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How the EU–Ukraine Association Agreement and its Consequences Necessitated Adaptation and Drove Innovation in the EU

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Abstract

Given its depth and ambition, the Association Agreement (AA) concluded between the EU and Ukraine may have been expected to result in significant reverse influence on the EU. However, this article shows that this influence is indirect, arising from mechanisms and international processes brought into sharp relief by the AA. These are: the power asymmetry between the parties, politicization of the agreement and geo-politicization as a form of contestation of the agreement in the geopolitical arena, stirred by Russia's grievances. The article argues that in responding to the asymmetry, politicization and geo-politicization of the AA, the EU has been pushed to innovate to prevent the legal and political failure of the negotiated agreement. Innovation occurred at different levels: at institutional level to assist Ukraine's capacity to implement it, at constitutional level to ensure its ratification given politicization in the Netherlands, and at policy level to address Russia's geopolitical moves.

Keywords: Ukraine; Russia; association agreement; politicization; geopolitics

Introduction

In 2014, Ukraine signed an Association Agreement (AA) including a Deep and Comprehensive Free Trade Area (DCFTA) with the European Union (EU). This agreement, advanced in nature and scope, allowed for potential access of Ukraine to the EU's single market. It was also an agreement that became the focus of political conflict and unprecedented geopolitical strife that few could have anticipated at the time.

This article argues that while Ukraine's Association Agreement is a novel legal instrument developed by the EU (Van der Loo, 2015), the high asymmetry of power between the EU and Ukraine has so far precluded reverse influence from the agreement on the EU's *acquis*. On the contrary, the agreement extends the reach of the EU's *acquis* towards Ukraine and contains enhanced conditionalities to protect the EU's interests. Instead of such direct reverse influence of the agreement, we argue that there has been significant, but indirect influence on the EU which is not expressed in modifications of the EU's legislation or case law, but in the form of innovation. That has become apparent after closing the AA's substantive provisions at the end of 2011 and after its signing, as well as at other critical junctures of provisionally applying and ratifying the agreement. Specifically, the EU has innovated at three different levels: at the institutional level, in setting up the Support Group for Ukraine (SGUA), at the constitutional level, by adopting a legal agreement to facilitate the AA's ratification, and in foreign policy, in responding to Russia's objections to the agreement.

To explore the sources of innovation that have characterized the EU's response, the main question addressed by this paper is 'How have mechanisms and forces operating in relation to the EU–Ukraine Association Agreement driven innovation in the EU in policy, organizational and constitutional terms?'. We analyse the EU's response and how it led to innovation driven by mechanisms and forces already present in the international arena but brought into focus by the AA. These are: the power asymmetry between the EU and Ukraine, the increasing politicization of international agreements, and specifically Ukraine's AA, and the 'geo-politicization' of the AA which we define as politicization of an agreement by a third country in the international arena for their own geopolitical purposes.

The paper proceeds as follows. First, we highlight the key mechanisms identified in theoretical debates that we employ to analyse the effects of the agreement and the developments around its signing and ratification. These are asymmetry, politicization and geo-politicization, which we discuss in relation to the different stages of completion of the agreement and its aftermath. We analyse how these features (asymmetry) and processes (politicization and geo-politicization) have created tensions with the technocratic approach inherent in the AA and have forced the Union to develop creative solutions to save the agreement and make it work in Ukraine. In the second part of the article, we discuss the EU innovations that have emerged at three levels: in EU foreign policy, in organizational structures and at the constitutional legal level.

I. Potential of Reverse Influence: Building on Different Literatures

Various strands of literature on international agreements and organizations assist us in identifying what mechanisms can influence the possibilities of reverse influence of Ukraine on the EU via the Association Agreement.

Rational institutionalist approaches to international institutions stress that formal organizations and their institutional rules embody 'the precise terms of state interactions' and recreate in rules the balance between the power, interest and knowledge of states (Abbott and Snidal, 1998, p. 10). If the terms of an international trade agreement reflect the balance of power between the parties that negotiated it, association agreements between the EU and third countries are mostly asymmetric, reflecting the EU's size and importance.

Asymmetry in power during negotiations is, however, not permanent or fixed, but may fluctuate. The weaker party strives to equalize the balance by drawing on actor-related resources, procedure-related resources or issue-related resources (Pfetsch, 2011, pp. 17–22). Rhetorical action that links the agreement to broader, shared values and norms is one way of improving the position of the weaker party, as shown by Schimmelfennig (2001) in the accession process of CEE states.

