successive accession of 15 new member states in 1995, 2004 and 2007, the approach of the EU towards the remaining candidate countries oscillates between a remote accession perspective and support for parallel regional integration based on the EU *acquis*, which can be interpreted as the institutionalization of a "waiting room" for membership. In this line the European Neighbourhood Policy (ENP) launched in 2004, was, following to Lavenex (2011), the first overt attempt to design a new form of association that provides "willing" neighbouring states with an alternative to enlargement.³⁶

When it comes to theoretical explanation of correlation between the internal and external dimension of European integration and thus also a role of the EU in international relations, academic literature in the field widely refers on the conception of the *EU as a Civilian Power* by François Duchêne. Following to Duchêne (1973), "the civilian power approach dissolves the strict distinction between the domestic and the external as its goal is: to domesticate relations between states, including those of its own members and those with states outside its frontiers. This means trying to bring to international problems the sense of common responsibility and structures of contractual politics which have been in the past associated exclusively with home and not foreign, that is alien, affairs." Duchêne argues that the way the EU behaves as an international actor might be characterized by the following three main features: first, it gives priority to diplomatic cooperation in dealing with international problems; second, it applies economic power as a tool to achieve its political goals; and third, it is willing to rely on international law and international institutions that produce internationally binding decisions to settle international disputes and ensure international progress.³⁷

Almost two decades later Ian Manners (2002) came up with a conception of the *EU as a Normative Power*, which is also widely accepted by academic literature in the field. As to Manners, the EU definitely is not a military power, however, its role in international relations could not be reduced just to a civilian power that has an intergovernmental nature and applies solely an economic power in its relations with third countries. The EU, as to Manners, is a normative power which does have an ideational nature determined by its basic principles and values. The fundamental values of the EU, i.e. peace, freedom, democracy, rule of law, respect to human rights and good governance, shape the soft power of the EU and make it a strong actor in international relations, which is capable to exert

³⁶ Lavenex, 2011, op. cit., 373.

³⁷ F. Duchêne, "The European Community and the uncertainties of interdependence," in M. Kohnstamm and W. Hager, eds, *A Nation Writ Large? Foreign-Policy Problems before the European Community*. London: Macmillan, 1973, p. 19, 20.

its influence on third countries and thus to achieve its political goals.³⁸ Richard G. Whitman and other authors elaborated on the Normative Power Europe conception by evaluating a soft power potential of the expanded list of fundamental European values included in the Article 2 of the Lisbon Treaty of 2009.³⁹

Chad Damro (2012) complemented the above Duchêne's and Manners' conceptions by the third one of the *EU as Market Power*. Following Damro, the single market does represent the basis of the material existence of the EU. It is the largest market in the world as to volumes of traded goods and services. Producers of goods and services providers all over the globe want get access to it, and naturally, first of all those from the neighbouring countries. The price for getting an access to the EU market equals the transposition of the EU market norms and rules by the acceding countries. That is what makes the EU a strong market power, which is capable through the trade and investment agreements with the third countries externalize its internal economic environment and to transpose its regulatory framework to external world. Functioning of the EU market follows the economic logics, which stipulates that the larger market is better than a smaller one. This market logic is a vehicle, which pushes for permanent expansion of the EU market. As to Damro, the history of the EU enlargement makes it evident that the expansion of the EU single market is much more dynamic in comparison to the enlargement of the EU political institutions and/or political membership of third countries in the EU.⁴⁰

The above conceptualizations do not contradict and/or eliminate each other, rather they provide complementary explanations of the main sources of the EU's power in international relations. However, Damro's conceptualization brings us closer to another set of academic literature, which tries to conceptualize differentiated and/or flexible integration within and outside of the EU since the early 1990s. Sandra Lavenex (2015) argues that for most of its existence, the European integration project has been imagined as a territorially, culturally, legally and institutionally relatively bounded process of institution-building between the participating European states. In the last decades, these boundaries have increasingly been reconsidered, both from within and from without. Internally, member states have opted for various forms of selective participation. Externally, numerous countries have become affiliated with sections of the *acquis communautaire*.⁴¹

³⁸ I. Manners (2002) Normative power Europe: a contradiction in terms? *Journal of Common Market Studies* 40(2): 235–258.

³⁹ R.G. Whitman, ed., *Normative Power Europe*. Palgrave Macmillan, 2011.

⁴⁰ Ch. Damro, "Market Power Europe," *Journal of European Public Policy* Vol. 19, No. 5, 2012, pp. 682–99.

⁴¹ S. Lavenex, "The external face of differentiated integration: third country participation in EU sectoral bodies," *Journal of European Public Policy* Vol. 22, No. 6, 2015, pp. 836–53, p. 836.

Katharina Holzinger and Frank Schimmelfennig (2012) note that some rules and policies of the European Union (such as monetary policy) apply to a subset of the member states only; others (such as many internal market rules) have been adopted by non-members; others again (such as the Schengen regime) do not apply in some of the member states but apply in some non-member states. All of these policies, in which the territorial extension of European Union (EU) membership and EU rule validity are incongruent, are cases of differentiated (or flexible) integration.⁴² They refer also on widely accepted and used three-way classification of differentiated integration by Alexander Stubb (1996) who distinguishes concepts based on: first, temporal differentiation ("time"), such as "two- or multi-speed Europe"; second, territorial differentiation ("space"), such as "core Europe" or "Europe of concentric circles"; and finally, third, sectoral differentiation ("matter"), such as "variable geometry" or "Europe a la carte."⁴³

When it comes to flexible integration of non-EU member countries, most of authors in the field, refer to the concept of "extended" and/or "externalized" governance. Following Sandra Lavenex (2008) concept of "extended governance" refers to an expansion of the "regulatory and the organisational" boundaries of the EU towards the territory of non-member countries. The "regulatory boundary" dimension covers the amount of issues addressed by an agreement, the legal obligations arising from it and the modalities through which compliance is monitored. The "organisational boundary" dimension refers to the stake third countries possess with respect to the shaping and implementation of decisions and the participation in agencies or programmes.⁴⁴ In her another study, Lavenex (2015) specifies that EU regulatory extension is the product of both direct foreign policy initiatives (such as the European Neighbourhood Policy) and of indirect, sector-specific policy diffusion. The foreign policy logic is political and serves the interest of the EU as a whole. A third country's inclusion in a specific regulatory body is not a goal in itself but is an instrument in a foreign policy that is based on the extension of the EU's *acquis communautaire*. Organizational inclusion thus aims to prepare for EU accession, familiarize with the *acquis communautaire* or, from a more symbolic perspective, express a privileged relation with the Union. Flexible integration in trans-governmental structures hence reflects third countries' overarching association status vis-a-vis the EU.⁴⁵

In a line with the above explanations Stefan Gänzle (2008) proposes to conceptualize the European Neighbourhood Policy (ENP) as a form of externalized

⁴² K. Holzinger, F. Schimmelfennig, 2012, op. cit., p. 296.

⁴³ A.C. Stubb, "A categorization of differentiated integration," *Journal of Common Market Studies*, 34(2), 1996, pp. 283–95.

⁴⁴ S. Lavenex, "Extended Governance: The European Union's Policies towards Its Neighbours," *European University Institute, NewGov Policy Brief* No. 27, Spring 2008, p. 2.

⁴⁵ Lavenex, 2015, op. cit., p. 837.

EU-centred governance in order to partially integrate third countries of the immediate vicinity into “policy-taking” rather than “policy-making” processes of the EU. “Externalization of EU governance” makes an implicit claim suggesting that modes of internal governance are similar or at least comparable to the ones employed by the EU vis-à-vis the “world outside.” In a nutshell, the EU attempts to externalize its own system of governance beyond its borders, and, bluntly put, to make its immediate vicinity more like itself. Consequently, EU governance eases interaction, manages expectations with regards to the scope and scale of a relationship (ultimately controlling adjustment costs for the EU) and maximizes EU influence on policy-making processes in the third countries concerned.⁴⁶

The EU has been applying policy of a flexible and/or differentiated integration together with extension of its governance on its immediate neighbourhood since early 1990s. This comprises the Western neighbours, i.e. EEA countries (Norway, Island and Lichtenstein) and Switzerland, who, unwilling to join the Union, have nevertheless committed to wide sections of the *acquis communautaire*, furthermore, it concerns the candidates for membership, including the former candidates from Central Eastern Europe and the current ones from the Western Balkan, as well as, since 2004, the countries of the ENP, including Eastern Partners as from 2009. In addition, there are also important elements of partial integration, which are part of the EU agreement on Customs Union with Turkey. The above modes of a flexible integration with the EU are implemented through specific integrative contracts of respective countries with the EU.

All contracts are different to each other; nevertheless, they go far beyond the Free Trade Area (FTA) agreements the EU has concluded with other third countries, e.g. Latin American countries, South Korea, etc. It is true that all FTAs of the EU with third countries include some integrative elements; however, in case of FTAs, following Stephen Woolcock (2007), the EU does not pursue approximation and/or systematic transfer of its norms. As a rule, “standard” FTAs of the EU do not include obligatory approximation with the *acquis communautaire*, and, when it comes to level of integration, most of them are limited to acceptance of the so-called Singapore issues by a third country, i.e. WTO provisions concerning trade facilitation, transparency in government procurement, investment and competition.⁴⁷ Unlike the contractual frameworks for EU relations with EEA countries, Switzerland, Turkey, Western Balkan countries, and Eastern Partner countries, including Ukraine, “standard” FTAs do not come within the ambit of differentiated European integration.

⁴⁶ S. Gänzle, “Externalizing EU Governance and the European Neighbourhood Policy: Towards a Framework for Analysis.” Paper prepared for presentation at the Annual Meeting of the Canadian Political Science Association, UBC, Vancouver, June 4–6, 2008, pp. 3–5.

⁴⁷ S. Woolcock, “European Union policy towards Free Trade Agreements,” *ECIPE Working Paper* No. 3/2007, p. 4.

1.1.3 EXISTING CONTRACTUAL FRAMEWORKS IN A COMPARATIVE PERSPECTIVE

This part of the study aims at exploring a “localisation” of Ukraine’s Association Agreement on the map of the EU’s contractual frameworks with third countries, which come under conceptualization of differentiated integration. In our comparative analysis we focus on the two key dimensions of respective agreements, which were identified by Sandra Lavenex (2011): first, scope of approximation with the *acquis communautaire* (regulatory boundary), and second, an access to the EU institutions (organizational boundary), which determines how far regulatory extension is accompanied by organizational inclusion relating to possibilities of respective countries to participate in the determination of relevant *acquis*.⁴⁸ We pay special attention to the latter as it indicates the level of an *institutional integration* of a contracting country with the EU without formal political membership.

European Economic Area

European Economic Area (EEA) Agreement between the EU and the three EFTA countries –Norway, Island and Lichtenstein – was signed in 1992 and entered into force in 1994.

The EEA Agreement provides for the inclusion of EU legislation in all policy areas of the Single Market. This covers the four freedoms, i.e. the free movement of goods, services, persons and capital, as well as competition and state aid rules, but also the following horizontal policies: consumer protection, company law, environment, social policy, and statistics. In addition, the EEA Agreement provides for cooperation in several flanking policies such as research and technological development, education, training and youth, employment, tourism, culture, civil protection, enterprise, entrepreneurship and small and medium-sized enterprises. It guarantees equal rights and obligations within the Single Market for citizens and economic operators in the EEA. However, it does not cover the following EU policies: common agriculture and fisheries policies (although it contains provisions on trade in agricultural and fish products); customs union; common trade policy; common foreign and security policy; justice and home affairs (the EEA EFTA states are, however, part of the Schengen area following their Schengen association agreements); direct and indirect taxation; or economic and monetary union.⁴⁹

⁴⁸ S. Lavenex, 2011, op. cit., pp. 374–5.

⁴⁹ “European Economic Area. The Basic Features of the EEA Agreement,” Standing Committee of the EFTA States, Ref. 1112099, July 1, 2013. Available online: http://www.efta.int/sites/default/files/documents/eea/1112099_basic_features_of_the_EEA_Agreement.pdf (accessed on March 21, 2017).

The EEA Agreement established joint EU–EFTA three-level institutional framework for cooperation and implementation of the agreement: at the first and highest (intergovernmental) level: the EEA Council; at the second (ambassadorial) level: the EEA Joint Committee; and the EEA Sub–Committees (expert level). As to Sandra Lavenex (2011) the role of joint EEA institutions is rather a passive one as their main task is to adjust EEA Agreement and its annexes to the new EU acquis.⁵⁰ Nevertheless, the above institutional EEA set-up has become a pattern applied also for the European Association Agreements with the CEE countries that has been concluded in parallel with the EEA Agreement at the beginning of 1990s and later on also for the CEE countries Accession Agreements, Stabilisation and Association Agreements with the Western Balkan countries, and finally, Association Agreements with Eastern Partner countries, including Ukraine.

The EEA Agreement includes principle of *legal homogeneity* what forms its *dynamic nature* as the EFTA countries shall fully adopt EU acquis, including new legal acts adopted by the EU subsequently to the conclusion of agreement. In addition, EFTA countries are bound to align with the case law of the European Court of Justice, which constitutes the secondary source of legal dynamism of EEA. Monitoring of implementation is ensured by the Surveillance Authority that can launch infringement procedures against non-compliant member states, and by the EFTA Court that is responsible for enforcing legal homogeneity across EEA while respecting the jurisdiction of European Court of Justice.⁵¹ Sandra Lavenex (2011) argues that the *legal homogeneity maxim* requires from the EEA EFTA states a constant alignment with the EU acquis in the areas covered by the Agreement. The intensity of the obligations arising from EEA law is comparable to that of Community law. This was confirmed in a ruling by the EFTA Court according to which the EEA legal order is to be situated at a half way position between supranational Community law and classic international law. Control is exerted by the EFTA Surveillance Authority with the power to launch infringement procedures and a juridical monitoring body, the EFTA Court. Although both institutions are not EU organs, their point of reference clearly is the EU jurisprudence. The compliance record demonstrated by the EEA EFTA states is similar to that of the EU member states.⁵²

While in formal terms the EEA agreement allows for country-specific derogations or adaptations to EU instruments, the EEA EFTA countries have rarely used these possibilities. The only condition under which the EEA EFTA countries can insert exceptions into the agreement is when they demonstrate that objective criteria (e.g. size, sparsely populated territory) are at odds with an implementation. Also, individual EEA EFTA states may exercise the right of reservation to

⁵⁰ S. Lavenex, 2011, op. cit., p. 377.

⁵¹ Ibid, pp. 376–7.

⁵² Ibid, pp. 377–8.

avert the inclusion of predetermined norms into the EEA *acquis*. However, the EU axiomatic insistence on the legal homogeneity within the EEA territory requires the proposition of an equivalent solution by the responsible Joint Committee, which is made up of ambassadors of the EEA EFTA States, representatives from the European Commission and EU Member States. Given the complexity of and interdependence between policies the EEA EFTA states have so far always agreed to include the contested measures into the EEA *acquis* sooner or later.⁵³ Ole Gunnar Austvik (2010) notes that so far, the right to veto has not been used by any EFTA country. This is partly due to the fact that, in case of a veto (reservation), the EU can take the entire area in question out of the agreement, which may incur substantial disadvantages for EFTA countries.⁵⁴

Following Roman Petrov (2008) the incorporation of the *acquis communautaire* within the EEA Agreement takes two procedural forms: “decision shaping” and “decision taking”. These procedural forms are exercised within a twin-pillar EEA structure, which comprises EU and EFTA institutions. This means that both decision-shaping and decision-taking within the EEA are conducted under close cooperation between EU and EFTA bodies. At the same time, neither the EFTA institutions nor the EEA member states are involved in EU decision-making. In accordance with Article 99(1) of the EEA Agreement, decision-shaping provides a forum for early consultations of the European Commission with the EFTA countries’ experts. The Commission shall informally seek advice from the EFTA experts in the same way as it seeks advice from the EU Member States for the elaboration of its proposals. This means that the EFTA member states’ experts may access Commission committees for the purpose of taking part in drafting the relevant EU legislation. Participation in the committees ensures the efficient incorporation of new EU legislation. Then the Commission transmits to these experts a copy of a drafted legislative proposal in the areas covered by the EEA Agreement. Thereafter, a preliminary exchange of views on the proposal takes place in the EEA Joint Committee at the request of one of the Contracting Parties.⁵⁵

The objective of the “decision-taking procedure” is to ensure the legal homogeneity of the EEA. Within this procedure, the EEA Joint Committee takes decisions to ensure as closely as possible the simultaneous application of the new and old *acquis communautaire* within the annexes of the EEA Agreement. For this purpose, the Commission is responsible for “early warnings” to EFTA countries, via the EEA Joint Committee, whenever the EU legislature adopts new legislation

⁵³ Ibid

⁵⁴ O.G. Austvik, “EU Regulation and National Innovation: the Case of Norwegian Petroleum Policy,” in: N. Veggeland, ed., *Innovative Regulatory Approaches*. Nova Science Publishers, Inc., 2010, pp. 103–30, p. 113.

⁵⁵ R. Petrov, “Exporting the Acquis Communautaire into the Legal Systems of Third Countries,” *European Foreign Affairs Review* 13, 2008, pp. 33–52, pp. 44–45.

on an issue governed by the EEA Agreement. Thereafter, the EEA Joint Committee is expected to make every effort to ensure the amendment of a relevant EEA Agreement annex. None of the EU external agreements replicates the depth of the formal and/or informal involvement of third countries into the EC legislative process in the EEA Agreement.⁵⁶

As said above the European Commission must seek the advice from EFTA experts in the same way it seeks advice from experts from the EU member states. Art. 100 of the EEA Agreement calls on the Commission to ensure “as wide participation as possible” in the preparatory stage of draft measures and that it refers to these experts on an equal basis with EU experts when drafting such measures. This entails that experts and officials from the EFTA states participate in the preparatory phases of the legislative process in more than 200 Commission committees. However, as Marius Vahl and Nina Grolimund (2006) note the European Commission and the EFTA states disagree on the precise extent of the legal right of participation in Commission comitology committees. This is in any case a challenging and resource-intensive process for the EFTA states, since they must work quickly if they are to consult with domestic interests in order to represent national interests effectively. Following their research Vahl and Grolimund (2006) refer that some interviewed officials claimed that the existence of the EFTA Secretariat was an important reason why the EEA functions smoothly. Although the EFTA Secretariat helps in the process of identifying issues, there is still a danger that EEA positions are not firmly established in time.⁵⁷

Sandra Lavenex (2011) summarizes that the main avenue for EFTA countries’ access to the EU institutions is their involvement in the EU comitology. *Comitology committees* are expert committees set up by the Commission in the agenda setting stage before the legislative process within the central EU institutions, e.g. Council and Parliament. Comitology committees assist the Commission in drafting new legislation as advisory bodies. They are open to EEA EFTA states and grant them equal participation rights, however, without right to vote. Another form of involvement of EFTA states into EU structures granted by the EEA Agreement is their right to participate in the *EU programs* and respective program committees as well as *EU agencies*.⁵⁸ It is up to EFTA states to identify the level of their involvement in the EU programs and agencies, which might range from full membership to observer status.

⁵⁶ Ibid, p. 45.

⁵⁷ M. Vahl, N. Grolimund, *Integration without Membership. Switzerland’s Bilateral Agreements with the European Union*. Brussels: Centre for European Policy Studies, 2006, p. 84.

⁵⁸ S. Lavenex, 2011, op. cit. For the status and role of the Comitology committees, including the competencies of the European Commission to establish them see: “Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1999/468/EC),” *Official Journal*, No L 200, p. 11, July 22, 2006.

However, there is one exemption from the rule when it comes to the access of the EEA countries and Switzerland to the central legislative and policy-making EU institutions. Their Schengen association agreements provide them with full access to the Council at all its levels without right to vote. In practice, this arrangement entails participation by non-member states in the EU's Council of Ministers and its important sub-groups, the COREPER and the working groups, as well as in the Commission's working groups responsible for the preparation and implementation of Schengen legislation alongside the member states. The associates participate in the discussions on an equal basis with the EU member states, but do not have a vote. The fact that decisions are usually made by consensus reduces the significance of the absence of a formal vote, even though the search for consensus does not have to extend to the associated partners.⁵⁹

In the present practise of the EU external relations, the EEA Agreement with Norway, Island and Lichtenstein provides for the highest level of economic and institutional integration of third countries with the EU without formal political membership.

Swiss bilateralism

Switzerland did not conclude the EEA Agreement together with the remaining EFTA states due to "no" vote referenda in 1992. Therefore, its relations with the EU are not framed by one comprehensive contractual framework. Instead, Swiss–EU relations are regulated by an extensive set of bilateral agreements. The EU has concluded more bilateral agreements with Switzerland than with any other third country at all. Between 1994 and 2004, the Swiss government negotiated two sets of bilateral sectoral agreements with the EU. The first set of seven such agreements, known as Bilateral I, were concluded in 1998 and entered into force in June 2002. A second set of nine agreements, known as Bilateral II, were signed in October 2004. 25 agreements were concluded before 1994 of which the most important is the 1972 Agreement between the European Communities and Switzerland (the "free trade agreement"). The 1972 agreement (formally consisting of two agreements, one with the European Community and one with the European Coal and Steel Community) is frequently referred to as the "free trade agreement", despite the fact that there is no reference to free trade in the title. Together with secondary agreements, the total number of bilateral agreements that frame the present day relations between Switzerland and the EU is circa 120.⁶⁰

⁵⁹ M. Vahl, N. Grolimund, 2006, op. cit., p. 36.

⁶⁰ See S. Lavenex, "Switzerland's Flexible Integration in the EU: A Conceptual Framework," *Swiss Political Science Review* 15(4), 2009, pp. 547–75, pp. 551–2; and M. Vahl, N. Grolimund, 2006, op. cit., p. 6, pp. 22–23.

As a general rule, each bilateral sectoral agreement between the EU and Switzerland is managed by a Joint or Mixed Committee. These bodies are composed of representatives from the EU and Switzerland and make decisions by consensus.⁶¹ The absence of central coordinating institutions or overarching macro structures mirrors the formally weak legalisation of Swiss–EU association. Contrary to the EEA and Association Agreements, there is no EU–Switzerland Association Council or overarching Joint Committee. Instead, relations are managed in a decentralised way within each sectoral agreement by the respective “mixed committees”. The mixed committees are in charge of managing both the technical and the political aspects of the bilateral agreements through information exchange and, when necessary, extension of EU legislation relevant for Switzerland.⁶² Another specific institutional arrangement of the Swiss bilateralism concerns the fact that most EU agreements with third countries are managed by the Directorate General (DG) for External Relations of the European Commission, which has been transformed into European External Action Service (EEAS) in 2011. On the EU–Swiss agreements, the management of the joint committees is divided among the relevant sectoral Directorates General of the European Commission. EU–Swiss relations here differ from most other EU relationships with third countries, in which EEAS plays the lead role on the EU side. In the Swiss case, EEAS is only responsible for the 1972 agreement and the Schengen association agreement.⁶³

Marius Vahl and Nina Grolimund (2006) note that due to the significant differences between the sectoral agreements, one can in fact speak of several Swiss models of association with the EU. There is for instance an EU–Swiss “air transport model”. Here the *acquis* is explicitly the legal basis of cooperation, and the EU institutions – the European Commission and the European Court of Justice – have competences in surveillance and arbitration in specified areas (in this case competition and state aid policies in the field of civil aviation). The Schengen association agreements provide another model differing from the standard EU cooperation and association agreements. Representatives of the associated states, i.e. EEA states and Switzerland, here participate with a say, but not a vote, in the EU Council of Ministers machinery (in the guise of the Schengen Mixed Committee) at the level of experts, junior and senior officials and ministers. As in the “air transport model”, participation of the associated state is explicitly based on the *acquis*.⁶⁴

However, as Sandra Lavenex (2009) points out, with the above exception of air transport and the Schengen agreements, the EU’s *acquis communautaire* is not automatically the basis of the other bilateral Swiss–EU agreements; the con-

⁶¹ M. Vahl, N. Grolimund, 2006, op. cit., p. 34.

⁶² S. Lavenex, 2009, op. cit., p. 554.

⁶³ M. Vahl, N. Grolimund, 2006, op. cit., p. 113.

⁶⁴ Ibid

sensus brought about by the negotiations can be referred to as *acquis helveto-communautaire*. The obligations created by the bilateral agreements are precise although they might include specified derogations from the *acquis*. Rather, the legal obligations arising under the bilateral agreements come closer to traditional international than to supranational EU law. The maxim underlying the relations between the two parties is not that of “legal homogeneity” as in case of EEA states, but the recognition of the *equivalence of legislation*. In addition, there is no systematic monitoring of the transposition of EU *acquis* to Swiss national legislation, neither juridical nor political. The monitoring of compliance with the obligations contained in the bilateral agreements is ensured by each one of the parties on their respective territory. Swiss legislative process includes the *autonomer Nachvollzug* rule, following which, each new Swiss legislation is checked if it complies with the EU *acquis*. Finally, there are no judicial supervision organs to monitor harmonization; it is based on *good faith* principle.⁶⁵

By contrast to EEA, the Swiss agreements allow for much more limited participation by Swiss experts in the EU comitology. This is due to the sector-specific approach and that, with the exception of the field of civil aviation and Schengen, the agreements do not amount to a wholesale adoption of the *acquis*. However, in connection with the conclusion of the Bilateral I package (in force since 2002), the EU Council adopted a declaration granting Swiss representatives the right to participate as observers with a right to speak, but not to vote, in committee meetings in the areas of research, air transport, social security and recognition of diplomas. In addition, the Commission is committed to consult with Swiss experts on an equal basis with experts from EU member states in fields where Swiss legislation is recognised as equivalent to the *acquis*. Switzerland also benefits from its observer status in the EFTA Standing Committee, which coordinates the position of the three EFTA EEA states on EEA matters.⁶⁶

Roman Petrov (2008) notes also that the EU–Swiss sectoral agreements imply the informal binding involvement of Swiss experts in the drafting of the dynamic *acquis communautaire*. Under the EEA Agreement, the Commission is obliged to consult the EFTA member states’ experts on the early stages of preparation of any new relevant EC law whereas, in contrast, the EU–Swiss information exchange procedure means that Switzerland must be notified of the *acquis* once it already has been adopted. During the preparatory drafting stage of the *acquis*, Swiss experts may be informed and consulted “as closely as possible” before and after the meetings of EU experts. It is only “at the request of one of the Contracting Parties [that] a preliminary exchange of views may take place in the Joint Committee” (Article 23 of the EU–Swiss sectoral agreement on air transport). The procedure of the EU – Swiss information exchange does not equate to the consul-

⁶⁵ S. Lavenex, 2009, op. cit.

