Association through Approximation: Procedural Law and Politics of Legislative and Regulatory Approximation in the EU-Ukraine Association Agreement

Andriy Tyushka

European Interdisciplinary Studies Department,
College of Europe (Natolin Campus)
ul. Nowoursynowska 84,
Warsaw 02-796, Poland
E-mail: andriy.tyushka@coleurope.eu

Abstract: *Against the context of the evolution of the European Union's association agreements as transformative tools beyond the organizational boundaries, this article seeks to develop an account for understanding legislative and regulatory approximation mechanisms as the essential elements for the exercise of the Union's normative and regulatory impact. It therefore distinguishes between both concepts and provides a legal and political science explorations of what the legislative and regulatory approximations are, and what are their substantial rationale and procedural features in the context of 'gradualist' convergence approach enshrined in the EU-Ukraine Association Agreement.*

Keywords: *EU association agreements, legislative approximation, regulatory approximation, Ukraine*

1. Introduction

For nearly a decade now, the notion and scope of new contractual relationships between the EU and Ukraine have remained one of the most debated topics in academia and among policy-makers. To a great extent, it had been due to the agreement's anticipated innovatory and model nature. Whereas some of the southern neighbour countries embraced by the European Neighbourhood Policy (ENP) framework have already been contractually associated with the EU, the EU-

Ukrainian association deal was sought to serve as a point of reference and actually “template”¹ for other agreements establishing enhanced association links between the Union and—essentially non-associated—Eastern European neighbourhood.

It has already become axiomatic that “[i]n EU external relations, the rule is almost as follows: the more ambitious the agreement, the more difficult its conclusion” (Hillion, 2007, p. 177). The difficulty is not only reflected in drafting the content of the agreement, but also in procedural matters that require multi-stakeholders’ input, as the Commission’s initiating and negotiating roles, EU Presidency’s negotiating performance, the Council’s unanimous stance or voting for agreement, Parliament’s consent and later ratification, but also national ratification procedures among the EU Member States, etc. No less difficulties and confusion entail the substantive elements of the EU external agreements implementation. In the EU-Ukrainian pioneering association deal, these are unarguably the mechanisms of legislative and regulatory approximation that constitute the agreement’s load-bearing pillar and thus a strong mandate for action on behalf of the parties to this contractual association, the European Union and especially Ukraine. Unlike the previously enacted mechanisms of legislative approximation, as found in various external agreements of the Union concluded worldwide, the patchwork mechanism of intertwined legislative *and* regulatory approximation, launched within the innovative EU-Ukrainian Association Agreement (but also following the EU-Moldovan and EU-Georgian association deals developed according to the Ukrainian “template”), puts more emphasis on dynamism and stricter enforcement. As such it acts—along with other elements of the truly novel treaty framework—as one of the enablers for the explicitly declared “stake in the EU internal market”.

Driven by the aim to present a holistic procedural model of this revolutionary mechanism enshrined in the EU-Ukraine Association Agreement and inspired by *Procedural Politics* by Joseph Jupille (2004), who has developed a theory of everyday EU politics and European integration with respect to rules, this article seeks to reveal the paramount procedural rigour and flexibility of legislative and regulatory approximation mechanisms as elements of the overall treaty implementation politics. Current scholarship on the broader scope of EU law or *acquis* export, legislative approximation and adaption has revealed by now the logic of exporting EU *acquis* via international agreements (Petrov, 2011), transposing it into the third countries’ legal systems (Petrov, 2012), including Ukrainian legal system at a pre-association stage (Demydovych, 2006; Homonay,

¹ According to the GAERC (2007) statement, “certain aspects of [an Enhanced Agreement with Ukraine] could serve as model for other ENP partners in the future”.

2009). These elaborations essentially draw on Central and Eastern European countries' experience of association and accession to the EU, as they rely on "voluntary" basis of legislative approximation process in case of Ukraine. At the new level of obligatory approximation, the issue has just gained—with *expressis verbis* formulations in the EU-Ukrainian Association Agreement—its palpability and scholarly dedication. A few but seminal accounts in this regard have been recently produced in the general context of legislative approximation and application of EU law in Ukraine (Van der Loo *et al.*, 2014, pp. 14–21; Petrov, 2014) as well as on the DCFTA as a coherent framework for Ukraine's legislative approximation under the newly concluded association treaty (Van der Loo, 2014). A holistic assessment of procedural foundations and mechanisms determining the enhanced and highly legalized process of anticipated legislative and regulatory approximation, taken over by Ukraine through an international legal commitment, is thus far missing.

