



BRIEFING PAPER

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UK-EU relations after Brexit: an Association Agreement?

By Vaughne Miller,
Dominic Webb & Sylvia
de Mars

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Summary

Close cooperation in a broad range of areas

Association Agreements (AAs) create a framework for close economic and political co-operation between the EU and third countries. They can be very broad and varied in purpose, scope and content, with trade as one element. AAs include co-operation in areas of mutual interest, such as security and defence, the environment, science and research.

Trade opportunities with regulatory approximation

An AA could be combined with a Deep and Comprehensive Free Trade Area (DCFTA). DCFTAs offer access to the Single Market in specific areas, based on regulatory and legislative approximation of the third party with the EU. The case law of the Court of Justice of the EU must also be taken into account.

Participation in EU bodies and programmes

AAs allow participation by the third state in several EU agencies and programmes.

Governance and institutional framework

The governance and institutional framework for AAs is in principle free for the parties to determine, but in general involves at least three levels of governance: high-level political (annual Summit), general oversight (Association Council at ministerial level) and day-to-day management (Association Committee). The DCFTAs have a specific Trade Committee.

Dispute settlement

Dispute settlement takes place on a political level and then an arbitral level.

The UK's future relationship with the EU

The UK does not yet know what its relationship with the EU will be after Brexit, when it will be a third state in relation to the EU. In all Brexit scenarios the UK Government will want to negotiate a future relations agreement with the EU. This is true whether the UK leaves the EU with or without a deal. These negotiations cannot begin until the UK has left the EU and is a 'third country'.

A future relationship is likely to be based on some combination of an Association Agreement and a DCFTA.

Association Agreement model has been suggested

The UK and the EU have already suggested that a future relations agreement might take the form of an AA. The Political Declaration on the framework for future EU-UK relations (agreed by the EU and UK in November 2018 as part of the withdrawal 'package') envisages "an ambitious, broad, deep and flexible partnership across trade and economic cooperation, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation". But it is not clear whether the Government of Boris Johnson will seek an AA with the EU.

It can take several years to agree an AA

It takes on average around six-and-a-half years to negotiate and implement an AA, either fully or provisionally. Under the November 2018 Withdrawal Agreement, the transition period in which a future relations agreement would be negotiated is one year and five months if the UK leaves on 31 October with a deal (to 31 December 2020, extendable once by up to two years).

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If the UK leaves without a withdrawal agreement, the negotiating period is not limited by any transition period, but negotiations could be more difficult politically. In any Brexit scenario the UK's starting point as a recently departed Member State means it would have close legislative alignment, so a head start technically, if not politically.

1. About Association Agreements

1.1 Different kinds of Association Agreements

Box 1: EU Association Agreements and variations

Association Agreement/Euro-Mediterranean Agreement Establishing an Association: Algeria, Chile, Egypt, Georgia, Israel, Jordan, Lebanon, Moldova, Morocco, Palestinian Authority (interim) and Tunisia.

Stabilisation and Association Agreement: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia

Deep and comprehensive free trade area: Georgia, Moldova and Ukraine

Provisional Association Agreement: Ukraine and Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama).

The EU **signed a trade agreement in principle** with Mercosur (Argentina, Brazil, Paraguay and Uruguay) at the end of June 2019 and has **suspended** signature of an Association Agreement with Syria.

Aims and purposes

Article 217 of the [Treaty on the Functioning of the European Union](#) (TFEU) provides for “an association involving reciprocal rights and obligations, common action and special procedures”. Association Agreements (AAs) create a framework for close economic and political co-operation between the European Union (EU) and third countries.¹ They are negotiated using procedures in Article 218 TFEU.

Their original purpose was to prepare candidate countries for EU accession (they were then called ‘Europe Agreements’).² AAs have been concluded with European Neighbourhood countries,³ South American countries and Central and Eastern European countries. They have also applied to countries with a particular historic link to an EU Member State (e.g. Morocco/France).

AAs now have a much broader and more varied content, scope and purpose, of which trade is only one element. They can also encompass co-operation in a wide range of areas of mutual interest, such as security and defence, the environment, science and research. Andrew Duff has pointed out that while the AAs aim at convergence and association, for the UK it would be divergence and less political cooperation than as a Member State.⁴

¹ Switzerland’s sectoral agreements are not formally described as AAs but they are also adopted under Article 217: Panos Koutrakos, *EU International Relations Law* (Hart, 2015) pp. 381-382

² Although the UK never had an AA with the EEC before it joined, it did [sign one with the European Coal and Steel Community](#) (ECSC) in December 1954, which entered into force in September 1955.

³ Through the European Neighbourhood Policy (ENP) the EU works with Southern and Eastern European countries to promote stabilisation, security and prosperity. See [ENP website](#). The [Euro-Mediterranean Partnership](#) (Euromed) is an ENP initiative.

⁴ European Policy Centre, Discussion Paper, [Brexit: Terra Nova to explore together](#), 7 November 2017

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Recent EU agreements with third countries have seen adaptations of free trade agreements on a case-by-case basis, some “deep and comprehensive”, some with more cooperation in some areas than others. Professor Catherine Barnard and Emilija Leinarte say: “There is no template for the content of an AA – it depends on the nature and needs of a particular relationship”.⁵ The European Parliament’s lead on Brexit, Guy Verhofstadt, said AAs are “in practice ... more akin to a blank canvas”:

A box into which we can place different areas of cooperation on trade and economic relations, foreign policy and security, internal security and thematic co-operation. At its heart would be a deep and comprehensive free trade area.⁶

In [evidence](#) to the Exiting the EU Committee on 20 June 2018, Mr Verhofstadt said AAs had “an enormous flexibility. You can put a lot of fields in it or only limit yourself to one or another field” (Q2092). He elaborated on their flexibility (Q2012):

On the one hand, that gives an enormous flexibility, because an association agreement can be very narrow; you can limit yourself only to trade, for example. In an association agreement you can be very broad. You can also put cooperation on foreign and security policy in it. It is flexible and precise at the same time, because [...] you are going to create not only one governance structure but also one cycle of ratification [...].

The advantage ... of an association agreement is that once it is approved by your side and by the European institutions, the Council and Parliament, it is applicable in advance; you do not need to wait for ratification by the other 27 member states, which can take some time.

Dr Tamara Kovziridze, former Chief Negotiator of the EU-Georgia Association Agreement, [told the Committee](#) (Q887) “the EU is able to adopt a creative approach to tailoring its agreements, given political will” and emphasised their individuality: “It is a matter of political priority to decide specifically what type of agreement it will be and when to enter into it. The dynamics and the timeline are often defined by political factors”.⁷ Although most Article 218 TFEU agreements require the EP consent and the support of a qualified majority in the EU Council, a deep and comprehensive AA with reciprocal rights and obligations and common action in certain areas would require EU27 agreement by unanimity.

Economic and Sector Cooperation

The EU’s AAs with Georgia, Moldova and Ukraine contain provisions on economic and sector cooperation. According to Van der Loo “these

⁵ The UK in a Changing Europe, [Association Agreements](#), 24 April 2018

⁶ The Telegraph, [Guy Verhofstadt: Brexit will be delayed unless Britain makes further concessions to EU](#), 27 April 2018; [Facebook](#), 28 April 2018

⁷ [Evidence session](#), 31 January 2018; [The future UK-EU relationship](#), 4th Report of Session 2017–19, para. 46, 4 April 2018

chapters cover a wide range of areas, including broad cooperation commitments and legislative approximation clauses".⁸

The EU-Ukraine AA contains 28 chapters under the heading of economic and sector cooperation. These include:

- Energy cooperation including nuclear issues
- Macro-economic cooperation
- Taxation
- Environment
- Transport
- Industrial and enterprise policy
- Financial services
- Agriculture and rural development
- Fisheries and maritime policies
- Cooperation on employment, social policy and equal opportunities
- Participation in EU agencies and programmes

Stabilisation and Association Agreements

A variation of the Association Agreement, the 'Stabilisation and Association Agreement' (SAA), applies to Western Balkan countries,⁹ and is adapted to the specific situation of each partner country. The SAAs establish a free trade area with the EU, identify common political and economic objectives and foster regional co-operation where there had been conflict. SAAs may also be the basis for implementing an EU accession process.

Deep and Comprehensive Free Trade Areas

Another component of recent AAs is the 'Deep and Comprehensive Free Trade Area' (DCFTA) with the countries in the 'Eastern Partnership' - Georgia, Moldova and Ukraine – see section 3.2 for detailed information.¹⁰ They are offered the 'four freedoms' of the Single Market (free movement of goods, services, capital and people – although the free movement of people is a visa-free regime for short stay travel only) and a range of other areas of cooperation, such as the environment,¹¹ science, transport and education.

In [written evidence](#) to the Exiting the EU Committee in January 2018, Michael Emerson, Associate Senior Research Fellow, Centre for European Policy Studies (CEPS), said the AA/DCFTA is halfway between

⁸ Guillaume Van der Loo, [The EU's Association Agreements and DCFTAs with Ukraine, Moldova and Georgia: A Comparative Study](#), 24 June 2017

⁹ Albania, Bosnia and Herzegovina, Kosovo, Northern Macedonia, Montenegro and Serbia

¹⁰ Armenia also intended to sign an AA with the EU, but ended negotiations to pursue membership in the Eurasian Union.

¹¹ They must adopt specific EU legislation in trade, consumer protection and environmental regulation, adopting around some 350 EU laws within a ten years.