⁶⁶ M. Vahl, N. Grolimund, op.cit., p. 85.

tation and information procedure set up within the EEA Agreement and the EU–Turkey Customs Union. Newly adopted *acquis communautaire* must be formally notified to Switzerland and vice versa within eight days. However, the EU–Swiss Joint Committees have full discretion on deciding whether to implement the new EU *acquis* into the Swiss legal system.⁶⁷

The Swiss bilateralism does represent a unique model of differentiated integration. In two sectorial policies of the EU, i.e. air transport and Schengen, it is identical to the EEA model when it comes to scope of the harmonization with the *acquis communautaire* as well as access to policy-shaping within the EU. In the remaining circa 120 sectorial agreements Switzerland can apply a *flexible harmonization* of the *acquis*, however, in a way that it ensures *equivalence* of its national legislation with the EU one. At the same time there is no judicial or political supervision authority and/or institutional mechanisms that would monitor the compliance of Swiss legislation with the EU *acquis* and/or impose its harmonization.

Turkey's Customs Union

Turkey and Greece applied for an Association Agreement with the European Economic Community (EEC) in parallel yet in 1959. The agreement envisaged the establishment of a customs union. In case of Greece the association agreement evolved into the accession to the EU in 1982, however, that has not been the case of Turkey. Following the accession of Greece, Turkey has applied for the EU membership in 1987. The EU agreed to start the accession talks with Turkey in 2004. Since then Turkey managed to open negotiations on 16 of the total of 35 chapters, however, it concluded talks just on one of them (science and research).⁶⁸

Therefore, the EU relations with Turkey are regulated by the Association Agreement known as the Ankara Agreement that was concluded in 1963. According to it, association of Turkey with the EEC was to be implemented in three stages: first, preparatory stage; second, transitional stage, and third, a final stage. During the preparatory stage, EEC granted unilateral concessions to Turkey in the form of agricultural tariff quotas and financial assistance. In 1967 Turkey submitted its application for negotiations on entering the transitional stage. The Additional Protocol to the Ankara Agreement was signed in 1970, and became effective in 1973. The basic aim of the Additional Protocol was the establishment of a Customs Union (CU). In 1995 it was agreed at the Association Council meeting that Turkey's CU will enter into force starting from January 1, 1996.⁶⁹

⁶⁷ R. Petrov, 2008, op. cit., p. 46, 49.

⁶⁸ See "European Neighbourhood Policy and Enlargement Negotiations," *European Commission*. Available online: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20170301-overview_negotiations_turkey.pdf (accessed on March 12, 2017).

⁶⁹ For more see S. Togan, "Opening up the Turkish Economy in the Context of the Customs Union with EU," *Journal of Economic Integration* 12(2), June 1997, pp. 157–79, pp. 158–9.

In fact, Turkey is the only candidate country that has already a customs union with the EU. At least with respect to trade in goods, Turkey is almost part of the Single Market. The EU–Turkish customs agreement is not restricted to conventional border controls, but moves significantly beyond that by addressing areas of regulatory or deep integration into the EU market in goods. It required that apart from the bilateral liberalisation of industrial tariffs and the alignment of external industrial tariffs, Turkey was obliged adopt the Community legislation, with respect to the elimination of technical barriers to trade, competition policies, protection of intellectual property rights and the administration of border procedures including rules of origin. Turkey was also required to adopt the Community's commercial policy towards third countries, including establishing free trade areas with all the EU's preferential partners, implementing various sectoral provisions (such as measures covering textiles and wearing apparel) and ensuring compatibility with international agreements for the protection of intellectual property rights. The EU–Turkish CU does not cover Common Agriculture Policy of the EU nor trade in agriculture products. It also does not include regulatory framework for trade in services, movement of capital and labour force.⁷⁰

As to Roman Petrov (2008) the aim of a customs union between the EU and a third country could entail a considerable degree of involvement by that third country's experts in the EU decision-making process. For instance, in accordance with Decision of the Association Council no. 1/95, Turkish experts should be informally consulted by the EU at the drafting stage of EU legislation where this falls in an area of direct relevance to the operation of the EU–Turkey CU. Petrov also notes that the Commission is not obliged to follow the advice of the Turkish experts. The experts may be involved in the work of a number of technical committees, which assist the Commission in the exercise of its executive powers, in areas of direct relevance to the functioning of the Customs Union (Article 60, Decision 1/95). In the EU–Turkey CU the procedure of information exchange is equivalent to that of the EU Member States. This means that Turkey must submit information to the Commission in all cases where the Member States must do so. In return, the Commission is obliged to share its reports and assessments with Turkey. The Parties are committed to publish all information related to the instruments employed.⁷¹

Following Sieglinde Gstöhl (2007) to some extent, the customs union's consultation mechanism in case of Turkey's CU has been taken from the EEA Agreement, but the flaws in the EEA provisions have been compounded by the failure to adjust them to reflect Turkey's involvement in the EU's trade policy. Even though the EU and Turkey should act in tandem, Turkey cannot affect the (re)negotiation of

⁷⁰ S. Ülgen, Y. Zahariadis, "The Future of Turkish – EU Trade Relations. Deepening and Widening," *Turkish Policy Quarterly* Vol. 3, No. 4, 2003, pp. 17–59, p. 19; see also S. Togan, 1997, op. cit., p. 158.

⁷¹ R. Petrov, 2008, op. cit., p. 46, 48.

trade agreements and is excluded from consultations on trade policy measures. In case of a dispute, the Association Council tries to find an agreement or may unanimously decide to submit the dispute to the European Court of Justice or an arbitration tribunal. In view of the supposedly temporary nature of the Customs Union, Turkey accepted to apply Community policies and legislation without taking part in the EU's decision-making process. The final goal of the association agreement was not the establishment of a customs union, but the completion of a real common market, thereby removing all barriers to factor movements between Turkey and the EU, including the possibility of a Turkish political membership.⁷²

The case of Turkey's CU as a model of differentiated integration is very interesting since even though limited scope of *acquis communautaire* Turkey has to align with, it provides for a relatively high level of institutional integration of Turkey within the policy-shaping of the EU in respective field of *acquis*, which makes it similar to the EEA model.

Other types of Association Agreements

In parallel to concluding EEA Agreement with Norway, Island and Lichtenstein in 1992, the first set of bilateral agreement with Switzerland (Bilateral I) in 1998, and the Customs Union with Turkey in 1995, the EU has concluded also *European Association Agreements* (EAAs) with the former three communist states in Central Eastern Europe (Czechoslovakia, Hungary and Poland) in 1992, Slovenia in 1996, Romania in 1997 and Bulgaria in 1998, and finally the *Stabilisation and Association Agreements* (SAAs) with the Western Balkan countries in 2010s. EAAs and SAAs, inspired by former Association Agreements of Greece and Turkey as of 1960s, include perspective of political membership against the full approximation with the *acquis communautaire*. However, what makes them clearly and substantially different from EEA, Swiss bilateralism and Turkey's Customs Union models of flexible integration is that the EAAs and SAAs do not envisage an obligation of the EU to involve experts from the associated countries into preparatory stage of legislative process.

Roman Petrov (2008) notes that remaining EU external agreements (except for EEA, Swiss bilateralism and Customs Union of Turkey) consider neither the formal nor the informal involvement of third countries in EU decision-making processes. Following to him, recent EU external agreements avoid references to such commitments. Instead, EU external agreements offer wider options for the mutual exchange of information, and technical/financial assistance, to encourage the export of the *acquis* into the legal orders of third countries. The EU external development agreements contain mere statements of intent for mu-

⁷² S. Gstöhl, 2007, op. cit., p. 13–14.

tual legislative cooperation.⁷³ In other words, Petrov (2008) assumes that the EU considers procedural means of involvement of third countries into its decision-making process suitable only for external agreements with a high level of mutual economic integration (customs union or access to mutual markets). As he rightly notes, even the EU external agreements with the objective of eventual EU membership (SAAs, EAAs) do not foresee the level of formal/informal involvement similar to that cited in economic integration agreements (EAA Agreement, EU–Turkey Customs Union). He concludes that the degree of involvement of third country experts in EU decision-making is linked to the nature of the harmonization/approximation commitments, and to the entire objectives of the EU external agreements. If these agreements envisage binding harmonization/approximation commitments, and if they pursue close economic integration (EEA Agreement, EU–Swiss sectorial agreements, Turkish Customs Union as an outcome of the 1963 Ankara Agreement), then some degree of formal/informal involvement is possible. On the other hand, EU external agreements that impose soft approximation/harmonization commitments, and which avoid the prospect of close economic integration (Partnership and Cooperation Agreements – PCAs: countries of the former Soviet Union, Euro-Mediterranean Association Agreements – EMAAs: countries of the Southern Mediterranean, Trade, Development and Cooperation Agreements – TDCAs: other third countries, e.g. the Republic of South Africa) do not include the possibility of involvement in EU decision-making. In this regard, he points out that the latest EU external agreements offer other options (informational assistance, technical and financial support) to third countries which have embarked upon the process of voluntary harmonization, in order to fulfil soft approximation/harmonization commitments.⁷⁴

Furthermore, Petrov (2008) argues that in the EAAs and SAAs the EU replaced direct involvement of contracting parties into decision-making process with providing technical assistance support, which includes also information exchange. He notes that in the EAAs and SAAs, the procedure of information exchange constitutes an intrinsic part of the technical assistance package on behalf of the EU. This technical assistance package is aimed at assisting contracting countries in their approximation efforts, and drafting their national legislation in accordance with EU standards to meet the aims of eventual EU membership. Instead of involvement into the EU policy-making process, the procedure of information exchange in the EAAs and SAAs presumes the EU's informational assistance to the

⁷³ R. Petrov, 2008, op. cit., p. 46. Together with Stabilisation and Association Agreements with the Western Balkan countries, Petrov includes also Partnership and Cooperation Agreements (PCA) with the former Soviet countries as well as Trade, Development and Cooperation Agreements (TDCA), e.g. with the Republic of South Africa, into the category of "EU external development agreements" as all of them envisage harmonization with *acquis communautaire* at least in certain minimal extent.

⁷⁴ Ibid, p. 47.

contracting countries on the correct application and enforcement of the *acquis communautaire* and EU policies. Besides, the procedure of information exchange also covers the public education dimension. For instance, the EAAs and the SAAs are supplemented by the so-called “information and communication procedure”, which is aimed at providing the general public of contracting countries with basic information on the EU and its policies and institutions through educational events, training and conferences.⁷⁵

In general terms, one can agree with the above explanation, however, it does not cast light on reasons why EAA and SAA agreements do include neither the formal nor the informal involvement of third countries into the EU decision-making processes. The main argument by Petrov (2008) concerning a possibility of “some degree of formal/informal involvement into EU decision-making” is that EEA Agreement, Switzerland’s extensive set of bilateral sectorial agreements and Turkey’s Customs Union envisage binding harmonization/ approximation commitments as well as pursue close economic integration, including mutual access to markets. However, former EAAs of Central European countries, including both former and present SAAs of the Western Balkan countries, do envisage binding harmonization/approximation commitments, including mutual access to markets, nevertheless they do not envisage any their involvement into decision-making process of the EU. Unlike Petrov, we do not think that there is directly proportional correlation between the range of harmonization/approximation together with the market integration on one hand, and institutional integration of the third countries and/or their involvement into the EU decision-making process on the other. In comparison with EEA, Swiss and Turkish contractual frameworks, EAAs and SAAs do establish much more asymmetric relationship between the EU and contracting countries.

1.1.4 UKRAINE’S ASSOCIATION AGREEMENT

In the concluding part of the study we aim at comparative analysis of Ukraine’s AA/DCFTA with other contractual frameworks examined above, which regulate partial integration of third countries into the EU single market and its four freedoms.

Our comparative analysis is built in along the two dimensions that allow for identifying types of the EU contractual frameworks with third countries as identified by Sandra Lavenex (2011), i.e. regulatory and organizational boundaries.⁷⁶ When it comes to *regulatory boundary* we compare Ukraine’s AA/DCFTA with other contractual frameworks on the base of the following three indicators: first,

⁷⁵ Ibid, p. 49.

⁷⁶ S. Lavenex, 2011, op. cit.

range of approximation/harmonization with the EU *acquis*, second, legal quality of the transposition of the EU *acquis* into national legislation, and third, the type of a supervision mechanism, which conveys a degree of integrative nature of the EU relations with contracting countries. Finally, we look at *organizational boundary* of Ukraine's AA/DCFTA against other examined contractual frameworks, i.e. if and how contracting countries are involved into policy-shaping process within the EU, especially when it comes to legislating norms they are committed to transpose into their national legislation.

Range of approximation

Former European Trade Commissioner Karel de Gucht who supervised talks on Association Agreements with the Eastern Partner countries noted that “these Association Agreements will provide one of the most ambitious levels ever of political association between the EU and a foreign country. They will affect businesses and citizens in several concrete ways since they cover most aspects of economic life – from consumer protection to company law, from environmental protection to education and training. They include a major trade component – a Deep and Comprehensive Free Trade Agreement or DCFTA in the jargon – which is the key driver for economic integration between the EU and the region.”⁷⁷ Indeed, Ukraine's AA/DCFTA goes far beyond the range of approximation to the *acquis communautaire* in comparison to EEA Agreement, Swiss bilateral sectorial agreements (SBSAs) and/or the Turkey's Customs Union (TCU). As to the range of approximation it is close to former EAAs of the EU with Central European countries as well as SAAs with the Western Balkan countries, which, however, included the membership perspective and thus also a commitment of given associated countries to comply with full EU *acquis*.

Unlike EEA Agreement Ukraine's AA/DCFTA covers also agriculture, fisheries and taxation as well as JHA and CFSP. Compared to Turkish CU, in addition to trade in goods it includes also trade in services. Ukraine's AA/DCFTA covers substantially all trade, including “sensitive” goods such as agricultural, steel and textile products. In addition to trade related issues AA/DCFTA establishes cooperation in 28 sectorial policies which are also based on gradual approximation with the EU *acquis* and, where relevant, with international norms and standards. Following the AA/DCFTA the vast majority of customs duties on goods will be removed as soon as the Agreement enters into force. Overall, Ukraine and the EU will eliminate respectively 99.1 per cent and 98.1 per cent of duties in trade value. The DCFTA provides tariff cuts which will allow the economic operators of both sides to save around 750 million euro per year on average. The transitional

⁷⁷ K. De Gucht, “EU trade policy looking East”. Speech at the Civil Society Trade Seminar, Warsaw, October 3, 2011; <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/625&format=HTML&aged=0&language=EN&guiLanguage=en> (accessed on March 15, 2017).

period until full liberalisation spans over 7 years only for the EU while up to 10 years for Ukraine (de facto 15 years for cars). The budget spending on legal and institutional reforms in trade-related areas will be supported by the EU along with funds from International Financial Institutions. It is part of the commitments made that the EU and IFIs will provide over 12 billion of euro in support to implementation of the Agreement as well as Ukraine's macro-financial stabilisation and reform process.⁷⁸

When it comes to exemptions from *acquis communautaire*, similarly to EEA Agreement, Ukraine's AA/DCFTA does not include common trade policy, economic and monetary union. However, Ukraine has to consult the EU on the matter of compliance with the Agreement should it plan to establish FTA with third country or join the customs union established by a group of third countries. In a sum, AA/DCFTA envisages that Ukraine will adopt about 95 per cent of the EU trade and economic related *acquis communautaire*.⁷⁹ As to the range of approximation to the *acquis communautaire*, AA/DCFTAs of Ukraine, Moldova, and Georgia are the second most "ambitious" contractual frameworks of the EU with third countries following the EAAs and SAAs. They are much more ambitious than EEA Agreement with Norway, Island and Lichtenstein, Swiss bilateral sectorial agreements (SBSAs) and Turkish CU. Ukraine's AA/DCFTA as well as AAs of Moldova and Georgia envisage the largest adoption of *acquis* among all existing contractual frameworks of the EU with third countries, which do not include membership perspective.

Legal quality

The key provision underpinning Ukraine's AA/DCFTA sets out the concept of *gradual approximation* of Ukraine's legislation to EU norms and standards. Specific timelines are set, within which Ukraine should approximate its legislations to the relevant EU *acquis*. The Agreement includes 43 Annexes setting out EU legislation to be taken over by a specific date. Timelines vary between 2 and 10 years after the entry into force of the Agreement.⁸⁰

Another guiding provision of AA/DCFTA sets out the concept of *dynamic approximation*. This concept reflects the reality that the EU law and legislation is not static but under constant evolution. Thus the approximation process of Ukraine's national legislation to the EU *acquis* shall be dynamic and should keep pace with

⁷⁸ "EU-Ukraine Association Agreement: Quick Guide to the Association Agreement," European External Action Service – Delegation of the European Union to Ukraine. Available online: http://eeas.europa.eu/archives/delegations/ukraine/eu_ukraine/association_agreement/index_en.htm (accessed on March 15, 2017), p. 4.

⁷⁹ Author's interview with the representatives of the DG Trade of the European Commission who were negotiating DCFTA part of Ukraine's Association Agreement; interview was held in Brussels on December 5, 2012.

⁸⁰ EU-Ukraine Association Agreement, op. cit., p. 2.

the principal EU reforms, but in a proportionate way, taking account of Ukraine's capacity to carry out the approximation. Following the Agreement, the EU should inform Ukraine well in advance about any changes of respective legislation, and subsequently Association Council can amend the annexes to the agreement following the changes in the EU *acquis*. After approximation of its national legislation Ukraine should request for recognition of equivalence.⁸¹

In terms of legal quality of transposition of EU *acquis* to national legislation AA/DCFTAs (of Ukraine, Moldova and Georgia) are less ambitious than EEA Agreement, SBSAs, TCU, EEAs and SAAs. Regulatory transposition of the EU *acquis* to national legislation of third countries can reach from the full projection of the EU's *acquis communautaire* (as in case of EAAs and SAAs) to more selective norm-transfer (as in case of EEA, SBSAs and TCU). As to Sandra Lavanex (2011) the legal quality of commitments varies between quasi-supranational harmonization, looser notions of approximation or mere dialogue and information exchange.⁸² AA/DCFTAs envisage approximation of national legislation to EU *acquis*, which is less strict method of transposition of EU *acquis* compared to harmonization. It offers more flexibility in an interpretation of respective EU *acquis* as well as in choosing a method of its transposition into national legislation.

In a sum, Ukraine's AA/DCFTA is similar to EEA Agreement, TCU, EEAs and SAAs when it comes to its dynamic nature as it includes constant approximation of national legislation not only with the existing but also newly adopted EU *acquis*. However, in terms of legal quality of transposition of EU *acquis*, it is less ambitious than the above contractual frameworks as it does not require achieving a strict legal homogeneity with the EU *acquis*. It rather requires achieving a legal equivalence with the EU *acquis* what brings it closer to the SBSAs and/or Swiss model of differentiated integration, which applies a "harmonization with flexibility" method for transposition of the EU *acquis* into national legislation.

Supervision and monitoring

Compliance with harmonization/approximation commitments within the examined contractual frameworks of third countries with the EU can be backed by, first, judicial enforcement bodies as in case of the EEA Agreement and Turkey's CU, second, regular political monitoring as in case of EAAs and SAAs, or third, it can be based on the legal principle of "good faith" as in case of Switzerland.

When it comes to Ukraine's AA/DCFTA, there is no legal enforcement authority as for example the EFTA Court established by the EEA Agreement. The supervisory body, which shall monitor implementation of the Agreement, is the Association Council on ministerial level. Association Council consists of the representatives of the European Commission, Council of the EU and the government of

⁸¹ EU-Ukraine Association Agreement, *ibid*.

⁸² S. Lavanex, 2011, *op. cit.*, p. 374.

Ukraine with rotating chairmanship. It is authorized to monitor the implementation of the Agreement, make binding decisions and has right to amend annexes to the Agreement following an evolution of the EU legislation.⁸³ Monitoring means supervision of the application and implementation of the Agreement, its objectives and commitments. It is a continuous appraisal of progress in implementing and enforcing measures and commitments covered by the Agreement. This monitoring process is of particular importance for the DCFTA as its positive results are the prerequisite of any further market opening for Ukrainian economic operators on the EU market. Monitoring includes the assessments of approximation of Ukraine's legislation to the EU acts and where applicable also to international instruments.⁸⁴

Under the Agreement, disputes, including in case of interpretation and/or transposition of EU *acquis* into Ukraine's national legislation should be resolved by the Association Council. The Agreement sets out a Dispute Settlement Mechanism, which should come into effect if obligations under the Association Agreement are not fulfilled by one of the Agreement Parties. For the DCFTA part, another binding trade specific Dispute Settlement Mechanism is set out in form of a dedicated protocol. This trade specific mechanism is inspired by traditional WTO dispute settlement mechanism. In addition, chapter on trade (Title IV, Section 3) establishes mediation procedure, including an arbitration panel (led by jointly agreed independent mediator; the panel shall consist of 15 individuals nominated jointly by the Joint Trade Committee: 5 from EU, 5 from Ukraine and 5 jointly agreed experts from non-EU/Ukraine). If arbitration panel fails to resolve a dispute, the last decision is upon the Court of Justice of the European Union (ECJ). If the judgment of ECJ is not respected by either party of the Agreement, ECJ is authorized to impose sanctions on respective party.⁸⁵

When it comes to supervision mechanisms Ukraine's AA/DCFTA is similar to TCU, EEAs and SAAs. All they can be put in the middle between the EEA Agreement, which includes the highest level of the supervision with both judicial and political institutions, on one hand, and the lowest or better to say a zero level of supervision, which is typical for the Swiss model of differentiated integration.

⁸³ "Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part," *Official Journal of the European Union*, L161/3, 29.5.2014, see Title VII. For more about the institutional framework for cooperation and dialogue between the EU and Ukraine see the chapter 1.3 of this publication.

⁸⁴ EU-Ukraine Association Agreement..., op. cit., p. 6.

⁸⁵ See Association Agreement, op. cit.: Title IV, Section 3.

Inclusion in a policy-shaping

Inclusion of non-member countries into policy-shaping process within the EU is a delicate political issue as the right to shape EU norms and policies is an exclusive prerogative of its members. In other words, an access to the EU policy-making institutions is a synonym for the political membership of a given country.

However, expansion of the EU integration space over the borders of its members and inclusion of the third countries into the single market and its four freedoms since early 1990s has been raising question about legitimacy of the EU external governance. During the talks on the EEA Agreement launched after the adoption of the Single European Act at the end of 1980s, EFTA countries were resisting to accept a contractual arrangement that would impose on them a commitment to import of EC/EU *acquis* without having a chance to participate in its formation.⁸⁶ In the end, the EU accepted certain forms of participation of the non-member states with integrative contracts in its institutions. However, different political and legal conditions under which the EU has been concluding integrative contracts with third countries resulted in different forms of their involvement into the EU institutions. Thus, in addition to different range of harmonization/approximation with the EU *acquis* as well as a different legal quality of transposition of the EU *acquis*, differentiated integration of third countries means also different types of their involvement into the EU policy-shaping. However, it has to be underlined that a red line, which the EU never crossed, is that it allowed participation of non-member states in the EU institutions, however, without a right to vote. Nevertheless, the way of inclusion of non-member states in the EU policy-shaping and EU institutions is important as it conveys a degree of their political integration with the EU.

The highest level of involvement of non-member states into the EU institutions within the existing external contractual regime of the EU is represented by the Schengen association agreements with Switzerland and EEA countries, which grant them access to the Council of the EU at all levels of its hierarchy, e.g. ministerial level, COREPER and expert working groups, however, without right to vote. The participation of the EEA countries and Switzerland in Schengen policy is the only case when non-member states have an access directly to one of the central policy-making and legislating institutions of the EU, e.g. Council, Commission and the Parliament, which is a prerogative of the member states.

The second level for participation of non-member states in policy shaping of the EU is involvement of their experts in the EU comitology. Comitology committees are expert committees set up by the Commission in the agenda setting stage before the legislative process within the central EU institutions, e.g. Council and Parliament. Their purpose is to assist the Commission in drafting new legislation as advisory bodies.

⁸⁶ See e.g. M. Vahl, N. Grolimund, 2006, op. cit., S. Lavenex, 2009, op. cit., etc.