Since the association deal between the European Union and Ukraine presents a truly comprehensive, complex and far-reaching integration-oriented legal instrument, which became highly politicized and discoursed by geopolitical narratives, it is essentially necessary to understand the logic as well as legally constrained rules and mechanisms of procedures exercised to launch and envisaged to implement the association accord. In the middle of the long and winding road to the agreement's full enactment and implementation, the certainties—and the more so the perils—of the inherent tacit procedures therefore need to be analyzed in order to provide both legal and political accounts for current and future procedural developments in the approximation process.

2. (Transitional) implementation politics and framework for the approximation process

Comprehensiveness and complexity of the Association Agreement between the European Union and Ukraine nearly by default imply significant challenges for the effective implementation of the treaty, both in terms of its implementation modes and models (transitional implementation period, suspension clause, institutional implementation models), substantial and procedural implementation politics (legislative and regulatory approximation, institutional association politics) as well as legal effects (constitutional tolerance, direct applicability, direct effect, interpretation rules, dispute settlement mechanism). The agreement involves furthermore high implementation costs, especially as regards such

policy areas as the internal market *acquis* transposition, customs regulations, environment policy, agriculture (and land reform) policy, but also transport, energy and nuclear safety policies. Significant institutional and personnel costs, along with the implied “domestic political [...] and economic costs” (Raik & Tamminen, 2014, p. 57), are also to be accounted for in the context of the agreement’s effective implementation policy. In addition to these, in principle, anticipated challenges to the implementation of the EU-Ukraine Association Agreement, the process has been already formidably impeded by earlier unexpected Russian invasion in the Ukrainian peninsula of Crimea and annexation thereof. This poses additional problems for the territorial scope of the agreement’s application. Rules of origin and the heavyweight part of the EU-Ukraine Association Agreement, the DCFTA, have become therewith the biggest concerns for effective implementation.

The EU-Ukraine Association Agreement (EU-UA AA) aims *inter alia* at “Ukraine’s *gradual* integration in the EU Internal Market’ [emphasis by the author] (EU-UA AA, Art. 1, §2(d)). Gradually shall also be achieved the establishment of the Deep and Comprehensive Free Trade Area, an integral part of the agreement and the envisaged economic integration of Ukraine in the European Union’s internal market. In technical terms, such a ‘gradualist’ approach will be pursued through transitory implementation policy supported by the incremental legislative and regulatory approximation, with a transitional period of a maximum of ten years² and for some areas, even longer. The DCFTA and economic integration are therefore sought be implemented progressively in terms of both substantive provisions and procedural requirements.

On the one hand, customs duties on Ukraine’s part have to be progressively eliminated, generally over the period of five to ten years, whereas the European Union obliged itself through the association agreement to eliminate tariff barriers without any transitory period. Article 29, §1 of the EU-UA AA determines that the parties shall reduce or eliminate customs duties on goods originating from their respective territories in accordance with the schedules set out in Annex I-A, pursuant to which the main transition period constitute one to seven years and in some areas, also up to ten years. With some exceptions, almost 95 per cent of the import custom duties will have to be eliminated, and the rest significantly reduced. In some cases, agreed upon by the parties, the tariff-rate quotas (TRQs) are applicable. Flexibility of the association agreement, as anchored particularly

² Article 25 of the EU-UA AA stipulates that “[t]he Parties shall progressively establish a free trade area over a transitional period of a maximum of 10 years starting from the entry into force of this Agreement [...] [u]nless otherwise provided in Annexes I and II to this Agreement”, as stated in the footnote to the Article.