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a Canada-style agreement and a Norway (EEA) type of agreement.¹² He summarised its characteristics as follows:

1. The AA/DCFTA model lies between 'Canada/CETA' and 'Norway/EEA', thus with elements of 'Canada+' and 'Norway-'.
2. It exists for Ukraine, Georgia and Moldova. It is therefore not correct for M. Barnier to be saying that there is nothing between 'Canada' and 'Norway'.¹³
3. The content of the AA/DCFTA model is an assembly of policies, laws and institutions of the EU that can be used to build a close relationship between the EU and its neighbours.
4. Being comprehensive, it avoids objections to 'cherry-picking' and 'bespoke' models.
5. Speed of negotiation: Ukraine took 7 years to negotiate through to signing; Georgia used Ukraine template and much detailed legal drafting, and so needed only 2 years.¹⁴

The EU has concluded a bi-regional Association Agreement (an [Interregional Framework Cooperation Agreement](#)) with Mercosur (Southern Common Market countries - Argentina, Brazil, Paraguay and Uruguay) and [signed a trade agreement in principle](#) with Mercosur at the end of June 2019.

Conditionality and suspension clauses

Access to the Single Market and EU financial and technical assistance comes with conditions and the AAs with Euro-Med and Eastern Partnership countries¹⁵ have conditionality clauses. The EU's [MEDA regulation](#) on funding for the Euro-Med partnership linked economic and financial co-operation to institutional reforms, the rule of law, good governance and respect for human rights.¹⁶ Article 2(1) of the EU-Georgia AA refers to European and international human rights norms (the UN Universal Declaration of Human Rights of 1948, the European Convention on Human Rights of 1950, the Helsinki Final Act of 1975 and the Charter of Paris for a New Europe of 1990). Article 1 of the AA with Moldova states that "respect for democratic principles, human rights and fundamental freedoms...shall form the basis of the domestic

¹² For information on the Canada and Norway agreements, see Commons Briefing Paper 8483, [Brexit: Proposals for the future UK-EU relationship](#), 18 April 2019, and Commons Library Insight, [What are the 'other' Brexit options?](#) 28 January 2019.

¹³ EU negotiator Michel Barnier said in 2017 that the UK's future relationship with the EU would not "combine the benefits of the Norway model with the weak constraints of the Canada model". See [speech, 7 September 2017](#): "Chacun comprend bien qu'il n'est pas possible et qu'il ne sera pas possible pour un Etat tiers d'avoir en même temps les bénéfices du modèle norvégien et les faibles contraintes du modèle canadien"; also [Newsnight, BBC News](#), 11 December 2017 and [The Independent, Brexit: Chief EU negotiator says 'no way' to a bespoke trade deal for the UK](#), 17 December 2017.

¹⁴ 'Notes on the EU's new Association Agreement (AA) model, including the Deep and Comprehensive Free Trade Area (DCFTA), with neighbouring states. Overarching points'

¹⁵ Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Tunisia

¹⁶ Since 1995 the EU has included an 'essential element' clause in all Association Agreements and Partnership and Cooperation Agreements with third countries stipulating that respect for human rights and democratic principles forms the basis for the agreement.

and external policies of the parties and constitutes an essential element of this Agreement”.

The application of an AA can be suspended by a decision of the Council on a proposal by the Commission or the High Representative for Foreign Affairs and Security Policy under Article 218(9) TFEU. Articles in the AAs themselves may provide for the suspension of specific elements of the Agreements. But the full suspension of trade relations is regarded as a last resort, to be used only in “exceptional circumstances”¹⁷ (this is discussed in detail in section 1.4 below).

In 2018 (and not for the first time) the EU suspended disbursement of macro-financial assistance (MFA) to Moldova because of its failure to fulfil the political conditions in a 2017 [EP and Council decision](#) requiring the government to respect effective democratic mechanisms and guarantee respect for human rights.

Guillaume Van der Loo commented on the suspension clauses in the Ukraine AA, and similar ones in the Georgia and Moldova AAs:

Like other suspension clauses included in EU international agreements, the EU-Ukraine AA suspension clause gives a party the exceptional right to immediately take “appropriate measures” in case of violation of an essential element of the AA.¹⁸ Remarkable is that the violation of essential elements can also lead, by derogation, to the suspension of rights and obligations provided for under the DCFTA.¹⁹ This is the only case in the EU-Ukraine AA where [*sic*] common values conditionality overlaps with market access conditionality: although the DCFTA has its own DSM [Dispute Settlement Mechanism], the violation by Ukraine of human rights or fundamental freedoms can lead to the Union’s suspension of specific trade benefits, granted to Ukraine under the DCFTA.²⁰

Human rights in the UK

The *European Union (Withdrawal) Act* 2018 omitted the EU Charter of Fundamental Rights from the remit of retained or preserved EU law, which has raised concerns.²¹ The Government points out that the Charter itself is not the source of human rights, but an expression of principles and rights that already exist in UK law.²² The UK remains party to the Council of Europe’s European Convention on Human Rights and the Government insists it is committed to maintaining high human rights standards - the Attorney General said in April “We are not in any

¹⁷ Full suspension of trade relations has not happened to date. Since 2002 there have been calls for the EU-Israel AA to be suspended on human rights grounds because of its activities in the Occupied Territories, but the EU has preferred to continue its dialogue with Israel.

¹⁸ Fn 851: Under normal circumstances, a party may only take

¹⁹ Fn 852: Art 478(2) EU-Ukraine AA

²⁰ Guillaume Van der Loo, *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area. A New Legal Instrument for EU Integration without Membership*, Brill Nijhoff, 2016, p 209

²¹ See e.g. Joint Committee on Human Rights, *Legislative Scrutiny: The EU (Withdrawal) Bill: A Right by Right Analysis*, [Appendix: Commentary on the Right by Right Analysis](#), 25 January 2018

²² See e.g. Lord Keen of Elie, Lords debate on [Brexit: Human Rights](#), 12 December 2017

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way going to permit our departure from the EU to detract from our firm and unshakeable commitment to human rights in this country and to the rule of law” - and to providing redress: “After the UK has left the EU, it will continue to afford its citizens access to well-established domestic and international mechanisms to bring their case and obtain appropriate remedies”.²³

Further reading

- European Parliamentary Research Service, [Human rights in EU trade agreements. The human rights clause and its application](#), Ionel Zamfir, July 2019
- House of Lords Library briefing, [Human Rights Priorities in the Light of Brexit](#), QSD on 12 December 2017

Withdrawal from an AA

The AAs provide for their termination by either party on six months’ notice. The Ukraine AA, for example, states in Article 481, ‘Duration’:

1. This Agreement is concluded for an unlimited period. The Parties shall provide for a comprehensive review of the achievement of objectives under this Agreement within five years of its entry into force, and at any other time by mutual consent of the Parties.
2. Either Party may denounce this Agreement by notifying the other Party. This Agreement shall terminate six months from the date of receipt of such notification.

1.2 EU Treaty procedure

Conclusion and ratification

Articles 218 TFEU provides for the negotiation and conclusion of agreements between the EU and third countries.²⁴ With trade agreements specific provisions in Article 207 TFEU on the Common Commercial Policy²⁵ are also relevant.

Under Article 218 the Council of the EU authorises the opening of negotiations, adopts negotiating directives, authorises the signing of agreements and concludes them. The European Commission submits recommendations to the Council prior to the authorisation of negotiations. AAs also require the consent of the European Parliament for EU ratification.

If the AA is mixed²⁶ (the wider the scope of the agreement, the greater the likelihood), it must be approved by the EU and each Member State

²³ Parliamentary Under-Secretary of State for Justice, Edward Argar, [Human Rights in the UK](#), c 383 WH, 13 February 2019

²⁴ For information on Article 218, see Institute for Government, [Article 218](#), 22 June 2017.

²⁵ The EU is a customs union which has economic and trade agreements with third countries or regional blocs. The Common Commercial Policy (CCP) is a major EU policy and an exclusive competence of the EU. Therefore, the EU negotiates these agreements on behalf of the Member States.

²⁶ [Mixed agreements](#) contain subject matters of EU and Member State competence, covering areas that go beyond the exclusive competences of the EU. This means that EU Member States as well as the EU must sign and ratify the agreement.

in accordance with its own constitutional approval or ratification procedures. This can involve more than 30 national and sub-national ratification procedures, including referendums in some cases.

The EU process for negotiating and adopting trade agreements is explained in Commons Library Briefing Paper 7192, [EU external agreements: EU and UK procedures](#), 29 March 2016, and in the European Commission publication, [Negotiating EU trade agreements](#), June 2012.

Provisional application

AAs can apply provisionally in part, pending full ratification, once the third country has ratified the agreement and the EP has given its consent.

EU Trade Commissioner Cecilia Malmström, [in reply to an EP questionnaire](#), said that trade agreements would not be provisionally applied before the EP had given its consent, except for urgent or technical reasons.

Further reading

- Ku Leuven, Working Paper No. 201, [The Provisional Application of the EU's Mixed Trade and Investment Agreements](#), Andrei Suse and Jan Wouters, May 2018

1.3 Institutional structure

The institutional setup of an Association Agreement (under EU law) is in principle free for the parties to determine and in general involves at least three distinct levels of governance: high-level political, general oversight and day-to-day management.

While recent AAs (including those with the Ukraine and Georgia) integrate significantly 'deeper' than other (non-accession) AAs concluded by the EU, their institutional structure is very similar. For example, the 2002 [EU-Chile AA](#) sets up identical bodies to the [EU-Ukraine AA](#).

Box 2: Case study: EU-Ukraine institutional provisions

Title VII Chapter 1 of the EU-Ukraine AA contains the institutional framework. It envisages the operation of bodies at several levels. First, Article 460 establishes a 'Summit' for the "highest level of political and policy dialogue". Summits are to take place in principle annually and will set the overall direction for the implementation of the AA.

At the level below 'Summit' level is an **Association Council** which meets at ministerial level and at regular intervals – at least annually, but also when circumstances require. The Association Council's primary task is to "supervise and monitor the application and implementation" of the AA and periodically review its functioning. In addition, Article 461(3) states that the Association Council will also "examine any major issues arising" in the AA's framework, as well as any other bilateral or international issues of mutual interests that might arise.