The EEA Agreement grants the right to Norway, Island and Lichtenstein to delegate their experts to comitology committees. They can participate in the committees' meetings together with experts from the member states, however, they cannot vote. The same right is granted to Turkish experts following TUC Agreement. Turkish experts have right to participate in comitology meetings, however, only in the limited fields of *acquis* that are covered by TUC, without right to vote. The EU comitology is open also to Switzerland; however, in contrast to EEA and TUC arrangements there is no formal binding commitment on side of the European Commission to involve Swiss experts on regular base. In addition, rules for participation of Swiss experts in the EU comitology vary depending on provisions of a given sectorial agreement as there is no one common institutional arrangement that would provide for one regulatory regime of involvement of Swiss experts into EU comitology. During the preparatory drafting stage of the *acquis*, Swiss experts may be informed and consulted before and after the meetings of EU experts. In most cases, the EU–Swiss information exchange procedure means that Switzerland must be notified of the *acquis* once it already has been adopted. EEAs and SAAs, including Eastern Partnership AA/DCFTAs do not envisage any participation of experts from contracting countries in the EU comitology. Other types of Association Agreements (EAAs, SAAs, including AA/DCFTAs) do not provide for an access of experts of contracting parties into the EU comitology.

The third level of involvement of non-member states into EU structures is their participation in the EU programs and agencies, including in their respective committees. The first EU agencies and programs were created in 1970s with a view to producing and disseminating information of European interest. Agencies and programs established later on in the 1990s, were predominantly meant as instruments for implementing EU policies such as the internal market. Most of the agencies created from 2000s onwards were vested with two key new tasks: providing independent scientific/technical advice/information, sometimes in response to serious safety crises, and fostering Member States cooperation in different areas.⁸⁷

Referring to the development of the EU agencies and programs, S. Lavenex (2015) notes that over the last two decades the policy-making system of the EU has diversified considerably, and trans-governmental bodies composed of national and European technocrats have come to complement the traditional legislative actors. Involved to different extents in the policy cycle, sector-specific executive committees and regulatory agencies are more permeable towards the inclusion of third country regulators, thereby opening up new avenues for flexible organizational integration. Current arrangements for involvement of third countries to EU programs and agencies reach from full membership to association without

⁸⁷ "Decentralised agencies: 2012 Overhaul," European Commission. Available online: http://europa.eu/european-union/about-eu/agencies/overhaul_en (accessed on March 19, 2017).

voting rights, observer status and punctual participation in particular functions and fora.⁸⁸ The main aim of the EU programs and agencies is to assist central legislating EU institutions in implementing and developing sectorial policies.

The EEA Agreement grants right to Norway, Island and Lichtenstein to participate in the EU programs and agencies upon their choice and decision, including the level of their involvement, which might range from full membership to observer status. Actually, Island participates in 12 EU programs; Norway participates in 11, and respectively Lichtenstein in 3. All three EEA countries participate in 13 EU agencies that have been transformed into a sort of joint EU–EAA agencies;⁸⁹ moreover, Norway concluded bilateral agreements with additional 13 agencies of the EU.⁹⁰ Participation in the EU programs and agencies is open also for Switzerland, Turkey and contracting countries of EAAs, SAAs, and AAs with Euro–Med and Eastern Partnership countries, including Ukraine. Switzerland participates in 4 programs and 7 agencies,⁹¹ respectively Turkey participates in 7 programs and 2 agencies.⁹² Ukraine participates in 3 EU programs (Erasmus plus, Eurostudent, and Horizon 2020) and 11 agencies.⁹³

Finally, the fourth avenue for involvement of non-member states into institutional cooperation with the EU which serves as an avenue for harmonization/approximation with the EU *acquis* are multilateral or regional platforms and/or international organization established by the EU with non-member states, e.g. Energy Community. As to its legal status the Energy Community is an international organisation dealing with energy policy. The organisation was established

⁸⁸ S. Lavenex, 2015, *op. cit.*, p. 838.

⁸⁹ The list of respective EU agencies with participation of EEA countries see ‘EU agencies,’ EFTA. Available online: <http://www.efta.int/eea/eu-agencies> (accessed on March 19, 2017).

⁹⁰ Mission of Norway to the European Union. Available online: <https://www.norway.no/en/missions/eu/areas-of-cooperation/participation-in-programmes-and-agencies/> (accessed on March 19, 2017).

⁹¹ “The Major Bilateral Agreements Switzerland – EU,” Federal Department for Foreign Affairs of the Swiss Confederation, February 2017. Available online: https://www.eda.admin.ch/dam/dea/en/documents/folien/Folien-Abkommen_en.pdf (accessed on March 19, 2017).

⁹² “EU Programs and Agencies to which Turkey Participates,” European Movement Turkey. Available online: <http://turabder.org/en/turkey-eu/turkey-eu-relations/eu-programmes-and-agencies> (accessed on March 19, 2017).

⁹³ Mission of Ukraine to the European Union. Available online: <http://ukraine-eu.mfa.gov.ua/en/ukraine-eu/sectoral-dialogue/participation> (accessed on March 19, 2017). Ukraine participates in the following EU agencies: European Monitoring Centre for Drugs and Drug Addiction (EMCDDA); European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX); European Global Navigation Satellite Systems Agency of the Galileo navigation system (GSA); European Environment Agency (EEA); Occupational Safety and Health Administration (OSHA); European Maritime Safety Agency (EMSA); European Aviation Safety Agency (EASA); European Centre for Disease Prevention and Control (ECDC); European Railway Agency (ERA); European Training Foundation (ETF); and European Medicines Agency (EMA).

by an international treaty in October 2005 in Athens and entered into force in July 2006. The Treaty establishing the Energy Community brings together the European Union, on one hand, and countries from the South East Europe and Black Sea region.⁹⁴ Ukraine acceded the Energy Community on February 1, 2011.⁹⁵

In a sum, Ukraine's association with the EU in the area of its involvement in the policy-shaping process within the EU, does not provide for the most ambitious institutional arrangement in the field, which the EU has established with non-member states over the last two decades. Ukraine has the access to the two basest levels of participation of non-member states in the EU institutions, first, international organizations, of which the EU is part; however, they are not part of the EU institutions, e.g. Energy Community, and second, EU programs and agencies, including their respective committees, that are advisory entities to central EU institutions, although, they are not participating directly in the EU legislating process.

The EEA countries, Turkey and Switzerland are the only non-member countries that have an access to the EU comitology, which is the first and basic level of the EU legislating process within the central EU institutions. Even though their experts can participate in the comitology meetings as observers without right to vote, they have a chance to influence the shape of respective EU legislation through presenting their arguments and legislative positions. Another important advantage, which participation of national experts in the EU comitology brings to the EEA countries, Switzerland and Turkey, is the fact that they are informed well in advance about planned amendments to respective EU *acquis*. And finally, the right of the EEA countries and Switzerland following their Schengen association agreements, to participate in the all three levels of the Council of the EU (ministerial level, ambassadorial level – COREPER, including the expert one) dealing with the Schengen policy, is rather a unique phenomenon in the existing legislative routine of the European Union.

Summary of main findings

The above comparative analysis of Ukraine's Association Agreement brings us to the following main conclusion: statements of the EU officials that AA/DCFTAs provide one of the most ambitious levels ever of political association and economic integration between the EU and a foreign country, is only partly true.

The above statements are completely true only regarding to one of the three indicators we have selected for a comparative analysis of a *regulatory boundary* of Ukraine's AA/DCFTA. Indeed, as to the range of approximation to the EU *acquis* Ukraine's AA/DCFTA is the second most ambitious contractual framework

⁹⁴ See the official website of the Energy Community: https://www.energy-community.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/Who_are_we (accessed on March 19, 2017).

⁹⁵ For analysis see A. Duleba, V. Benč, V. Bilčík, 2012, op. cit.

for the EU relations with third countries (Ukraine shall transpose circa 95 per cent of EU trade and economic related *acquis*) following the EEAs with former candidates from Central Eastern Europe and present SAAs with the Western Balkan countries (100 per cent of EU *acquis*). In this respect Ukraine's AA/DCFTA is much more ambitious than EEA Agreement with Norway, Island and Lichtenstein, Swiss bilateral sectorial agreements and Turkey's Customs Union. Ukraine's AA/DCFTA as well as similar agreements of Moldova and Georgia envisages the largest adoption of *acquis* in comparison to all contractual frameworks the EU ever concluded with third countries, which, however, do not include membership perspective.

Ukraine's AA/DCFTA is similar to EEA Agreement, Turkey's CU, EEAs and SAAs when it comes to its dynamic nature as it provide for constant approximation of national legislation not only with the existing but also newly adopted EU *acquis*. However, in terms of legal quality of transposition of EU *acquis*, Ukraine's AA/DCFTA is less ambitious than the above contractual frameworks as it does not require achieving a strict legal homogeneity with the EU *acquis*. Unlike above agreements, which include harmonization principle, Ukraine's AA/DCFTA includes approximation with the EU *acquis*. It stipulates achievement of a legal equivalence with the EU *acquis* what brings it closer to the SBAS and/or Swiss model of differentiated integration that includes a "harmonization with flexibility" method for transposition of the EU *acquis* into national legislation. When it comes to supervision mechanisms Ukraine's AA/DCFTA is similar to TCU, EEAs and SAAs. All they can be placed in the middle between the EEA Agreement, which includes the highest level of the supervision with both judicial and political institutions, on one hand, and the lowest or better to say a zero level of supervision, which is typical for the Swiss bilateralism.

In respect of *organizational boundary*, Ukraine's Association Agreement as far as it concerns participation of Ukraine in the policy-shaping process within the EU, does not provide for the most ambitious institutional arrangement in the field, which the EU has established with the EEA countries, Turkey and Switzerland. Ukraine has the access to the two basest levels of participation of non-member states in the EU institutions, first, international organizations, of which the EU is part; however, they are not part of the EU institutions, e.g. Energy Community, and second, EU programs and agencies, including their respective committees. However, unlike EEA countries, Turkey and Switzerland, Ukraine does not have an access to the EU comitology, which is the first exert level of the legislating process taking place within central EU institutions.

Table 1: Ukraine's AA/DCFTA in comparative perspective

Agreement	Range of harmonization/ approximation with the EU acquis (policy-taking)	Legal quality	Inclusion in EU structures (policy-shaping)	Supervision	Schengen
EEA	(nearly) Full EU acquis: Single Market, incl. number of additional sectoral policies Exemptions: agriculture, fisheries, customs union, common trade policy, CFSP, JHA, taxation, economic and monetary union	Harmonization with "legal homogeneity" principle Dynamic nature: all new EU acquis shall be adopted, including case law of the European Court of Justice (ECJ)	Participation (of experts) in: Comitology committees (advisory bodies of the EC in drafting new legislation) without right to vote EU Programs EU Agencies (right to participate as full member or observer)	Judicial: Surveillance Authority (can launch infringement procedures against non-compliant member states) EFTA Court (responsible for enforcing legal homogeneity across EEA while respecting the jurisdiction of ECJ)	Full participation on the base of the Schengen association agreement The highest level of involvement in the EU structures with access to all three levels of Council (Ministerial Council, COREPER and expert working groups) without right to vote
Swiss bilateralism	Full EU acquis in two sectors: air transport and Schengen Partial acquis in the remaining sectors (120 bilateral sectorial agreements)	Harmonization in two sectors: air transport and Schengen In the remaining sectors: "harmonization with flexibility" ruled by "equivalence of legislation" principle "Autonomer Nachvollzug" rule (Swiss legislative procedure includes checking of each new Swiss legislation if it complies with the EU acquis)	In air transport and Bilateral I package of 7 sectorial agreements (as from 2002): participation (of experts) in Comitology committees (advisory bodies of the EC in drafting new legislation) without right to vote EU Programs EU Agencies (are open to participation of Switzerland as full member or observer)	No political or judicial supervision "Good faith"	Full participation on the base of the Schengen association agreement The highest level of involvement in the EU structures with access to all three levels of Council (Ministerial Council, COREPER and expert working groups) without right to vote

Customs Union of Turkey	Partial EU acquis (Single Market in the field of trade in goods, incl. elimination of technical barriers to trade, competition policies, protection of intellectual property rights, the administration of border procedures including rules of origin and common trade policy)	Harmonization in respective field of the Single Market acquis regulating trade in goods, including common trade policy Dynamic nature: all new respective EU acquis shall be adopted	Participation (of experts) in respective selected Comitology committees EU Programs EU Agencies (open to participation of Turkey)	Political: Association Council Judicial: Jurisdiction of ECJ in respective areas	No JHA dialogue (not part of an agreement), incl. on migration, asylum, border management and visa
EAA/SAAs	Full acquis	Harmonization Dynamic nature: all new EU acquis shall be adopted	No access to the Comitology committees EU Programs EU Agencies (open to participation)	Political: Association Council Dispute Settlement Mechanism In case of failure: jurisdiction of ECJ, which can impose sanctions	No JHA dialogue (part of AA), incl. on migration, asylum, border management and visa
AA/DCFTA of Ukraine	(almost) Full EU acquis Single Market acquis plus 28 sectorial policies (95 per cent of trade and economic related acquis) Exemption: customs union, economic and monetary union	Approximation (DCFTA) Dynamic nature: all new EU acquis shall be adopted	No access to the Comitology committees EU Programs EU Agencies (open to participation)	Political: Association Council Dispute Settlement Mechanism In case of failure: jurisdiction of ECJ, which can impose sanctions	No JHA dialogue (part of AA), incl. on migration, asylum, border management and visa

Considering the fact, first, that current Russian–Ukrainian crisis marks three decades of the European integration project based on the EC/EU and tests capacities of the EU to act as a *transformative and integrative actor in Europe*, capacities that the EC/EU has been developing since the late 1970s, and second, that fol-

lowing the range of approximation to the *acquis communautaire*, Ukraine's AA/DCFTA is much more ambitious than EEA Agreement with Norway, Island and Lichtenstein, SBSAs and TCU, we argue that it is of critical importance for both the EU and Ukraine to upgrade institutional framework laid down by the Association Agreement with the aim to improve effectiveness of its implementation.

Even if the EU and the member states at the present are not ready for an innovative approach towards its contractual frameworks with third countries based on a method of differentiated and/or flexible integration, Ukraine should be offered at least the same modalities for inclusion into the EU policy-shaping as they are in place in case of EEA countries, Switzerland and Turkey. Our comparative analysis shows that AA/DCFTAs include the largest structural asymmetry in the existing integrative contractual frameworks for the EU relations with third countries that means a gap between a range of approximation with the EU *acquis* on one hand, and the level of institutional involvement of a contracting country into policy-shaping within the EU on the other. We do believe that it is in interest of both the EU and Ukraine to bring more symmetry into their relations, including in the field of institutional mechanisms for their mutual interaction.

1.2 Slovakia's association process: political, economic and institutional implications

Vladimír Bilčík

The goal of this text is to examine the implications of Slovakia's association process with the European Union in the run-up to its EU membership in 2004. The text first reviews both political and economic contexts of Slovakia's path to EU membership. It outlines political difficulties accompanying the fulfilment of the Association Agreement as well as the technical side of coordination and implementation of the EU *acquis*. The paper thus underlines the primacy of technical and legal efficacy in the case of Slovakia whose main goal was to catch up with its Visegrad neighbors in efforts to join the EU.⁹⁶ In addition to institutional experience it also draws other lessons connected to challenges of multiple transitions, Slovakia's short-lived experience with independent statehood and the need for fast-track state-building.

1.2.1 EUROPE AGREEMENTS: POLITICAL AND ECONOMIC IMPLICATIONS

Slovakia's path to EU membership was both long and precarious. Although Czechoslovakia, Hungary and Poland were among the first post-communist states to sign the so-called Europe Agreements (specific kind of Association Agreement designed for post-communist countries) with the European Community in 1991, Slovakia found itself excluded from the opening of EU enlargement negotiations in March of 1998 after the European Council's decision at the summit in Luxembourg.⁹⁷ In general, Slovakia's domestic developments were principally responsi-

⁹⁶ The text draws on an older chapter by V. Bilčík, "The Coordination of EU Policies in V4 Countries: The Case of Slovakia," *Improving the Coordination of European Policies in Georgia Based on the Practices of the Visegrad Countries*. Tbilisi: Georgia's Reforms Associates Policy Study, 2015, pp. 73–92.

⁹⁷ The EU summit in Luxembourg held in December 1997 invited six applicant states to start accession talks with the European Union in March 1998. These included five ex-communist countries – Poland, Hungary, the Czech Republic, Slovenia and Estonia – and Cyprus. This group of states is

ble for the country's exclusion from accession processes into western security, economic and political structures when in 1997 Slovakia was barred from beginning direct accession with the EU in for political reasons.

Political problems

The country's international problems began when Vladimir Mečiar's nationalist and neo-Stalinist coalition replaced Moravcik's government in the aftermath of Slovakia's first parliamentary elections held between September 30 and October 1, 1994.⁹⁸ The formation of Slovakia's second government began a new period in Slovak–EU relations and in Slovakia's international position more broadly. This era, lasting until the next parliamentary elections of 1998, was generally characterized by questionable domestic political developments that led to Slovakia's gradual exclusion from western integrationist processes. During this time the country began to deviate from its Visegrad neighbors chiefly due to Mečiar's subordination of his stated foreign policy aims to domestic politics.⁹⁹ While the coalition claimed both EU and NATO membership as its principal foreign policy goals, several important political events inside Slovakia determined why Slovakia could not be considered a serious contender for membership in either organization.

Among others, these included an increasingly worse relationship between the Prime Minister Vladimir Mečiar and Slovakia's President Michal Kováč. The tensions culminated in the abduction of President's son Michal Kováč Jr. and his deposition across the border to Austria. The Slovak secret service was allegedly implicated in this matter aimed at discrediting the President.¹⁰⁰ The Slovak President's constitutional prerogatives are largely symbolic, though for instance he does wield more power than the German Federal President. The President, who originated from within Mečiar's political movement, was consistently critical of the government and its rather nationalist and non-transparent policies. Apart from this event, the Slovak government ignored the rulings by the Slovak Constitutional Court on several crucial occasions. One exemplary case involved a verdict defying the parliament's decision to strip one MP of his parliamentary mandate on the grounds of defection from the ranks of the ruling Movement for

generally referred to as a 5+1 group or a Luxembourg group.

⁹⁸ In addition to the Movement for Democratic Slovakia the governmental coalition included a smaller nationalist party – the Slovak National Party and a newly formed small neo-Stalinist party – Workers' Association of Slovakia.

⁹⁹ K. Henderson, "Slovakia and the democratic criteria for EU accession," in K. Henderson, ed., *Back to Europe: Central and Eastern Europe and the European Union*. London: University College London, pp. 221–240, p. 228.

¹⁰⁰ German authorities sought to question Michal Kovac Jr. in connection with a fraud case. Kovac Jr.'s kidnapping to Austria brought the President's son closer to German Interpol and set a potentially strong pretext for discrediting his father, the President of the Slovak Republic.

Democratic Slovakia.¹⁰¹ In addition, from 1994 to 1998 Slovakia failed to deliver on its promise to pass a law on the use of minority languages, which was explicitly called for by the Slovak constitution.

Domestic political deficiencies strongly reflected upon Slovakia's international standing. The country became gradually isolated. Unlike its Visegrad neighbors, Slovakia was not invited to join NATO at the Madrid summit in 1997. And the European Union excluded Slovakia from starting accession talks after the Luxembourg summit in December 1997. Slovakia became sidelined principally due to non-compliance with the Union's political criteria outlined by the EU summit held in Copenhagen in June 1993. Although the country managed to produce relatively good economic results and in terms of living standards stood above some other candidate states – such as Estonia or even Poland, it was relegated to the second wave of applicants because of lacking domestic political stability and major inconsistencies in democratic practice.¹⁰²

Catching up with neighbours

More positive segment of Slovakia's path toward EU membership began with the replacement of Mečiar's government by a broad coalition of Right–Left political forces united mainly by their opposition to Mečiar and his policies and by their desire to move Slovakia out of its international isolation. The new government came out of the country's second parliamentary elections in September 1998 and assumed power in November of the same year.¹⁰³ The coalition led by Prime Minister Mikuláš Dzurinda began to take a series of quick steps aimed at overcoming the political deficits of the previous government. Two additional electoral contests after the parliamentary elections helped to stabilize the domestic political system. First, Slovakia held its municipal elections at the end of 1998. These preceded the country's first direct presidential elections held in May 1999.¹⁰⁴ In

¹⁰¹ M. Wlachovský, J. Marušiak, "Hlavné trendy v zahraničnej politike," M. Bútora, M. Ivantyšin, eds, *Slovensko 1997: Súhrnná správa o stave spoločnosti a trendoch na rok 1998*. Bratislava: Institute for Public Affairs, 1998, pp. 233–43.

¹⁰² The Commission's report prior to the decision at the EU summit in Luxembourg summarized Slovakia's political deficits together with its economic development. See European Commission, "AGENDA 2000 – For a stronger and wider Europe," Luxembourg: Office for Official Publications of the European Communities 1997.

¹⁰³ The government was composed of four principal political parties. The largest Slovak Democratic Coalition led by Mikulas Dzurinda was a single party further composed of a broad spectrum of 5 constitutive political parties. On the center–right these were the Christian Democratic Movement, the Democratic Party, the Democratic Union; on the left there were the Green Party and the Social Democrats. The other three coalition partners included the post–communist Party of the Democratic Left, the newly established center–left Party of Civic Understanding and the Party of Hungarian Coalition.

¹⁰⁴ President Kovac was elected by the Slovak Parliament. His term of office ended in March 1998. Since that date, the Meciar led coalition was unable to muster the constitutionally required major-

this contest the candidate of the governing coalition Rudolf Schuster defeated in a direct popular vote the opposition's candidate – Vladimir Mečiar. Within a span of several months Mečiar thus suffered his second major political defeat. In addition to these changes, Dzurinda's coalition marked a new course in relation to the Hungarian minority. The party representing Slovakia's ethnic Hungarians – the Party of the Hungarian Coalition – became a member of the government. Moreover, in summer 1999 the parliament passed the new law on the use of minority languages. Whilst several long-term problematic political issues, such as the status of the Roma minority or the independence of Slovakia's judicial system, remained open, the overall nature of domestic politics changed in important ways with the departure of the Mečiar-led coalition in 1998.¹⁰⁵

The immediate task of the Dzurinda-led government was to achieve some basic stability of the political system and to create conditions for a speedy achievement of EU membership. The process of negotiations brought up a whole new set of priorities. The focus from the domestic political struggle gradually shifted to the practicalities of the enlargement process that principally demanded an effective one-way transfer of EU rules and norms into Slovakia's public life. It is indeed no great exaggeration to state that there were times when the relations between Slovakia and the Union during negotiations "resembled an obedient dog faithfully following its master's instructions."¹⁰⁶

In the context of Slovakia's bid for EU membership there were two principal trends that helped facilitate Slovakia's break with its recent past under the leadership of Vladimir Mečiar between 1994 and 1998. First, in its attempt to regain momentum in the process of preparation for accession to the European Union, Slovakia cooperated closely with the European Commission. To foster Slovakia's efforts, the European Commission created a unique institutional tool: The European Commission – Slovakia High Level Working group, which met five times between November 1998 and September 1999. The group was jointly chaired by Deputy Director General Francois Lamoureux for the European Commission and Secretary of State Ján Figel' for the Slovak Government. Its purpose was to help Slovakia regain momentum in the process of preparation for EU accession. The group consulted on several specific political, economic and legal issues. One of the concrete outcomes of the group's work was Slovakia's pledge to decide on

ity to elect a new president by the Slovak parliament. The new coalition of governing forces from the parliamentary elections of 1998 amended the Slovak Constitution and in early 1999 passed a law on elections of the Slovak President by universal suffrage.

¹⁰⁵ The position of the Roma minority in Slovakia and in Central Europe more broadly represents a serious challenge and was an essential issue on the way to the EU. With respect to the questionable independence of the judicial system, the Commission has criticized the selection process for judges who are subject to a probationary period of four years.

¹⁰⁶ D. Malová, T. Houghton, *Challenge from the Pace-Setting Periphery. The Causes and Consequences of Slovakia's Stances on Further European Integration*, an unpublished study, 2005.

the closure of two blocks of nuclear reactors – which form a part of the nuclear power plant located in Jaslovské Bohunice.¹⁰⁷ Effectively, Slovakia, thanks to its drive to catch up with the Visegrad group in accession efforts and through this High Level WG with the European Commission, managed to sign up to some of the biggest concessions vis-à-vis the EU (like the closure of nuclear power plant) even before official start of negotiations. Second, the Slovak leadership improved both the intensity and the quality of bilateral contacts with all member states of the EU. Bilateral relations – so crucial to the ultimate success of enlargement – reached their low point during Mečiar's era. In contrast to the previous trend when Slovakia found itself "in the periphery of Central Europe,"¹⁰⁸ Prime Minister Dzurinda alone took part in 35 bilateral foreign visits prior to the EU summit in Helsinki held in December 1999.¹⁰⁹

The crucial pre-condition for Slovakia's solid performance rested with the state of domestic politics. Although Dzurinda's coalition after the 1998 parliamentary elections gained control of a total of 93 seats thus assuring the government of its three-fifth constitutional majority, Mečiar's Movement for Democratic Slovakia emerged as the single largest political force, winning 43 seats out of the total of 150. In addition, the other opposition party – the Slovak National Party – captured 14 seats. The problem for Slovakia was that neither Mečiar's movement nor the Slovak nationalists represented trustworthy political partners for the European Union. Slovakia's only EU-viable ruling force consisted of a broad anti-Mečiar coalition. This fact did distinguish the country from the rest of the Visegrad group where there existed no political equivalent of the Mečiar phenomenon.

