

# Comparing the European Economic Area and the EU-Ukraine Association Agreement: Theoretical and Legal Aspects

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[“Lowering the Bar? Compliance Negotiations and the EU-Ukraine  
Association Agreement?”](#)

# Plan

## 1. EU association relations with third states: theory and legal basis

1. Several words about history
2. Legal basis
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1. Adoption context and aims
2. Political dimension
3. Trade liberalization
4. Sectoral cooperation
5. Institutional structure
6. Homogeneity of EU law / legislative approximation
7. Dispute settlement

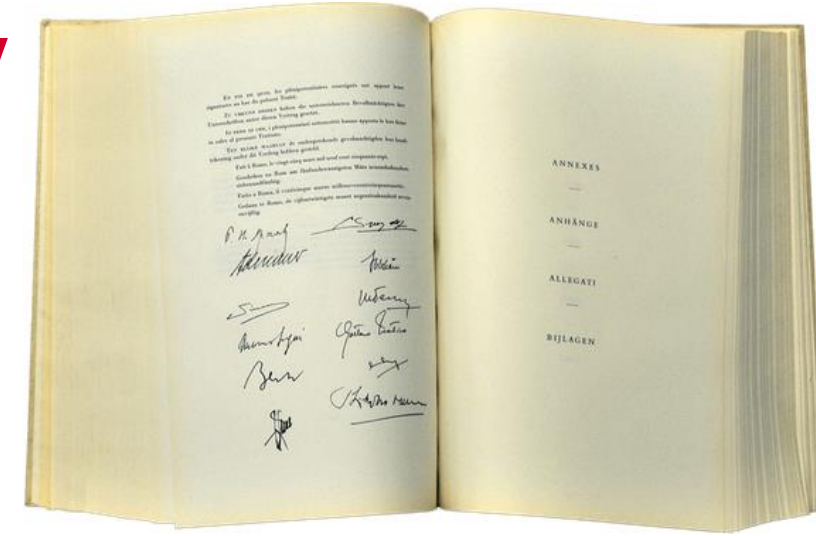
## 3. Final outlook

## 1. EU association relations with third states: theory and legal basis



## Several words about history

- External competences of the European Economic Community (EEC) based on the **1957 Rome Treaty** due to the creation of the customs union between the EEC countries
  - Common external tariff (customs union)
  - Foundations of the Common Commercial Policy (external trade policy)
  - Establishing the European Fund for Development
  - Creation of association with overseas countries and territories
- **1963 Yaoundé Convention** between the EEC and the Member States' former colonies in the ACP region



<https://rometreaties.eu/>



[https://www.cvce.eu/en/obj/jean\\_marie\\_kone\\_and\\_mohammed\\_sidi\\_signing\\_the\\_yaounde\\_convention\\_20\\_july\\_1963-en-9cff6a82-de7b-404e-afa0-8619ed76d52f.html](https://www.cvce.eu/en/obj/jean_marie_kone_and_mohammed_sidi_signing_the_yaounde_convention_20_july_1963-en-9cff6a82-de7b-404e-afa0-8619ed76d52f.html)

## Several words about history

- **1963 Ankara AA with Turkey**
- The **1975 Lomé Convention** between the EEC and 71 ACP countries (renewed and adapted in 1985, 1986 and 1990)
- Broadening of the AAs' network following the adoption of the **Treaty of Maastricht** (e.g. the EEA Agreement, the Cotonou Agreement, bilateral agreements with Switzerland)
- and, subsequently, the **Lisbon Treaty**



On 28 February 1975, Babacar Ba, President of the 46 African, Caribbean and Pacific (ACP) States and Minister for Finance and Economic Affairs of Senegal, delivers a speech during the signing of the Lomé Convention for economic cooperation between the nine Member States of the European Economic Community (EEC) and the ACP States,  
[https://www.cvce.eu/en/obj/the\\_acp\\_eec\\_convention\\_28\\_february\\_1975-en-5fa948e9-1d27-4cd2-9512-eac78c8c416c.html](https://www.cvce.eu/en/obj/the_acp_eec_convention_28_february_1975-en-5fa948e9-1d27-4cd2-9512-eac78c8c416c.html)