When the Association Council meets at 'Ministerial level', this means members of the Council of Ministers, the European Commission and the Government of Ukraine. The Association Council is to

establish its own rules of procedures, and the chairing of its meetings will be turn-based between a representative of the EU and Ukraine. The possibility is left open that “other bodies” can observe Association Council meetings, but what bodies these are is not indicated.

Article 463 makes clear that the Association Council has decision-making powers where the AA provides for this. These decisions will be binding on the parties, and the parties are obliged to implement measures that will give effect to Association Council decisions. It can also make recommendations; given that these are not described as binding, it is assumed that they are not. Both recommendations and decisions are adopted by ‘agreement’, suggesting unanimity for decision-making.

Article 463(2) is specific to the EU-Ukraine AA, which has as one of its objectives the “gradual approximation” of Ukraine’s legislation to EU law. Given that objective, the Association Council will be a ‘forum’ where the parties can exchange information on relevant legislative activity.

Finally, the Association Council can update or amend annexes to the AA, as required because of evolutions of EU law and relevant standards set out in international law that are applicable to both parties.

The third institution governing the AA, introduced in Article 464, is the **Association Committee**. This body will assist the Association Council in the performance of its duties and is composed of representatives of both parties at senior civil servant level. For the EU, this suggests Commission employees. Chairing of the Association Committee is also taken in turn, much as the chairing of the Association Council is, but its rules of procedure are produced by the Association Council. The Association Committee is obliged to meet once a year and is responsible for preparing meetings of the Association Council. Beyond that, the Association Council can also delegate any power (including decision-making power) to the Association Committee, which has its own decision-making powers under the AA. Association Committee decisions will be adopted by ‘agreement’ as well.

A specific provision relating to Title IV of the AA and covering the DCFTA that is part of it is set out in Article 465(4). When addressing issues related to Title IV, the Association Committee is to meet in a “specific configuration” called the Trade Committee in other parts of the AA, at least once a year.

There is further provision for setting up sub-committees by the Association Council to assist the Association Committee.

Article 467 sets up a Parliamentary Association Committee. This committee is not analogous with the institutional framework of most traditional free trade agreements: it exists so that members of the European Parliament and Ukraine’s Parliament, the *Verkhovna Rada*, can meet and exchange views. It is informed by the Association Council on how implementation of the AA is progressing, and can make recommendations to the Association Council as it sees fit (under Article 468).

Finally, and unusually for international trade agreements, Article 469 establishes a so-called ‘Civil Society Platform’, where members of the European Economic and Social Committee and representatives of civil society from Ukraine meet and exchange views. It has information rights and recommendation powers akin to those of the Parliamentary Association Committee.

Dispute Settlement

Dispute settlement under EU AAs generally is set up to take place on first, a political level, and where this fails, an arbitral level. The 2002 [EU-Chile AA](#) is a good example of this setup, with its Title VIII discussing consultations in the Association Committee as a means of avoiding a

dispute, and arbitration as the means to settle disputes that cannot be resolved in consultations.

The [EU-Ukraine AA](#) sets up a similar, if more detailed, process in Title IV on trade (with consultations taking place in a specific configuration of the Association Committee called the Trade Committee), but also has a separate 'high-level' political dispute settlement process that does not progress to arbitration, and takes place in the Association Council instead. Both of these are discussed in detail below.

Box 3: Case study: EU-Ukraine dispute settlement provisions

The dispute settlement provisions regarding the AA - excepting Title IV on trade - are set out in Article 476 to 478.

A general obligation is set out for both parties to take measures as required to fulfil their obligations under the AA. Any disputes regarding interpretation, implementation or good faith application of the AA shall be referred to the Association Council, which has the power to take a binding decision on any dispute.

Under the dispute settlement process before the Association Council, a party will submit to both the other party and the Association Council a "formal request" for dispute settlement, unless the dispute concerns the Title IV trade matters (in which case there is a dispute settlement section in Chapter 14 of Title IV, which is discussed below). The first step in response to the formal request is good faith consultations in relevant bodies as appropriate. As long as the dispute remains unresolved, it will be raised at all meetings of the Association Council. When a binding decision has been taken in the Association Council, or when the Association Council declares (unanimously) that the dispute has come to an end, the dispute is deemed to be resolved. Article 477(5) stresses that "all information disclosed during the consultations shall remain confidential".

Where a dispute is not resolved within three months of formal notification, a complaining party is allowed to take "appropriate measures" and it is made clear that appropriate measures are the ones that "least disturb" the overall functioning of the AA. Specifically, the appropriate measures cannot be the suspension of the Title IV trade provisions, and they must always be notified immediately to the Association Council to become the subject of consultations themselves.

There are two exceptions to not being able to suspend provisions in Title IV: this is where a party engages in a "denunciation of the Agreement not sanctioned by general rules of international law", or where a party violates "any of the essential elements" of the AA, as set out in Article 2 of the AA. These are:

Respect for democratic principles, human rights and fundamental freedoms, as defined in particular in the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and the Charter of Paris for a New Europe of 1990, and other relevant human rights instruments, among them the UN Universal Declaration of Human Rights and the European Convention on Human Rights and Fundamental Freedoms, and respect for the principle of the rule of law shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement. Promotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence, as well as countering the proliferation of weapons of mass destruction, related materials and their means of delivery also constitute essential elements of this Agreement.

The dispute settlement process under Title IV is slightly different. While it also starts with consultations (under Article 305), a failure to end a dispute in consultations means that the complaining Party can initiate arbitration to settle the dispute. Section 1 of Chapter 14 of Title IV sets out the rules applicable to arbitration processes: the complaining party is to establish terms of reference for this panel, which will be composed of three arbitrators as agreed by the parties (or, where they fail to agree, by the Trade Committee established under Title IV of the AA). Article 308 states that the panel will issue an 'interim report' that sets out facts, applicable provisions of the AA and the reason for its findings, and recommendations within 90 days of its establishment, if possible. This 'interim report' can be challenged by either Party, and the arbitration panel will consider any comments made in its final ruling. That ruling is due within 120 days of the establishment of an arbitration panel (unless by consent of the

parties, the dispute is declared urgent, or the arbitration panel notifies that it cannot meet this deadline, in which case it is due 150 days after the establishment of the panel).

Section 2 of Chapter 14 sets out the rules on compliance with panel decisions, and Article 311 obliges the Parties to take “any measure necessary to comply in good faith” with the ruling. This compliance is meant to occur in reasonable time, which means that the complained against Party has to indicate a timeline for compliance, and this can be agreed to or contested by the complaining Party. When the complained against Party has in its view complied with the ruling, it must notify the Trade Committee and the complaining Party of what measures it has taken. Where there is disagreement on compliance, this can again be taken to arbitration.

If the panel agrees that there still is not compliance at this stage, or if there was no attempt at compliance within the agreed “reasonable time”, the complained against Party will, if asked, offer “temporary compensation”. If this cannot be agreed within 30 days, the complaining Party is allowed to suspend its obligations within 10 days of notifying the Trade Committee and the Party complained against. This suspension of obligation is to be limited to “nullification or impairment” caused by the original violation complained about, and Article 315(3) makes clear that this could be done, for instance, by increasing tariffs to within WTO tariff schedules on a volume of trade that results in such nullification.

However, a decision to suspend is also potentially subject to arbitration where the complained against Party believes the suspension is disproportionate. Should an arbitration panel agree that the suspension results in more than “nullification or impairment of the violation”, or the complained against Party has by now complied with the original panel ruling, the complaining Party is obliged (under Article 316(2)) to cease its suspension of obligations within 15 days of such a ruling.

1.4 Length of the AA process

Table 1 (below) shows the length of time taken from the Council’s adoption of negotiating directives on the Association Agreement under Article 218(2) TFEU up to entry into force or provisional application of the agreement.²⁷ It took on average 6 years and 9 months for an AA to enter fully into force and 6 years and 4 months for provisional application.

AA country	Adoption of negotiating mandate	Signature of AA	Entry into force of AA	Approx. how long?
Algeria	10/6/1996	22/4/2002	1/9/2005	9 yrs 3 mths
Chile	13/9/1999 <i>(Negotiations began on new trade part 16/11/2017)</i>	18/11/02	1/3/2005	5 yrs 6 mths
Egypt	19/12/1994	25/6/2001	1/6/2004	9 yrs 6 mths
Georgia	10/5/2010	27/6/2014	1/7/2016	6 yrs 2 mths
Israel	20/12/1993	20/11/1995	1/6/2000	6 yrs 6 mths

²⁷ Sources include the Parliamentary European Scrutiny and Information Database and [EU reply to FOI request](#) from Mr Luke Stanley, 11 September 2014.