in the respective clause of Article 29, §4, allows however to review these premises in a five-year term and accelerate or broaden the scope of the elimination of customs duties on trade within the EU-Ukrainian DCFTA. As regards exports, any customs duties thereon have to be eliminated, since Article 31, §1 prescribes that neither the EU nor Ukraine “shall not institute or maintain any customs duties, taxes or other measures having an equivalent effect imposed on, or in connection with, the exportation of goods to the territory of each other”. Unlike the EU that is obliged to eliminate export customs duties immediately, Ukraine shall enjoy a transitional period (in accordance with the Schedule included in Annex I-C to EU-UA AA) to phase out the existing customs duties or measures having equivalent effect (EU-UA AA, Art. 31, §2). Pursuant to Article 31, §2 of the EU-UA AA, a “safeguard clause” may be deployed by Ukraine for export duties on certain kinds of goods as set out in Annex I-D, however with a strict observance of deadline periods for expiry of safeguard measures. This shall provide time necessary for adopting Ukraine’s economy and business for the market access of European goods.

On the other hand, gradual rapprochement in domains of DCFTA-related legislation and regulatory politics is reasonably dispersed within the decade-long timespan allowed for transitory implementation of the EU-Ukraine Association Agreement, as shown in Figure 1 below.

Figure 1. Gradual legislative approximation chart according to the EU-Ukraine AA

(quantity of normative acts to be approximated per year)

Thus the greatest approximation “burden” falls to the third and tenth year’s lot, with 68 and 56 normative acts to be approximated per annum, respectively. In respect to the policy domains, six areas will be “burdened” by the legislative

and regulatory approximation imperative at most, with thirty normative acts in average to be adopted in accordance with respective EU *acquis*. These six policy domains include industrial standards and regulation, financial services, agriculture, environment, transport, and social policy (cf. Fig. 2 below).

Figure 2. Gradual legislative approximation chart according to the EU-Ukraine AA

(quantity of normative acts to be approximated per policy domain)

Source: Adapted from Burakovsky and Movchan, 2014, p. 130.

Hence, contrary to the contravariant discourse framed by the belief that Ukraine will have to painfully adopt all the EU rules and *acquis* immediately after entry into force of the association agreement, the treaty itself foresees a reasonably diversified transitional implementation period that, along with the flexibility elements and safeguard clauses, is meant to provide a strictly enforceable framework for the effective implementation of Ukraine's commitments under the association accord. It shall be noted hereto as well that, ahead of the agreement's enactment, the *Verkhovna Rada* has already adopted many of EU *acquis*-conform laws which shall provide advantage for the scheduled legislative and regulatory approximation process.

3. Legislative and regulatory approximation: a procedural law and politics perspective

“Gradual integration in the EU Internal Market” (EU-UA AA, Art. 1, §2(d)) constitutes, as mentioned afore, one of the core association objectives in the EU-Ukrainian enhanced contractual bilateralism. As an overarching and long-term strategic policy, it involves progressive establishment of a Deep and Comprehensive Free Trade Area and simultaneous transition of Ukraine into a functioning market economy by means of, *inter alia*, “progressive approximation of its legislation to that of the Union” (EU-UA AA, Art. 1, §2(d)). Commitment to gradual approximation of Ukraine’s legislation with that of the European Union is also one of the fundamental underpinnings of the agreement itself³ (cf. Preamble’s indent 27 in EU-UA AA). In a way, Ukraine’s commitment to approximate its legislation to the EU internal market *acquis* is “[a]t the heart of the Association Agreement, especially of the DCFTA” (Van der Loo, 2014, p. 63).

It shall be noted, however, that it is not only the legislative approximation clause, which has been introduced as a legally binding mechanism in EU-Ukraine gradual economic integration and political association, but also the regulatory approximation clause that complements the “*quid pro quo* deal”, to borrow Van der Loo’s (2014, p. 63) wording, with monitoring and compliance mechanisms sought to “guide” and enforce good faith application of the approximated legislation. As such, it presents what Delcour and Wolczuk (2013, p. 1) succinctly call an “extensive regulatory framework” that gets exported by the Union to the third states via the new generation of association agreements. Already in its 2007 negotiation mandate on a new enhanced agreement (NEA) with Ukraine, the European Parliament has clearly referred to the significance of establishing, via gradual approximation of regulatory practices, of a *common regulatory framework*: the EP “point[s] out the need to set up a stable regulatory framework which would ensure the creation of a competitive market economy based on the principle of property rights, as a factor inextricably linked to Ukraine’s European perspective” (EP, 2007, §16(g)). Inaugural Eastern Partnership Declaration adopted in Prague once again emphasized the essentiality of both elements by maintaining that “[l]egislative and regulatory approximation is crucial to those partner countries willing to make progress in coming closer to the EU” (EU, 2009, §9). Significantly, the

³ As carefully observed by Elsuwege and Petrov (2014, p. 1), *traditionally*, the EU’s whole “transformative engagement is essentially based on the export of the *acquis communautaire*”.