<https://www.politico.eu/article/ukraine-georgia-and-moldova-sign-eu-deals/#>



Group photograph of the representatives of the seven Member States of the European Free Trade Association (EFTA), taken during the ceremony held on 2 May 1992 in Oporto to celebrate the signing of the Agreement creating the European Economic Area (EEA).  
[https://www.cvce.eu/en/obj/signing\\_of\\_the\\_eea\\_agreement\\_oporto\\_2\\_may\\_1992-en-6cb5d9c6-1b09-4152-be26-191db9973cde.html](https://www.cvce.eu/en/obj/signing_of_the_eea_agreement_oporto_2_may_1992-en-6cb5d9c6-1b09-4152-be26-191db9973cde.html)



## Legal basis

- Difference between ‘associate membership’ (‘internal association’/observer status) in international organizations and ‘external’ association under Art. 217 TFEU
- **Art. 217 TFEU**
  - *The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedures.*
- **Art. 8 TEU**
  - *The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.*
  - *For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.*
- **Mixity** and its implications for the practice of AAs

# Types of Association Agreements

- ✓ Flexibility of association as an instrument
- ✓ The evolution of the AAs' scope following the evolution of the EU competences
- ✓ Distinctions based on the AA's geographical coverage and the finalité of an established privileged relationship

Pre-accession instruments	EU membership alternatives	Privileged relationships with non-European countries
AA with Turkey	European Economic Area (EEA)	African, Caribbean and Pacific (ACP) countries
Stabilization and Association Agreements (SAAs) with Western Balkans' countries	A set of bilateral agreements with Switzerland	Euro-Mediterranean Association Agreements (EMAAs) with MENA countries
	Associated Eastern Neighbours	Mercosur, the Andean Community, Mexico, Chile

## Common features

1. Adoption context and aims
2. Political dimension
3. Trade liberalization
4. Sectoral cooperation
5. Institutional structure
6. Homogeneity of EU law / legislative approximation
7. Dispute settlement



## EEA & EU-Ukraine AA

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# 1. Adoption context and aims

- **EEA**

- Signed in 1992; entered into force on 1 January 1994 to launch the **internal market regime** between the EU and member states of the **European Free Trade Association** (EFTA, i.e. Norway, Liechtenstein and Iceland):
- “The aim ... is to promote a **continuous and balanced strengthening of trade and economic relations** between the Contracting Parties with equal conditions of competition, and the respect of the same rules, **with a view to creating a homogeneous European Economic Area...**”

- **EU-Ukraine AA**

- Concluded in 2014 in the ENP/EaP context and following the Revolution of Dignity in Ukraine
- **Six expansive aims of association relating to:**
  - “Gradual rapprochement between the Parties” based on common values and privileged links
  - Appropriate framework for political dialogue
  - Peace and stability regionally and internationally
  - Enhanced economic and trade relations (DCFTA) and Ukraine’s market economy transition
  - Enhancing cooperation in Justice, Freedom and Security domain
  - Close cooperation in other areas of mutual interest

## 2. Political dimension

- **EEA**

- No pronounced political dimension
- Political dialogue and cooperation outside the EEA realm
- **As exemplified by Norway:** Schengen and Justice and Home Affairs, biannual political dialogue, civilian and military cooperation under the CFSP/CDSP, PESCO

- **EU-Ukraine AA**

- Strong political dimension
- Political dialogue in all areas of mutual interest and gradual convergence on foreign policy and security domain
- Dialogue and cooperation on domestic reform in Ukraine
- Practical cooperation in the domains of conflict prevention and crisis management, combating terrorism and promoting disarmament and arms control
- Justice, Freedom and Security cooperation pillar

### 3. Trade liberalization

- **EEA**

- **Clear focus on four freedoms** (freedom of movement for goods, services, capital and people)
- Extensive trade liberalization, except for agricultural products and fisheries
- The EU and EFTA countries can use safeguard measures for agricultural and fisheries' products
- Freedom to provide services in a non-discriminatory manner in the EEA
- **Single Market in public procurement**
- Free movement of persons (same rights to EEA nationals and their family members as of EU nationals)
- Right of establishment