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AA country	Adoption of negotiating mandate	Signature of AA	Entry into force of AA	Approx. how long?
Jordan	12/6/1995	24/11/1997	1/5/2002	6 yrs 11 mths
Lebanon	2/10/1995	17/6/2002	1/4/2006	10 yrs 6 mths
Moldova	15/6/2009 <i>(DCFTA negotiations started 2/2012)</i>	27/6/2014	1/7/2016	7 yrs 1 mth
Morocco	6/12/1993 <i>(DCFTA negotiations started 1/3/2013, on hold since April 2014)</i>	26/2/1996	1/3/2000	6 yrs 3 mths
Palestine (interim)	1/10/1996	24/2/1997	1/7/1997	8 mths
Tunisia	20/12/1993 <i>(DCFTA negotiations started 12/10/2013)</i>	17/5/1995	1/3/1998	4 yrs 3 mths
Costa Rica	24/4/2007	29/6/2012	Provisionally applied since 1/10/2013	6 yrs 6 mths
El Salvador	24/4/2007	29/6/2012	Provisionally applied since 1/10/2013	6 yrs 6 mths
Guatemala	24/4/2007	29/6/2012	Provisionally applied since 1/12/2013	6 yrs 8 mths
Honduras	24/4/2007	29/6/2012	Provisionally applied since 1/8/2013	6 yrs 4 mths
Nicaragua	24/4/2007	29/6/2012	Provisionally applied since 1/8/2013	6 yrs 4 mths

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AA country	Adoption of negotiating mandate	Signature of AA	Entry into force of AA	Approx. how long?
Panama	24/4/2007	29/6/2012	Provisionally applied since 1/8/2013	6 yrs 4 mths
Ukraine	5/3/2007 <i>(DCFTA negotiations started February 2008)</i>	29/5/2014	AA entered fully into force 1/9/2017. (DCFTA provisionally applied from 1/1/2016; political and cooperation parts provisionally applied from November 2014).	10 yrs 6 mths

But as Michael Emerson has [pointed out](#), the UK would have the advantage of starting “with full compliance”.²⁸

The Institute for Government suggested in March 2018: “One practical advantage is that it provides a ready legal framework, which could shorten the time necessary for legal drafting of a comprehensive agreement between the UK and EU. Much of the technical legal drafting could be carried over from the EU’s existing agreements if a similar structure was adopted”.²⁹

It has been suggested that, if the UK leaves the EU according to the terms of the November 2018 Withdrawal Agreement, the UK Prime Minister might try and negotiate a longer transition period after exit day beyond the agreed maximum of 31 December 2022 to allow more time to resolve Irish backstop issues and for the negotiation, ratification and entry into force of a future relations agreement. According to Andrew Duff (President of the Spinelli Group and a Visiting Fellow at the European Policy Centre): “Such a revision will not breach anyone’s red lines. It will obviate the need for the Irish backstop, reassure business and citizens, and enable an orderly exit”.³⁰ But it is not clear whether there would be EU consent to or UK parliamentary support for a longer transition period. Some Brexit supporters might view an extension as a

²⁸ Written evidence to Exiting the EU Committee, ‘Notes on the EU’s new Association Agreement (AA) model, including the Deep and Comprehensive Free Trade Area (DCFTA), with neighbouring states’, January 2018

²⁹ IfG, [Association Agreements](#), 22 March 2018

³⁰ Andrew Duff, [Brexit: Time regained](#), EPC Discussion Paper, 11 July 2019

longer period of the UK being a “vassal state”³¹ and would prefer a hard Brexit.

1.5 Free movement of people

Association Agreements do not offer free movement, but the EU has entered into agreements with third states which provide their nationals with some immigration and social security rights. These rights are reciprocal.³²

The Commons Home Affairs Committee [noted](#) in 2018:

97. The DCFTA negotiated between the European Union and the Ukraine provides a precedent for partial integration in the single market without requiring the free movement of people. Despite the European Commission’s repeated claim that there can be no ‘cherry-picking’ of the four freedoms of the single market, this is a political judgement rather than a technical or legal obstacle. We note that the EU-Ukraine package was agreed in the context of Ukraine moving towards the EU, rather than away, and the European Commission has so far insisted that, for the UK-EU negotiations, the four freedoms of the single market are indivisible.³³

This would be a matter for negotiation between the EU and the UK.

Box 4: Case study: EU-Turkey Association Agreement

The 1963 AA with Turkey – often referred to as the ‘[Ankara Agreement](#)’ – is an example of an agreement with some immigration rights. Article 12 committed the Contracting Parties to “progressively securing freedom of movement for workers between them”. An additional protocol with the aim of establishing the free movement of goods, services and people entered into force in 1973. Decisions of the Association Council 2/76 of 20 December 1976 and 1/80 of 19 September 1980 provided employment rights. [Decision 3/80](#) of the Association Council of 19 September 1980 established social security measures for Turkish workers and their family members living and moving within the EU. A readmission agreement has been in force since October 2014.

Carolus Grütters *et al*/summarise the provisions:

Under Decision 2/76 and 1/80 adopted under the EEC-Turkey Association Agreement, Turkish nationals who have been admitted to the labour market are entitled to extension of their work (and residence permits after one, three, and four years employment with varying conditions (Article 6 Decision 1/80). There is also a standstill provision prohibiting a deterioration of the rights of Turkish workers. After four years employment the Turkish worker is entitled to free access to the labour market. There is extensive jurisprudence by the CJEU on the subject. The agreement also extends rights to the family members of Turkish nationals once they have been admitted to the Member State.³⁴

In the UK these arrangements gave particular rights to some Turkish nationals who had already entered and lawfully worked in the UK, and gave Turkish nationals who wished to establish themselves in

³¹ Jacob Rees-Mogg, [HC Deb 10 September 2018](#) cc 526 and 530; see also *Financial Times* Brexit Briefing, The road to a deal for Johnson? James Blitz, 12 July 2019.

³² Using its current opt-in option, the UK has had the right to opt into or remain outside EU measures on the migration of third-country nationals, borders and visa agreements. It has not opted into some EU measures on irregular migration, some readmission agreements with third countries or any visa facilitation or visa waiver agreements with third countries.

³³ [Policy options for future migration from the European Economic Area: Interim report](#), Eighth Report of Session 2017–19, HC 857, 31 July 2018

³⁴ LIBE Committee, [Brexit and Migration](#), October 2018, p 25

business in the UK the right to have their application for leave to enter/remain considered under an older (and less restrictive) version of the Immigration Rules.³⁵

Further reading

- Eisele, K. 'Social security coordination in Association Agreements: Is a common EU approach with third countries in sight?', *European Journal of Social Security*, 2018
- [Brexit and Migration](#), study for the Civil Liberties, Justice and Home Affairs Committee, Carolus Grütters, Elspeth Guild, Paul Minderhoud, Ricky van Oers and Tineke Strik, October 2018
- 'Rights of Third-Country Nationals under EU Association Agreements. Degrees of Free Movement and Citizenship', *Nijhoff Studies in European Union Law*, Volume: 9, Editors: Daniel Thym, LL.M. and Margarite Zoeteweij-Turhan, 28 July 2015
- CEPS, [Social benefits and migration: a contested relationship and policy challenge in the EU](#), edited by Elspeth Guild, Sergio Carrera and Katharina Eisele, 2013:
 - Chapter 3: [The Significance of Decision 3/80 of the EEC-Turkey Association Council](#), Paul Minderhoud;
 - Chapter 4: [Social security rights of third country nationals under the Euro-Mediterranean Association Agreements](#), Anja Wiesbrock

1.6 Participation in EU agencies

Association Agreement countries may participate in EU agencies where third party participation is permitted.³⁶ According to the European Commission, most EU agencies are not open to the European Neighbourhood Policy (ENP)³⁷ countries – a quick tally of the [annex](#) to the relevant Commission Communication gives 18-21, depending on the ENP partner. A CEPS publication, [Which model for Brexit?](#) by Michael Emerson, October 2016, lists EU agencies and programmes that are open to non-EU membership. Emerson [told](#) the Exiting the EU Committee in January 2018: "There is a list of about 30 EU agencies that are officially open to neighbouring non-member states that wish to associate with the policy in question" (Q861).

³⁵ [Chapter 6, section 6](#) of the UK Border Agency (UKBA)'s *Immigration Directorate Instructions*, 'Business applications under the Turkish-EC Association Agreement (ECAA)', provides background information on the AA with Turkey. updated 7 September 2009. The [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#) repeals directly effective treaty rights relating to immigration in the AA with Turkey.

³⁶ For information on EU agencies and bodies which allow third country participation, see Commons Library Briefing Paper 7957, [EU Agencies and post-Brexit options](#), 28 April 2017.

³⁷ Through the ENP the EU works with its Southern and Eastern Neighbours to foster stabilisation, security and prosperity ([EU External Action Service](#)).

Box 5: Case study: EU-Ukraine Association Agreement

The [EU-Ukraine AA](#) including the DCFTA has been fully in force since 1 September 2017. The DCFTA was applied provisionally from 1 January 2016 after eight years of negotiation.

This section looks at the participation of Ukraine, a 'neighbouring partner country', in various EU agencies, programmes and bodies.

Chapter 28, Articles 450-452 of the Ukraine AA provide for Ukraine's participation:

Article 450

Ukraine shall be allowed to participate in EU agencies relevant to the implementation of this Agreement and other EU agencies, where their establishing regulations permit, and as laid down by these establishing regulations. Ukraine shall enter into separate agreements with the EU to enable its participation in each such agency and to set the amount of its financial contribution.

Article 451

Ukraine shall be allowed to participate in all current and future programmes of the Union that are opened to the participation of Ukraine in accordance with the relevant provisions adopting those programmes. Ukraine's participation in the programmes of the Union shall be in accordance with the provisions laid down in the annexed Protocol III on a Framework Agreement between the European Union and Ukraine on the General Principles for the Participation of Ukraine in Union Programmes of 2010.

Article 452

The EU shall inform Ukraine in the case of establishment of new EU agencies and new programmes of the Union, as well as regarding changes in terms of participation in the programmes of the Union and agencies, mentioned in the Articles 450 and 451 of this Agreement.

The [Ukraine Mission to the EU](#) lists the EU agencies in which the Ukraine participates, while a Centre for European Policy Studies (CEPS) report in 2016³⁸ looked at Ukraine's actual and potential participation in EU agencies and programmes, noting that 20 agencies and 19 programmes were "open to participation by Ukraine as partner under the Association Agreement".

Tables 2-4 (below) list EU agencies, programmes and bodies in which Ukraine participates and where possible the basis for this participation. Ukraine has an agreement or arrangement with these agencies, but it may have looser cooperation with others that are not listed.