EuroNest Parliamentary Assembly's 2013 resolution expressly points to the difference between legislative and regulatory approximation and the challenge emerging from it for the EU's engagement in the neighbourhood:

the main challenge for the Eastern partnership countries does not lie so much in the approximation of their legal texts as in the transformation and adaptation of their respective administrations, justice systems and societies to the conditions necessary to ensure that the legislation is defective and well implemented (EuroNest, 2013, §6).

Therefore, in practical terms, the process of approximation can be comprehended through the quantity and quality of national acts in the associated country transposing (or 'mirroring') relevant provisions of EU law (both primary and secondary) and the observable evidences of their effective application (regulatory practices). *Sensu largo*, legislative and regulatory approximation can be defined as a "transposition of provisions of EU law into the national legislation, implementation (application) of the provisions of such national legislation by the national competent public authorities and their enforcement by the courts and law enforcement agencies" (Government of the Republic of Kosovo, 2014, p. 38).

Against this backdrop, the puzzled legislative and regulatory approximation concept entails both (prevailing in earlier practices of EU external relations) soft and (innovatory) hard regulation mechanisms. In contrast to earlier approximation mechanisms of the EU-Ukraine PCA and the ENP Action Plan (cf. Table 1 on the next page), the revolutionary nature of the legislative approximation⁴ to be pursued under the EU-Ukraine AA in a legally binding *quid pro quo* manner—rather than in a policy-based conditionality one—lies basically in the hard law framework which obliges Ukraine to approximate its legislation with the EU's *acquis*.

⁴ Although not specifically labelling into what the original concept of 'norms export' as an outcome of legislative approximation has evolved, Hillion (2014) also recognizes the revolutionary nature of the development: "Not only is the corpus of *norms* continuously growing as a result of the Union's (hyper)activity as 'rule generator', but also the conception of such norms *export* has evolved, both in EU external relations congenital and in its policy towards the neighbourhood in particular" (Hillion, 2014, p. 13).

Table 1. *EU-Ukraine PCA, ENP AP, and EU-Ukraine AA approximation clauses compared*

	Approximation clauses	Commitment credibility	Examples of formulations	Enforcement mechanisms
PCAs	'Best endeavour' legislative approximation clause	Ambiguous although legally binding 'hard law' ⁵	Ukraine " <i>shall endeavour to ensure</i> that its legislation be gradually made compatible with that of the Community [now Union]" [emphasis and remark by the author] (Art. 51 EU-Ukraine PCA)	No, but positive conditionality
ENP (Action Plans, Association Agendas)	'Aspirational' legislative approximation clause	More specific but politically binding 'soft law' ⁶	"Implementation of the Action Plan <i>will significantly advance the approximation</i> of Ukrainian legislation, norms and standards to those of the European Union" (§1, indent 5, EU-Ukraine 2005 Action Plan); "The Parties <i>cooperate to support</i> Ukraine in establishing a fully functioning market economy and <i>gradually approximating</i> its policies to the policies of the Community" (§4, EU-Ukraine 2009 Association Agenda)	No, but positive and negative conditionality
AA/DCF-TAs	'(Genuine/imperative)' legislative and regulatory approximation clause	Substantiated and legally binding 'hard law'	"Ukraine <i>shall approximate</i> its competition laws and enforcement practices to the part of the EU <i>acquis as set out below</i> " [emphasis by the author] (EU-UAAA, Art. 256)	Both monitoring and sanctioning mechanisms envisaged (regulatory enforcement) ⁷

⁵ The '*best endeavour*' approximation clause introduced by the EU-Ukraine PCA is an ambiguous stipulation with no formal legal commitment, as it only prescribes an obligation to act without a requirement to achieve particular results (no scope and content of the EU legislation to be taken as the basis for approximation has been expressly specified). Moreover, monitoring and sanctioning mechanisms for regulating the cases of failed or not duly/fully fulfilled legislative approximation are lacking. Although forming part of the EU legal order as an international agreement, the provisions of the EU-Ukraine PCA are too far from being precise and unconditional as well as entitling the individuals specific rights, which is the precondition for acquiring *direct effect*. By contrast, EU-Russia PCA entailed stronger formulations and its provisions proved being able to have direct effect for third-country individuals in European Union legal order, cf. the ECJ's 2005 ruling on the Simutenkov case (*Igor Simutenkov vs. Ministerio de Educación...*, 2005).

