

UKRAINE'S SECTORAL INTEGRATION IN THE EU COMMON MARKET

Summary of the report "Integration within the framework of the Association." (5th edition, extended)

Ukraine has come a long way to obtaining EU candidate status. The first framework agreement between Ukraine and the EU (then still the European Communities) was the Agreement on Partnership and Cooperation, which was signed in 1994, temporarily applied since 1996, and entered into force in 1998.

In 2014, the Association Agreement (AA) between Ukraine and the EU was signed, and in the same year, ratified by the Verkhovna Rada and the European Parliament. After completing the long process of ratification by all EU member states, on September 1, 2017, the AA between Ukraine and the EU entered into force. Until recently, it was expected that the modernised AA would be the basis for the economic integration of Ukraine into the EU common market.

However, full-scale Russian military aggression against Ukraine caused tectonic changes in relations with the EU. Within a week after the aggression began, Ukraine applied for EU membership, and on June 23, 2022, it received candidate status.

This decision not only realised Ukraine's long-term aspirations to reach a new level in relations with the EU and provided hope in the difficult times of the war. It defined an agenda of legislative and institutional reforms with a clear objective supported by most of the population.

Notably, the reforms related to the preparation for membership are closely intertwined with the changes already programmed within the AA. Accordingly, the AA implementation gives Ukraine much better starting conditions for negotiations as, in many areas, the EU framework legislation is already part of Ukrainian legislation. Therefore, additional changes will require less time and potentially be less drastic than they could be.

Quid pro quo of the Association Agreement: what changed when Ukraine received candidate status

The AA signatory parties' most specific obligations are within the framework of the deep and comprehensive free trade area (DCFTA) and sectoral and economic cooperation. Tentatively the AA contains three types of arrangements:

- **Direct action arrangements**, like tariff liberalisation envisaging the mutual opening of markets by the gradual abolition of import duties (asymmetric, privileged for Ukraine).¹

If everything is normal, implementing these arrangements does not require additional legislative or institutional changes.² Therefore there is no need for active cooperation between Ukraine and the EU to achieve the goals. Everything works virtually automatically;

- **Arrangements based on the "if - then" principle**, on which the sectoral integration is built. Sectoral integration aims to withdraw barriers to activities of the Ukrainian business on the EU market (and vice versa) conditioned upon Ukraine implementing EU norms and practices in these spheres/sectors.

Within the framework of these arrangements' implementation, close cooperation between Ukraine and the EU is essential. On the one hand, these arrangements contain Ukraine's obligations to harmonise legislation and conduct institutional changes, and on the other hand, require the EU to help in harmonisation, monitor the correctness of adopted norms, i.e. their compliance with EU norms, provide timely feedback, as well as make decisions regarding the (mutual) opening of markets in case of successful completion of the reform;

- **Arrangements designed to ensure a level playing field for the fair competition** of Ukrainian and European companies on the common market. Ukraine achieves that by gradually implementing EU norms and practices related to consumer rights, intellectual property rights, rights of employees, ecological requirements, state aid, competition policy, etc.³

Until the candidate status was obtained, these arrangements did not provide additional benefits for the partners in the form of market opening. However, they were vital for forming an environment favourable to cooperation. However, after the EU granted candidate status to Ukraine, these agreements took on a new dimension because they will become an essential part of the negotiation process, and their successful implementation will bring membership closer.

¹ In reality, it happened even before the launch of the AA provisional application. In 2014, the EU granted unilateral preferences for Ukraine.

² An example of "abnormality" can be Ukraine's decision to introduce a moratorium on the export of raw wood, including to EU countries, which caused arbitration by the EU.