Table 2: EU Agencies in which Ukraine participates

Agency	Basis for participation	Further information
European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)	Memorandum of Understanding between the Ministry of Health of Ukraine and the European Monitoring Centre for Drugs and Drug Addiction, signed 2010.	Comes under European Neighbourhood Policy and revised EU-Ukraine Action Plan on Freedom, Security and Justice, June 2007
European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)	Operational cooperation under a Working Arrangement ; not considered to be an international treaty.	Cooperation between Ukraine State Border Guard Service and Frontex began in 2007. Cooperation activities include exchange of information, risk analysis, joint operations and personnel training. Training projects include

³⁸ CEPS, [Deepening EU-Ukrainian Relations: What, why and how?](#) edited by Michael Emerson and Veronika Movchan

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Agency	Basis for participation	Further information
		<p>detection of stolen vehicles and falsified documents, training dog handlers, learning English, implementation of a common core curriculum for border guards and preparation of common web platform for border guards training. See http://frontex.europa.eu/partners/third-countries/.</p>
<p>European Global Navigation Satellite Systems Agency of the Galileo navigation system (GSA)</p>	<p>Cooperation Agreement on a Civil Global Navigation Satellite System (GNSS), concluded in November 2013. Not based on Association Agreement.</p>	<p>Covers satellite navigation (EGNOS / Galileo) and remote sensing (GMES).</p>
<p>European Environment Agency (EEA)</p>	<p>Cooperation since 2009. Focus is to implement provisions of Association Agreement</p>	<p>Aim is for deeper cooperation, including harmonisation of Ukrainian and EU law, developing infrastructure in Ukraine under Shared European Environmental Information System (SEIS) and identifying priorities of Strategy of State Environmental Policy to 2020. See http://eng.menr.gov.ua/index.php/international/international2/179-yeea.</p>
<p>Occupational Safety and Health Administration (OSHA)</p>	<p>In 2014 became partner country in project for neighbouring countries.</p>	<p>Ukraine has participated in work of Agency after establishing a country contact point and platform for sharing information and future cooperation.</p>
<p>European Maritime Safety Agency (EMSA)</p>	<p>Cooperation</p>	<p>Ukraine is developing cooperation between EMSA and the State Maritime and River Transport Safety Inspection.</p>
<p>European Aviation Safety Agency (EASA)</p>	<p>Working Arrangement in 2015 replacing 2006 Working Arrangement.</p>	<p>State Aviation Service of Ukraine (SAS) has been an EASA Pan-European Partner since 2009. The Working Arrangements cover all aspects of the regulation of civil aviation safety and environmental protection of products, organisations and personnel. Ukraine's participation in EASA was a key precondition for proceeding with the Common Aviation Area Agreement (CAA Agreement) between Ukraine and the European Union. See https://www.easa.europa.eu/easa-and-you/international-cooperation/easa-by-country/countries/ukraine.</p>

Agency	Basis for participation	Further information
European Centre for Disease Prevention and Control (ECDC)	In action plan of Association Agreement 2014-17.	Implementation of Decision 851/2004/EC of 21 April 2004.
European Railway Agency (ERA)	In action plan of Association Agreement 2014-17.	Cooperation in framework of work of the group on interoperability in the railway system space 1520.
European Training Foundation (ETF)	Partner country	http://www.etf.europa.eu/web.nsf/pages/Ukraine
European Defence Agency (EDA)	In action plan of Association Agreement 2014-17: Administrative Arrangement.	Conclusion of Administrative Arrangement followed mandate of EDA Steering Board on 3 December 2015. European Council approved the Arrangement on 30 November 2015. It formalised relationship between EDA and Ukraine Ministry of Defence, allowing participation in EDA's military-technological projects and programmes, including training, logistics and Single European Sky. See press release , 7 December 2015.
European Union Institute for Security Studies	In action plan of Association Agreement 2014-17	
European Union Satellite Centre	In action plan of Association Agreement 2014-17	
European Food Safety Authority (EFSA)	Cooperation agreements	EFSA started to cooperate with EU neighbouring countries via the Programme funded from the European Neighbourhood Policy Instrument (ENPI) in February 2014.
European Space Agency	Cooperation agreement since 2008; in February 2014 was extended to 2019: Protocol amending Agreement between Ukraine and European Space Agency on cooperation in peaceful use of outer space.	See State Space Agency of Ukraine website.
European Fisheries Control Agency (EFCA)	In action plan of Association Agreement 2014-17.	Contacts to be established.

Table 3: EU programmes in which Ukraine participates

EU programme	Basis for participation	Further information
Erasmus +	Partner country since 2014	http://ec.europa.eu/programmes/erasmus-plus/index_en.htm

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EU programme	Basis for participation	Further information
Horizon 2020	In action plan of Association Agreement 2014-17.	Officially joined 20 March 2015
Eurostudent	Participant in the project since 2013	http://www.eurostudent.eu/
Competitiveness of Enterprises and SMEs (COSME)	International agreement signed 4 May 2016; entered into force 21 March 2017.	Ukraine does not participate in COSME financial instruments.
Health for Growth	EU-Ukraine Association Agenda , 24 June 2013	EU-Ukraine Association Council - Joint communiqué , 8 December 2017
Creative Europe Programme	EU-Ukraine Agreement , signed 19 November 2015	EU programme which supports the cultural and creative sectors.

Table 4: other EU-Ukraine relations

Organisation/institution	Basis for participation
Euratom	Association Agreement Agreement for Cooperation between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine in the field of controlled nuclear fusion , 3/07/1999 Agreement for Cooperation between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine in the field of nuclear safety
European Police Office (Europol)	Cooperation Agreement signed in 2009 provided for coordination of efforts in preventing and combating all forms of international crime, terrorist threats, human trafficking, drugs and illegal migration. Memorandum of Understanding with Europol signed April 2015, setting up a special secured communication channel, SIENA, for the exchange of information. Agreement on Operational and Strategic Co-operation between Ukraine and Europol , signed December 2016.
EU Judicial Cooperation Unit (EUROJUST)	Cooperation Agreement concluded in February 2015 and signed on 28 June 2016.
European Police College (CEPOL)	Working Arrangement under negotiation
Common Security and Defence Policy (CSDP)	Special frameworks for co-operation

Further reading

- Centre for European Reform, [The Ukraine model for Brexit: is dissociation just like association?](#) Insight, Beth Oppenheim, 27 February 2018

1.7 Legislative and regulatory approximation

Association Agreements require the legislative and regulatory alignment (approximation) of the third country with EU legislation in the areas covered and they provide a general legal basis for the approximation of laws. Ukraine, for example, had to approximate its legislation with EU legislation in the areas of transport, social policy, technical barriers to trade, establishment and trade in services, environment and company law.³⁹

Whereas approximation has presented challenges for some Euro-Med and Eastern Partnership countries, it would not be problematic for the UK technically (the UK would start with almost full compliance and most EU legislation in force on exit day will have been converted to or retained in UK law under the *European Union (Withdrawal) Act 2018*), although it might be so politically and ideologically.

Taking account of CJEU case law

The AAs with Ukraine, Georgia and Moldova require the progressive harmonisation of national law with EU law and the partner States must also take “due account” of the case law of the CJEU. But as the Committee on Exiting the EU concluded: “Binding arbitration is provided for dispute resolution and referrals to the Court of Justice of the EU are limited to interpretations of EU law.”⁴⁰

Article 273(2) of the [EU-Moldova Association Agreement](#) states with regard to the approximation of public procurement legislation that “due account shall be taken of the corresponding case law of the Court of Justice of the European Union and the implementing measures adopted by the European Commission, as well as, should it become necessary, of any modifications of the Union *acquis* occurring in the meantime”. The Ukraine and Georgia AAs contain similar provisions.

Article 403 of the Moldova AA is on referrals to the CJEU:

1. The procedures set out in this Article shall apply to disputes concerning the interpretation and application of a provision of this Agreement relating to gradual approximation contained in Chapter 3 (Technical Barriers to Trade), Chapter 4 (Sanitary and Phytosanitary Measures), Chapter 5 (Customs and Trade Facilitation), Chapter 6 (Establishment, Trade in Services and Electronic Commerce), Chapter 8 (Public Procurement) or Chapter 10 (Competition) of Title V (Trade and Trade-related Matters) of this Agreement, or which otherwise imposes upon a Party an obligation defined by reference to a provision of Union law.

2. Where a dispute raises a question of interpretation of a provision of Union law referred to in paragraph 1, the arbitration panel shall not decide the question, but request the Court of Justice of the European Union to give a ruling on the question. In such cases, the deadlines applying to the rulings of the arbitration panel shall be suspended until the Court of Justice of the European Union has given its ruling. The ruling of the Court of

³⁹ Ukrainian Centre for European Policy, [Labyrinths of the Association Agreement](#), Liubov Akulenko, Olha Kulyk and Nataliia Bovkun, 2019

⁴⁰ [The future UK-EU relationship](#), 4 April 2018, para 54

Justice of the European Union shall be binding on the arbitration panel.

Box 6: Case study: EU-Israel Association Agreement

Article 55 of the [EU-Israel Association Agreement](#) provides for the approximation of laws between Israel and the EU: "The Parties shall use their best endeavours to approximate laws in order to facilitate the implementation of this Agreement". The AA includes provisions on:

- regular political dialogue
- free movement of goods (tariff and quota free trade in industrial goods)
- freedom of establishment and liberalisation of services
- the free movement of capital, public procurement
- competition rules, including a prohibition of state aid
- strengthening of economic cooperation
- cooperation on cultural and social matters

It contains arrangements for free trade in industrial products and mentions many other areas of cooperation that are open to negotiation. In addition, in 2009 the EU and Israel concluded an [Agreement on agriculture](#) providing for reciprocal liberalisation measures on agricultural products, processed agricultural products and fish and fishery products. It entered into force on 1 January 2010. Both parties have concluded several other agreements, including:

- [Agreement on Scientific Cooperation](#), which gives Israel full access to the EU's scientific research programme, Horizon 2020;
- Agreements on [Procurement by Telecommunications Operators](#) (1997) and on [Government Procurement](#) (1997);
- [EU-Israel Agreement on Conformity Assessment and Acceptance of industrial products \(ACAA\)](#), which entered into force on 19 January 2013. This agreement concerns mutual recognition based on the alignment of the legislative system and infrastructure.