Furthermore, agreements differ from institutions in the sense that they can be finalized or dropped, ratified or not, based on the different value which states place on concluding the agreement. For certain states or regional organizations under some circumstances, the status quo could be marginally less beneficial than a potential future agreement. The party which has more to lose from the lack of agreement (the cost of non-agreement) is in a weaker position in the negotiations and has less power to define its terms and content.

In the analysis which follows, we rely on a broad understanding of power to comprise not only economic and political aspects, but also alternative conditions of not achieving agreement and the use of resources such as expertise, rhetoric and perception to assess the fluctuating power asymmetry between the EU and Ukraine and consequentially, the differentiating potential of the AA for reverse influence on the EU.

The politicization of international authority is another increasingly important mechanism in international affairs. In the first-generation body of literature on politicization in the international arena, it has been defined as the loss of independence or neutrality of international organizations influenced or captured by specific member states (Abbott and Snidal, 1998). More recent theoretical and analytical work focuses on citizens and growing public awareness of political orders beyond the nation state. Politicization is then the act of transporting an issue to the realm of politics and making it salient, that is, subject to communication and debate in the political sphere (Zürn, 2019, p. 977). Such processes are accompanied by increased public mobilization of competing preferences regarding policies or procedures in the international arena (Zürn et al., 2012, p. 71). The opposite of politicization is keeping issues in a technical level of debate and deciding on them behind closed doors in a technocratic mode. Following Zürn et al. (2012), we understand politicization as the process of moving issues or decisions from the technical or expert sphere of decision making to a public domain, be it national or international, whereby these become salient to a wider group of actors and subject to contestation.

In the EU, in particular, politicization has been seen as a constraint to future integration (Hooghe and Marks, 2009; Zürn, 2019). Constraining dissensus, as introduced by Hooghe and Marks (2009, p. 5), puts limits to European integration in terms of closer integration or integration in further policy areas. European institutions and their decisions have been brought 'back' into the political arena in the member states (Zürn, 2019, p. 989). Another potential consequence of increasing politicization is, therefore, deadlock. Deadlock, or stalemate, is a fairly common state in European policy when, under conditions of unanimity, arenas become linked and the number of veto players increases (Héritier, 1999, pp. 14–15). In the case of trade agreements and association agreements, the emergence of domestic actors such as trade unions or political parties and movements, able and interested in making debates on international trade provisions salient in the domestic arena, creates such linkages and potential deadlock.

Indeed, international trade agreements have become increasingly politicized in the last decade and their ratification has stalled as a result, as the important cases of TTIP and CETA show. Trade issues have become more political and less technical as they have increasingly transcended tariffs and customs border concerns, making inroads into a wide range of domestic regulations. Centring on 'beyond border' issues, 'deep trade' agreements have proliferated, affecting an even wider range of domestic interests (Rodrick, 2018). Contestation of their provisions, scope and embedded arbitration mechanisms have emerged from various coalitions of national and transnational actors such as trade union and provinces (Dominguez, 2017; Hübner et al., 2017).

Thus, there has been a growing erosion of the separation between trade and geopolitics. In contrast to previous decades when states and governments worldwide strove to enable trade regardless of geopolitical tensions or ideological divides, in recent years we have again seen a more pronounced return of geopolitics disregarding the gains of trade and existing economic interdependence.

Incorporating geopolitical factors is vital in understanding both the EU and Russia's external trade relations, albeit in very different ways. On the one hand, for the EU, changes in the multilateral context have been a key determinant for the Union's commitment to an agenda of deep and comprehensive preferential trade agreements with key partners (Woolcock, 2014). For Russia, on the other hand, geopolitics runs deeper than the substance of trade rules, driven by notions of traditional sovereignty and understanding of itself as a great power (Lewis, 2020). Economic integration is about the ability to delineate a region through economic integration as a challenge to perceived Western hegemony. Geopolitical considerations have been primary in driving Russia's own efforts to promote Eurasian integration (Dragneva and Wolczuk, 2013), while at the same time Russia has imposed geopolitical interpretations on the EU's engagement with its Eastern partners (Gretskiy et al., 2020).

More recently, the return of power politics played by both China and Russia have fed into a growing realization at the EU level that the EU needs to develop 'hard' next to 'soft' power, as reflected in the Global Strategy (European Union, 2016) and in the character of the 'geopolitical' Von der Leyen Commission (Tocci, 2016; Blockmans, 2020).