³ EU-Ukraine Deep and Comprehensive Free Trade Area: Benefits and Opportunities. Information prepared by the European Commissions: http://trade.ec.europa.eu/doclib/docs/2015/december/tradoc_154128.pdf

Thus, the essence of the arrangements (*quid pro quo*) within the AA framework was a unilateral regulatory approximation in exchange for economic integration. In 2014, Ukraine undertook to adopt and implement the *acquis* - legal norms, rules and technical standards of the EU - in exchange for the EU's obligation to integrate Ukraine into the EU internal market. Generally speaking, the EU has never before offered this degree of internal market opening to a third country except for the European Economic Area and the candidate countries.⁴

However, a candidate country's status has changed AA's value. It is still a one-sided regulatory rapprochement in exchange for economic integration. But it precedes full membership. Accordingly, the successful AA implementation creates the basis for quick and successful negotiations.⁵

In this study, we evaluate the implementation of AA arrangements, which are built on the "if-then" principle and lead to sectoral integration in the EU common market.

Sectoral integration: plans and their implementation

The EU's obligations regarding the sectoral integration of Ukraine are presented in Table 1, which indicates the specific sectors for which the AA provides for the adoption of additional EU decisions regarding the integration of Ukraine and the deadlines for Ukraine's fulfilment of the relevant obligations. In general, we are talking about 15 sectors. Adopting these decisions mean that in these sectors, Ukrainian businesses will not need additional permits, certificates or licenses to operate on the EU market.

Adopted EU decision about integrating Ukraine into different sectors of the EU common market is the best indicators (KPI) implementation of the AA economic parts. It does not deny the self-sufficient value of fulfilling obligations for the internal development of Ukraine. But, from the viewpoint of the economic integration goal, such decisions are the key.

Table 1: Sectoral integration of Ukraine into the EU internal market under the AA provisions

No	Sphere	Market	AA provisions	Method of integration to the EU market as foreseen in the AA	Timeframe for implementing Ukraine's obligations as in the AA, from the date of entry into force/start of the AA provisional application
1	Technical barriers	Industrial products	Article 57 AA, Annex III	Conclusion of the Agreement on Conformity Assessment and Acceptance of	Two – five years * (until 31.12.2017 – 31.12.2020)

⁴ EU information guide "The EU - Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: What's it all about?": http://eeas.europa.eu/archives/delegations/ukraine/documents/virtual_library/vademecum_en.pdf - p . 8, 11, 13.

⁵ Here we do not assess the political preconditions for the start of the negotiation process.

No	Sphere	Market	AA provisions	Method of integration to the EU market as foreseen in the AA	Timeframe for implementing Ukraine's obligations as in the AA, from the date of entry into force/start of the AA provisional application
				Industrial Goods (ACAA)	
2	Sanitary and phytosanitary measures	Agro-food products	Articles 64, 66 AA, Annexes IV, V, IX	Decision-making on recognition of equivalence in different sectors of agro-food products **	2021 ***
3	Customs procedures	All goods	St. 76.1 (c), 76.4 (b) AA, Annex XV	Joining the common transit system	One year (until 31.12.2016)
			St. 76.1 (k), 80 (i) AA	Mutual recognition of authorised economic operators (AEO)	Three years (until 31.12.2018)
4	Services	Financial	St. 4 (3) of Annex XVII, Appendix XVII-2	Granting the internal market treatment	Six years (until 31.12.2021)
5		Tele-communications	St. 4 (3) of Annex XVII, Appendix XVII-3	Granting the internal market treatment	Four years (until 31.12.2019)
6		Postal and courier	St. 4 (3) of Annex XVII, Appendix XVII-4	Granting the internal market treatment	Two years (until 31.12.2017)
7	Transport services	Automotive	Article 136 AA, Annex XXXII (1)	Possibility of concluding a special agreement in the field of road transport ****	Seven years (until 30.10.2021)
8		Railway	Article 136 AA, Annex XXXII (2)	Possibility of concluding a special agreement in the field of railway transport ****	Eight years (until 30.10.2022)
9		Inland water	Article 136 AA, Annex XXXII (5)	Possibility of concluding a special agreement in the field of inland water transport ****	Five years (until October 30, 2019)
10		International maritime	St. 4 (3) of Annex XVII,	Granting the internal market treatment	Six years (until 31.12.2021)