Conformity assessment and mutual recognition

The EU-Israel Protocol on Conformity Assessment and Acceptance of Industrial Products (ACAA) promotes trade in goods by facilitating market access, but covers only a restricted groups of products: medical products and pharmaceutical ingredients for or veterinary use. Its Article 7 provides for possible extension to other areas if Israel adopts and implements further national law aligning with relevant EU law.

The ACAA focuses on mutual recognition based on the alignment of the legislative system and infrastructure. It contains an annex on good manufacturing practices for pharmaceutical products which allows for EU-certified pharmaceuticals to be placed on Israel's market and vice-versa, without additional certification. See Israel-EU [ACAA Questions and Answers](#), European Commission, 2013.

Conformity assessment, included in an ACAA agreement, implies no alignment on standards themselves and the regulatory requirements of the two parties may differ substantially. Therefore, Good Manufacturing Practices are designed to ensure consistent minimum quality standards and minimise risks in production which cannot be eliminated by testing the final product. They often test conformity to guidelines recommended by licensing agencies in a particular sector – in this case medical products and pharmaceuticals.

The Commons Library Briefing Paper on [Future trade with the EU: Mutual recognition](#), 8 October 2018, analyses examples of EU mutual recognition agreements (MRAs), including the Israel-EU ACAA. It states that where MRAs are based on 'common' rules, those rules are in fact EU rules. While these agreements look like 'mutual' recognition agreements, they really facilitate the extension of the trade territory and rules of the EU internal market. The European Commission has said in the past that "Such agreements can only be concluded with countries where there is a political commitment for extension

of the internal market to them, which de facto requires them adopting the *acquis communautaire*", and that these agreements require "adoption by the other Party of the *acquis communautaire* as a basis for its own legislation".⁴¹ Article 3 on the alignment of legislation states:

For the purpose of this Protocol, Israel agrees to take appropriate measures, in consultation with the European Commission, to align with and maintain relevant EU law as it applies to the placing on the market of products covered by this Protocol.

In sectors covered by this Protocol where relevant EU law is based upon the use of technical standards giving presumption of conformity with essential safety requirements (known as "New Approach" sectors) Israel agrees to take appropriate measures, in consultation with the European Commission, to align with and maintain relevant EU practice in the fields of standardisation, metrology, accreditation, conformity assessment, market surveillance, general safety of products, and producers' liability. "New Approach" sectors are indicated as such in the Sectoral Annexes.⁴²

In the ACAA with Israel the EU *does not* in fact recognise Israeli rules, so in that sense there is no 'mutual' recognition or 'equivalence', but rather the acceptance of EU rules by Israel. Sussex University's UK Trade Policy Observatory (UKTPO) noted in written evidence to the Business, Energy and Industrial Strategy (BEIS) Select Committee's Brexit inquiry that "[a] basic requirement for an ACAA is legislative alignment". According to Michael Emerson, "The ACAA represents the ultimate standard for removing TBTs [technical barriers to trade] entirely".⁴³

Emerson summarises the situation under the ACAA with Israel:

...goods in a given sector certified for acceptance on the home market of one party are automatically accepted on the market of the other party with no further testing or checks, as if between EU member states. This requires the use of identical technical standards and testing procedures, which again the UK is perfectly able to sustain as at present. The ACAA model is available for any close neighbour.⁴⁴

He cites the EU's ACAA as a possible model for a post-Brexit relationship with the EU giving "seamless access to the EU single market for both goods and some service markets". But this access is currently restricted to a select group of goods.

⁴¹ European Commission Staff Working Paper, [Priorities for bilateral/regional trade related activities in the field of mutual recognition agreements for industrial products and related technical dialogue](#). SEC (2004) 1072, 19 October 2004, p5

⁴² [2013/1/EU: Council Decision of 20 November 2012](#) on the conclusion of a Protocol to the Euro-Mediterranean Agreement establishing an EC-Israel association on Conformity Assessment and Acceptance of Industrial Products

⁴³ [The Strategic Potential of the Emerging Wider European Economic Area](#), CEPS, Michael Emerson, No 2018/05, February 2018, p5; see also Commons Library Briefing Paper on [Future trade with the EU: Mutual recognition](#), 8 October 2018, p23.

⁴⁴ Letter to *Financial Times*, [Two working examples of access to single market](#), Michael Emerson, 23 November 2017.

2. An agreement for any Brexit scenario?

Whether Brexit happens with or without a withdrawal agreement, the UK will need to negotiate a new relationship with the EU after it has left. The EU and the UK want a close relationship with each other after Brexit. An AA could be negotiated with or without a withdrawal agreement if the political will is there.⁴⁵ But if there is no withdrawal agreement, and therefore no transition/ implementation period, the negotiation of an AA would start after exit day and could take a few years (even with the UK's more advanced starting point regarding legislative approximation). An interim regime of EU-UK bilateral agreements could bridge the gap.

After the European Council meeting on 21 June 2019, EUCO President Donald Tusk [said](#): "We look forward to working together with the next UK prime minister, we want to avoid a disorderly Brexit and establish a future relationship that is as close as possible with the UK". But the EU has warned Member States against concluding bilateral 'mini deals' with the UK in an attempt to mitigate a no-deal exit.⁴⁶

2.1 EU support for an AA

European Parliament Resolution

In a [Resolution](#) on 14 March 2018⁴⁷ the European Parliament recommended an AA as "an appropriate framework for the future relationship by which these common interests can be protected and promoted, including a new trade relationship". The Resolution also stated that the EP would endorse a framework for the future EU-UK relationship if it maintained:

- protection of the integrity and correct functioning of the internal market, the customs union and the four freedoms, without allowing for a sector-by-sector approach;
- full adherence to the four freedoms and incorporation of corresponding EU rules, a level playing field, including through a competition and state aid regime;
- binding CJEU jurisprudence and contributions to the EU budget;
- safeguarding of the EU legal order and the role of the CJEU in this respect.

⁴⁵ For views on this, see Georgina Wright, [The EU27 believe a no deal Brexit would weaken the UK's negotiating hand](#), Institute for Government, 17 June 2019.

⁴⁶ See, for example, Open Europe, [EU warns member states against engaging with the UK bilaterally on Brexit](#), 5 September 2018. An exception to this is in the area of citizens' rights, where the EU has asked the UK and the EU27 to agree reciprocal residence, work and social security provisions. The measures and legislation adopted by the EU as part of its Brexit preparedness programme are unilateral EU measures, not negotiated with the UK (see Michel Barnier, [oral evidence](#) to Exiting the EU Committee, The progress of the UK's negotiations on EU withdrawal, HC 372, 3 September 2018, Q 2563).

⁴⁷ EP [resolution](#) of 14 March 2018 on the framework of the future EU-UK relationship

The AA would be adopted under Article 217 TFEU and would almost certainly be a mixed agreement requiring adoption by and ratification in all the EU27 states and the UK (and primary legislation).⁴⁸

Political Declaration on future relations

The EU says it will not renegotiate the November 2018 Withdrawal Agreement, but it is prepared to reconsider⁴⁹ the non-binding [Political Declaration on the framework for the future EU-UK relationship](#) (which is part of the EU-UK withdrawal 'package') if the UK Government is willing to modify its 'red lines' of leaving the customs union and Single Market. The Political Declaration (PD) states that it:

... establishes the parameters of an ambitious, broad, deep and flexible partnership across trade and economic cooperation, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation.

The PD makes over 60 references to 'cooperation'. It refers to "trade and economic cooperation, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation" (Article 3). This "wider cooperation" includes culture and education (Article 14); cooperation with EU agencies such as the European Medicines Agency, the European Chemicals Agency and the European Aviation Safety Agency (Article 24); exchange of information and sharing of best practice (Article 35); structured cooperation on regulatory and supervisory matters to do with financial services (Article 39); cooperation and exchange of information on intellectual property issues of mutual interest (Article 47); judicial cooperation in matrimonial, parental responsibility (Article 58); on high standards of aviation safety and security (Article 61); on maritime safety and security (Article 65); technical cooperation between electricity and gas networks operators and organisations (Article 67); cooperation with Euratom (Article 68); on carbon pricing (Article 72); global cooperation to address issues of shared economic, environmental and social interest (Article 77); judicial cooperation in criminal matters, foreign policy, security and defence (Article 81); operational cooperation between law enforcement authorities and judicial cooperation in criminal matters; and anti-money laundering and counter terrorism financing (Article 84); external action (Article 92); crisis management (Article 101); research and industry (Article 104); space (Article 107); development (Article 108); security and stability in cyberspace (Article 110); civil protection (Article 114); illegal migration including cooperation with Europol (Article 116); and counter-terrorism, countering violent extremism and emerging threats (Article 117).

The PD also provides for the possibility of UK participation in EU programmes in areas such as science and innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space.

⁴⁸ For further information see Europarl, [EP Brexit: EP recommends association agreement for future EU-UK relations](#), 14 March 2018.

⁴⁹ See [Michel Barnier Tweet](#), 23 July 2019.

[Article 122](#) of the PD notes that “the overarching institutional framework could take the form of an Association Agreement”. But it does not provide details of the future agreement the EU will have with the UK after Brexit. This will be for the UK and EU to negotiate once the UK has left the EU.