Power asymmetry, politicization and geo-politicization are forces that potentially produce different consequences and affect the EU's response to the AA with Ukraine in different ways. With regard to asymmetry, we expect that it means that Ukraine's agreement has little to no reverse influence on the EU's regulatory or governance approach as an asymmetric relationship during negotiations would result in transfer of an existing EU template. With regard to politicization, however, it can result both in deadlock and in backdoor innovation. Notably, previous research in mechanisms for overcoming stalemate at the EU level highlights the role of external, *ad hoc* factors for speeding up problem-solving, oriented bargaining and facilitating innovation. Policy innovation can also be facilitated by organizational nodes of coordination providing new institutional avenues for problem-solving (Héritier, 1999, p. 92).

Last, but not least, geo-politicization creates a tension between power politics and the EU's mode of external governance through technocratic outreach (Lavenex and Schimmelfennig, 2009). This tension requires significant efforts to transcend previously developed technocratic tendencies and develop a clearer geopolitical dimension (Blockmans, 2020).

To sum up, asymmetry on its own cannot be expected to promote innovation. Domestic politicization might lead to limited innovation using arena change as a way to avoid deadlock. Arguably, it is the external shock and tension between geopolitics and existing modes of governance introduced by geo-politicization, that can be expected to produce the most innovation.

II. Asymmetry and Politicization in the Context of the EU–Ukraine Association Agreement

The EU's agreement with Ukraine is a case of negotiations in which contextual factors are seen to have played an exceptionally important role (Schade, 2019). Following the theoretical discussion of these factors, here we analyse how asymmetry, politicization and geopoliticization have played out in different phases of the creation and operation of the Ukraine Association Agreement.

Asymmetry

Power asymmetry in negotiations is a feature of many EU agreements, albeit to a different extent and depending on the importance of the prospective partner. There are several aspects of disparity between the EU and Ukraine that contribute to asymmetry during and after the negotiations of the AA: economic, political and stemming from the costs of non-agreement.

The EU's importance as a trade block and economic power in the global stage makes asymmetry almost the default condition of trade relations with third countries, meaning that EU rules, standards and regulations are exported via the EU's agreements or adopted by economic actors voluntarily (Cremona, 2010; Bradford, 2020). The asymmetry in bargaining power, however, still depends on the relative economic strength and importance of the prospective trade partner (Introduction, this issue).

The disparity of economic power of the EU compared to Ukraine has been considerable, not least because of Ukraine's economic weakness. In the run-up to 2014 and the signing of the AA, Ukraine faced a catastrophic state of its finances and high levels of debt. Persistent lack of structural reforms has meant the Ukrainian state has been dysfunctional in terms of capacity for tax collection and – until recently – service provision (Fritz, 2007; Berenson, 2018). In addition, the 2008 global financial crisis affected Ukraine particularly harshly, plunging it into recession by 2012 (WTO, 2016).

Consequently, the cost of non-agreement has been much higher for Ukraine than for the EU in the run up to signing the agreement and thereafter. Ukraine's interest in trade opening and economic exchange with the EU was clear, while the EU had been prioritizing external agreements and negotiations with a range of 'economically significant partners', which did not include Ukraine, as part of its 2006 Global Europe agenda (Woolcock, 2014).

For Ukraine, the *political* costs of non-agreement have also increased over time. Ukraine's leadership had set European integration as its goal since 1998, when the then President Kuchma oversaw the adoption of the comprehensive Strategy for integration with the EU (Wolczuk, 2004). In the early 2000s and especially after the Orange revolution in 2004, joining the EU was increasingly framed as a civilizational choice linked to considerations of security, identity and modernization (Dragneva and Wolczuk, 2015). However, until 2014, a viable (even if problematic) alternative existed in the form of Eurasian economic integration. During the period of AA negotiations, Ukraine's foreign policy was based on a balancing act between Russia and the EU. After the Agreement's signature, the costs of non-agreement rose drastically: integration with Russia was not viable politically following the annexation of the Crimea and the conflict in Donbas. Ukraine's declared European orientation has, therefore, evolved as an increasingly important domestic legitimization mechanism, finding culmination in the application for membership submitted by President Zelensky in 2022.

Existing analyses have identified ambiguity on the EU's side as to the scope and goals of the agreement with Ukraine coupled with differential involvement of the Commission (DGs Trade and NEAR) and the Council over time (Schade, 2019, pp. 200–02). The EU's ambiguity and the power asymmetry discussed above were reflected in the negotiations and in the text of the agreement.