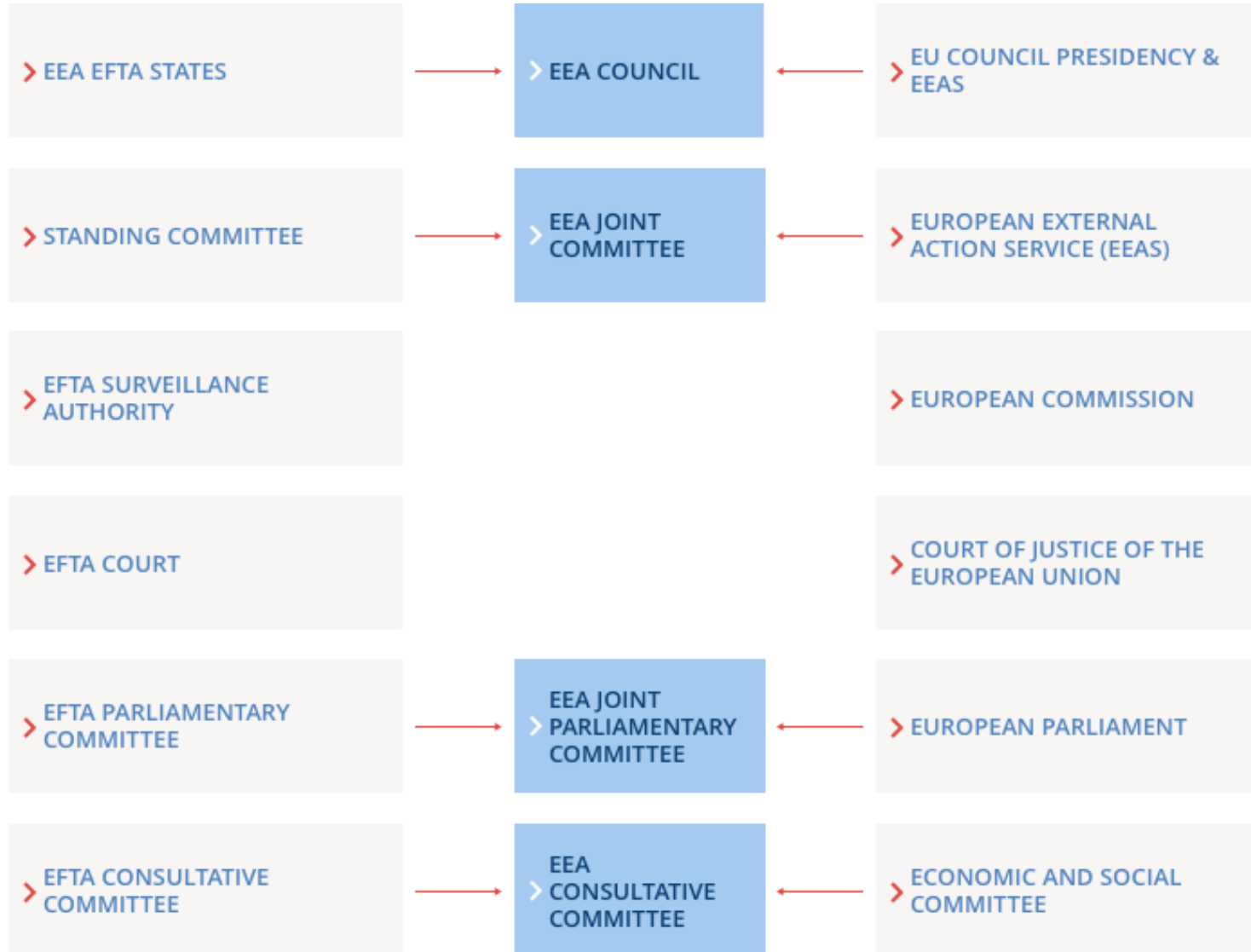
- **EU-Ukraine AA**

- Strong market integration ambitions BUT!
- **No provisions on the free movement of persons**
- Preferential tariff quotas for agricultural and food products
- Preparing for 'industrial visa-free' regime (ACAA Agreement)
- Liberalization of trade in services (high degree of **legislative approximation** needed)
- Liberalization of public procurement market (**market access linked to legislative approximation**)