The ultimate resolution of the EU's uncertainty over Slovakia's politics came with the result of the parliamentary elections in the fall of 2002. While between 1999 and 2002 Mečiar verbally supported Dzurinda's foreign policy orientation, many EU officials sighed with relief when Slovakia passed "a last test of democratic credentials" and the election results brought a surprisingly clear victory for the center-right parties led by Dzurinda's Slovak Democratic and Christian Union.¹¹⁰ Slovakia thus moved away from its era of heightened domestic political conflict in the 1990s to a period of political continuity with Dzurinda becoming the longest serving Prime Minister among the Visegrad countries.

¹⁰⁷ See "Conclusions: EC-Slovakia High Level Working Group," September 8, 1999. Following the end of the group's work, the Slovak government decided to close the two blocks of nuclear reactors by 2006–2008.

¹⁰⁸ R. Chmel, I. Samson & A. Duleba, "Vzťahy Slovenska so susedmi a s Nemeckom," M. Bútora, M. Ivantýšyn, eds, op. cit. pp. 265–285, p. 273

¹⁰⁹ *Pravda*, December 6, 1999.

¹¹⁰ Slovakia's center-right government that came to office in the fall of 2002 was composed of the Slovak Democratic and Christian Union (SDKU), the Christian Democratic Movement (KDH), The Coalition of Hungarian Parties (SMK) and the Alliance of a New Citizen (ANO).

Economic reforms

Slovakia's place at the negotiating table with the EU membership created a strong impetus for reforming Slovakia's economy. The European Commission's 1999 *Composite Paper* described Slovakia together with Lithuania as "close to being functioning market economies." This report also stated that "if the reforms, which have been decided or are in the pipeline, are consistently implemented in the coming year, both countries should fulfill this sub-criterion in the course of next year."¹¹¹ The end of the Mečiar government clearly revealed by late 1998 that the level of Slovakia's growth was unbalanced and that the economy did not go through fundamental structural changes needed for a successful completion of the transition¹¹². (Morvay 2000) The economic revival of the mid-1990s was principally export-driven and short-lived.¹¹³ Although privatization proceeded, its progress brought about neither the emergence of appropriate regulatory structures nor the necessary funds and skills to achieve successful restructuring of the privatized enterprises.¹¹⁴ Slovakia's unemployment rate remained high¹¹⁵ and the level of foreign direct investment paled in comparison with the other Visegrad countries.

The new Slovak coalition government headed by the Prime Minister Dzurinda imposed new measures aimed at overall economic stabilization. The "Medium-term Concept of economic and social development of the Slovak Republic" was prepared in 1999 and it delineated the priorities for economic development. They included a new approach to macroeconomic regulation, recovery of the business sector and banks and further restructuring. The government introduced new constraints and liberalizing measures while trying to maintain the social safety net. The Commission's 2000 *Enlargement Strategy Paper* indicated some progress in Slovak economic developments. It noted that "Slovakia can be regarded as a functioning market economy and should be able to cope with competitive pressure and market forces within the Union in the medium term, provided that the structural reform agenda is fully implemented and broadened to include remaining reforms."¹¹⁶ During the subsequent years Slovakia's economic underwent a more fundamental transition that picked up in its speed and scope especially after the

¹¹¹ "Composite Paper: Reports on progress towards accession by each of the candidate countries," European Commission, October 13, 1999.

¹¹² K. Morvay, "Overall Macroeconomic Development," in A. Marcinčin, M. Beblavý, op. cit., pp. 19–60.

¹¹³ Throughout the 1990s Slovakia recorded the following rates of annual economic growth: –3.7 per cent in 1993, 4.9 per cent in 1994, 6.9 per cent in 1995, 6.6 per cent in 1996, 6.5 per cent in 1997, 4.4 per cent in 1998 and 2.4 per cent in 1999. Source: Morvay 2000: 29.

¹¹⁴ A. Marcinčin, "Privatization," in: A. Marcinčin, M. Beblavý, eds, *Economic Policy in Slovakia 1990–1999*. Bratislava: Slovak Foreign Policy Association & INEKO, 2000, pp. 293–315, p. 311.

¹¹⁵ The unemployment rate reached 17.7 per cent in 1999.

¹¹⁶ "Enlargement Strategy Paper: Reports on progress towards accession by each of the candidate countries," European Commission, November 8, 2000.

2002 parliamentary elections. Dzurinda's second Center–Right government introduced a series of tax, social and health care reforms that on the eve of Slovakia's EU accession became subject to questions by some member states as measures adding pressure for economic and social change in other parts of Europe.¹¹⁷

1.2.2 ASSOCIATION PROCESS: INSTITUTIONAL AND LEGAL IMPLICATIONS

In February 2000 Slovakia began official accession talks with the European Union and proved capable of completing the accession talks by December 2002. Slovakia together with nine other countries signed the accession treaty with the EU in April 2003. Bratislava was thus able to catch up in negotiations with the more advanced countries of the Luxembourg group¹¹⁸ and entered the EU together with Slovakia's Visegrad neighbors on May 1, 2004.

Transition and integration

While there were clearly aspects of post-communist economic transition that did not have to do with conditions of EU membership, the nature of accession talks did affect in some distinct ways the domestic executive and legislative framework. Although at the inception of negotiations with the EU Slovakia faced the apparent problem of internal institutional coordination¹¹⁹, squabbles within the ruling coalition became quickly subordinate to the task of efficient execution of Slovakia's accession obligations. Hence, relations between Slovakia and the European Union before May 1, 2004 consisted virtually of a one-way transfer of EU rules and standards into Slovakia's legislative and political system. Slovakia's principal task to adapt to the Union's conditions and its *modus operandi* reflected thus upon the country's institutional setting.¹²⁰

¹¹⁷ D. Malová, T. Haughton, op. cit.

¹¹⁸ The term "second wave" denotes the candidate states that did not receive an invitation to begin enlargement negotiations at the Luxembourg summit in December 1997. The Helsinki group consists of the countries that began accession negotiations in February 2000 following the decision at the EU summit in Helsinki (Slovakia, Latvia, Lithuania, Bulgaria, Romania and Malta).

¹¹⁹ Interview with a Slovak diplomat, March 2, 2000. For a detailed breakdown of the institutional basis of Slovakia's integration policy see J. Alner, "Integracne procesy na Slovensku," in G. Mezeznikov and M. Ivantýšyn, eds, *Slovensko 1998–1999: Suhrnna správa o stave spoločnosti* (Slovakia 1998–1999: Global Report on the State of the Society) Bratislava: Institute for Public Affairs, 1999, pp. 311–32. The weak coordination reflected in part also the political differences between the key players and their differing individual political agenda. During this period State Secretary and chief negotiator Jan Figel was a Christian Democrat while Deputy Prime Minister for European integration Pavol Hamzik headed the Party of Civic Understanding and Deputy Prime Minister for Legislation Lubomir Fogas represented the Party of the Democratic Left.

¹²⁰ The following paragraphs dealing with the executive–legislative relations draw on V. Bilčík, "Insti-

The accession negotiations shifted the principal focus on Slovakia's legislative compatibility with EC/EU law and created incentives for a speedy adoption of new laws and changes in the functioning of public institutions. Slovakia faced the task of implementing standards that had been in place in EU member states for decades. Yet, the country was without the chance to influence these standards. Hence, expressions such as being "pro-integrationist" or "pro-European" in that situation basically meant support for Slovakia's membership in the European Union. Slovakia did not contribute to the process of EU integration; it "merely" took over the prescribed rules as the country's bureaucratic structures played the crucial role in technical adaptation and in monitoring of Slovakia's gradual compliance to EU standards.

Given the particular demands of the accession process, the institutionalization of integration policy during negotiations affected particular branches of the state power with different intensity. The government became the key player in negotiations over the terms of EU accession. In the course of EU negotiations, Slovakia acquired new technical elite in EU affairs. However, members of these domestic EU elite operated as isolated individuals or cells, either under the auspices of the Foreign Ministry or other ministries. They did not become an integral part of the executive. Moreover, political parties in government (or opposition, for that matter) often restricted themselves in their official statements to expressing general support for Slovakia's EU membership. It was only later after the signing of the accession treaty when political parties began to contribute to the discussion on the future of the EU and shape the government's position on various issues on the EU agenda.

New roles for public institutions

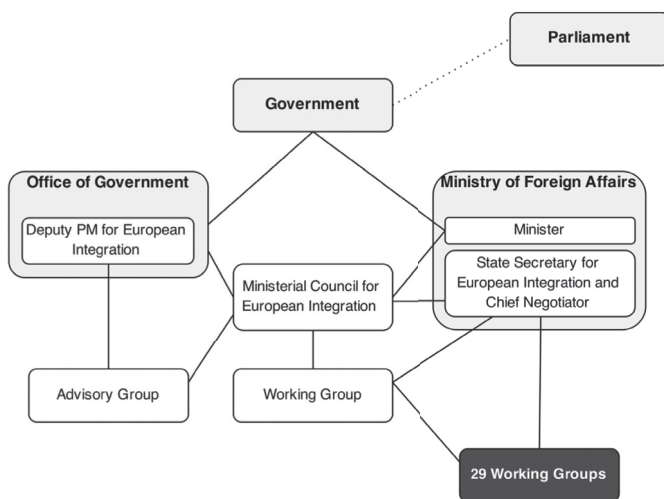
Thus the coordination of accession negotiations was in the hands of the Ministry of Foreign Affairs (MFA). The MFA through the Chief Negotiator and his team coordinated the preparation of domestic ministries for negotiations in each of the 29 substantive negotiating chapters (Figure 1). At the same time the MFA and the departments headed by the Chief negotiator together with the country's Mission to the European Communities coordinated Slovakia's communication and negotiations with the European Commission and member states in Brussels (Figure 4). The Deputy Prime Minister's Office was responsible for domestic legal adaptation and implementation of EU compatible laws through the work of the Institute of Approximation as well as for domestic coordination of pre-accession aid and public communication of EU issues (Figure 3). Ministerial Council for European Integration (Figure 1) was a formal communication and advisory mechanism composed of Deputy Prime Minister and Ministers for Foreign Affairs, Economy, Finance, Agriculture and Interior as well as the Chief Negotiator.

tutionalisation of Integration Policy," in P. Brežáni, ed., *Yearbook of Foreign Policy of the Slovak Republic 2003*. Bratislava: Research Center of the Slovak Foreign Policy Association, 2004, pp. 35–41.

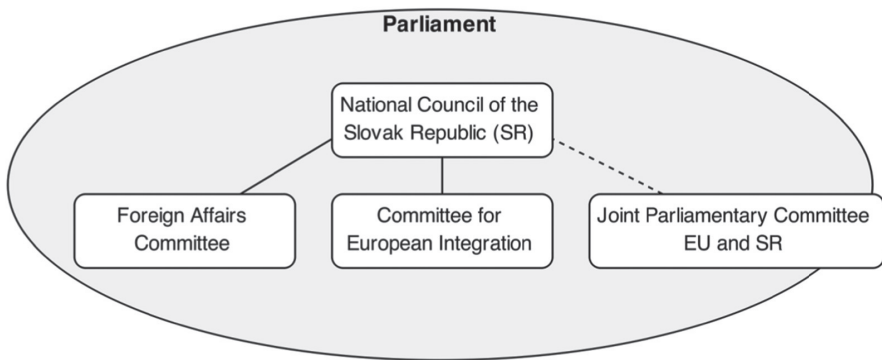
Slovakia's parliament – The National Council of the Slovak Republic – adopted legislation that was indispensable to Slovakia's EU accession; however, the space for discussion over EU-compatible rules was rather limited, as the parliament largely took over already existing directives or guidelines. There was no particular need for the parliament to maintain its own independent expert background regarding the issue of European integration. Rather, it was concrete needs related primarily to the harmonization of Slovakia's legal system with that of the Union that determined the parliament's communication with the cabinet. So while the parliament also created its own internal structure of communication on EU issues and with the European parliament (Figure 2), the main task of this institutional setup was to ensure expedient adoption of new laws rather than offer space for broad public discussion on details of European integration.

Finally, since the accession process placed no direct demands upon the judicial branch of power, its preparedness to operate within the Union's legislative space could only be tested during EU membership. This uneven engagement of Slovakia's different institutional branches of power serves as a good lesson for Ukraine. While elements of the executive were well-prepared for functioning in the EU context, the quality of performance in the EU by Slovakia's government as a whole or EU-related parliamentary scrutiny or EU relevant engagement by judiciary continue to present ongoing challenges.

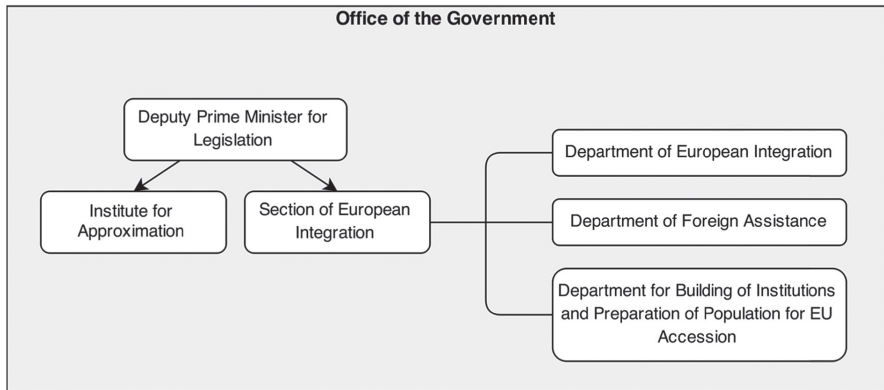
Figure 1. The Executive managing association and accession



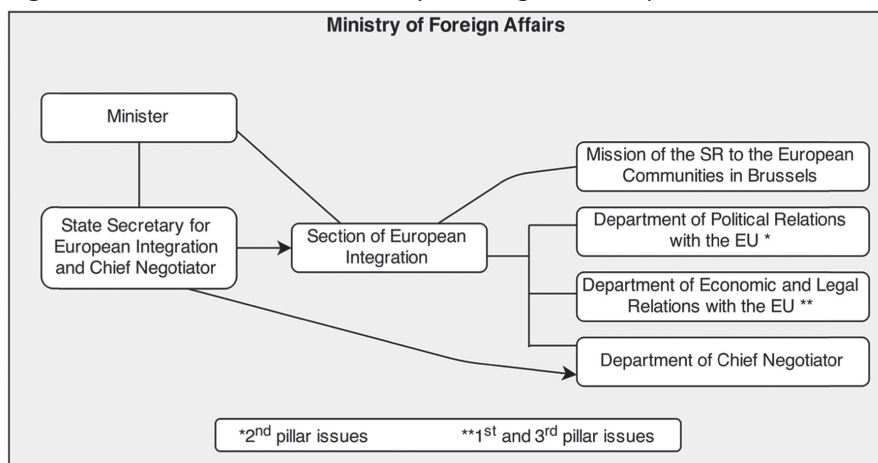
Source: J. Figeľ, M. Adamiš, *Slovensko na ceste do Európskej únie. Kapitoly a súvislosti*. Bratislava: Slovak Foreign Policy Association, Government Office of the Slovak Republic, Center for European Policy, 2003, p. 14.

Figure 2. The Legislative branch during association and accession process

Source: J. Figel', M. Adamiš, op. cit., p.15.

Figure 3. Legal and Public Approximation towards the EU

Source: J. Figel', M. Adamiš, op. cit., p.15.

Figure 4. Association towards Ministry of Foreign and European Affairs

Source: J. Figel', M. Adamiš, op. cit., p. 15.

1.2.3 FROM ASYMMETRY OF ASSOCIATION TO ACCESSION

It is hardly a surprise that in scholarly literature one can find more definitions of Europeanizing trends.¹ Before accession the relationship between the EU and Slovakia was largely characterized by a one-way transfer of EU rules and norms into the domestic Slovak legislative and political setting. The main task for Slovakia was to adapt to EU conditions.

Association Council and gradual change

Gradual development of official ties between Slovakia, the European Communities and the European Union² placed specific demands upon the nature of domestic politics, the quality of public administration and the content of the country's legal system. The Association Agreement, better known as the Europe Agreement, signed during the existence of the former ČSFR in December 1991 for the first time formalized Slovakia's political and economic ties with the EC countries. After the breakup of the Czecho-Slovak federation, Slovakia signed its own Europe Agreement, which established the Association Council as the main body for communication between Slovak executive and EU institutions. Political criteria for the admission of new member states, adopted at the EC summit in Copenhagen in June 1993, contributed in turn to democratic consolidation in Slovakia,³ while negotiations about the conditions of Slovakia's accession focused on the compatibility of Slovakia's legislation with the EC/EU law and created pressure for the adoption of new laws and changes in the functioning of public institutions.

In short, Slovakia assumed the role of a receiver of the norms that have functioned in EU member states for decades and the country had a very limited say in influencing the nature of these norms. With Slovakia's entry to the Union on May 1, 2004, the term Europeanization has gained more complex connotations. The EU is not just a political player. Foremost it represents an arena within which the member states can negotiate on their respective policy preferences.⁵ Therefore today while the Slovak Republic still continues to adapt to EU standards it already possesses an opportunity to contribute to the formation of the Union's setting.

One may wish to underline that the state of politics was the essential precondition to get to the negotiating table between Slovakia and EU member states and EU institutions. However, when the two sides do come together, when we begin the actual negotiations on the EU legislation and the chapters of the *acquis*, the progress toward an agreement on these technical details depends on technical negotiations within Slovakia and technical negotiations within the EU. In some respects, negotiations are an exercise in efficiency rather than legitimacy. What is clear from the Slovak experience is that it was an exercise dominated by the executive, and actually not so much by the government as whole but rather by concentrated bureaucratic elements within the executive. In the case of Slovakia these elements were concentrated within the Foreign Ministry, where we had the chief negotiator as the coordinator of accession talks with his small compact team of people who communicated and coordinated with the other ministries. The more efficient the setup, the better your ability to perform in this very technical aspect of completing one's commitment to the adoption of the *acquis* – this seems Slovakia's simple lesson. This is also the reason why we were able to negotiate EU membership within three years.

Technical negotiations with the EU are boring business and although you did have the Chief Negotiator, he often had little negotiating power. In fact, negotiations on accession are about the country's commitment to adapt to EU rules and norms as quickly as possible and in ways that are least painful both for the EU and for domestic public and domestic structures. In terms of our measure of success, we had to adopt commitments on some big issues such as the closure of a nuclear power plant in Jaslovské Bohunice but also, we had to commit to our adoption of the EU compatible laws, which today comprise more than 100,000 pages of legislation. More importantly, we had to commit to when we were going to implement these laws. Today we are in the EU but actually we are still implementing our commitments and we are closely watched by the European Commission and by other EU member states. This process creates pressure, although it's done technically by very few people. It creates pressure for the structures at large and for the society at large.

Associating and enlargement

First, negotiations take time. Former Czechoslovakia began its talks on the so-called Europe agreement in 1990. This Europe agreement came into effect before Czechoslovakia fell apart. It took us fourteen years from the signing of the Europe Agreement with the former Czechoslovakia to Slovakia's accession into EU in 2004. So it does take a long time to get in and therefore any questionable domestic political practices could prove very costly in terms of successful management of the whole accession process.

The second observation is that one does need to organize the state anew and successfully after one dissolves from a larger entity. This was a big challenge for Slovakia after we separated from the Czech Republic. This was because of negotiating all the obligations that we were taking on as a successor state and also because of dealing with the basic challenge of the administrative management of a new country. Slovakia did not really have any history of independent government as such so there was a big challenge for building both political elite and administrative capacities to carry out the essential public services.

Thirdly, Slovakia faced the essential challenge of sorting out relations with the immediate neighbors of a newly found state in 1993. Apart from the Czech Republic, which in the end turned out to be the easy case, the more difficult one and a more protracted one was the relationship with our southern neighbor Hungary, particularly because of certain historical legacies but also because of the presence of a sizeable Hungarian minority in southern Slovakia. This bilateral relationship took some time to resolve to such a degree that the EU member states felt comfortable enough to launch the expert side of negotiations. In short, the political solution took some years. While the Slovak–Hungarian bilateral treaty was signed in 1995, a number of specific provisions that had to do with the nature of the Slovak–Hungarian relations didn't come into effect until the political climate changed in Slovakia at the end of the 1990s. The essential problem, which the Slovakia faced, was that although we pronounced ever since we were born as a country in 1993 that we want to enter both NATO and the EU, there was a big mismatch between the words and the deeds on the ground.

This was especially characteristic of the coalition government in Slovakia under the Prime Minister Vladimir Mečiar between 1994–1998. The real problems or legacies from that time included unresolved crimes in which the involvement of the state authorities was largely suspected and also the unfilled presidency of Slovakia which went on for over year and resulted in an institutional imbalance in domestic politics. Also, Mečiar's executive ignored some important¹ rulings by the Constitutional Court. In sum, there was a big question mark over the nature of the democratic institutions in the country. In addition, there was also the issue of treatment of Hungarian minority in Slovak public life. This had two aspects. One was the inclusion of the Hungarian political forces in the mainstream politics, which only happened after the 1998 elections and the coalition of Hungarian

parties has been in government ever since then. This really has mitigated some tensions between the minority population and the majority population. The second challenge was the adoption of laws on the usage of the minority languages in Slovakia. This was passed in July of 1999, again after the political changes in the autumn of 1998.

Slovakia's status inside the EU negotiating framework turned the country's attention toward a number of different short-term political, economic and international goals. Especially two legislative tasks appeared of the utmost importance. First, the current government promised to amend the Slovak constitution, however despite its constitutional majority in the Slovak parliament, it had been rather sluggish at delivering on its pledge. The constitution was finally amended in February 2001. The adopted changes are expected to pave the way towards the reform of the country's judicial system whose state had previously been criticized by the Commission. Also, the new amendments clarify the legal status of international treaties – such as the EU accession treaty – and their ensuing obligations in the context Slovak law. Other changes were made in the area of competencies of the President and local authorities. Also, according to the passed amendments Slovakia would establish the Ombudsman's Office.¹²¹

Second, the government was preparing a comprehensive public administration reform, however it has thus far been unable to agree on its extent and its adoption. The reform of public administration encompasses a whole set of issues, such as the division of central and local competencies and the future shape of Slovakia's regions. Its implementation is expected to shape the country's regional policy – an integral part of the EU's *acquis*. The failure to go ahead with this reform could in fact significantly hinder legislative and practical progress in several important areas of the *acquis*.

Anchoring the public

The new institutionalized interactions between the European Union and Slovakia were generally welcomed by the public. During the late 1990s the majority of the Slovak public consistently expressed its support for EU membership. While in January 1999 64 per cent of the citizens supported Slovakia's integration into the EU, by August 2000 72 per cent expressed their support.¹²² With the start of negotiations for EU membership, the public support increased. Next to elite attitudes, public consensus on EU integration was essential for the continued success of accession talks, while the real test of public support was the national referen-

¹²¹ The amendments passed by the smallest possible margin when exactly three fifths of the members of the Slovak National Council (90 out of the total of 150) voted for them. The changes covered the areas I mention in the text. The amended constitution will be applied from July 1, 2001, although in certain areas the amendments will only be applied from January 1, 2002.

¹²² Source: *Institute for Public Affairs*, regular surveys in 1999 and in 2000.

dum. The experience of some neighboring states in talks with the EU since March 1998 suggested a small decline of public support for EU membership.¹²³

Slovak leaders had a relatively easy task ultimately because of all the political problems that Slovakia experienced in the mid-1990s. Formally, the Office of the Government (Figure 3) was tasked with coordinating public communication on EU issues. Due to overwhelming political consensus on EU accession, the government's main task was not to inform on and communicate the terms of EU membership but rather to mobilize the public prior to Slovakia's referendum on European Union accession. A valid referendum required a turnout of over 50 per cent of all eligible voters. In the end, the Slovak public actually produced the highest positive result in the latest referenda on EU membership – about 93 per cent of the 52 per cent of the electorate that took part in the referendum in 2003 supported Slovakia's entry into the EU. Hence, the government and the country gained strong legitimacy for pursuing the course of EU membership.

Reflections on EU association

One of the important aspects of the association process was the role of the European Commission. Although sometimes sidelined by member states when it comes to accession negotiations, it played a crucial role. It was an important interlocutor between the member states and the outsiders as well as Slovakia and other candidate countries. It was also a mediator – both a friend and a critic because it was also in the Commission's interest that enlargement turned out successful. In some respects the Commission was very much in the driving seat of the enlargement game. It was also on the ground in Slovakia, producing its regular reports on progress toward membership in the EU.

Second, while negotiations on accession and association are managed by the Commission, they take place with member states. And there are at least three kinds of issues that the member states brought to the negotiating table. One, they focused on particular agendas, which are of high political salience within a specific country. The example here is the closure of the nuclear power plant. Austria brought it to the table repeatedly. Other issues include for example the competition policy. The subsidies provided to the Volkswagen plant outside of Bratislava became a very sensitive issue in the case of Slovakia. The Spaniards blocked the closure of the competition policy chapter with Slovakia for several weeks because they wanted to have assurances that this would not affect negatively the Seat plant in Spain. So there are specific issues of high political salience, which are particular to each member state and one has to confront a particular member state using the Commission as an ally. Second, there are horizontal issues sensitive for the majority of EU member states. The freedom of movement

¹²³ While in March 1998 60 per cent of Poland's citizens expressed support for EU membership, 55 per cent of the Polish public supported the idea in June 1999. See: *The Economist*, July 31, 1999.

of persons was probably the most sensitive issue. Goods and capital had been settled before labor issues. Slovakia together with other associate countries had to accept an agreement made amongst the member states on the possibility that up to seven years after our entry into the EU, the labor market of the whole EU would not be open. Finally, there was the issue of financial contribution and gains from the EU budget. Once again this was something where the negotiating room was only within a certain framework provided by the EU. In our case it was the 1999 budgetary agreement on the financial framework for the years 2000–2006. That was the so-called Berlin ceiling which sealed the possibility within which Slovakia and other candidate countries could negotiate. The candidate countries could not form a single front but rather each country negotiated on its terms with the EU member states within the given limits. Room for these negotiations proved small.