No	Sphere	Market	AA provisions	Method of integration to the EU market as foreseen in the AA	Timeframe for implementing Ukraine's obligations as in the AA, from the date of entry into force/start of the AA provisional application
			Appendix XVII-5, Annex XXXII (4)		
11		Aviation	Article 137 AA	Decisions under a separate Common Aviation Area Agreement (CAA)	Not specified*****
12	Government Procurement	Public procurement market	Article 154 v, Annex XXI	Opening access to the market in the amount determined by the provisions of the AA	Gradually, in five stages, within six months - eight years (until 31.12.2023)
13	Energy	Natural gas market	Annex XXVII	Not clearly defined in AA *****	to 31.12.2019
14		Electricity market	Annex XXVII	Not clearly defined in AA *****	2021
15	Education	Labour market	St. 432.b AA, Annex XLII	Mutual recognition of qualifications and competencies	Not specified

* For fulfilling the obligations in the scope sufficient for the conclusion of the ACAA. For fulfilling it in the scope enough for extension of the ACAA coverage to all 27 sectors listed in the AA – 5 years

** Also, there is an option of approval of individual producers for exports to the EU without waiting for decisions on the equivalence of the relevant sector. In practice, Ukrainian producers are actively using this option

*** According to the Comprehensive Strategy for the Implementation of the AA Chapter on Sanitary and Phytosanitary Measures (Chapter 4 of the Title IV of the AA) that was approved by the AA joint bodies at the end of 2019 and became the content of Annex V to the AA

**** The AA text does not put implementation of regulatory approximation obligations as a precondition for the possible conclusion of this agreement

***** The EU-Ukraine Common Aviation Area (CAA) Agreement was initialled at the end of 2013 but has not yet been signed due to a dispute between the UK and Spain about the mention of Gibraltar Airport in the text of this agreement

***** Even the updated Annex XXVII does not contain a clear perspective for gaining internal market treatment. However, its implementation may lead to the de facto integration of Ukraine into the EU gas market when transportation of gas from Russia to the EU through the territory of Ukraine is regulated by EU law (and, possibly, with the point of gas delivery shifted to the Eastern border of Ukraine)

***** Even the updated Annex XXVII does not contain a clear perspective for gaining internal market treatment. However, its implementation may lead to the de facto integration of Ukraine into the EU electric energy market, with Ukraine joining the European ENTSO-E network

It should be noted that the AA does not define the terms when the EU should adopt relevant additional decisions regarding the sectoral integration of Ukraine. However, the AA contains clear deadlines for Ukraine to fulfil its "task" in the relevant sectors. It was logical to expect EU decisions to be adopted soon after confirmation of such fulfilment.

As seen from Table 1, Ukraine must complete obligations for all 15 sectors no later than the end of 2023, and by the beginning of 2023, integration could already take place in 14 sectors. Only full-scale mutual access to public procurement markets should be achieved by the end of 2023.

However, not everything turned out as planned. On the one hand, Ukraine is lagging in fulfilling its obligations. On the other, in many sectors where Ukraine claims significant progress, there is limited verification and official confirmation of the commitments' fulfilment by the EU. That has created risks because partners can assess the achieved progress differently. However, with the acquisition of candidate status, this risk has significantly decreased because Ukraine has become part of the regular process of assessing the country's progress in its preparation for membership. That provides a predictable and transparent mechanism for monitoring changes and forming a shared vision of what has been done and needs to be done.

As of the beginning of 2023, progress in economic integration with the EU market has been achieved in six areas. However, for some decisions, that means reaching the expected level of integration, while for others - only a milestone on a long journey. Table 2 summarises the state of sectoral integration.