## 4. Sectoral cooperation

- The EEA and the EU-Ukraine AA both have two types of sectoral cooperation provisions:
- **“Deep disciplines”**, e.g.
  - Rules of origin, sanitary and phytosanitary measures
  - Competition and state aid
  - Company law
  - Intellectual property
  - Trade aspects of energy
  - Transparency
- **Broader cooperation**, e.g.
  - Research and technological development
  - Social policy
  - Education and youth
  - Environment
  - Labour law

## 5. Institutional Structure (EEA)



<https://www.efta.int/EEA/EEA-Council-1315>

Source: <https://www.efta-studies.org/the-two-pillar-structure>

This diagram illustrates the management of the EEA Agreement. The left pillar shows the EFTA States and their institutions, while the right pillar shows the EU side. The joint EEA bodies are in the middle.

## 5. Institutional Structure under the EU-Ukraine AA

- **Association Council**

- Members of the European Council and the European Commission, on the one side, and the Government of Ukraine, on the other side
- Able to take decisions within the scope of the AA and update and amend Annexes to the AA to account for the evolution of EU law

- **Association Committee**

- Assists the Association Council in the implementation of its tasks
- Able to create sub-committees to take stock of progress in various domains

- **Parliamentary Association Committee**

- Forum for exchanging views between the Verkhovna Rada and European Parliament MPs

- **Civil Society Platform**



EU-Ukraine Association Council 11 February 2021, Brussels  
<https://newsroom.consilium.europa.eu/permalink/p115737>





## 6. Homogeneity of EU law / legislative approximation

### • EEA Agreement

- EFTA states did not transfer any legislative competences to the EU or the EEA joint bodies
- A new EU act can become applicable to EFTA states, **if it is incorporated into one of Annexes** to the EEA Agreement by the decision of the EEA Committee
- If the act confers competences to EU institutions, adaptations are made to confer competences on the relevant institutions under the EFTA pillar (via Protocol 1 to the EEA or the decision of the EEA Committee)
- The EEA Joint Committee fosters exchange of information between the CJEU and EFTA court and takes into account their case law
- Some EU law matters can be referred to the CJEU for interpretation
- Monitoring by the EFTA Surveillance Authority and the EC Committee

### EU-Ukraine AA

- Ukraine's extensive regulatory approximation obligations
- **Market access conditionality linked to legislative approximation** (e.g. public procurement)
- Requirement of **gradual and dynamic approximation**
- Requirement of rules' interpretation in conformity with relevant CJEU rulings
- Association Council's competences to amend the Annexes to the EEA to take stock of the EU law evolution
- Monitoring, conducted by the Parties individually or jointly

# Dispute settlement

- **EEA Agreement**

- A single dispute settlement procedure
- Dispute shall be resolved by the EEA Joint Committee
- The Court of Justice can be requested to give a ruling on treaty implementation, if the contested EEA provisions are identical to EU law provisions
- The Contracting Party may use safeguard measures if the dispute is not settled over the 6-month period

- **EU-Ukraine AA**

- Two dispute settlement procedures: under the DCFTA and the general DSM (not applicable to DCFTA-related matters)
- Obligatory preliminary consultations (30 days/15 days for urgent matters)
- If consultations do not succeed, the Parties can launch the arbitration procedure
- The Court of Justice can be requested to give a ruling on treaty implementation, if the contested Association Agreement's provisions are identical to EU law provisions
- Binding nature of the Panel's arbitration ruling
- Right to remedies in case of non-compliance

## Outlook

- The EEA and the EU-Ukraine AA have considerable differences in their scope and the way their institutional framework is designed
- But they share a high ambition of EU Single Market integration and thus create valuable business internationalization opportunities and room for knowledge transfer.