Ultimately EU member states and European Parliament have to approve enlargement and Slovakia did fairly well in lobbying and finding friends in the EU. Other countries had more difficulties particularly in the European parliament but this is part of the game when ratifying the accession treaty. Slovakia needed friends in EU member state but also in the European parliament.

In sum, the Slovak association and accession experience shows that each country does negotiate on its own merits and each country has its own problems. That is why Slovakia's experience could not simply be replicated. But there are aspects that might be interesting to other countries. Slovakia had a very unique nature of the statehood problem as a result of dissolving Czechoslovakia in a peaceful manner and quickly and without any serious repercussions. Slovakia's real problem in applying its Europe Agreement was domestic politics, not technical aspects. In terms of looking ahead to future associations of EU neighbors, the gap between the EU and outsiders is getting larger whereas the EU consensus on how to engage neighbors is getting weaker. Hence, Slovakia's experience with association agreement and accession process offers potential insights that have to take account of current political realities.

1.3 Institutional framework for Ukraine's cooperation with the EU

Oleksandr Sushko

The Association Agreement (AA) between Ukraine and the EU needs adequate institutional solutions for its proper implementation. Some of these solutions are set out in the Agreement itself. This applies to bilateral bodies: Association Council, Association Committee, Parliamentary Association Committee, the Civil Society Platform and other subsidiary bodies.

Despite the problems with the final ratification of the AA due to the Netherlands issue, the establishment of bilateral bodies stipulated by the Agreement has basically been completed. Therefore, the AA, in its part of bilateral institutions, at the end of 2016 was practically implemented. This became possible due to the mechanism of provisional application, which is in effect until the European Union completes its internal ratification procedures.

At the same time, those institutional decisions that are not directly derived from the text of the Association Agreement are equally important, as they are dictated by its spirit and the logic of implementation. This concerns the internal system of coordination and implementation of the policy of European integration in Ukraine.

For a long time, discussions have been held in Ukraine regarding the optimal model for the coordination of the European integration policy. A lot of practical experience has been accumulated, including attempts at various models of coordination at the governmental level, as well as various forms of organizational support and creation of appropriate administrative capabilities at the interagency level. These discussions have not been completed so far, although in 2015–2016 significant steps were taken to ensure the political leadership, responsibility and administrative ability of the government to implement the policy of European integration.

1.3.1 JOINT BILATERAL INSTITUTIONS

The Association Agreement introduces a whole system of bilateral bodies between Ukraine and the EU. Some of these bodies are a specific continuation of the institutional tradition of the previous Partnership and Cooperation Agree-

ment (PCA) between Ukraine and the EU, which was in effect from 1998 until the Association Agreement entered into force. At least all bilateral PCA bodies that had their analogue in the new AA system were directly reformatted to the Association's bodies as soon as the AA entered into force through the provisional application mechanism. However, some of the AA bilateral bodies are new, they had no analogues in the past, so they were built from a fresh start.

The Association Council was established in accordance with the Article 461 of the AA for providing control and monitoring of the Agreement application and implementation. The Association Council replaced the Cooperation Council, which has operated under the PCA since 1998. In fact, there were no significant organizational changes in the nature of operation of the Association Council in comparison to the Cooperation Council. The exception was the expansion of the agenda as the AA covers more areas and provides for a greater integration degree than the PCA. The most significant added value of the Association Council agenda compared to the Cooperation Council, is the issue of the Deep and Comprehensive Free Trade Area (AA/DCFTA), an element that was absent within the PCA.

At the ministerial level of the Association Council regular political dialogue goes on between Ukraine and the EU in all spheres. Meetings of the Association Council are held at the ministerial level at least once a year.

At its first meeting on December 15, 2014 the Association Council established an institutional framework by adopting the Rules of Procedures of the Association Council, the Association Committee and its sub-committees. The second meeting was held on December 7, 2015. Both meetings took place in Brussels. On Ukrainian side, the Prime Minister Arseniy Yatseniuk was presiding, while on the EU side – the High Representative of the European Union for Foreign Affairs and Security Policy Federica Mogherini. The third meeting of the Association Council was scheduled for December 19, 2016.¹²⁴ The Association Council, in order to achieve the objectives of the Agreement, has the authority to take decisions obligatory to the Parties. The Association Council may delegate its authority to the Association Committee.

In its turn, the **Association Committee**, a lower-status body, prepares meetings and discussions of the Association Council, implements decisions of the Association Council, if necessary, and ensures the continuity of the Association's relations and proper implementation of the Agreement. The first meeting of the Association Committee was held on July 13–14, 2015 in Brussels¹²⁵. The Commit-

¹²⁴ "Засідання Ради асоціації Україна–ЄС відбудеться в Брюсселі 19 грудня," *Європейська Правда*, November 16, 2016. Available online: <http://www.eurointegration.com.ua/news/2016/11/16/7057563/> (accessed on March 23, 2017).

¹²⁵ "У Брюсселі завершилося засідання Комітету асоціації Україна – ЄС," *Government of Ukraine*, July 14, 2015. Available online: http://www.kmu.gov.ua/control/publish/article?art_id=248329038 (accessed on March 23, 2017).

tee is headed by a profile vice-premier and consists of deputy ministers responsible for the European integration in their ministries.

Within the Association Committee there are **sub-committees** – sectoral bodies, whose competencies include separate political spheres, for example:

- Sub-Committee on Freedom, Security and Justice;
- Sub-Committee on Economic and Other Sector Cooperation;
- Sanitary and Phytosanitary Sub-Committee;
- Customs Issues and Trade Facilitation Sub-Committee;
- Geographical Indications Sub-Committee;
- Trade and Sustainable Development Sub-Committee;

The Sub-Committee on Freedom, Security and Justice was the first who started its active work and held two meetings on July 23–24, 2015 and June 3, 2016. At this stage the Committee was focusing on Ukraine's criteria implementation of the Action Plan on Visa Liberalization and subsequent cancellations by the European Union of visa requirements for Ukrainian citizens. In particular, the anti-corruption policy was discussed (creation and functioning of new anti-corruption institutions, such as the National Anti-Corruption Bureau and the National Agency for Prevention of Corruption), the reform of law enforcement agencies (police, prosecutors), protection of personal data and the overcoming of organized crime.¹²⁶

The Sub-Committee on Economic and Other Sector Cooperation, due to the breadth of its subject matter, has narrower thematic **Clusters**:

- Cluster 1: Macroeconomic cooperation, public financial management: budgetary policy, internal control and external audit, statistics, accounting and audit, fraud control;
- Cluster 2: Industrial and entrepreneurial policy, mining and metallurgy, tourism, space, legislation on societies and corporate management, consumer protection, taxation;
- Cluster 3: Cooperation in the energy sector, including nuclear issues, the environment, climate change and civil protection, transport;
- Cluster 4: Cooperation in the field of science and technology, information society, audiovisual policy, education, training and youth, culture, cooperation in the field of sports and physical culture;
- Cluster 5: Agriculture and rural development, fisheries and maritime policy, the Danube region, cross-border and regional cooperation;
- Cluster 6: Cooperation in the field of employment, social policy and equal opportunities, health.

¹²⁶ "Розпочалося Перше засідання Підкомітету «Юстиція, свобода та безпека» Комітету асоціації між Україною та ЄС," Ministry of Justice of Ukraine, July 23, 2015. Available online: <https://minjust.gov.ua/ua/news/47455> (accessed on March 23, 2017).

Clusters from the Ukrainian side are headed by deputy ministers in the relevant areas.

Some of these Clusters were opened in 2015, while others started their operation after January 2016 – when the implementation of economic sections of the Agreement – relating to the EFTA and sectoral cooperation – through the temporary implementation mechanism began. In particular, Clusters 4 and 6 of the Sub-committee on Economic and Other Sector Cooperation began working in June 2016.¹²⁷

Within the Cluster 1 (macroeconomic cooperation, public finance management: budget policy, internal control and external audit, statistics, accounting and audit, anti-fraud), in particular, the discussion is held on the issues of macro-financial assistance of the EU, sectoral support and implementation of the State building contract for Ukraine. In accordance with the Memorandum of Understanding between Ukraine and the EU on providing Ukraine with macro-financial assistance by the EU for up to 1.8 billion euros, in July 2015 Ukraine received its first tranche of this aid in the amount of 600 million euros.¹²⁸

The subsequent tranches were based on Ukraine's achievement of a number of indicators, in particular, the continuing cooperation with the IMF. To receive the second tranche Ukraine has to comply with 15 conditions of structural policy, while the third tranche requires meeting of 21 conditions. The next IMF tranche after a significant break, in September 2016, taking into account the coincidence of most of the indicators, paved the way for the next tranche of the EU macro-financial assistance (600 million euros), its receipt is expected in early 2017.¹²⁹

The delay was primarily caused by the lag in the implementation of anti-corruption indicators, in particular, functioning of newly established anti-corruption bodies and introduction of electronic declaration of incomes, fortune and ex-

¹²⁷ "Відбулося перше засідання кластера 4 Підкомітету з питань економіки та іншого галузевого співробітництва Комітету асоціації між Україною та ЄС," Government of Ukraine, June 3, 2016. Available online: http://www.kmu.gov.ua/control/uk/publish/article?art_id=249086663&cat_id=244276429 (accessed on March 23, 2017).

¹²⁸ "У Н.Яресько підтвердили отримання першого траншу допомоги від ЄС у розмірі 600 млн євро," Українські національні новини, July 23, 2015. Available online: <http://www.unn.com.ua/uk/news/1485059-u-n-yaresko-pidtvrdili-otrimannya-pershogo-transhu-dopomogi-vid-yes-u-rozmiri-600-mln-yevro> (accessed on March 23, 2017).

¹²⁹ "Посол ЄС назвав умови, необхідні для отримання €600 млн від Євросоюзу," Zaxid.net, October 10, 2016. Available online:

penses of civil servants. This electronic system was implemented in August 2016; however, on October it still contained a number of technical shortcomings hindering its full operation.

The Cluster 1 is focused on the implementation of the Agreement on Financing the State building contract for Ukraine, signed May 13, 2014. It provides for free and irrevocable financing of the State Budget in the amount of 355 million euros to support reforms. Within this Agreement, the first 250 million euros were received June 17, 2014 into the state budget.¹³⁰

During the second meeting of the Cluster 1 (September 28–29, 2016), parties focused at the macroeconomic cooperation (in particular, measures aimed at stabilizing economic situation in Ukraine; public finances and the latest changes in the tax and budget policy, etc.); cooperation in the financial sector (in particular, stability of the financial situation in Ukraine and internal reorganization of the National Bank of Ukraine); cooperation in other sectors (in particular, public finance management, development of national statistics, especially, plans for the national statistical system reforming, improving national legislation on the prevention and control of the money–laundering in accordance with the international standards and the EU legislation, developing cooperation with relevant bodies of the EU member states).¹³¹

As of October 2016, there is no information on the work beginning of the Cluster 2 (industrial and entrepreneurial policy, mining and metallurgy, tourism, space, legislation on societies and corporate governance, consumer protection and taxation).

Cluster 3 (energy cooperation, including nuclear issues, environment, especially, climate change and civil protection, transport) deals with the implementation of energy standards by Ukraine (primarily, obligations under the Treaty on the European Energy Community), environmental policy standards and transport cooperation.

In particular, the parties are trying to solve problems connected to the delay of the Agreement on the Common Aviation Area (CAA) signing. The agreement on the CAA was initialed on November 28, 2013. The Ukrainian party has complied with the relevant internal procedures and received the authority to conclude the Agreement in May 2015. Signing of the CAA Agreement was postponed twice by the EU initiative. This issue remains unresolved due to the lack of consensus between Spain and the UK regarding the wording of the paragraph 31 “Territory”

¹³⁰ “Інформація Міністерства фінансів України щодо виконання Державного бюджету України на 2014 рік,” Урядовий кур’єр, February 28, 2015. Available online: <http://ukurier.gov.ua/uk/articles/informaciya-ministerstva-finansiv-2014/> (accessed on March 23, 2017).

¹³¹ “Друге засідання кластера 1 Підкомітету з питань економіки та іншого галузевого співробітництва Комітету асоціації між Україною та ЄС,” Government of Ukraine. Available online: www.kmu.gov.ua/.../20160930_dodper_cent20Druyepreper_cent20zasidannayaper_cent20klasteraper_cent201.pdf (accessed on March 23, 2017).

of Article 2 “Definition” on the territorial application of the Agreement in part of Gibraltar.¹³²

In the navigation sphere, the discussion point, on which the Cluster 3 is working, remains the use of the Ukrainian part of Danube River due to the fact that the Romanian party raised objections to the inclusion of the Ukrainian section of Danube River (from Izmail to the Bystroe estuary) to the TEN-T regional network in the context of the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) on Ukraine’s implementation of the Danube – Black Sea Deep–Water Canal project.¹³³ An important component of this Cluster’s operation is the discussion of ways and consequences of the reorientation of traffic flows in the context of Russia’s aggression in the East of Ukraine and the Crimea annexation.

The Cluster 4 began its functioning on June 3, 2016 in Brussels. Within the Cluster Ukrainian party raised a point of the possibility of Ukrainian participation expanding in the Erasmus + projects. There were discussed conditions of the Agreement implementation between Ukrainian Government and the European Commission on Ukraine’s participation in the Creative Europe programme; Ukraine’s progress in audiovisual policy implementing in accordance with the European standards; current development of the digital economy and the information society. In particular, information was provided on the development and implementation of the Digital Agenda for Ukraine, and the importance of COMUS and CDIS projects for Ukraine was noted.¹³⁴

The first meeting of the Cluster 5 (agriculture and rural development, fisheries and maritime policy, the Danube River, cross-border and regional cooperation) was held on April 26, 2016 in Brussels. An overview of the EU policy in the field of agriculture and rural development was presented (including legislation changes in the context of the AA implementation) as well as a review of the relevant policy of Ukraine, in particular the Single and Comprehensive Strategy for Agriculture and Rural Development in Ukraine for 2015 – 2020; the development of associations of small and medium agricultural producers; market infrastructure in rural areas. The parties discussed green tourism, prospects for the

¹³² К. Кульчицька, “Закрите небо – чому Україна досі не приєдналась до спільного авіапростору ЄС,” *Європейська Правда*, October 14, 2016. Available online: <http://www.eurointegration.com.ua/articles/2016/10/14/7055886/> (accessed on March 23, 2017).

¹³³ “Пам’ятна записка до засідання кластера 3 Підкомітету з питань економіки та іншого галузевого співробітництва Комітету асоціації між Україною та ЄС,” Government of Ukraine. Available online: [http://www.kmu.gov.ua/document/248531083/Nonper cent20paper_Clusterper cent203_final_ukr_FORper cent20WEBper cent20\(2\).pdf](http://www.kmu.gov.ua/document/248531083/Nonper cent20paper_Clusterper cent203_final_ukr_FORper cent20WEBper cent20(2).pdf) (accessed on March 23, 2017).

¹³⁴ “Відбулося перше засідання кластера 4 Підкомітету з питань економіки та іншого галузевого співробітництва Комітету асоціації між Україною та ЄС,” Government of Ukraine. Available online: http://www.kmu.gov.ua/control/ru/publish/article?art_id=249086663&cat_id=244276429 (accessed on March 23, 2017).

export of Ukrainian dairy products to the EU market; trade restrictive measures of the Russian Federation and the impact of the illegal Crimea annexation on the agrarian products trade.¹³⁵ In the fishing sector, the parties focused their attention on the implementation of the Roadmap on fighting illegal, unreported and unregulated fishing in the Black Sea, cooperation on integrated maritime policy.

The first meeting of the Cluster 6 (employment, social policy, equal opportunities and public health) was held on June 10, 2016 in Kyiv. The Cluster is focused on cooperation on the employment, modernization of social protection systems; ensuring equal rights and opportunities for women and men, including mechanisms against gender-based discrimination; cooperation in the health sector, in particular, health system reform.¹³⁶ The implementation of the EU directives in the field of occupational safety and health, as well as creation of safe working conditions, current condition of the implementation of the vocational education and training reform as well as competitiveness improving and citizens mobility in the labor market through the professional training were discussed. Attention is paid to the prospects of pension reform, social assistance system reform, including system of subsidies related to the increase of tariffs for housing and communal services.

The government is trying to ensure an appropriate level of transparency in the work of the Association bodies; in particular, on the website of the Cabinet of Ministers, there are available agendas and information reports on the work of sub-committees and clusters – on the absolute majority of the AA components.

At the same time, as of October 2016, there is no information on the operation of sub-committees formed in accordance with the Section IV (Trade and trade-related issues), namely:

- Sanitary and Phytosanitary Management (SPS) Sub-Committee (Article 74 of the AA)
- Customs Sub-Committee (Article 83 of the AA)
- Sub-Committee on Geographical Indications (Article 211 of the AA)
- Trade and Sustainable Development Sub-Committee (Article 300 of the AA).

It is assumed that the first meeting of these sub-committees should take place within three months after the entry into force of the relevant articles (sections) of the AA.

¹³⁵ “Виконання Угоди про асоціацію. Підкомітети,” Government of Ukraine. Available online: http://www.kmu.gov.ua/kmu/control/uk/publish/article?art_id=248626503&cat_id=247749488 (accessed on March 23, 2017).

¹³⁶ Ibid

As of October 2016, the establishment of bilateral intergovernmental institutions of the Ukraine–EU Association, despite the incomplete ratification of the AA, is at the final stage. Most of the institutions are established and functioning. However, the parties still have to start the operation of some sub-committees and clusters, the launch of which was delayed.

1.3.2 INSTITUTIONAL COORDINATION ON THE GOVERNMENTAL LEVEL

The government is in the process of the organization of the AA implementation – it is guided by its own Ukrainian experience of implementing the European integration policy during previous years, and also takes into account the best practices of other countries that solved commensurate political and managerial tasks.

In April 2016, a new Cabinet of Ministers of Ukraine was formed under the leadership of the Prime Minister Volodymyr Groisman. In this government structure a new post of the Vice-Prime Minister on the European and Euro–Atlantic integration was introduced and occupied by Ivanna Klympush–Tsyntsadze, who until then was the Member of Parliament of Ukraine. The appointment of the profile Vice-Prime Minister is supposed to overcome the problem of lack of political leadership and responsibility, which has been pointed out over many years by the experts, suggesting the introduction of such a post.

However, this is not the first time that the post of the Vice-Prime Minister for the European Integration has been established: previously such position was occupied by Oleh Rybachuk (2005) and Hryhoriy Nemyria (2007–2010). This experience was indicative, because it revealed both advantages and disadvantages of this institutional solution. The Vice-Prime Ministers lacked political weight, coordinating powers and operational capabilities to implement consistent political will in the policy of European integration. In many respects the post was ceremonial; the Vice-Prime Ministers did not have real power in the government, or did not rely on sufficient hardware resources, and often performed *de facto* other functions than coordination of the state's European integration policy. Therefore, taking into account lessons of the past, the newly appointed Vice-Prime Minister focused on developing appropriate administrative capabilities, organizational and expert support for her work.

The position of the profile Vice-Prime Ministers is only the institutional completion and political superstructure over the system of implementing policy of European integration. In previous years (2014–2015) a number of decisions were adopted and implemented; this created the middle executing unit at the level of ministries and the Secretariat of the Cabinet of Ministers. So, back in 2014, each ministry appointed deputy ministers responsible for European integration issues within the au-

thority of their bodies. They lead the relevant sub-committees and clusters within bilateral bodies and introduce them into the Committee of the Association.¹³⁷

In the Secretariat of the Cabinet of Ministers in 2014, the Government Office for European Integration (GOEI) was established. Since January 2015, the work of the GOEI was headed by the Deputy Minister of the Cabinet of Ministers of Ukraine Natalia Hnydyuk. After her resignation in August 2016, the position as of October 2016 remained vacant. Following the expanding of the area of responsibility in 2016, the institution was renamed into the Government Office for European and Euro-Atlantic Integration (GOEEI). Organizational, expert, analytical and information support of the activity of the Cabinet of Ministers of Ukraine in the sphere of European and Euro-Atlantic integration shall be referred to the GOEEI. The Office ensures coordination of executive bodies in their development and implementation activities aimed at the AA implementation; planning, monitoring and evaluation of the efficiency and effectiveness of the tasks implementation in the field of European integration, including the Agreement implementation; coordination of the activities of executive bodies in drafting legislative and other legal acts aimed at the implementation of the Agreement, other international agreements of Ukraine on European integration and arrangements between Ukraine and the EU.¹³⁸

During 2014–2016, the Government, primarily due to the work of the Office, was able to achieve notable results, in particular: it approved a national plan for the Agreement implementation (recently substantially updated in the FTA part in connection with the commencement of the provisional application of the Chapter IV of the Agreement), to implement which 150 implementation plans of the 219 EU acts were approved in accordance with the Association Agreement; introduced the practice of consultations with the public and interested parties, the quarterly public reporting of the GOEEI on the implementation of the Association Agreement and the EU–Ukraine Association Agenda (public reports are posted on the website of the Cabinet of Ministers of Ukraine in the section “European Integration”). At the level of the GOEEI, the experts noted the existence of both an adequate understanding of challenges in the development of the approximation mechanism of the legislation, and realistic plans for solving these problems through the EU technical assistance project “Support for the implementation of the Association Agreement between Ukraine and the EU”, which will be implemented in 2016–2018.¹³⁹

¹³⁷ “Кабмін призначив 9 заступників міністрів з євроінтеграції,” УНІАН, August 21, 2014. Available online: <http://www.unian.ua/politics/953797-kabmin-priznachiv-9-zastupnikov-ministriv-z-evrointegratsiji.html> (accessed on March 23, 2017).

¹³⁸ С. Сидоренко, “Що відбувається з урядовим офісом з питань європейської інтеграції?” *Європейська Правда*, September 14, 2016. Available online: <http://www.eurointegration.com.ua/articles/2016/09/14/7054535/> (accessed on March 23, 2017).

¹³⁹ О. Сушко, В. Мовчан, Р. Хорольський, О. Мірошниченко, “Впроваджуючи Угоду про асоціацію:

At this stage, it is necessary to avoid any temptation to direct resources of the project mainly to current tasks maintenance. Instead, it is necessary to make every effort to ensure full institutionalization of the government's mechanism of legislation approximation and control over its implementation in Ukraine. The main criterion by which it is necessary to assess the efforts of the Ukrainian authorities on institutionalization of the approximation mechanism of Ukraine's legislation to the EU *aquis*, as determined by the expert Robert Khorolsky, should be the development of human capacity, that is, the presence in the public service of a sufficient number of specialists in European integration with high level qualifications.¹⁴⁰ There is sometimes a lack of understanding, and in some cases – a lack of resources to attract a sufficient number of specialists (low, non-competitive salaries on relevant vacancies), providing both general quality management of processes and proper professional expertise. It is a necessary condition for success of any institutional configuration of the national European integration mechanism as well as leading politicians.

1.3.3 ROLE FOR THE VERKHOVNA RADA

The Parliamentary Association Committee (PAC), established in accordance with Article 467 of the AA, is the formal Association's institution in relations between Ukraine and the EU. The Parliamentary Association Committee consists of members of the Verkhovna Rada of Ukraine, on the one hand, and members of the European Parliament, on the other. The PAC should be informed on the decisions and recommendations of the Association Council and provide recommendations to the Association Council.

The first meeting of the Parliamentary Association Committee was held on February 24–25, 2015 in Brussels. The second meeting took place in Kyiv, November 4–5, 2015. The first co-chairmen of the Ukraine–EU PAC were Ostap Semerak (from Ukraine, April 2016) and Andrej Plenkovic (from the EU, October 2016).¹⁴¹ The latter terminated his appointment ahead of schedule in connection with his appointment to the post of Prime Minister of Croatia.

The fourth PAC meeting held on September 20–21, 2016 focused on institutional reform and decentralization issues, justice and public administration reforms, implementation of the Association Agreement between Ukraine and the

перші уроки, наслідки, практики використання,” Аналітична доповідь Фонду Конрада Аденауера та Інституту Євро–Атлантичного співробітництва, 2016, р. 9. Available online: <http://www.kas.de/wf/doc/19278–1442–13–30.pdf> (accessed on March 23, 2017).

¹⁴⁰ Ibid

¹⁴¹ Парламентський комітет Асоціації. Available online: http://www.kmu.gov.ua/kmu/control/uk/publish/article?art_id=248626478&cat_id=247749488 (accessed on March 23, 2017).

EU, introduction of a visa-free regime for Ukrainian citizens, and sectoral cooperation.¹⁴²

The Parliamentary Association Committee applies a wide range of cooperation instruments, combining both official and informal agenda. For example, on the eve of the fourth meeting of the PAC in September 2016, the three EU members – Rebecca Harms, Michael Boni and Jaromir Schetina – together with their Ukrainian colleagues, visited the Ukrainian–Russian conflict zone in Donbass with an informal visit, as it was reported later at the PAC meeting.¹⁴³

The Verkhovna Rada of Ukraine has a Committee on European Integration, whose competence includes provision of parliamentary part of the work on European integration, and, first of all, adaptation of Ukrainian legislation to the EU *aquis communautaire*.

1.3.4 INVOLVEMENT OF CIVIL SOCIETY

While the previous agreement – the PCA between Ukraine and the EU – did not provide for institutional forms of public participation, the AA goes with this issue to a new level, creating a special institution to represent the interests of organized civil society – EU–Ukraine Civil Society Platform (CSP).