The EU negotiated with Ukraine at the height of its ‘power of attraction’, drafting a detailed and comprehensive agreement spanning all areas of cooperation with Ukraine. In designing the DCFTA, in particular, the EU implemented its preference for ambitious coverage, providing not only for traditional tariff liberalization, but also far-reaching commitments in services, investment, public procurement and competition, in line with its 2006 Global Europe agenda (Woolcock, 2014). This wide scope was complemented by an emphasis on the ‘depth’ of relations through the removal of regulatory barriers. Drawing on its enlargement template, the EU promoted regulatory harmonization based on a wholesale export of the *acquis*. Thus, the DCFTA promised a progressive, partial integration into the internal market subject to adopting the *acquis* and related institutional reform. Furthermore, keen to protect the integrity of the single market, the EU envisaged stringent and complex enhanced conditionalities, allowing it disproportionate control (Van der Loo, 2015, pp. 210–13). Finally, export of the EU *acquis* underpins not only the DCFTA, but extends more widely to economic and sectoral cooperation.

Ultimately, the EU’s Association Agreement with Ukraine emerged as one of considerable complexity, scope and depth of the required download of the EU *acquis* (as listed in the 43 annexes), exceeding even EU expectations from Western Balkan candidate states (Blockmans, 2017). This was possible because Ukraine was highly open to EU templates in the negotiations. Negotiations on traditional trade issues, such as tariffs, quotas and transition periods for key commodities, took place (Van der Loo, 2015, p.107). However, there was keen acceptance of EU’s deep and comprehensive agenda and willingness to undertake extensive legislative approximation and accept EU’s conditionalities. This was, firstly, because from a Ukrainian perspective, the AA was as a pathway to membership. President Yanukovich had pressed – without success – the membership question until the very end of the AA negotiations (Retman, 2011). Secondly, the *acquis* was viewed by Ukraine’s reform-minded elites as a blueprint for much needed modernization (Dragneva and Wolczuk, 2015). Association with the EU was a vital stimulus for restructuring, opening the door to investment and technology flows not available from elsewhere (Dabrowski and Taran, 2012).

The asymmetry of relations is also reflected in the institutional framework set up to manage the association process. The Association Council is the main body entrusted with monitoring the application and implementation of the agreement, in which it is assisted by the Association Committee. On the one hand, there is parity in the composition of these bodies, which operate ‘by mutual agreement’. In a major upgrade of past relations, their decisions are binding on the parties, which can contribute to deepening the association process. Indeed, the Council can examine any issue of mutual interest, arising from the AA or outside it, but also has the power to update or amend the annexes of the AA without the need to go through an intergovernmental amendment procedure. On the other hand, this dynamic potential is centred on ‘taking into account the evolution of EU law’, rather than amounting to a general competence to broaden the scope of cooperation to new areas (Van der Loo and Akhvlediani, 2020). Furthermore, ‘by mutual agreement’ means that each party can veto proposed decisions (Tyushka, 2022), ultimately making them conditional – as in the negotiation stage – on their interest and capacity.¹

¹For example, despite being outdated, the annexes have been slow to update because of procedural delays or competing priorities of the various DGs involved on the EU side (Van der Loo and Akhvlediani, 2020, p. 8).

While the high asymmetry between the EU and Ukraine limited the scope for reverse influence during the negotiations, other factors such as the cost of non-agreement – in this case not being able to implement the AA, produced different dynamics in the following stages of the life of the agreement.

The potential for reverse influence increased with the need for the EU to address the issue of Ukraine's capacity to implement the AA/DCFTA. The complexity of the EU's own regulatory provisions – the *acquis* – requires high levels of administrative capacity, one that took decades for the post-communist states of Central and Eastern Europe to build prior to accession (Dimitrova, 2002).

Capacity became an urgent issue for the EU and Ukraine in the aftermath of the signing of the AA. The Ukrainian state's ability to govern and regulate and its administration's capacity to implement rules and policies were far from the levels required to operate the agreement (Wolczuk et al., 2017; Dimitrova et al., 2021). Ukraine's administration had been in need of reform due to decades of rent seeking by politically-linked oligarchs (Fritz, 2007; Wolczuk et al., 2017; De Groot et al., 2019; Wolczuk, 2019; Dimitrova et al., 2021). In 2014, Ukrainian statehood was further undermined by the economic crisis and the critical security situation.

In addition, the potential for reverse influence was affected by changing costs of non-agreement for the EU. The annexation of the Crimea and the hybrid warfare initiated by Russia in Eastern Ukraine increased – first slowly, then exponentially – the cost of non-agreement also for the EU. It continues to be the case that, should the EU and Ukraine fail to make the Association agreement work in trade, economic and integration terms, it would challenge the Union's fundamental mechanisms of legitimation as a community of democratic states.