⁶ Both ENP Action Plans and Association Agendas extend the PCA-induced '*aspirational*' legislative approximation clause. The EU-Ukraine 2005 Action Plan (adopted for the period of three years) defined, for instance, specific political and economic

The association-based legislative approximation clause does not present, however, a single mechanism, but encompasses instead several distinct ‘types’ of legislative approximation that—in distinct policy contexts ruled out by specific chapters of the EU-Ukraine AA—vary in scope⁸ and enforcement procedures depending on the objectives and *finalité* of the specific areas or agreement chapters, respectively.⁹ For that reason, it is difficult to make a comprehensive assessment of the approximation grand mechanism, its unparalleled significance is however more than self-evident. Van der Loo (2014, pp. 64–66) explains the significance of legislative approximation by twofold argument, namely the instrumental and the teleological rationale of this mechanism: first, the DCFTA-induced legislative approximation is not an objective *per se* but an instrument to achieve economic integration; second, legislative approximation shall also be assessed in the context of the broader objectives of both the Association Agreement, as well as the Eastern Partnership and the European Neighbourhood

priorities for reform in the context of preparatory activities for furthering economic integration via establishment of a free trade area; in addition, it extended the scope of approximation as compared to that of the EU-Ukraine PCA, as well as incorporated non-trade related rules and regulations. Nonetheless, benchmarking for the vastly “aspired” approximation progress (in case of Ukraine, nearly 300 priority areas were specified) was still lacking, as was the clear stipulation of what has to be achieved against which deadline. For more on that point, cf. Smith, 2005, pp. 757–773, especially p. 764. Given this, the EU-Ukraine 2005 Action Plan has been widely criticized as being only “a list of good intentions” or “a shopping list for reform”, for instance, cf. Nowak and Milczarek, 2007, p. 75; Barbé and Johansson-Nogués, 2008, p. 92. The EU-Ukraine Association Agenda, which replaced the Action Plan in November 2009, entailed a more specific objective to “prepare and facilitate” the conclusion and enactment of the innovatively drafted EU-Ukraine Association Agreement with the DCFTA component. Nevertheless, it still comes short as an instrument for legislative approximation, not least because of its ‘soft law’ nature.

⁷ A “monitoring mechanism” sought to assess the Ukraine’s legislative approximation status is established by Art. 475 of the EU-Ukraine AA. A “dispute settlement and sanctioning mechanism” determined by Articles 315, 477 and 478 of the EU-Ukraine AA. A “regulatory enforcement” mechanism is enshrined in Art. 322 of the EU-Ukraine AA.

⁸ Overall, the extent of EU *acquis* which is contained especially in the DCFTA part and has to be progressively approximated according to the programme and schedules provided in Annexes is unprecedented for European Union association agreements—it amounts to 70–80 per cent of EU *acquis* that falls under the legislation approximation clause.

⁹ Cf., for instance, the comparative outlook on different legislative approximation mechanisms vis-à-vis their scope and *finalité* in sectors, such as ‘technical barriers to trade’ (TBT), ‘sanitary and phytosanitary measures’ (SPS), ‘establishment, trade in services and electronic commerce’, or ‘public procurement’ as provided in the composite table by Van der Loo (2014, p. 65); for a more detailed analysis of different legislative approximation mechanisms, cf. also Van der Loo, 2014, pp. 70–86.

Policy frameworks. So, it is not only the economic integration against which the legislative approximation tool will have to be assessed, but also EU's policy agenda in the region, which will have to be accounted for while interpreting the mechanism, the latter being, for instance, the key objective of the ENP to "expand prosperity, stability and security beyond the borders of the European Union" (EU, 2006, §57).