The CSP was established in April 2015 in accordance with articles 469–470 of the AA. CSP is the official body of the Agreement together with the Association Council, the Association Committee, and the Parliamentary Association Committee. The CSP is a bilateral body consisting of representatives of civil society of Ukraine on one hand and members of the European Economic and Social Committee (EESC) on the other. The CSP goal is to ensure an effective public participation in the implementation of the Association Agreement, in particular through public monitoring of the implementation of the Agreement provisions.

Creation of the Ukrainian part of the CSP was preceded by intensive public discussions on the mechanisms for the CSP creation and functioning. The first composition of the CSP (April–December 2015) was of experimental nature: from the Ukrainian party, the platform comprised 26 persons, from the EU party – 9. The first co-chairmen of the CSP from April 2015 to February 2016 were Oleksandr Sushko (Institute of Euro–Atlantic Cooperation, Ukraine) and Andrzej Adamczyk (Trade Union Association “Solidarity,” Poland). The formation of the Ukrainian part of the CSP took place in an open inclusive process where members of the CSP were elected by the Assembly; more than 160 pub-

¹⁴² “Відбулося Четверте засідання Парламентського комітету асоціації між Україною та ЄС.” Верховна Рада України, September 22, 2016. Available online: <http://portal.rada.gov.ua/news/Novyny/134897.html> (accessed on March 23, 2017).

¹⁴³ Ibid

lic organizations from all over Ukraine took part in it.¹⁴⁴ The second staff of the CSP, elected in December 2015, was modified in a result of long negotiations with the European Economic and Social Committee, which insisted on an equal representation of the so-called Sectors: trade unions, employers and other public associations.

A significant part of the Ukrainian civil society opposed the privileged representation of only two groups of public associations (trade unions and employers). It is perceived as discrimination of other types of associations (human rights organizations, volunteer associations, business associations, independent think tanks, environmental organizations, etc.), which, according to EESC standards, together have only one third of the votes in the general structure. The main argument was that the nature of Ukrainian trade unions and employers' organizations differs significantly to the similar structures in Western Europe, where the true independence of the trade union movement and employers' organizations has a deep tradition. Activists of Ukrainian civil society pointed out that the creation of CSP by the EESC example in the Ukrainian version would lead to an unjustifiably powerful representation of oligarchic interests in this institution.¹⁴⁵ Nevertheless, due to the political influence of the EESC, the Ukrainian party had to take into account partially its position, providing for a guaranteed representation of "sectors," albeit in a reduced version.

The second part of the Ukrainian side of the CSP, formed in December 2015, consists of 15 persons, of which three represent trade unions, three – association of employers, three – other public associations, and six of them are from working groups formed by the CSP Assembly in accordance with the AA structure. The EU party is formed by nine members representing the EESC and six observers from major European public associations. In the future, the EU, represented by the EESC, intends to go on and insist on full perception by the Ukrainian party of the equal representation principle for the three "sectors" – trade unions, employers and "other public organizations". For most part of Ukrainian civil society (except for the trade unions themselves and employers), such a position is unacceptable. Therefore, the discussion on this matter is incomplete.¹⁴⁶

Starting with the 2nd staff, the CSP is elected for a period of 2.5 years. Alfre-

¹⁴⁴ "Українська частина Платформи громадянського суспільства Україна–ЄС розпочинає роботу," Government of Ukraine, April 21, 2015. Available online: http://www.kmu.gov.ua/kmu/control/uk/publish/article?art_id=248107213&cat_id=223561280 (accessed on March 23, 2017).

¹⁴⁵ А. Когут, "Тінь Фірташа або Хто блокує створення громадського органу асоціації?" Європейська Правда, December 15, 2014. Available online: <http://www.eurointegration.com.ua/experts/2014/12/15/7028747/> (accessed on March 23, 2017).

¹⁴⁶ А. Ферт, "Чи оживе громадський орган асоціації, або До чого довів конфлікт з Брюсселем," Європейська правда, April 6, 2015. Available online: http://www.eurointegration.com.ua/articles/2015/04/6/7032571/view_print/ (accessed on March 23, 2017).

das Jonuska (Lithuania) is the co-chairman of the second staff of the CSP from the EU. Co-chairmanship in the Ukrainian part is carried out on a rotational basis, with a replacement for every 10 months. From February to December 2016, the role of the Chairman of the CSP belongs to Hryhoriy Osovy.¹⁴⁷

The CSP holds its official meetings twice a year, where it approves position papers. Those documents represent a public assessment of the progress in the Agreement implementation, draw the attention of other Association bodies to existing problems and determine recommended steps to ensure effective reforms. In particular, at the second meeting of the CSP in February 2016, analytical reports on energy policy and anti-corruption issues were discussed and approved. The leading subjects of the reports preparation from the Ukrainian party became authoritative non-governmental organizations: DIXI-Group (energy) and Transparency International – Ukraine (anti-corruption).¹⁴⁸

On the initiative and with the financial support of the EU in 2016, the International Renaissance Foundation launched the project Public Synergy, which, in particular, aims to strengthen institutional capacity of the CSP, expand its influence tools, improve awareness of the Ukrainian civil society on the public component of cooperation between Ukraine and the EU.¹⁴⁹

In addition to the general public institution, the AA provides some specific forms of engaging the public at the sectoral level. Thus, Article 299 provides for the establishment of an Advisory Group on sustainable development with the task of advising on the implementation of this Chapter (on Trade and Sustainable Development (Chapter 13) – Authors). It is also stipulated that “Members of the Advisory Group of each Party will meet at an open Civil Society Forum in order to conduct a dialogue encompassing sustainable development aspects of trade relations between the Parties”. Article 229 specifies that these institutions should be established within a year of the entry into force of the AA.

As of October 2016, the establishing process on a consultative group on sustainable development and the relevant Civil Society Forum was in the phase of preliminary consultations.

¹⁴⁷ “Україна – ЄС. Процесу євроінтеграції – ефективну громадську підтримку,” Федерація профспілок України, November 9, 2016. Available online: <http://www.fpsu.org.ua/component/content/article/215-platforma-gromadyanskogo-suspilstva-ukrajina-es/11235-ukrajina-es-protsesu-evrointegratsiji-efektivnu-gromadsku-pidtrimku-2> (accessed on March 23, 2017).

¹⁴⁸ “2nd meeting of EU–Ukraine Civil Society Platform,” *European Economic and Social Committee*. Reports. Available online: <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-2nd-eu-ukraine-reports>. (accessed on March 23, 2017).

¹⁴⁹ “Civil synergy: enhancing public participation in the implementation of Euro–integration reforms by the EU–Ukraine Civil Society Platform and Ukrainian National Platform of the Eastern Partnership Civil Society Forum, *International Renaissance Foundation*. Available online: <http://www.irf.ua/programs/eu/civicsynergy/> (accessed on March 23, 2017).

Conclusions

- Institutional support of the AA goes much further than the previous Ukraine–EU PCA, which was in effect from 1998 and practically until the entry into force of the AA.
- Bilateral institutions of the AA are established at the three levels of representation: executive power, parliaments and civil societies.
- Expansion of agenda of bilateral institutions – primarily through the inclusion of a Deep and Comprehensive Free Trade Area (DCFTA) to the AA – means inclusion of wide range of trade and economic policies that were outside the scope of regulation of a preliminary agreement.
- The vertical system of governmental bilateral bodies (Council–Committee–sub–committees–clusters) seems to be more structured, detailed and aimed at practical results in comparison to the structure that existed within the PCA.
- Creation of the official public representation – the EU–Ukraine Civil Society Platform (CSP) – is an innovation of the AA, which was missing not only in the former PCA institutional framework between Ukraine and the EU, but also in previous generations of association agreements signed by the European Union with the third countries.
- The model of the CSP is largely based on the institutional experience of the European Economic and Social Committee, with its privileged “sectoral” representation of employers and trade unions. However, the role and place of similar associations in the structure of civil society in Ukraine differs significantly from those in Western Europe, from where the EESC model originated. This led to long (and not finished) discussions about adequate representation of public interests in institutions of this type in Ukraine.
- In addition to formal bilateral institutions, the issue of crucial importance is the creation of internal government institutions responsible for implementing the AA in Ukraine. During 2014–2016 Ukraine took significant steps in this direction (appointed a profile Vice-Prime Minister, established a Government Office for European Integration, appointed deputy ministers for European integration in each ministry, introduced public reporting and public consultations), however, this process seems to be unfinished.

2.1 DCFTA: a starting gear for structural changes in Ukraine's trade relations with the EU

Yaroslav Zhalilo

The vector of the European integration of Ukraine at the legislative level was determined by the Strategy of Ukraine's Integration into the European Union approved by the Decree of the President of Ukraine in 1998. In 2004 the National Program on Adaptation of Ukrainian Legislation to Legislation of the European Union was adopted, in 2009 – the EU–Ukraine Association Agenda. Article 11 of the Law of Ukraine “On the Foundations of Domestic and Foreign Policy” (2010) defined, among the main principles of foreign policy, “ensuring Ukraine's integration into the European political, economic and legal area with the aim of gaining membership in the European Union”.

Meanwhile, the legal and regulatory preparation of the European integration process of Ukraine left aside trade relations between Ukraine and the EU countries, which were traditionally marked by rather unstable dynamics (Fig. 5).

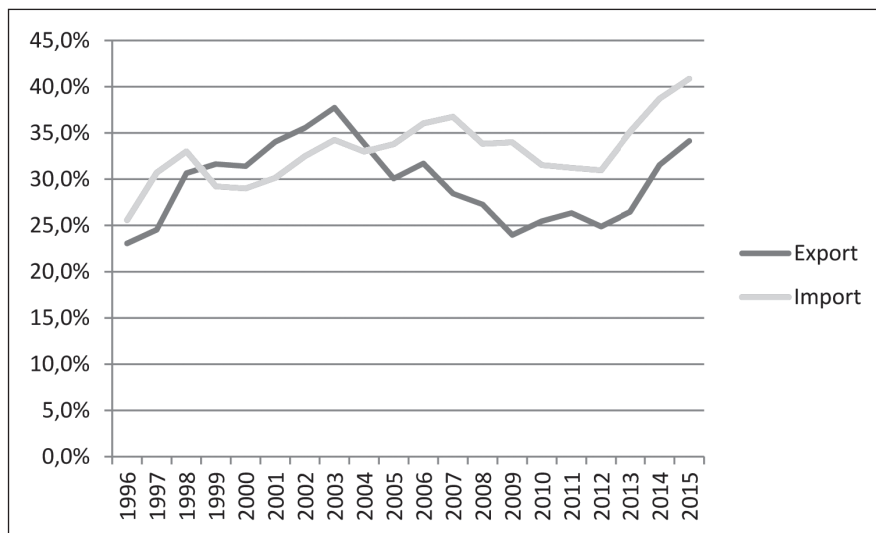
2.1.1 CHANGING DYNAMICS OF UKRAINE'S FOREIGN TRADE WITH THE EU

While at the stage of recovering from the transformation crisis and resuming economic growth (1996–2003), the share of commodity export from Ukraine to the EU has steadily grown, reaching 37.7 per cent¹⁵⁰, later the priority of this geographical direction became weak for a long period. And the specified indicator decreased to 24.9 per cent in 2012, which was even lower than the share of exports to Asian countries (25.7 per cent). This was primarily caused by the outstripping growth of exports to the CIS countries, whose share increased over the period 2004–2012 at 11 points and should be explained by the development of production cooperation in this sphere and the growing lag in the competitiveness of Ukrainian goods in the European market. Accordingly, in the structure of commodity export, the predominance of low-technology products was formed: the

¹⁵⁰ The calculations in this article are based on the data of the State Statistics Service of Ukraine.

share of metallurgical products in exports from Ukraine to the EU in 2004–2010 averaged 31.2 per cent, the share of mineral products was 20.1 per cent.

Figure 5. The share of Ukraine's foreign trade with the EU in 1996–2015, in %



It is characteristic that the dynamics of imports was much more stable, and the share of imports of goods from the EU countries has been growing during the period preceding the economic crisis of 2008–2009 almost constantly, reaching 36.7 per cent in 2007. From our point of view, such dynamics is caused by the importance of the investment factor of economic growth in this period and the growth of demand for investment products. According to the estimates of the Ministry of Economic Development and Trade of Ukraine, for the period 2004–2010, machinery and equipment (including energy) accounted for 44.8 per cent of imports from the EU to Ukraine, another 15.4 per cent were vehicles. 16.6 per cent of imports belonged to the products of chemical industry and related industries.

The post-crisis recovery of 2010–2013 was no longer accompanied by marked increase in trade between Ukraine and the EU. Exports from Ukraine to the EU did not exceed the pre-crisis level, and from 2012 began to decline (Figure 6). However Asian and African directions intensified significantly. Imports from the EU have intensified; however, they also did not exceed the pre-crisis index, which is logically explained by stagnation processes in the investment sphere of Ukraine.

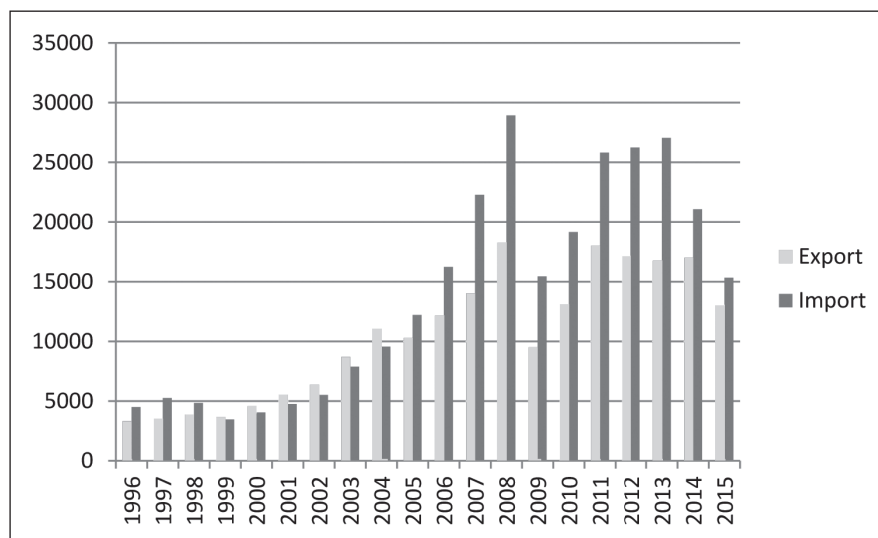
It is important that during this period Ukraine started practical implementation of the EU–Ukraine Association Agenda, which had to prepare Ukraine for signing the Association Agreement. Meanwhile, the conditions, put forward by

the European Union, applied to political aspects primarily (electoral legislation, reforms of judicial system, internal affairs bodies, fighting corruption, release of political prisoners, etc.), they had no practical effect on current economic processes. A certain positive impact on the development of the economy should be provided by simplifying conditions for starting a business and registering property, obtaining permits, protecting investors' rights that were implemented in accordance with the Agenda. However, their potential has not been disclosed in the face of growing depressive trends in both Ukrainian and European economies.

In the pre-crisis year 2013, mutual trade between Ukraine and the EU was characterized by the following:

- The share of commodity export to the EU was 26.5 per cent, and imports was 35.1 per cent;
- 10 major trading partners accounted for 77.4 per cent of exports and 78.3 per cent of imports;
- Metallurgical products (27.9 per cent), agrarian raw materials and products of fat and oil industry (22.6 per cent), mineral products (17.9 per cent) prevailed in the structure of exports. Production of machine-building and instrument-making industries amounted to 13.2 per cent of exports;
- In the structure of imports, production of machinery and equipment (33.2 per cent), chemical products and polymers (17.2 per cent), mineral products (11.9 per cent), agrarian and food products (11.9 per cent) prevailed.

Figure 6. Trade volumes of Ukraine and the EU in 1996–2015, USD million

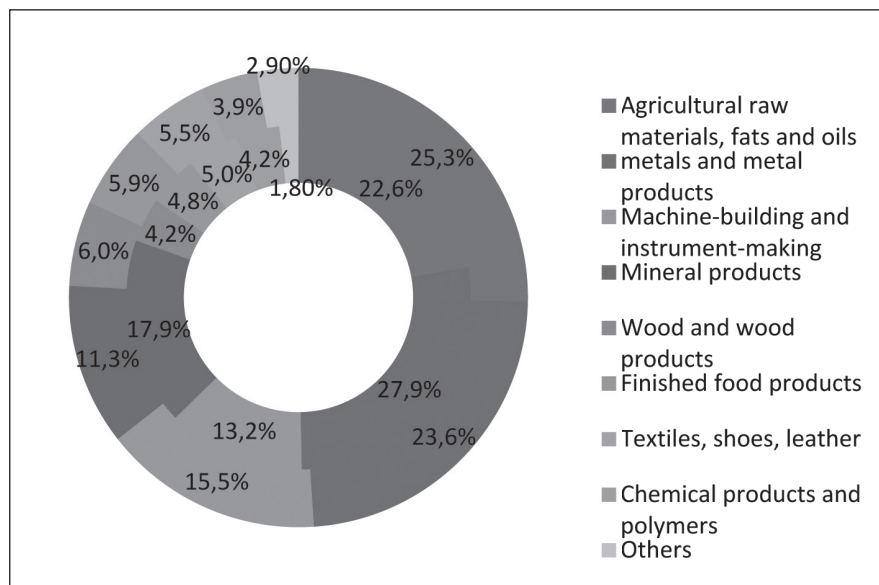


The general decrease in volumes of Ukraine's foreign trade in the crisis period 2014–2015 was marked by a decrease in exports by 39.8 per cent and imports by 51.3 per cent. The main factors of this reduction were the crisis phenomena caused by an internal political and economic crisis and a military aggression of the Russian Federation. They led to a rapid drop in the investment activity, loss of income and aggregate demand. Exports to the Russian Federation decreased by 1.5 times, which was caused by both further development of the trade war against Ukraine and the loss of control over the part of the territory of those regions that had traditionally high export orientation.

Losses in trade relations in the European direction were significantly smaller. During this period, exports from Ukraine to the EU decreased by 22.3 per cent, imports from the EU decreased by 43.3 per cent. This contributed to the fact that the EU's share in Ukraine's foreign trade turnover began to grow dynamically, reaching 34.1 per cent of exports and 40.9 per cent of imports. At the same time, there were tangible positive shifts in the structure of exports (Figure 7):

1. The geography of mutual trade has expanded. In conditions of a general significant reduction, exports to Portugal increased by 20 per cent, to Spain – by 5.7 per cent, to Romania – by 2.1 per cent. At the same time, the share of Central and Eastern European countries that experienced high economic growth rates during the period of stagnation in the EU declined from 44.7 per cent in 2013 to 41.3 per cent in 2015. However, there was no geographical diversification of exports in terms of value. The share of major partners increased to 78.5 per cent, and more than a half of commodities were exported to 5 countries: Italy, Poland, Germany, Spain and Hungary. A number of commodity groups have a significant geographical concentration: one quarter of the machine-building exports in the EU goes to Hungary and 22.3 per cent – to Germany, 33.6 per cent of the export of metallurgical products goes to Italy, 36.4 per cent of textiles – to Germany, 43.7 per cent of skins and leather – to Italy, 37.2 per cent – to Poland, 23.4 per cent of agricultural raw materials – to Spain, almost half of fats and oils – to Italy and Spain.

Figure 7. Changes in the structure of exports from Ukraine to the EU in 2013–2015, in %

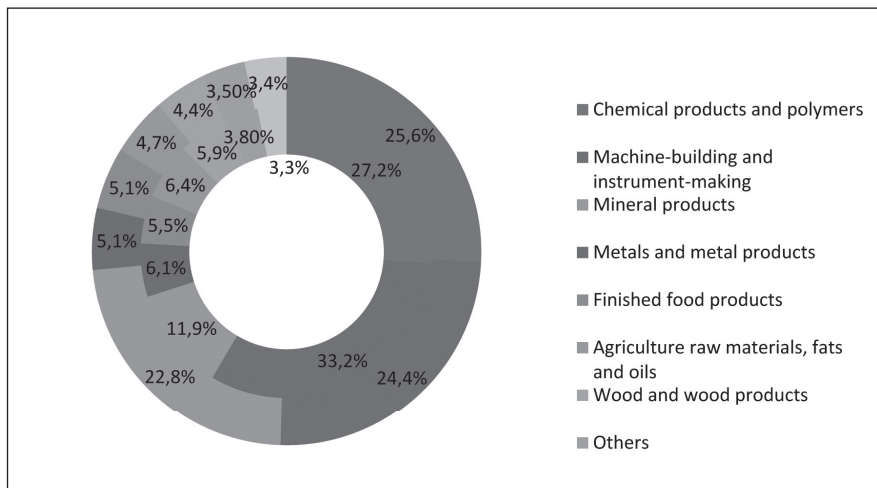


2. In the structure of commodity exports from Ukraine to the EU, the share of agrarian raw materials and products of the fat and oil industry increased insignificantly, reaching 25.3 per cent (Figure 3). At the same time, there was an increase in 28.1 per cent in the export of poultry meat (there is no access for beef, pork and lamb meat from Ukraine to the EU market), 40.4 per cent – in the export of flour and cereals. According to the Ministry of Economic Development, in 2015, the tariff quotas for duty-free importation of honey, barley and flour, processed tomatoes, oats, wheat, corn and flour from them, grape and apple juice from Ukraine to the EU was used in full. However the quota for the import of eggs was used at 5 per cent.
3. The share of integrated food products also slightly increased from 4.8 to 5.9 per cent of exports to the EU (primarily due to confectionery and finished grain products). However, according to the Ministry of Economic Development, in 2015 Ukraine used only 0.4 per cent of the export quota for food products. Taking into account that agrarian and food products prices declined by 15–20 per cent in the specified period, in general, in the natural dimension, the export of food and basic types of agrarian products increased significantly.
4. Exports of metals and metal products to the EU decreased by 32.8 per cent, and their share in the total exports to the EU – by 23.6 per cent, mineral products – by 11.3 per cent. It should be noted that these changes

occurred during the period of a synchronous decline in prices for these products: according to the State Statistics Service, the price for ferrous metals exported from Ukraine decreased by 25 per cent in 2015, and for products made from ferrous metals – by 15.6 per cent. Consequently, we are talking about a physical reduction in exports of metallurgical and mineral products, which is primarily connected to the loss of a number of production capacities on the territories of the Donets Basin that are not controlled by Ukraine.

5. The share of machine–building and instrument–making products in exports increased to 15.5 per cent. Export of these products decreased in value only by 9.6 per cent, with a 10–12 per cent decrease in prices, which suggests preservation of the pre–crisis physical volume of engineering products exports. Moreover, 42.1 per cent of the total export of machine–building products from Ukraine was directed to the EU, including 72.5 per cent of electric cars. At the same time there was an increase in exports of transport engineering products: shipbuilding – 1.8 times, motor industry – 2 times, aircraft construction – 9.6 times. The export of optical instruments increased 1.3 times.

Figure 8. Changes in the structure of imports from the EU to Ukraine in 2013–2015, in %



6. There was a slight increase (from 5.0 to 5.5 per cent) in the share of exports of textiles, footwear, hats, leather and skins, which are usually sold by small and medium–sized enterprises. At the same time, 80.2 per cent of textiles are exported to the EU countries, 93 per cent of these exports are

ready-made clothes. Now 90 per cent of the total export of ready-made clothes from Ukraine is directed to the EU.

Changes in the structure of *imports* in the period under review were more controversial and generally reflected trends in the change in aggregate demand under the impact of the economic crisis (Figure 8):

1. Imports to Ukraine from the EU declined more significantly than exports, which is caused by a deep fall in a domestic demand, reinforced by the threefold devaluation of hryvnia. At the same time, the level of geographical concentration increased: the top ten largest trading partners accounted for 80.0 per cent of total imports from the EU, including a quarter of imports from Germany. The three countries – Germany, Poland and Hungary – provided 51.6 per cent of all imports to Ukraine from the EU. Only imports from Hungary, which grew by 14.8 per cent, showed positive dynamics for the period under review, and the share of this country grew more than 2 times (also imports from Luxembourg and Malta grew, however this figure is not significant).
2. In the commodity structure of imports, the share of investment and production products decreased the most significantly. Thus, the import of machine-building and instrument-making decreased by 56.6 per cent, and the share was up to 24.4 per cent, the share of metallurgical products – up to 5.1 per cent, chemical products and polymers – up to 25.6 per cent. Such changes clearly correlate with a phenomena of the investment crisis and a reduction in the inflow of foreign investment. They indicate a natural narrowing of cooperative relations with European enterprises in the face of growing risks for economic activity.
3. A significant increase occurred only for imports of mineral products – as a reflection of Ukraine's reorientation from the Russian to the European hydrocarbon market: import of mineral fuels grew by 13.2 per cent, and their share was 22.3 per cent of total imports from the EU.
4. A decrease in imports of agricultural raw materials by 2.3 times and finished food products by 1.8 times is also indicative. Due to this, the share of imports of goods of groups 1–24 by CNoFTA decreased from 11.9 to 9.8 per cent. Such a reduction is a consequence of a narrowing in both domestic consumer demand, including for food products, and export of finished food products and, accordingly, production in the food industry.