Table 2: Status of sectoral integration within the framework of the AU and related agreements

No	Sphere	Market	Method of integration to the EU market as foreseen in the AA	Implementation status
1	Technical barriers	Industrial products	Conclusion of the ACAA	
2	Sanitary and phytosanitary measures	Agro-food products	Decision-making on recognition of equivalence in various sectors of agro-industrial products	Recognition of equivalence for cereal seeds (2020) <i>Very partial achievement of the overall goal</i>
3	Customs procedures	All goods	Joining the common transit system	Done (2022)
			Mutual recognition of authorised economic operators (AEOs)	
4	Services	Financial	Granting the internal market treatment	
5		Telecommunications	Granting the internal market treatment	
6		Postal and courier services	Granting the internal market treatment	

No	Sphere	Market	Method of integration to the EU market as foreseen in the AA	Implementation status
7	Transport services	Automotive	The possibility of concluding a special agreement	Interim Agreement (2022) <i>Partial achievement of the overall goal</i>
8		Railway	The possibility of concluding a special agreement	
9		Internal water	The possibility of concluding a special agreement	
10		International maritime	Granting the internal market treatment	
11		Aviation	Agreement on Common Aviation Area (CAA)	Done (2021)
12		Government Procurement	The public procurement market	Opening mutual access to the market
13	Energy	Natural gas market	De facto integration into the EU market	Done (2020)
14		Electricity market	Joining ENTSO-E	Done (2022)
15	Education	Services / Labour market	Mutual recognition of qualifications and competences	

The situation and achievements by sectors 2021 -2022 are as follows:

Technical barriers to trade: Since October 2020, the work of the EU expert evaluation mission, designed to assess the state of harmonisation of Ukrainian legislation and institutions with EU norms and practices as part of the general assessment of Ukraine's readiness to conclude the Agreement on conformity assessment and acceptance of industrial products (ACAA), has been ongoing. The mission is expected to complete its work in the first half of 2023.

Sanitary and phytosanitary measures: At the end of 2020, the EU recognised the equivalence of Ukraine's system of control and certification of grain crop seeds. That became the first achievement of integration within the AA framework. Further harmonisation of the relevant legislation is ongoing, while the Ukrainian producers of animal products continue actively using the possibility of individual production verification for export to the EU.

Customs: In October 2022, Ukraine joined the common transit system, one of the two elements of sectoral integration in the customs sphere. Registration of authorised economic operators is ongoing.

Financial services: In 2020, the Strategy for the Development of the Financial Sector of Ukraine until 2025 was approved, which, in particular, provides for the implementation of the remaining basic norms of EU legislation required for obtaining the internal market treatment

from the EU. However, even with the acquisition of the candidate status, the prospect of getting the "internal market" regime before the actual accession to the EU requires the creation of an institutional mechanism that would allow the implementation of European supervisory bodies' functions in Ukraine.

Telecommunications: Legal harmonisation continues. In September 2022, Ukraine and the EU signed the Agreement on Ukraine's participation in the EU program "Digital Europe" 2021-2027. Joint roaming should be the next step in integrating telecommunications services markets. Preparations for mutual recognition of electronic trust services are also ongoing.

Postal and courier services: Ukraine adopted a law implementing the provisions of Directive 97/67/EC. However, the new law does not fully comply with the Directive, so further legislative changes are expected.

Transport: In 2021, the Agreement on Common Aviation Space was finally signed after more than eight years of waiting. Unfortunately, Russian aggression does not allow Ukraine to take advantage of this agreement. To help mitigate the consequences of military actions against Ukraine, the EU concluded an agreement that temporarily simplifies the access of Ukrainian freight transport to the EU.

Public procurement: In 2020, a new version of the law on public procurement entered into force. It brings the Ukrainian legislation closer to EU directives following requirements of the second (out of five) stage of the Indicative Time Schedule for Institutional Reform, Legislative Approximation and Market Access in public procurement. At the same time, the EU and Ukraine still have not decided on a formal completion of any stage.

Energy: Ukraine has achieved a significant level of integration in the EU natural gas market. In 2022, ENTSO-E was joined in an emergency mode amid Russian military aggression against Ukraine. At the same time, the European Green Deal also includes changes in EU legislation, which creates new challenges for Ukraine.

Education: In 2021, the CMU approved the Procedure for the recognition in Ukraine of professional qualifications obtained in other countries, which defines the criteria and procedure for the recognition in Ukraine of professional qualifications obtained in other countries, particularly in the EU. Against the war's backdrop, Ukrainians gained Europass access in May 2022.