2.2 UK Government position on an AA

The May Government did not and the Johnson Government has not ruled out a future AA with the EU. David Davis said in May 2018, when he was Secretary of State for Exiting the EU, that he had “no intrinsic objection” to the idea of an AA similar to one the EU has with Ukraine. Brexit Minister Steve Baker had said in a [parliamentary reply in November 2017](#) that the Government was not seeking an “off the shelf solution” and AAs are not simply “off the shelf” instruments. The May Government wanted a “comprehensive, bold and ambitious free trade agreement” ([Theresa May](#)), a “Canada plus plus plus” ([David Davis](#)), “a free trade agreement of unprecedented scope and ambition” ([Steve Baker](#)), which would be more than an Association Agreement in some respects and possibly less than one in others. The last Government saw “a deep and comprehensive economic partnership between the UK and the EU” as having “distinct benefits for both sides”.⁵⁰ Dominic Raab, as Exiting the EU Secretary, [said](#) in July 2018 that “the future UK-EU relationship is likely to consist of several separate agreements covering different elements of economic, security and cross-cutting co-operation, and those arrangements could take the form of an association agreement”.

Would an AA be compatible with UK ‘red lines’?

Because it is a relatively flexible instrument, an AA goes a long way towards meeting the Government’s objectives for a future relations agreement as set out in the [July 2018 White Paper](#) on future EU-UK relations (see below).

Michael Emerson listed in his [written evidence](#) to the Exiting the EU Committee in January 2018 the main points about AAs of relevance to the UK for Brexit, noting that “these points are largely consistent with positions expressed by UK government”:

1. ‘In’ three of the four freedoms for goods, services [\[1\]](#)(with limitations), and capital.
2. Not ‘in’ customs union = freedom to set own trade policies with rest of the world...
3. But deep customs cooperation to facilitate trade (EU customs Code)
4. Special provisions for certain services, including financial services, etc. (see D.1).
5. No fourth freedom, for movement of people, but ...

⁵⁰ Department for Exiting the European Union, [The United Kingdom’s exit from, and new partnership with, the European Union](#), updated 15 May 2017

6. Visa-free travel for short stays (see D.4), and ...
7. Open for mutual recognition for professional qualifications.
8. No budget contributions.
9. Dispute settlement primarily by arbitration, lesser role for European Court of Justice.
10. 'In' several sectoral policies, e.g. civil aviation area and energy community (see D.4).
11. Inclusion in other spheres: security & defence, many agencies and programmes.
12. Comprehensive content, but room for negotiation on extent of commitments (see D.2).
13. Flexibility for amendment of detailed commitments by mutual agreement (see D.3).
14. Provisional application of DCFTA content upon signing; ratification can wait.
15. Institutional arrangements well developed, and function smoothly.
16. A stock of legal language (2,000 pages) that can save much time in drafting.

May Government White Paper on future relations

A section of the previous Government's [White Paper on the Future Relationship between the UK and the EU](#) (Cm 9593, July 2018, pp 84-95) sets out future institutional arrangements for a UK-EU Association Agreement. It proposes a governing body involving EU leaders and UK ministers and a Joint Committee accountable to the governing body, which would have oversight for ensuring that the AA operated effectively (see diagram on p.86).

There is a summary of the proposal on page 11:

A practical Brexit

To deliver the kind of practical relationship needed to secure prosperity for the UK and the EU, and maintain the security of UK and EU citizens, both sides will need to be confident they can trust and rely on the commitments made to each other.

So to underpin the future relationship, the Government is proposing joint institutional arrangements that provide for proper democratic accountability, allow for the relationship to develop over time, mean cooperation can be managed effectively and enable the UK and the EU to address issues as they arise.

These arrangements, which could take the form of an Association Agreement, would ensure the new settlement is sustainable – working for the citizens of the UK and the EU now and in the future.

They would provide for regular dialogue between UK and EU leaders and ministers, commensurate with the depth of the future relationship and recognising the significance of each other's global standing.

They would support the smooth functioning of the relationship, underpinning the various forms of regulatory cooperation agreed between the UK and the EU. Where the UK had made a commitment to the EU, including in those areas where the Government is proposing the UK would remain party to a common rulebook, there would be a clear process for updating the relevant rules, which respected the UK's sovereignty and provided for Parliamentary scrutiny.

The arrangements would include robust and appropriate means for the resolution of disputes, including through a Joint Committee and in many areas through binding independent arbitration – accommodating through a joint reference procedure the role of the Court of Justice of the European Union as the interpreter of EU rules, but founded on the principle that the court of one party cannot resolve disputes between the two.

And they would make sure both the UK and the EU interpreted rules consistently – with rights enforced in the UK by UK courts and in the EU by EU courts, with a commitment that UK courts would pay due regard to EU case law in only those areas where the UK continued to apply a common rulebook.

Finally, these arrangements would enable flexibility, ensuring the UK and the EU could review the relationship, responding and adapting to changing circumstances and challenges over time.⁵¹

Johnson Government

It is not clear whether the Government of Boris Johnson holds the same views as the May Government. In a speech on 14 February 2018, Mr Johnson spoke about taking back control of “our laws” and “our regulatory framework”,⁵² so there is a question mark over the acceptability of the legislative and regulatory approximation an AA would require.

Would an AA solve the Irish border issue?

Not necessarily, although the level of incompatibility would depend on the kind of AA. A future relationship agreement modelled on the EU-Israel AA, for example, would not be sufficient to solve the issue of avoiding checks (and their associated infrastructure) on goods crossing the Ireland/ Northern Ireland border.

The EU-Israel ACAA covers only industrial goods and falls short of the mutual recognition of most standards that would be required to remove all regulatory checks. In particular, regulatory checks on food and animal products (sanitary and phytosanitary checks) are still required. While there is an EU-Israel agriculture agreement, this does not cover the trade in live animals.

The EU-Israel AA has not eradicated the need for customs checks. However, customs checks are easier to deal with in part through technological solutions and other pre-clearance schemes like the EU's Authorised Economic Operator schemes, unlike regulatory checks.

⁵¹ Cm 9593, July 2018

⁵² For full text of speech, see [The Spectator, 14 February 2018](#).

There is also the issue of VAT, which has implications for cross-border trade and is not fully addressed by the EU-Israel model.

In the Exiting the EU Committee evidence session in January 2018 Craig Mackinlay MP asked about checks at Ukraine's border with Poland and Belarus. Dmytro Tupchiienko (Data Protection Lawyer, Ernst & Young) [replied](#) (Q901):

The only thing that has changed since the agreement came into place—or even before, some seven years ago—is that Ukraine started to experiment with checkpoints where both Ukrainian and Polish customs officers were sitting in one place and checking the goods. But there are still queues at the border and they are quite long. There is no such thing as pre-determined checks.

Craig Mackinlay: Is the treatment less or more light-touch than, say, the Belarus part of the Polish border?

Dmytro Tupchiienko: It is the same.⁵³

Asked whether an AA would solve the Irish border question, Guy Verhofstadt [replied](#) in June 2018 (Q2090):

An association agreement does not solve all problems, naturally. An association agreement is a framework in which you can create a relationship based on one governance, one ratification cycle, with democratic institutions covering everything that you want. It is not a miracle. You cannot say, "We have an association agreement and now the border issue between Northern Ireland and the Irish Republic is solved".

You still need to decide on the content, on what you put in the trade and economic pillar of the association agreement. What will it be: single market, customs union, EEA, less than EEA, only a bespoke trade deal? You still need to fill that in in such an association agreement. An association agreement does not take away the hard political choices that have to be made between the two negotiating parties, but it creates a framework that is foreseen in the treaties, that is understandable, creating governance structures to manage this future relationship between both.

The SNP MP Peter Grant [suggested](#) it would be difficult in any case for Poland to agree to UK terms for an AA which involved no border checks at the Irish border (Q891) because it (Poland) had "got a very hard deal" in its accession agreement.

⁵³ The Progress of the UK's negotiations on EU withdrawal, 31 January 2018

3. Trade

Three recent EU Association Agreements – with Ukraine, Georgia and Moldova – contain DCFTAs. While the circumstances in which these were agreed (moves towards greater integration with the EU) and their economic circumstances are quite different from those of the UK,⁵⁴ it has been suggested that they offer one possible starting point for a future UK-EU agreement.

Michel Barnier's '[staircase](#)' diagram of types of possible future relationships between the UK and EU includes Ukraine between Switzerland and Turkey.⁵⁵ The diagram shows that the UK's red lines of no CJEU jurisdiction and regulatory autonomy would probably be breached by an agreement similar to the Ukrainian model.

3.1 Deep and Comprehensive Free Trade Areas

The Deep and Comprehensive Free Trade Areas (DCFTAs) involve a commitment to align with EU legislation in certain areas. This process, sometime referred to a 'legislative approximation' allows these countries to move closer to the EU economy and gain greater access to the Single Market.

A paper for the European Parliament commented on the EU's DCFTAs with Georgia, Moldova and Ukraine:

The latest generation of association agreements with the EU's eastern neighbours provide for the establishment of DCFTAs. In comparison to traditional FTAs, the DCFTAs do not only foresee the mutual opening of markets for goods but also cover services, competition, intellectual property rights, energy, public procurement, technical barriers to trade, etc. The 'deep' character of the DCFTAs refers to the process of legislative approximation. The DCFTAs include numerous legislative approximation clauses obliging the associated countries to apply a selection of EU legislation in their domestic legal order. The objective is to tackle non-tariff barriers and to create a common legal space, leading to the gradual and partial integration of the associated countries in the EU internal market.⁵⁶

According to the UK in a Changing Europe:

The DCFTA which is part of the Association Agreement with Ukraine (2017), for example, calls, among other, for a progressive removal of customs tariffs and barriers. A typical DCFTA, however, requires a binding convergence mechanism (i.e. a commitment to keep third country's laws in line with those of the EU laws) and a

⁵⁴ Gross national income (GNI) is \$128 billion in Ukraine compared with \$2790 billion in the UK. On a per head basis, GNI in Ukraine is \$2,660 compared with \$41,330 in the UK (Source: World Bank. Figures for 2018)

⁵⁵ European Commission, [Slide on future relationship](#), 19 December 2017

⁵⁶ Peter van Elsuwege and Merijn Chamón, [The meaning of 'association' under EU law](#), Study for the European Parliament, February 2019, p32

binding role for the Court of Justice of the European Union. The UK Government has so far rejected both.⁵⁷

This point was also made in a paper by the EP Research Service:

Deep and comprehensive free trade agreements (DCFTA) of the kind negotiated with Ukraine in its association agreement ... would entail areas of approximation or alignment with the EU regulatory system and consequently the need to account for the CJEU role in interpreting EU law. The Commission therefore considered DCFTAs to be incompatible with the red lines expressed by the UK government.⁵⁸

3.2 Monitoring legislative approximation

The EU published an [Association Implementation Report](#) in November 2018. This monitored the implementation of commitments under the AAs over the preceding year.