In addition, the obligatory under the EU-Ukraine Association Agreement regulatory approximation enhances Ukraine's rapprochement with Union's practices of norms application. Precisely this instrument shall make substantial difference between the enhanced association agreement, as the EU-Ukraine AA, and "older-generation" association agreements, as, for example, the EC-Turkey Association Agreement or the EU-Serbia Stabilization and Association Agreement. It ensures, consistently with the EU law, application of exported norms (legislative approximation) in the associated country (post-export regulatory approximation). As in case with legislative approximation clause, regulatory approximation as well presents a composite procedural machinery, with varying scope and enforcement mechanisms depending on the policy field concerned.¹⁰

Yet in most cases the scope of the Union's *acquis*, which is to be imported to Ukrainian legislation, is not extensively or exhaustively specified by the association agreement, the role of the regulatory approximation sought to ensure coherence and uniformity in interpretation and application of the body of Union's *acquis* is difficult to overestimate.¹¹ Not to underestimate is also the ECJ's power of "guiding" and enforcing the uniform interpretation of the EU-Ukraine Association Agreement, in fact a EU law-conforming interpretation of this innovative legal instrument for political association and economic

¹⁰ For instance, in the field of customs and trade facilitation, a *basic approximation mechanism* is envisaged (EU-UA AA, Art. 84), with specific body of EU *acquis* as per Annex XV and the timetable provided; in the field of competition policy, a *peculiar approximation mechanism* is established (e.g., EU-UA AA, Art. 255(1)), without a specified body of EU *acquis*, but with reference to TFEU provisions, relevant ECJ case law as well as secondary EU legislation as "sources of interpretation" of several provisions of the EU-Ukraine AA (e.g., EU-UA AA, Art.-s 262, 263(3) and 263(4)); in the field of macro-economic cooperation, a rather *vague (weak) approximation mechanism* is foreseen (cf. EU-UA AA, Art. 475), both with and without references to specific body of EU *acquis* as per Annexes, but only horizontal monitoring mechanisms devoid of strict monitoring and enforcement procedures.

¹¹ It shall be emphasized that even such a developed "technicality" as legislative approximation (export of the EU rules and norms themselves—even without the export of regulatory practices) presents a challenge for non-EU third states; for more on challenging substantial and procedural means of exporting the *acquis communautaire* to the third countries' systems, cf. Petrov, 2011, pp. 187–213.

integration. The agreement anchors the legal possibility for Ukraine's association institutions (essentially, the Association Council) and/or national courts or tribunals to refer to the Court of Justice of the European Union with questions on the interpretation of EU law—both as contained in the Association Agreement and in a wider scope of the EU-Ukraine association law which draws on the Union's own legal order. In particular, Article 322, §1 of the EU-Ukraine AA enlists—in a non-exhaustive and unrestricted manner—policy areas for which a unique dispute settlement mechanism relating to regulatory approximation is established:

The procedures set out in this Article shall apply to disputes concerning the interpretation and application of a provision of this Agreement relating to regulatory 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), or which otherwise imposes upon a Party an obligation defined by reference to a provision of EU law [emphasis by the author] (EU-UA AA, Art. 322, §1).

Hence, the EU-Ukraine Association Agreement will not only serve as a tool for achieving coherence, but also as one for ensuring compliance of norms application and regulatory practices with those established and observed in the EU's own legal order. Precisely because of such a 'voluntary harmonization' approach (Evans, 1997) at both legislative and regulatory level, the extraterritorial effect of EU law shall be enabled and thus allow in certain contexts a 'stake in EU law' that, in turn, includes possibilities for third countries' individuals to safeguard the same level of rights and their protection as in the European Union itself. To compare, EU's Europe Agreements with CEECs did not contain, for instance, regulatory approximation clauses, and provided only for legislative approximation without any commitments to regulatory homogeneity. This disabled the national courts of the countries and the created Association Councils to enjoy an extraterritorial 'stake in the EU law' in terms of relying on single interpretation (and thus indirect judicial protection) framework. The binding nature of both the requirement to refer the issue of interpretation of EU law (provision) in question to the ECJ and the Court's ruling itself, as stipulated in Article 322(2) of the EU-Ukraine AA, pinpoint to the very distinctive nature of the legal order to be created with this innovative association treaty of the European Union with Ukraine. With the exception of the EU-Turkey Association Agreement or the EU-EFTA Agreement on the European Economic Area, there

is hardly any other agreement of the European Union that entitles and, at the same time, obliges an association institution (in this case, the Arbitration Panel) to ask the European Court of Justice for a preliminary ruling:

Where a dispute raises a question of interpretation of a provision of EU law [...], 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. [...] The ruling of the Court of Justice of the European Union shall be binding on the arbitration panel' [emphasis by the author]. (EU-UA AA, Art. 322(2))

Significantly, even in cases where no dispute arises, Ukraine is bound in approximating its legislation and regulatory practices with those of the European Union, since it is obliged to take “due account” of the relating ECJ case law as well as implementing measures adopted by the European Commission, both *existing* and (*sic!*) *future* ones:

Legislative approximation shall be carried out in consecutive phases [...] In this process, due account shall be taken of the corresponding case law of the European Court of Justice and the implementing measures adopted by the European Commission as well as, if this should become necessary, of any modifications of the EU acquis occurring in the meantime (EU-UA AA, Art. 153, §2).

The dynamism of legislative and regulatory approximation is, moreover, anchored in Article 463(3) of the EU-Ukraine AA, which entitled the Association Council to update or amend all the Annexes to the agreement (enlisting the *acquis* to be incorporated into Ukrainian legislation), “taking into account the evolution of EU law” and “without prejudice to the specific approximation provisions included in Title IV (Trade and Trade-related Matters) of this Agreement”, which in fact presents the core of the established Deep and Comprehensive Free Trade Area.

To fully agree with Van der Loo (2014, p. 87), this “puzzle”¹² of different approximation mechanisms signifies that “this agreement is a unique but complex piece of legal drafting”, in which the differences between various enshrined mechanisms can be explained, to a certain extent, by their different policy-derived objectives and the implied *finalité*.

¹² Or “patchwork”, as mentioned by the author elsewhere, cf. Van der Loo *et al.*, 2014, p. 14.

4. Conclusions

To conclude, the establishment of the Association Agreement, with the DCFTA component, between the European Union and Ukraine certainly does not mark the start of the legislative approximation process linking, in a downloading way, Ukrainian legislation and regulatory politics with the EU's *acquis* and regulatory patterns. It brings, however, this mechanism to a qualitatively different level—that of legally binding, and thus enforceable, harmonization of Ukrainian legislation with the EU policy norms in extensive sectors of political association and economic integration. The EU-Ukraine Association Agreement marks, however, the start of the revolutionary process of regulatory approximation, voluntarily agreed upon by the signatories of this international agreement. This process shall equip the European Union with monitoring and sanctioning mechanisms and therefore provide for EU law-conforming application of both the provisions entailed in the EU-Ukraine Association Agreement as well as stipulations of Ukrainian legislative acts that directly or indirectly pertain to the areas covered thereby. It is what shall ensure the credibility of the commitments undertaken by the parties to this “new generation” association agreement: not only does Ukraine commit itself therewith to approximate its legislation with the Union's *acquis* but also it is bound to *bona fide* and effectively apply the exported norms wholesale. This strategy enshrined in the complex approximation concept should hence allow to indirectly (via regulatory approximation) extend the enforceable rule (*law export*) of the European Union to the associated neighbourhood, in contrast to the currently extended, via legislative approximation, normative impact (*norm export*), a traditional transformative tool.

The process of alignment of the associated countries' *existing and future legislation as well as regulatory practices* to those of the Union, which is encompassed in the truly diversified and patchwork-akin formula of “legislative and regulatory approximation”, is therefore a genuine condition *sine qua non* and, at the same time, the most essential means for economic integration and ‘stake’ in the Union's system, as regards EU's internal market and partially legal order.

Andriy Tyushka is postdoctoral research fellow at the European Neighbourhood Policy Chair, College of Europe (Natolin Campus). His research focuses on the constitutional and procedural law and politics in the area of EU external relations, including security and defence matters. He is also a member of the research team at the Nicolaus Copernicus University of Toruń that hosts the NCN Sonata 6-funded research project on strategic partnerships between states and international organizations.

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