How far to the membership

As already mentioned, with the candidate status, Ukraine's sectoral integration gained a new value as it brings Ukraine closer to fulfilling the *EU acquis* stipulated by the negotiation process. And the critical question is to what extent the full implementation of the AA means fulfilling the negotiation chapters' requirements.

Table 3: Sufficiency of the fulfilment of obligations of the AU for membership in the EU

No	Sphere	Market	Sufficiency of the AA and related agreements for membership
1	Technical barriers	Industrial products	Partial
2	Sanitary and phytosanitary measures	Agro-food products	Almost complete
3	Customs procedures	All goods	Partial
4	Services	Financial	Complete
5		Telecommunications	Complete
6		Postal and courier services	Complete
7	Transport services	Automotive	Partial
8		Railway	Partial
9		Internal water	Partial
10		International maritime	Complete
11		Aviation	Partial
12	Government procurement	Public procurement market	Almost complete
13	Energy	Natural gas market	Almost complete
14		Electricity market	Almost complete
15	Education	Services / Labour market	Partial

As shown in Table 3, for sectoral integration, the AA's full implementation ensures a good approximation of Ukraine's legislative and institutional parameters to those expected from the country within the framework of the membership negotiation process.

Of the 15 considered sectors that provide for sectoral integration, for four service sectors, full implementation of the AA means the introduction of the internal market regime, which is identical to the full implementation of the requirements set for member states. According to the report's authors, AA or related agreements enable almost complete fulfilment of the requirements for another four sectors.

However, for 7 out of 15 sectors, AA is only part of the path to membership. For example, the signing of the ACAA Agreement, even for all 27 sectors currently defined in the AA, will not mean implementing all the norms required for members. A large share of the relevant legislation did not get into the AA, for example, regarding the safety of chemical products, cosmetics, pharmaceutical products, etc. In the field of customs legislation, membership in the EU will require the adoption of the entire EU Customs Code, as well as a significant restructuring of the infrastructure, because the border of Ukraine will also become the border of the EU. Additional harmonisation will also be required for education and transport services, except for international maritime transportation.

Further steps

Despite the war and the delays accumulated over the years, Ukraine fulfils its AA obligations, which is now a path to membership.

Provided that Ukraine continues to fulfil its obligations actively and there is political will on the part of the EU, in 2023, we can expect progress in sectoral integration regarding:

- Conclusion of the ACAA Agreement on three sectors;
- Decisions of association bodies on mutual access to public procurement markets, at least based on completed several stages of the Indicative Time Schedule;
- Accession of Ukraine to the common roaming of the EU;
- Conclusion of the Agreement on mutual recognition of electronic trust services between Ukraine and the EU;
- Further recognition of the equivalence of certification systems for agricultural products;
- Mutual recognition of authorised economic operators.

Another dimension of sectoral integration and preparation for membership is the policy of the European Green Deal, the strategic goal of which is to make Europe climate neutral by 2050. The Green Deal covers most of the issues of sectoral cooperation between Ukraine and the EU, where the economic integration of Ukraine into the EU market is envisaged, in particular energy, transport, technical regulation and sanitary and phytosanitary measures, public procurement and financial services. Effective modernisation and achieving sectoral integration are impossible without considering the Green Deal.

If we summarise the recommendations on individual aspects of sectoral integration, the cross-cutting themes are:

- Establishment of an updated agenda of sectoral integration, taking into account the change in the status of Ukraine,
- Completion of the harmonisation of legislation in close cooperation between Ukraine and the EU. A mechanism for constant consultations and coordination of texts' compatibility with the *EU acquis* before adopting normative acts is required.
- Continuation of institutional development and formation or, if necessary, restoration of the technical capacity of Ukraine, particularly in infrastructure;
- Active dialogue with stakeholders both in Ukraine and in the EU as Ukraine prepares for membership;
- Provision of the technical component of harmonisation (translations, transposition tables, etc.);
- Ensuring transparency of the monitoring and evaluation process, the clarity and regularity of communication, and the involvement of civil society in this process.