On trade aspects, AAs are very different from the FTA model in particular with respect to regulatory cooperation. AAs used by the EU with its neighbours entail some alignment on technical standards and are often accompanied by the negotiation of agreements on conformity assessment and acceptance of industrial products (ACAA). The ACAA is a type of enhanced Mutual Recognition Agreement (MRA) based on the alignment of the legislative system and infrastructure of the country concerned with those of the European Union. The ACAA would only initially cover some sectors where alignment is specified in the agreement (obviously only if alignment of technical legislation, standards and infrastructure is completed). The ACAA is, in the long term, intended to cover all the sectors for which regulatory alignment was envisaged in the treaty. The ACAA with Israel for example, covers medicinal and pharmaceutical products (see annex to the agreement), and in its Article 7 sets out the possibility to extend it to other areas if Israel adopts and implements further national law aligning with relevant EU law. The legislative alignment in association agreements entails a role for the CJEU because of the exclusive competence of the CJEU to interpret EU law and the autonomy of the EU legal system. For example, Article 322 of the AA with Ukraine specifies that, when there is a dispute on an AA provision relating to regulatory approximation or which imposes an obligation referring to EU law, the arbitration panel must ask the CJEU to give a ruling on the question and that such a ruling is binding on the arbitration panel.⁵⁹

The Exiting the EU Committee heard evidence on the extent to which the partner country's regulations should be similar and comparable to those of the EU:

Mr McFadden: On all these areas—goods, services and agriculture— what is the EU's legal expectation of Georgia, Ukraine and Moldova with regard to regulatory alignment? Is the market access dependent on keeping the same rules in place in a dynamic way as we go forward?

⁵⁷ Catherine Barnard and Emilija Leinarte, [Association Agreements](#), UK in a Changing Europe, 24 April 2018

⁵⁸ European Parliamentary Research Service, [The future relationship between the European Union and the United Kingdom](#), September 2018, p15

⁵⁹ European Parliamentary Research Service, [The future relationship between the European Union and the United Kingdom](#), September 2018, pp45-46

Dr Kovziridze:⁶⁰ Yes. It is not the same or identical, but it is at least similar and comparable. The term we use is not “harmonisation” but “approximation”, meaning that it is brought closer. Every piece of legislation we draft is normally reviewed by the EU with comments and feedback given. It is a very closely monitored and scrutinised process that sometimes can absorb a lot of resources. It is not only that we say, “We drafted this legislation, we adopted the law and we think it is compliant with the EU regulations”; the EU has to say that, and reviews drafts of it.⁶¹

Box 7: Case study: DCFTA with Ukraine

The DCFTA came into force provisionally on 1 January 2016. It aims to increase trade between the EU and Ukraine by cutting tariffs and aligning Ukraine’s regulations with those of the EU in a number of agricultural and industrial sectors. It is hoped that the DCFTA will help with the reform and modernisation of the Ukrainian economy and integrate it more closely with that of the EU.

Contents of the DCFTA⁶²

The EU-Ukraine DCFTA includes 15 chapters and 3 protocols. The chapters cover matters including market access for goods, Technical Barriers to Trade, Sanitary and Phytosanitary measures (animal and plant health), Services, Public Procurement, Intellectual Property Rights, State Aid and Dispute Resolution.

Market access for goods

Most tariffs will be eliminated under the Agreement. For industrial goods, this took place when the AA came into force. There are a few exceptions, such as the automobile sector in Ukraine. For agricultural goods, Ukraine’s access to the EU market is subject to tariff rate quotas for a number of products, including cereals, pork, beef and poultry. EU tariffs on agricultural products will be reduced over a 10-year period.

Technical barriers to trade (TBT)

TBTs are technical regulations and standards which may impact on trade. Ukraine will gradually bring its technical regulations and standards into line with the EU’s. In addition, an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) will be negotiated. This will mean, for the products covered by the ACAA, that trade between the EU and Ukraine will take place under the same conditions as trade between EU Member States.

A statement issued by European and Ukrainian leaders after the 21st EU-Ukraine summit in July 2019 said:

The EU welcomed and acknowledged the progress made by Ukraine to approximate its legislation in the area of technical regulations, standards, and conformity assessment as envisaged by the AA/DCFTA. Before the EU and Ukraine can start the negotiations on an Agreement on Conformity Assessment and Acceptance of Industrial Products, the EU recalls that the required legislation should be adopted, entered into force and effectively implemented by the relevant Ukrainian institutions.⁶³

Sanitary and Phytosanitary (SPS) measures

SPS measures relate to food safety and animal and plant health. Ukraine has agreed to align its legislation on SPS and animal welfare with the EU *acquis communautaire*.

⁶⁰ Co-founder, Reformatics, Tbilisi

⁶¹ Exiting the EU Committee, Oral evidence, [The progress of the UK’s negotiations on EU withdrawal](#), HC 372, 31 January 2018, Q881

⁶² European Commission, [EU-Ukraine Deep and Comprehensive Free Trade Agreement](#) and WTO, [Trade Policy Review: Ukraine \(2016\)](#)

⁶³ [Advancing mutual commitment: joint statement following the 21st EU-Ukraine Summit](#), 10 July 2019

Services

The Agreement provides a mutual right of establishment for suppliers in all sectors (both services and non-services), except in accordance with the reservations recorded in a negative list. In some service sectors (financial services, telecommunications, postal/courier services, and international maritime services) Ukraine will implement the existing and future EU *acquis*. After this has happened, Ukrainian services providers in these sectors will have the same access to the Single Market as EU providers.

Public procurement

Ukraine will gradually adopt current and future EU public procurement legislation. Once this is achieved, Ukrainian and EU suppliers will have full access to each other's procurement markets, except in defence.

Intellectual property rights

This covers areas such as copyright, designs, patents and geographical indications.⁶⁴ Ukraine's enforcement of intellectual property rights is to be based on EU internal rules.

State aid

Ukraine is to set up a system of independent control of state aids similar to that of the EU. Particularly distortive subsidies are prohibited. Ukraine and the EU will exchange information on subsidies. Agricultural and fisheries subsidies fall outside the scope of these rules.

Dispute resolution

The Dispute Resolution provisions are based on the WTO's Dispute Settlement Understanding. The first step is a period of consultation. The WTO's 2016 Trade Policy Review of Ukraine describes what happens if this fails to resolve the dispute:

Unsuccessful consultations would lead to the establishment of an arbitration panel, formed by three experts appointed by the parties. Panel decisions, delivered within 120 days or earlier in urgent cases, are binding on the parties. However, disputes involving the interpretation of EU legislation would not be decided by an arbitration panel. Instead, the panel would refer the matter to the Court of Justice of the European Union, who would issue the appropriate ruling.⁶⁵

The EU recently requested the establishment of an arbitration panel in relation to Ukraine's ban on the export of unprocessed wood.⁶⁶

⁶⁴ Geographical indications are names used to identify a product that originates in a specific geographical area and is known for its quality, method of production or another characteristic (e.g. feta cheese).

⁶⁵ WTO, [Trade Policy Review: Ukraine \(2016\)](#) para 2.25

⁶⁶ [EU asks for a panel with Ukraine on wood export ban](#), European Commission Press Release, 21 June 2019

4. Further reading

- Exiting the EU Committee, [The future UK-EU relationship](#), Fourth Report of Session 2017–19, 4 April 2018
- Lords EU Committee, UK-EU relations after Brexit. Chapter 4: [Models for the future relationship, An Association Agreement?](#) June 2018
- Commons Library Briefing Paper 8384, [Future trade with the EU: Mutual recognition](#), 8 October 2018
- [The UK-EU Future Relationship: Association Agreements](#), Manon George, National Assembly for Wales Research Service, 18 July 2018
- [Britain has little to fear from an EU association agreement](#), William Davidson, CapX website (CapX is sponsored by the conservative think tank Centre for Policy Studies (CPS)), 3 May 2018
- Institute for Government, [Association agreements](#), 22 March 2018
- Centre for European Reform, [The Ukraine Model for Brexit: is dissociation just like association?](#) Beth Oppenheim, 27 February 2018
- Exiting the European Union Committee, [Oral evidence: The Progress of the UK's Negotiations on EU Withdrawal](#), 31 January 2018
- [A UK Brexit transition: to the Ukraine model?](#) Erika Szyszczak, UK Trade Policy Observatory, Briefing Paper 11, November 2017
- Study for European Parliament's Committee on Foreign Affairs, [The state of implementation of the associations and free trade agreements with Ukraine, Georgia and Moldova with a particular focus on Ukraine and systemic analysis of key sectors](#), November 2017
- 3 DCFTAs project: supported by Swedish International Development Agency (Sida), April 2015 to December 2018 and 2019 to 2021. [3 DCFTAs: Understanding the EU's Association Agreements and Deep and Comprehensive Free Trade Areas with Ukraine, Moldova and Georgia](#) including Guillaume Van der Loo, [The EU's Association Agreements and DCFTAs with Ukraine, Moldova and Georgia: A Comparative Study](#), 24 June 2017.
- The UK in a Changing Europe, [The case for a new association agreement](#), Andrew Duff, 16 November 2016

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