So, the main engines for trade reducing between Ukraine and the EU in 2014–2015 were crisis phenomena in Ukraine, including the destruction of a part of the export potential caused by the military operations in the East of the country, the decline in prices on world markets and the stagnation of global economy. At the same time, the effect of these negative factors on the European vector has softened significantly, as evidenced by a much lower level of decline in trade

volumes and marked positive structural changes. From our point of view, positive trends were primarily due to institutional factors that were implemented in the process of practical realisation of Ukraine's European integration steps, namely:

- Strengthening motivation of Ukrainian companies to search for new markets for their products after the loss of Russian markets;
- Growing interest in Ukraine and prospects for cooperation with it among European businesses as a result of the adoption of the political part of the Association Agreement;
- Provision from mid–2014 of autonomous trade preferences in the form of the EU's abolition of duties on the majority of imports from Ukraine;
- Reforming the system of technical regulation, by a phased implementation of European technical regulations and the beginning of the creation of modern conformity assessment bodies;
- Activation of the Ukrainian government's policy on information and methodological support for the entry of businesses into European markets;
- Development of cross-border cooperation.

2.1.2 IMPACT OF DCFTA

Since January 2016, the Deep and Comprehensive Free Trade Area (FTA) between Ukraine and the EU came into force. It will continue to modify the terms of trade between Ukraine and the EU, in particular as a result of the phased removal of tariff barriers to European goods access into the Ukrainian market. According to the preliminary a priori estimates, business representatives expect positive results mostly from this process. So, following a survey conducted by the Ukrainian Institute of Economic Research and Policy Consulting in May 2016¹⁵¹, 30.8 per cent of industrial enterprises reported that they won in a result of the FTA introduction, 10.1 per cent of companies stated their losses, other companies noted the lack of the FTA influence on their activities. Changes in trade regimes have already allowed 32.2 per cent of companies to start or increase their exports in the EU market.

It should be noted that the impact of the reduction of customs and tariff protection of the European and Ukrainian markets is not of fundamental importance yet because of the considerable devaluation of hryvnia, which absorbed relatively small differences in customs tariffs. Perhaps a certain exception would be the export of agricultural products to the EU, where a tariff reduction of 19.8 per cent is significant. Thus, the average weighted import duty rates used in trade

¹⁵¹ “Чи виграв український бізнес від створення ПВЗВТ з ЄС?” Інститут економічних досліджень і політичних консультацій. Available online: <http://www.ier.com.ua/ua/publications/articles?pid=5358> (accessed on March 21, 2017).

between Ukraine and the EU are relatively low: the EU import duties on industrial products – 3.9 per cent; import duties in Ukraine for products from the EU countries – 9.2 per cent for agrarian and 3.7 per cent for industrial products. Since the entry into force of the agreement, the average EU rates have decreased to 0.6 per cent for agrarian and 0.5 per cent for industrial products (until then unilateral trade preferences for Ukraine *de facto* were used). Ukraine's rates decreased, respectively, to 6.8 per cent and 1.1 per cent with movement over 10 years – to 1.4 per cent and 0.0 per cent.

So, now the leading role in the development of trade relations between Ukraine and the EU will be played not by customs and tariff factors, but by institutional factors that will encourage or discourage cooperation. In particular, in the already mentioned survey among the obstacles that will not allow to take advantage of the FTA in full, the companies' managers pointed out the insolvency to quickly adapt products to the EU standards, the lack of partners in the EU countries, the lack of knowledge of the EU legislation and market.

Thus, the entry into force of the Association Agreement regarding formation of the Free Trade Area puts the task to maximize the positive potential for facilitating access of Ukrainian companies to the European markets, strengthening competitiveness of the national economy, as the access of European goods to the domestic market of Ukraine is gradually simplified, creating conditions for mutually beneficial economic cooperation.

As the experience of the countries of Central and Eastern Europe shows, in the process of free trade relations with the EU, the participation of national economies in the international division of labor is gradually changing. Therefore, the shifts in the structure of Ukrainian economy are inevitable. However, the decrease in the share of domestic producers on a number of certain commodity groups should be compensated by the growth of export-oriented industries in the directions that make up the current and prospective foreign trade specialization of Ukraine.

In turn, this change will require significant investment and occur if the situation is favourable and Ukraine provides for a consistent reforms policy, friendly for the investment climate and optimization of the national resources use to meet the competitive challenges and opportunities. Therefore, in the medium and long term, the most significant in the implementation of the Agreement provisions are institutional changes that should contribute to the modernization of the domestic economic and legal environment.

So, assessment of the effectiveness of the associated membership of Ukraine in the EU only by changing trade conditions means considerable loss of its potential. Implementation of the entire set of obligations, stipulated by the Agreement, is, in fact, the content of the reform of the national economy, which provides for the regulation of foreign trade in accordance with the WTO rules, competition policy, control over national assistance, competition in public procurement and etc.

To ensure the constructive perception of both parties of the Agreement, it is necessary, first of all, to use it not as a set of obligations that must be mechanically ensured or controlled. We must look for potential opportunities for mutually beneficial steps to strengthen in Ukraine the European economic and legal framework. Cooperation forms envisaged by the Agreement propose methodical and informational support of the implementation of economic policy instruments, monitoring, public control, trainings for employees of state administration and local self-government bodies, cooperation of experts in joint research.

2.1.3 OPTIMIZING A DCFTA POTENTIAL: PRIORITY AREAS FOR COOPERATION

Among promising areas of cooperation, which are essential for the development of economic cooperation between Ukraine and the EU, we consider it is important to focus on the following:

1. **Formation of mechanisms for the provision of national assistance** in accordance with the Agreement (Article 262) and the Law of Ukraine “On National Assistance to Commercial Organizations” adopted in 2014. The Antimonopoly Committee of Ukraine as the Authorized Body shall develop and adopt a methodology for assessing the admissibility of national assistance to commercial organisations for a competition, which will be taken into account when assessing the development of new regulatory and legal acts providing for the budgetary funding, tax incentives, state guarantees, other types of support. Meanwhile, the relevant executive authorities should develop new acceptable instruments of assistance, and in this they need a methodological support and a European experience.
2. **Completion of reforms in the field of technical regulation.** According to Article 55 of the Agreement, the parties strengthen their cooperation in the areas of technical regulation, standardization, market supervision, accreditation and compliance assessment in order to deepen mutual understanding of relevant systems and to facilitate access to relevant markets. It provides for the development of a qualitative infrastructure for standardization, metrology, accreditation, compliance assessment and market supervision in Ukraine. This direction is very important, as technical barriers to the entry of Ukrainian companies into the EU market often arise not because of real properties of the products, but because of the lack of a proper system for recognizing Ukrainian certificates of compliance, or the difficulty of obtaining European certificates. Therefore, the main purpose should be not to introduce technical regulations as such, but rather to create an infrastructure of testing laboratories and certification bodies for activities in accordance with European requirements.

3. **Support of Ukraine in improving and developing the tax system.** According to Article 351, the parties of the Agreement cooperate in the issues of improving and developing the tax system and tax authorities of Ukraine, in particular, strengthening collection and control capacities, with an emphasis on VAT refund procedures in order to avoid accumulation of debts, ensuring efficient tax collection and strengthening fight against tax fraud and tax evasion, introduction of European principles of proper tax administration. Such assistance should include provision, adaptation and implementation of relevant software products, methods of indirect control of taxpayers, cooperation between Ukrainian and European specialists in developing measures of tax reform.
4. **Expansion of cooperation between Ukraine and the EU in the field of science and technology** will contribute to accelerating technological development, strengthening competitiveness of the national economy, and capitalizing scientific and technological sphere in Ukraine. According to Article 374 of the Agreement, the parties make efforts to develop research capacities and human potential, as well as respect for global responsibility and obligations in such areas as health care, environmental protection and etc. Article 376 provides for the joint implementation of scientific programs and research activities, training through the implementation of exchange programs for researchers and specialists, organization of joint activities for scientific and technological development, exchange of experience in the management of research institutions, as well as ensuring proper protection of intellectual property of research results. Implementation of this potential will require a completion of a system for the intellectual property protection in Ukraine, targeted actions to support the development of international scientific and technical cooperation, and stimulation of innovative entrepreneurship through the appropriate tax, financial and organizational tools that have been tested in the EU countries.
5. **Implementation of modern tools to promote the development of small and medium-sized enterprises (SME) with the support of the EU.** According to Article 379 of the Agreement, the parties cooperate to implement SME development strategies on the principles of the European Charter for Small Enterprises, with special attention to microenterprises, improving the regulatory and legal framework for SMEs, introducing innovative entrepreneurship, cluster development. Assistance is provided for expanding contacts between private enterprises of Ukraine and the EU. To implement these opportunities, synchronization of the Ukrainian policy of deregulation and support of SME development from the European one is extremely important. The provisions of the Agreement give grounds for proposing an increase in the share of financing SME development programs in the framework of technical assistance, providing methodological

support for creating institutional support for SMEs (funds, service, advisory institutions, etc.).

6. **Expansion of cooperation in the modernization of Ukraine's industry, and, first of all, its basic industries.** Such cooperation is provided, in particular, by Article 379 of the Agreement. Article 381 separately provides for cooperation in the mining and metals industries with emphasis on the information exchange on development prospects, restructuring measures and the achievement of sustainable development of these industries. Article 379 also separately provides for support from the EU to take measures to stimulate exports to Ukraine. On this basis, it is advisable to use the experience of creating of financial and information support systems for exports, first of all, gained by the new members of the EU. It is appropriate to harmonize Ukraine's industrial policy with the EU industry revival program envisaged by the European Parliament resolution "Renaissance of Industry for Sustainable Europe" (RISE)¹⁵². It should be taken into account that the incompleteness of the restructuring processes of the old industrial regions in the East of the EU may become the basis for joint development of technologies for modernization and restructuring of basic industries. The creation within the framework of the RISE implementation of the *Investment Plan for Europe* and the public investment network on the basis of the *National Promotional Banks*¹⁵³ extends the possibilities for Ukraine to be included into the relevant investment projects, at least as a recipient of updated technologies for basic industries.
7. **Adaptation of European experience in supporting agriculture and rural development in Ukraine.** Article 403 of the Agreement provides for a gradual approximation of policies and legislation of the EU and Ukraine in this area. Corresponding cooperation, according to Article 404, provides for the promotion of modern and sustainable agricultural production in Ukraine, improving the competitiveness of the agricultural sector and the efficiency and transparency of the markets, enhancing harmonization on issues addressed within the framework of international organisations. Relevant priorities could be integrated into technical assistance programs for Ukraine, including those that relate to the restoration and restructuring of territories in the conflict zone in the East of Ukraine, and can also be used to determine the investment attractiveness of the Ukrainian agrarian sector.

¹⁵² "Renaissance of Industry for a Sustainable Europe. Motion for a European Parliament resolution on reindustrialising Europe to promote competitiveness and sustainability." Available online: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0464+0+DOC+XML+V0//EN> (accessed on March 21, 2017).

¹⁵³ "Working together for jobs and growth: The role of National Promotional Banks (NPBs) in supporting the Investment Plan for Europe," Communication from the Commission to the European Parliament, the Council. – COM (2015) 361. – Brussels, July 22, 2015.

8. **Development of cross–border cooperation, support for the implementation of a regional policy in Ukraine** with special emphasis on the development of disadvantaged territories (Article 446 of the Agreement) and the wide involvement of local and regional authorities in cross–border and regional cooperation by strengthening cross–border and regional economic ties and business partnerships (Article 447). Article 448 defines transport, energy, communication networks, culture, education, tourism and health-care as priorities for cooperation. Implementation of this potential will help to expand the powers of regional authorities and local self–government in the implementation of cross–border links, to develop cooperation within the Euroregions, to get an experience of restructuring the old industrial areas of Eastern Europe. Special attention should be paid to the program cooperation with the EU on the restoration and restructuring of the economy of the territory in the conflict zone in the East of Ukraine, which provides both assistance programs for restoring infrastructure and attracting private investments.
9. **The improvement of the mechanisms for using external financial assistance** through the relevant EU funding instruments. Section VI of the Agreement provides for the prevention of fraud with the funds received. This will require an introduction of institutional tools, receipt and use of such assistance on program principles, in cooperation and coordination with other donor countries, donor organizations and international financial institutions and in accordance with the international principles of effective assistance. In particular, this will be facilitated by: creation of a program of financial support to Ukraine (provisionally, the “Marshall Plan for Ukraine”) jointly with the main private and institutional donors, defining the institutional framework for managing the implementation of this plan through an appropriate body, which will include donor representatives, creation of a specialized financial Institution – regional development fund – for the implementation of financial assistance programs in the regional dimension and etc.

It is understood that the flexibility of the economic model that will be formed in Ukraine through the implementation of the Association Agreement grants European partners opportunity to go beyond the “trade–centered” limits to form the economic space in Ukraine, extend logically the competitive advantages of the EU on the basis of cross–cutting projects and cooperative chains that contribute to the introduction of modern Industry 4.0 technologies in a wide range of industries, including traditional ones. This will change the structure of domestic demand in Ukraine, build new capacious markets for advanced products and services, improve resource use in the economy of Ukraine and orient them to the variable structure of demand, which finally gives a synergetic effect for further development of economic relationships across the whole Europe which now

needs reconsolidation sources. So, a full-scale implementation of the AA is potentially beneficial for united Europe no less than for Ukraine.

Until now, the lack of understanding of the importance of developing such an ideology of formation of common interests holds back the development of mutual relations, causes the so-called "fatigue from Ukraine", and also discourages Ukrainian authorities from undertaking the necessary European integration reforms.

Therefore, it is necessary to focus on the development of institutional mechanisms for expanding and deepening cooperation between Ukraine and the EU regarding the implementation of the potential laid down by the Association Agreement. Among possible steps that contribute to this development, it is worth emphasizing the following:

- Formation and approval of a new Strategy for European Integration of Ukraine, adopted in 1998, which should position Ukraine's participation in solving common European problems, determine the directions and mechanisms for realizing positive potential of the Association Agreement, creating governance mechanisms for the development of associated membership in the direction of deepening integration;
- Development of mechanisms for deliberative participation of Ukraine at the stages of decisions preparation in groups and committees of the European Commission, especially those that change conditions for the functioning of the EU space, and consequently – must be adopted by Ukraine (the model of such participation of the European Economic Area countries, in particular – the experience of Norway, can be used as an example);
- Clarification of the powers of the Vice-Prime Minister of Ukraine for European and Euro-Atlantic integration and the government office for European integration – with the expansion of functional tasks from the implementation of the Association Agreement prior to organizing participation of the government and relevant ministries in monitoring, developing and evaluating the decisions of the EU bodies in relevant spheres;
- Creation of an expanded expert group and, if necessary, consultative groups with stakeholders in assessing the current implementation of the Association Agreement and of relevant problems, further expanding cooperation between Ukraine and the EU;
- Development of mechanisms for technical assistance to public authorities on modern management tools, establishing an adequate institutional support of public policy;
- Formation of joint institutions for the distribution and control of the use of international (particularly European) aid to Ukraine, credit programs of European organizations, sovereign and, for individual arrangements, other creditors;
- Development of cooperation with the diplomatic departments of the EU

countries on the systemic support of economic diplomacy of Ukrainian exporters in the European commodity markets: the agreements signing on simplification of customs procedures, participation of business representatives in negotiations on economic and trade issues, protection of national economic interests in relevant international organizations, etc.;

- Creation of facilitation mechanisms for the entry of small and medium companies to the markets of the EU countries with the preparation of the necessary documents on the «single window» principle; creation of organizational mechanisms for providing transparent publicly available information and legal support from the Ministry of Economic Development and the Ministry of Foreign Affairs to promote products of these companies to foreign markets;
- Deepening of the cross-border cooperation, primarily on the basis of Euroregions, increased involvement and powers of local communities in this process, wide involvement of small and medium-sized businesses to cross-border cooperation;
- Assistance in contacts broadening between business associations and directly between private enterprises of Ukraine and the EU, for direct exchange of business proposals, getting the experience in European markets and under the conditions of European regulations – this may attract technical assistance programs to Ukraine by European donors.

The high level of geopolitical tension around Ukraine's strategic choice makes the passive European waiting tactics too risky for system changes in Ukraine. Therefore, the participation of European partners in Ukraine's institutional modernization and promotion of economic communications with the EU countries is a necessary condition for consistent and dynamic European integration process of Ukraine.

2.2 Slovak–Ukrainian economic cooperation and foreign trade: dynamics, institutional factors and prospects

Martin Lačný

2.2.1 ECONOMIC COOPERATION AND FOREIGN TRADE

Economies of Central and Eastern European countries faced a difficult task at the beginning of their transition process. Background of economic processes often based on the trade–off (or “quid pro quo”) type of relationships required a number of compromises. This included also the shift of international trade from East to West, resulting in loss of some positions in the markets of the former Soviet Union countries. In the early 1990s, the Czechoslovak political elites made a concentrated effort to shift foreign trade away from the former Soviet Union and former Eastern Bloc countries to the European Union and the United States. The split of Czechoslovakia into two independent states further shaped the conduct of economic policy in Slovakia. The first changes of the federal transition strategy started to be implemented at the end of 1993 and besides economic objectives, the strategy declared the intention for integration into EU and NATO. Although becoming a part of the European integration was one of the most important declared priorities of Slovak government, the actual outcome was in the beginning quite the opposite.

There were two major issues inherited from the Soviet period that have troubled mutual Slovak–Ukrainian trade and economic relations. The construction of a metallurgic complex in Ukraine (Kriviy Rih – Dolinska, thereafter KŤUK) was initiated by the governments of countries associated in former COMECON. Liabilities arising from contractual relations were not met since 1992, when construction was interrupted by all parties involved, resulting in a long lasting and complicated series of negotiations regarding the method of settlement of mutual rights and obligations of unfinished KŤUK construction.

Much more important was another problem of Slovak–Ukrainian relations, which is not just a legacy of the Eastern bloc past in terms of its political importance, but it is rather a product of last decades, affecting the “living interests” of both actors. This conflict has stemmed from the different positions of Ukraine

and Slovakia on the issue of the transit of Russian energy raw materials through Ukrainian and Slovak territories to Europe.¹⁵⁴

The Slovak attitude toward Ukraine in the years 1993–1998 might be characterized like an “indifferent neighbourhood.” In fact, the then Slovak government led by PM Vladimír Mečiar were viewing Ukraine rather like a “gate to Russia” than a partner worthy of attention for itself as they were performing an unbalanced eastern policy preferring one-sided relations with Moscow. The then priorities of Slovak foreign policy toward its Eastern neighbours and beyond are clearly illustrated by the intensity and weight of mutual agenda. From gaining independence in January 1993 till 1998 Slovakia has concluded more than 90 new agreements with the Russian Federation. At the same time, it has concluded around 40 agreements with Ukraine. The principal intergovernmental treaties that regulated Slovak–Ukrainian economic and trade cooperation in the aforementioned period were: Agreement on trade, economic, scientific and technical cooperation (signed on August 26, 1993), Agreement on support and reciprocal protection of investment (of June 22, 1994), Treaty on cooperation and mutual aid in the field of customs issues (June 15, 1995), Agreement on principles of cooperation and conditions of mutual relations in the field of transport (June 15, 1995), Treaty on border regime, cooperation and mutual aid in the border-related issues (October 14, 1995), Treaty on preventing double taxation and tax evasion in field of income-tax and property-tax (January 23, 1996), Agreement on reciprocal employment of citizens (March 7, 1997), Agreement on protection of classified information (June 1, 1998).¹⁵⁵

In contrast to the period of Vladimír Mečiar's government, the Mikuláš Dzurinda's government elected in 1998 began to actively encourage the shift of foreign trade in an effort to improve Slovakia's chances for entry into the European Union. Trading patterns since then show increased volume in trade with the European Union and the United States and decreased volume with other eastern European countries and the former Soviet Union. As one result of this shift, trade with Ukraine should have been in decline during the Slovakia's pre-accession period. Thus the history of mutual trade between Slovakia and Ukraine has its own story. While Ukrainian trade with Hungary, Poland and Russia has been increasing in the course of 1993–1995, Slovak–Ukrainian trade has been stagnating. The values of Slovak–Ukrainian trade according to the Slovak statistics were, as follows: 273 million US dollars in 1993; 240 US dollars in 1994; and 310 US dollars in

¹⁵⁴ A. Duleba, “Economic cooperation, cross-border cooperation, human contacts and ethnic minorities issues, border management in relations between Ukraine and the Slovak Republic,” in: V. Hudak, A. Herrberg, I. Solonenko, eds, *2004 European Union accession: Implications for Ukraine's relations with its Central European neighbours*. EastWest Institute, Institute for Regional and Euro-Integration Studies “EuroRegio Ukraine”, Kyiv, 2005, pp. 50–3 et 226–31.

¹⁵⁵ Ibid

1995.¹⁵⁶ The announced massive increase in trade dynamics forecasted by both then prime ministers of Ukraine and Slovakia after the governmental meeting in Štrbské Pleso (High Tatras in Slovakia) came not to be a reality and reached the sum of 418 million US dollars in 1996. Another meeting of governmental delegations took place in Uzhgorod in March 1997. Both sides focused first of all on problems associated with a mode of payment, which they identified as the biggest obstacle for developing bilateral trade. Almost 25 per cent of Slovak exports to Ukraine and 33 per cent of Ukrainian exports to Slovakia at that time has been realized via barter exchange. In Uzhgorod both sides concluded seven bilateral intergovernmental and inter-ministerial agreements, e.g. agreement on mode of payments in bilateral trade, reciprocal employment of citizens, transport cooperation, etc. Among others both sides signed also “Memorandum on steps leading toward liberalization of bilateral trade”, in which Slovakia declared its support of Ukraine what concerns Ukraine’s accession to WTO and CEFTA.

Whereas under the Mečiar rule Ukraine has been overshadowed on the foreign policy map of Slovakia by Russia, at the beginning of Dzurinda governance it was in a shadow of the West in the course of 1998 – 2002. The Slovak–Ukrainian trade turnover topped at the level of 520,7 million US dollars in 1997, while in next two years a significant decline in mutual trade dynamics has been caused by the impact of the Russian financial crisis. Starting from 2000 the Slovak–Ukrainian trade exchange shows a slight growth, corresponding to the slow recovery of Ukrainian economy and the changing character of legal and institutional framework for mutual trade. The Slovak–Ukrainian treaties including the bilateral legal arrangements in field of trade and economic cooperation signed in the course of 2000–2003 corresponded to the EU *acquis* which Slovakia was obliged to follow in its relations with the third countries, while the bilateral legal documents signed before 2000 had to be revised and consequently adjusted to the EU *acquis*.

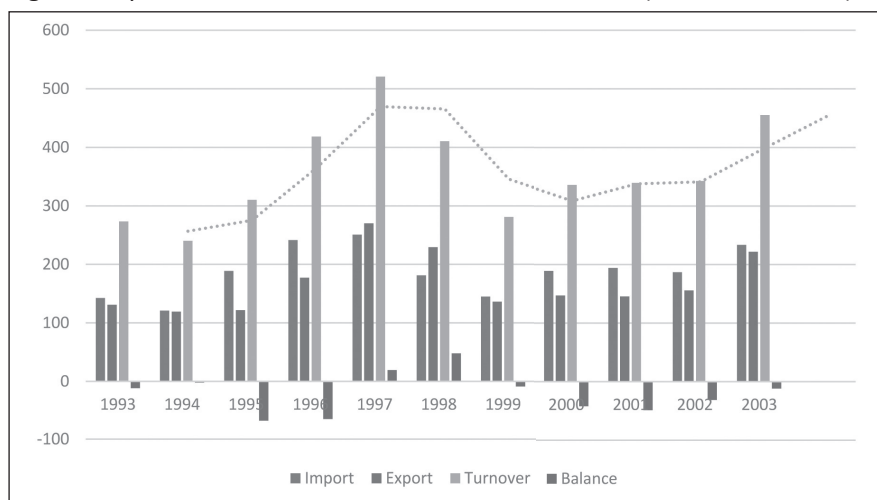
Table 1. History of Slovak–Ukrainian mutual trade in 1993–2003 (US dollars, million)

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Import	142,4	121	188,7	241,3	250,7	181,2	144,8	189	194,1	186,9	233,5
Export	130,9	119,1	121,7	177	270	229,2	136,2	147,1	145,5	155,8	221,7
Turnover	273,3	240,1	310,4	418,3	520,7	410,4	281	336,1	339,6	342,7	455,2
Balance	−11,5	−1,9	−67	−64,3	19,3	48	−8,6	−41,9	−48,6	−31,1	−11,8

Source: Ministry of Economy of the Slovak Republic¹⁵⁷

¹⁵⁶ Source: Ministry of Economy of the Slovak Republic.

¹⁵⁷ It should be noted that the Slovak and Ukrainian statistical data on bilateral trade differ significantly in this period, especially when it comes to the Ukrainian exports to Slovakia. As to the Ukrainian statistics the bilateral trade turnover for nine months of the year of 2002 in comparison with the

Figure 9. Dynamics of mutual trade SR – UA in 1993–2003 (US dollars, million)

Source: Ministry of Economy of the Slovak Republic

In the wake of Slovakia's EU accession in May 2004 and the rapid growth of both Ukrainian and Slovak economies, we can consider a dynamic upward trend in mutual trade in the years 2004–2008, especially when it comes to the volume of Slovak export to Ukraine, which has almost tripled within this short period. This scenario did not fully repeat after the crisis, where we can see higher volumes of imports from Ukraine than ever before, but the amount of Slovakia's export has not reached the level from 2007 – 2008. The significant impact of Russian–Ukrainian conflict on foreign trade is apparent since 2014 also in case of the Ukraine's mutual trade with Slovakia.

equal period of 2001 grew out in 9,1 per cent and presented the sum of 316,6 million US dollars, exports to Slovakia went up in 16,2 per cent (219,6 million US dollars) and imports from Slovakia declined in 4,2 per cent (97,1 million US dollars). On the other side the following are Slovak data for the same period: the total turnover dropped in 3,2 per cent presenting the sum of 245,0 million US dollars, Slovak imports from Ukraine declined in 12,0 per cent (133,9 million US dollars) and exports to Ukraine grew out in 7,3 per cent and reached the sum of 111,6 million US dollars. As to the Ukrainian statistics, the passive trade balance of Slovakia in bilateral trade was 122,5 million US dollars while as to the Slovak evidence – 22,0 million US dollars for the same period. As to the representatives of the Slovak Ministry of Economy statistical evidence on bilateral trade differs not much in case of Ukrainian imports from Slovakia but quite significantly in respect of Ukrainian exports following the fact that Ukrainian statistics does register some exports to the Czech Republic as exports to Slovakia, because the customs union between Slovakia and the CR, however in fact those exports only transit the Slovak territory.

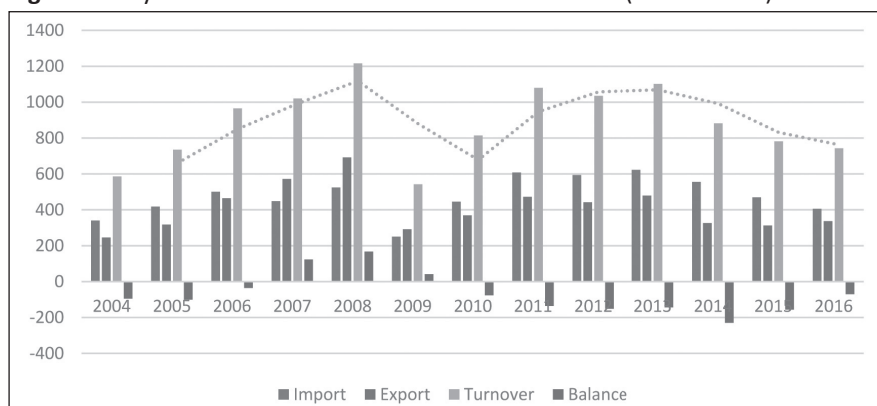
Ukraine has been a member of the WTO since May 2008. Prior to the DCFTA introduction more than 70 per cent of Ukrainian exports to the EU (engineering products, vegetable products, oils, metals, chemical industry products, and textiles) benefited from reference tariffs within the Generalised System of Preferences. The AA/DCFTA aims to boost trade in goods and services between the EU and Ukraine by gradually cutting tariffs and bringing Ukraine's rules in line with the EU's in certain industrial sectors and agricultural products. Ukraine has committed to adapt norms and standards relating to market competition, government procurement, trade facilitation, intellectual property protection, investment and transport. Due to the production potential of Ukraine the DCFTA constitutes a great opportunity to enhance the competitiveness and modernization of Ukrainian economy and the diversification of Ukrainian exports. Small and medium sized enterprises (SME) in Ukraine can receive support from the EU's SME Flagship Initiative, which allows SMEs in Ukraine, Georgia and Moldova to access approximately 200 million euros of EU grants. This funding adds to the new trade opportunities with the EU, including Slovak market, that have been created by DCFTA. Nevertheless, despite the DCFTA implementation since January 1, 2016, the preliminary data from 2016 do not show any dramatic turn of trends in mutual Slovak–Ukrainian trade volumes so far. The reasons include that the DCFTA implementation has found Ukraine underprepared when it comes to the necessary changes in legislation and institutional framework. On the other hand, the current lower performance of Ukrainian economy still results from an economic downturn caused by the Russian–Ukrainian conflict.

Table 2. History of Slovak–Ukrainian mutual trade in 2004 – 2016 (in mil. euros)

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Import	340,3	417,6	500,2	448,4	524,2	250,7	445,5	607,8	593,4	622,5	555,8	469,1	406,2
Export	245,4	317,3	464,7	571,8	691,7	291,8	368,8	471,9	442	479	326	312,5	336,4
Turnover	585,7	734,9	964,9	1020,2	1215,9	542,5	814,3	1079,7	1035,4	1101,5	881,8	781,6	742,6
Balance	−94,9	−100,3	−35,5	123,4	167,5	41,1	−76,7	−135,9	−151,4	−143,5	−229,8	−156,6	−69,8

Source: Statistical Office of the Slovak Republic¹⁵⁸

¹⁵⁸ The 2016 data are preliminary, as published on February 8, 2017, based on the values of FOB type.

Figure 10. Dynamics of mutual trade SR – UA since 2004 (in mil. euros)

Source: Statistical Office of the Slovak Republic

It should be noted that in the long run the share of Slovak mutual trade with Ukraine on the country's total foreign trade turnover moves around 1 per cent and more or less the same we can say vice versa as we look at the Ukrainian foreign trade statistics. In general, the abovementioned figures show that the current state of affairs in the bilateral Slovak–Ukrainian trade does not consist with their foreign trade potential and first of all with the fact of their geographical proximity. Neither the projected trends of Slovak foreign trade until 2020 do not mention Ukraine among the top ten trade partners of Slovakia, though Czech Republic, Poland, Austria and Hungary rank in top ten both in case of predicted import and export of Slovakia.¹⁵⁹

One of the important characteristics of the trade between Slovakia and Ukraine is the long lasting commodity concentration of Ukrainian exports to Slovakia, where vast majority of trade volume is represented by supplies of raw materials and blanks for further processing in the Slovak Republic (as in 2015: iron ores and concentrates – 34,12 per cent; wires and cables – 13,70 per cent; flat-rolled products of iron or non-alloy steel – 9,25 per cent; black coal – 8,21 per cent; petroleum gases and other gaseous hydrocarbons – 4,78 per cent; ferroalloys – 3,03 per cent; raw aluminium – 1,81 per cent).¹⁶⁰ Ukraine has traditionally exported to Slovakia mainly raw materials, mineral fuels and lubricants, industrial products, machinery and transport equipment. We can assume that the export of Ukraine to Slovakia is in its sectoral cross-section considerably close to the overall structure of export of Ukraine to the EU.

¹⁵⁹ "Projekcia vývoja zahraničného obchodu Slovenskej republiky do roku 2020," *Ministry of Economy of the Slovak Republic*. Available online: www.economy.gov.sk/11157-menu/144345s (accessed on November 18, 2016).

¹⁶⁰ Source: Statistical Office of the Slovak Republic.

When it comes to the ratio of the gross value added, there is a different situation regarding the commodity structure of Slovakia's exports to Ukraine, which is recently dominated by machinery and transport equipment, industrial products, chemicals and raw materials (the most important export items in 2015 were: flat-rolled products of iron or non-alloy steel – 11,3 per cent; magnesite – 8,44 per cent; cars and other motor vehicles – 6,31 per cent; polymers of propylene or other olefins – 6,28 per cent; uncoated paper and paperboard – 5,1 per cent; telecommunications equipment – 3,57 per cent; limestone and other calcareous stones – 2,09 per cent; washing machines – 1,79 per cent; central heating boilers – 1,77 per cent; etc.).¹⁶¹ Less significant share of Slovak exports to Ukraine is represented by mineral fuels and lubricants, food and live animals. The shift toward the strengthening of the technological components of Slovak exports occurred in 2007–2008 in connection with the launch of production in several industrial branches after the FDI arrival. Within this period, we can consider a significant increase of the share of machinery and transport vehicles on Slovak exports to Ukraine. The dynamic growth in exports of engineering production to Ukraine was later dampened by the symptoms of economic crisis, which in 2009 caused a fall in incomes and demand in the Ukrainian market and a decline in Slovak industrial production. All things considered, the impact of economic crisis on the development of Slovak–Ukrainian trade was mainly of a financial and not of a structural nature, which is being confirmed by no dramatic changes in the commodity structure of mutual trade in recent years.

Penetration of Slovak companies on the Ukrainian market is at present important not only due to the size of the market, its relative unsaturation, geographical and linguistic proximity, but also with respect to the expected future consolidation of this market, the prospect of Ukraine's European integrations, and finally due to the gradual occupation of the Ukrainian market by domestic and foreign companies. Ukrainian market represents a considerable potential for Slovak companies, while the taking of full advantage depends on the implementation of economic reforms by Ukrainian government, the pace of standardization of business and investment environment, as well as the progress of European integrations. The prospective areas of mutual Slovak–Ukrainian cooperation include: energetics (reconstruction of power supply systems, improvement of energy efficiency, use of alternative energy sources), infrastructure, agro–food sector (processing of agricultural products), area of ecology, machine industry, metallurgy, chemical industry and tourism.

Since 1990s the Ukrainians represent a significant clientele for the Slovak spa facilities as well as for winter holidays in Slovak ski resorts. Apart of minor changes, in the long run there is no high dynamics in tourism between Ukraine and Slovakia. Recently, in 2016 arrived 52,850 Ukrainian visitors to Slovakia (102,6 per cent compared to 2015), which have spent 173,228 overnight stays (108,5 per cent compared to 2015). Ukrainian visitors spent on average 3,3 nights, i.e.

¹⁶¹ Source: Statistical Office of the Slovak Republic.

0,2 nights more than in 2015. This slight increase of Ukrainian tourists in Slovakia ranked the country's position in Slovakia's foreign traffic in 2016 to seventh place. Nevertheless, the share of Ukraine in the foreign traffic in Slovakia has shrunk from 2.9 per cent in 2015 to 2.6 per cent in 2016.¹⁶²

As stated in the official analysis outcomes¹⁶³, the most serious obstacles of doing business in Ukraine are the still existing large gaps in Ukrainian legislation, as well as the fact that in the long run the legislation is awkward to adapt the standard international conditions. The entrepreneurs coming to Ukraine claim about problems with VAT refunds from the state, persistent high level of corruption and frequent violation of negotiated contracts. The specifics of Ukrainian market are associated also with prevailing supply over demand, low purchasing power of the population, as well as with minor and weak middle class population.

According to the State Statistics Committee of Ukraine have Slovak companies invested in Ukraine to December 31, 2013 cumulatively in the amount of 99,7 million US dollars, while to December 31, 2015 it was 73,1 million US dollars, which is surely not one of the highest FDI inflows to the Ukrainian economy. Nevertheless, the amount of Slovak investment is higher, respectively comparable to the FDI coming e.g. from Spain, Belgium, Ireland and Czech Republic. Despite the hindrances, Ukraine is nowadays becoming an interesting investment destination for Slovak entities, in several respects: the devaluation of the Ukrainian hryvnia against the euro, relatively high cost of domestic capital, significant investment demand in Ukraine, the efforts of the new Ukrainian government to improve the investment and business climate, as well as Ukraine's cooperation with international financial institutions.

A different story is the Ukrainian direct investment in Slovakia. According to the Slovak National Bank have the Ukrainian FDI in Slovakia amounted minus 5,638 million euros (represented by the debt instruments) to December 31, 2014, thus the figure does not reflect reality perfectly, since the Ukrainian companies can invest in Slovakia through its subsidiaries abroad or in the Slovak Republic.

2.2.2 SLOVAK–UKRAINIAN CBC AREA

Regional economies of border regions on both sides of the Schengen border function as specific parts of national economies in the context of their internal links into the national economy and specific external linkages to international sur-

¹⁶² "Vybrané ukazovatele cestovného ruchu 12/2016," Statistical Office of the Slovak Republic. Available online: <https://slovak.statistics.sk/PortalTraffic/fileServlet?Dokument=09ee621f-94b8-4187-a6e7-dfd05b937fcc> (accessed on March 10, 2017).

¹⁶³ "Ekonomická informácia o teritóriu – Ukrajina," Ministry of Foreign and European Affairs of the Slovak Republic, April 2016. Available online: <https://www.mzv.sk/documents/10182/620840/Ukrajina+-+ekonomickaper+centC3per+centA9+informper+centC3per+centA1cie+o+teritper+centC3per+centB3riu+Apr2016> (accessed on February 8, 2017).

roundings – especially the geographically close environment. Functional diversity of regional economies within the national economy causes that various regions do not have the same needs and priorities and do not respond to external stimuli in the same way. In the case of border regions of Ukraine and the neighbouring EU countries, we can typically consider regions having the character of peripherals, which are not the most important centres of economic activity. Their development potential depends largely on the nature of the border and the conditions for mutual trade and cross-border cooperation.

According to the Regional Economic Performance Index (REPI) ranking, measuring the performance level of NUTS-2 EU border regions, there are significant differences when it comes to the border regions of Zakarpattya and Eastern Slovakia. This composite index is built with the variables listed in dimensions, appropriate to measure the economic strengths and potential of a region. Crucial importance in terms of economic potential and international competitiveness have the factors including regional economic assets (labour availability and skills, capital stock and infrastructure, factor productivity, living conditions), significant impact on the development potential of regions however show also the intangible factors such as proximity to universities, access to health care, the length of time required to start a business, the perception of corruption, factors of personal safety and the safety of transport, etc. In recent Regional Economic Performance Index benchmarking analysis the NUTS-2 region of Eastern Slovakia ranked at the 49th position, which is a result approximate to the neighbouring Polish region Podkarpackie at the 53rd, as well as the neighbouring Hungarian region Northern Great Plain at 48th position, while there is a much different situation in the neighbouring Ukrainian Zakarpattya region which ranked at the 119th position, Ivano-Frankivsk at the 107th and the Lviv region at the 98th position.¹⁶⁴

The subsequent cluster analysis revealed different regional development patterns and industrial profiles among the EU and the non-EU border regions, which have been classified in nine different clusters. In case of Zakarpattya and Eastern Slovakia it pointed at different prospective of regional development. A total of 13 indicators available at the regional level (persons aged 25–64 with upper secondary education attainment, persons aged 25 – 64 with tertiary education attainment, available beds in hospitals, physicians or doctors, economic activity rates, employment in industry, employment in services, fertility rate, population growth, population density, GDP per capita, growth rate of gross value added, unemployment rate) and 4 indicators available at national level (workers' remittances, total tax rate, corruption perception index, cost of business start-up procedures) have been used for clustering. Zakarpattya fell in the Cluster G (with the average REPI score of 53,33), together with other Ukrainian border regions (Volyn, Ivano-Frankivsk,

¹⁶⁴ D. Grozea-Helmenstein, H. Berrer, *Benchmarking EU-Border-Regions: Regional Economic Performance Index*, 2015, pp. 48–51. Available online: <http://www.euborderregions.eu/files/reportpercent20vienna.pdf> (accessed on September 8, 2016).

Lviv, Odesa, Chernivtsi), Belarussian and Russian border regions. Based on common characteristics, the region of Eastern Slovakia is included in the Cluster E (with the average REPI score of 66,0), which comprises NUTS-2 border regions belonging to the new EU member states in Central and Eastern Europe (Bulgarian, Estonian, Latvian, Lithuanian, Hungarian, Polish, Romanian, Slovenian and Croatian regions), plus the Serbian border region Pokrajina Vojvodina.¹⁶⁵

Production branches typical for both Zakarpattya and Eastern Slovakia border regions include mainly medium and low technology manufacturing and agriculture. From their mutual proximity and connections, they can draw productive advantages and learn to build on their strengths and economic development opportunities. When compared at the level of selected partial indicators, the Eastern Slovakia and the Zakarpattya regions report approximately the same share of services on employment (both at the level cca 55 per cent), but in case of Zakarpattya there is a higher share of agriculture on employment (cca 20 per cent) in comparison with the Slovak border region. Both border regions have roughly the same share of qualified workforce, though the other important difference between the two border regions consists in the rate of population growth, which is cca 2 per cent in case of Eastern Slovakia, but cca minus 5 per cent in case of all Ukrainian regions bordering with the EU. When it comes to infrastructure, there is cca 100 km of roads per 100 km² of land area available in Slovakia, while this indicator reaches only a value of 20–30 on the Ukrainian side.¹⁶⁶

Slovakia ranks among the top five export destinations for the Zakarpattya regional economy. As in 2015, the main export destinations were as follows: Hungary (48 per cent), Germany (7,3 per cent), Slovakia (7,2 per cent), Austria (6 per cent) and Poland (5,4 per cent). Exports of goods to Slovakia in 2013 – 2015 consist of three product groups, share of which ranged from 89.2 per cent to 92 per cent, indicating a steady Slovak demand for mechanical and electrical equipment, textiles and textile goods, wood and wood products from Zakarpattya. Although raw material and technological potential of Slovakia in these areas is much higher than in Ukraine. In the commodity structure of imports from Slovakia to Zakarpattya dominated supplies of mechanical and electrical equipment, mineral products, textiles and textile products, polymeric materials, plastics and articles thereof (the share of these product groups amounts 81,2 per cent of total imports). Slovakia achieves also the largest share on total imports of services to Zakarpattya (16,2 per cent).¹⁶⁷ Nevertheless, in case of the mutual trade in Slovak–Ukrainian CBC area we are speaking only about a fraction of mutual Slovak–Ukrainian trade turnover.

¹⁶⁵ Ibid, pp. 53–7.

¹⁶⁶ Ibid, pp. 17–41

¹⁶⁷ U. Kardash, M. Lašný, Динаміка зовнішньої торгівлі України та Закарпаття в умовах дії Угоди про асоціацію між Україною та ЄС. Prešov: Research Center of the Slovak Foreign Policy Association, 2017.

Policy recommendations

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Association process

- Our research shows that Ukraine's AA/DCFTA (likewise similar agreements of Georgia and Moldova) includes the largest structural asymmetry in comparison to other contractual frameworks for the EU relations with third countries that envisage their partial integration with the Single Market and its four freedoms. The above asymmetry concerns a gap between a range of approximation with the EU *acquis* on one hand, and the level of institutional involvement of a contracting country into policy-shaping within the EU on the other. Except for agreements that include membership perspective, Ukraine's AA/DCFTA envisages the largest adoption of *acquis* in comparison to all existing integrative contracts of the EU with third countries. Following the range of approximation to the *acquis communautaire*, Ukraine's AA/DCFTA is much more ambitious than EEA Agreement with Norway, Island and Lichtenstein, Swiss sectorial bilateralism and Turkey's Customs Union, nevertheless, it is much less ambitious when it comes to participation of Ukraine into policy-shaping within the EU.
- The EEA countries, Turkey and Switzerland are the only non-member countries that have an access to the EU comitology, which is the first and basic level of the EU legislating process within the central EU institutions. Even though their experts can participate in the comitology meetings as observers without right to vote, they have a chance to influence the shape of respective EU legislation through presenting their arguments and legislative positions. Another important advantage, which participation of national experts in the EU comitology brings to the EEA countries, Switzerland and Turkey, is the fact that they are informed well in advance about planned amendments to respective EU *acquis*. Ukraine has the access to the two basest levels of participation of non-member states in the EU institutions, first, international organizations, of which the EU is part; however, they are not part of the EU institutions, e.g. Energy Community, and second, EU programs and agencies, including their respective committees. However, unlike EEA countries, Turkey and Switzerland, Ukraine does not have an access to the EU comitology, which is the first expert level of the

legislating process taking place within central EU institutions. We do believe that it is in interest of both the EU and Ukraine to bring more institutional symmetry into their relations through opening of the EU comitology for participation of Ukrainian experts.

- Ukraine's AA/DCFTA is similar to EEA Agreement, Turkey's Customs Union, former European Association Agreements with Central European countries and Stabilization and Association Agreements with the Western Balkan countries when it comes to its dynamic nature as it includes constant approximation of national legislation not only with the existing but also newly adopted EU acquis. However, in terms of legal quality of transposition of EU acquis, it is less ambitious than the above contractual frameworks as it does not require achieving a strict legal homogeneity with the EU acquis through harmonization. It rather requires achieving a legal equivalence with the EU acquis through approximation what brings it closer to the Swiss model of differentiated integration, which applies a "harmonization with flexibility" method for transposition of the EU acquis into national legislation. Thus, AA/DCFTA leaves a looser room for maneuver for Ukrainian authorities when it comes to legal quality of transposed EU acquis into national legislation. In order to maintain the full-fledged integration for Ukraine an open perspective in the future, Ukrainian authorities should follow EAAs and SAAs model of a strict harmonization with EU acquis rather than a "flexible harmonization" pursuant to the Swiss model.
- Slovakia's experience from the association process shows that the state of politics was the essential precondition to get to the negotiating table between Slovakia and EU member states and EU institutions. However, when the two sides do come together, when we begin the actual negotiations on the EU legislation and the chapters of the acquis, the progress toward an agreement on these technical details depends on technical negotiations within both the EU and a partner country. In some respects negotiations are an exercise in efficiency rather than legitimacy. What is clear from the Slovak experience is that it was an exercise dominated by the executive, and actually not so much by the government as whole but rather by concentrated bureaucratic elements within the executive. In the case of Slovakia these elements were concentrated within the Foreign Ministry, where there was the chief negotiator as the coordinator of accession talks with his small compact team of people who communicated and coordinated with the other ministries. The more efficient the setup, the better your ability to perform in this very technical aspect of completing one's commitment to the adoption of the acquis.
- The Slovak association and accession experience shows that each country does negotiate on its own merits and each country has its own problems. That is why Slovakia's experience could not simply be replicated.

But there are aspects that might be interesting to other countries. Slovakia had a very unique nature of the statehood problem as a result of dissolving Czechoslovakia in a peaceful manner and quickly and without any serious repercussions. Slovakia's real problem in applying its Europe Agreement was domestic politics, not technical aspects. In terms of looking ahead to future associations of EU neighbours, the gap between the EU and outsiders is getting larger whereas the EU consensus on how to engage neighbours is getting weaker. Hence, Slovakia's experience with association agreement and accession process offers potential insights that have to take account of current political realities.

- The issue of crucial importance is the creation by Ukraine of internal government institutions responsible for implementing the AA. During 2014–2016 Ukraine took significant steps in this direction (appointed a profile Vice–Prime Minister, established a Government Office for European Integration, appointed deputy ministers for European integration in every ministry, introduced public reporting and public consultations), however, as of October 2016, this process seems to be unfinished.

Therefore, it is necessary to focus on the development of institutional mechanisms for expanding and deepening cooperation between Ukraine and the EU regarding the implementation of the potential laid down by the Association Agreement. Among possible steps that contribute to this development, it is worth emphasizing the following:

- Formation and approval of a new Strategy for European Integration of Ukraine, adopted in 1998, which should position Ukraine's participation in solving common European problems, determine the directions and mechanisms for realizing positive potential of the Association Agreement, creating governance mechanisms for the development of associated membership in the direction of deepening integration;
- Clarification of the powers of the Vice–Prime Minister of Ukraine for European and Euro–Atlantic integration and the government office for European integration – with the expansion of functional tasks from the implementation of the Association Agreement prior to organizing participation of the government and relevant ministries in monitoring, developing and evaluating the decisions of the EU bodies in relevant spheres;
- Creation of an expanded expert group and, if necessary, consultative groups with stakeholders in assessing the current implementation of the Association Agreement and of relevant problems, further expanding cooperation between Ukraine and the EU;
- Development of mechanisms for technical assistance to public authorities on modern management tools, establishing an adequate institutional support of public policy;

- Formation of joint institutions for the distribution and control of the use of international (particularly European) aid to Ukraine, credit programs of European organizations, sovereign and, for individual arrangements, other creditors.

Economic cooperation and trade

In order to maximize opportunities for boosting economic cooperation and expanding foreign trade Ukraine should focus on the following priorities:

- Development of cooperation with the diplomatic departments of the EU countries on the systemic support of economic diplomacy of Ukrainian exporters in the European commodity markets: the agreements signing on simplification of customs procedures, participation of business representatives in negotiations on economic and trade issues, protection of national economic interests in relevant international organizations, etc.;
- Creation of facilitation mechanisms for the entry of small and medium companies to the markets of the EU countries with the preparation of the necessary documents on the «single window» principle; creation of organizational mechanisms for providing transparent publicly available information and legal support from the Ministry of Economic Development and the Ministry of Foreign Affairs to promote products of these companies to foreign markets;
- Assistance in contacts broadening between business associations and directly between private enterprises of Ukraine and the EU, for direct exchange of business proposals, getting the experience in European markets and under the conditions of European regulations – this may attract technical assistance programs to Ukraine by European donors.
- Efficient implementation of necessary changes in Ukrainian legislation and institutional framework related to the DCFTA (esp. regarding market competition, government procurement, trade facilitation, intellectual property protection, investment and transport);
- Optimization of legislation dealing with legal protection of business;
- Reforms of the existing inadequate institutional setup (non-transparent practices at the local public administration offices, police and courts);

Both Ukraine and Slovakia should aim at:

- Improving management of Ukrainian–Slovakian border by speeding and streamlining border and customs control, including reforms of inefficient custom offices that paralyze small local businesses;
- Enhancing co-operation in customs and customs-related matters, including simplification of customs requirements and formalities and at the same time preventing customs irregularities and fraud;
- Developing border infrastructure (there is a limited number of border

crossings with low quality of transport infrastructure) on both sides of the border;

- Maintaining smooth cooperation with investors at every level (government, municipality, company) assuring the requisite institutional capacities;
- Creating an economically attractive environment for investments in border regions;
- Applying OECD's corporate governance principles that may serve as a tool for achieving better accountability and improved relationship with investors, spurring investments into technologically advanced assets;
- Targeting of investment incentives for both local businesses and foreign investors with a better tax system, a better educated workforce and a good transport infrastructure rather than tax holidays, duty free zones, or other political promises;
- Working out joint solutions to restore and boost Slovak–Ukrainian trade turnover, including the promotion of trade and investment opportunities for local businesses in border regions and promotion of tourism;
- Supporting and promoting innovation and technological progress in the border regions;
- Following the identification of a regional cluster's strengths and competitive advantages regional policy makers should engage in developing a regional cluster strategy.

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