Politicization and Geo-Politicization

The politicization of the Association Agreement did not involve debates of its provisions during its negotiations which were finalized in October 2011. Discussions in Ukraine were limited to a group of state officials and think tanks (Dragneva and Wolczuk, 2015).

The negotiations of the text had been closed and the Agreement had been initialed when, in November 2013, following Yanukovich's last-minute refusal to sign the agreement, the Ukrainian people came out on the street in protest. Violent clashes with secret police followed. Yanukovich's actions, under pressure from Russia, were seen as the wrong geopolitical choice by Ukrainian protesters. The emergence of a powerful movement defending the agreement, that became known as the *Euromaidan* or the Revolution of Dignity, can be regarded as one of the most extreme cases of politicization of an international agreement.

In terms of politicization in the European Union, the ratification of the AA encountered a serious problem in the Netherlands. There was no legal requirement for the Dutch government to put ratification of the AA to a popular vote. In early 2016, however, a public signature campaign was initiated by several organizations, far right parties and media personalities. Signatures were collected with astonishing speed, resulting in a legal obligation to call a referendum based on existing Dutch law. The referendum took place in April 2016 and was consultative in character. Nevertheless, it represented a textbook example

of politicization of European integration that, following its negative result, threw a major stumbling block on the road to ratification.

In terms of geo-politicization of the agreement, Russia's geopolitical interpretation of the consequences of the agreement evolved over time. Whether it has been Moscow's genuine perception that an Association Agreement between the EU and Ukraine would damage Russian trade interests, is a question which has now become obscured by the ideology and propaganda justifying the 2022 war. Looking back, Russian objections to the AA were made in early 2011 in the context of Moscow's offer to Ukraine to join the Eurasian Customs Union and subsequently, the Eurasian Economic Union (EEU) (Dragneva and Wolczuk, 2015). The aim was to preclude Ukraine's signature of the AA through a combination of economic sticks and carrots applied at key procedural milestones of the lead-up to signing. As Russia failed to achieve this goal, its strategy was modified in two significant ways.

Firstly, Russia levied its concerns at the EU, challenging specific parts of the Agreement, and threatening Ukraine with further trade penalties. While some of Russia's objections to the Agreement concerned tariffs and technical rules, there were also grievances regarding foreign and security policy cooperation (Article 7 of the AA) and the creation of Association bodies endowed with powers to shape the association process. In putting forward its concerns Russia sought to assert the precedence of its regional project, the EEU, framing the EU as 'spoiler' of Russia's legitimate interests in the region in line with Russian perceptions of limited sovereignty of its post-Soviet neighbours (Deyermund, 2016). While the EU ultimately dismissed Russian attempts to change the agreement, the approach taken by Russia made it salient and contested in the region, resulting in geo-politicization.

Secondly, the protests which led to the ousting of Yanukovich were used by Russia as a formal pretext for hostile actions in 2014. Ukraine's 'Revolution of Dignity' linking the agreement to the country's European choice was labelled by Russia a 'Western coup' and followed by the annexation of the Crimea. Further threats to Ukraine's territorial integrity emerged with Russia's incursion into Luhansk and Donetsk. The conflict in the region remained active till 2022 when it became the formal pretext for the Russian invasion following a parliamentary vote for recognition of the two republics.

Interaction Effects of Asymmetry, Politicization and Geo-Politicization

Having highlighted separately the factors and processes that made the EU–Ukraine AA/DCFTA a great challenge for the EU and Ukraine, before we proceed to discuss the EU's responses and innovations, we note that these factors have operated in complex interaction.

The DCFTA's highly technical character and complexity are, *a priori*, conditions for low level of politicization. However, the DCFTA and conditionalities for access to the EU internal market introduced additional complexity that meant the EU had to support Ukraine in capacity building so that they could apply the provisions of the AA. At the same time, the *Euromaidan* Revolution and the Russian annexation of the Crimea affected the significance and salience of the Association agreement for Ukraine as well as the EU.

Politicization and geo-politicization influenced the signing of the agreement and its ratification and implementation. They presented the EU and Ukraine with unprecedented challenges, requiring equally great efforts of adaptation and innovation. The perception of the AA as a geopolitical issue and Russia's grievances took the agreement beyond the regulatory realm.

III. The Influence of the Ukraine Association Agreement on the EU: Three Levels of Innovation

As shown, the underlying asymmetries between Ukraine and the EU meant that while some traditional tariff negotiations took place, there was no direct reverse influence on the EU's deep free trade agenda and *acquis*. This dynamic continued after the end of the negotiations in October 2011. The EU has, for various reasons, been open to granting more tariff-related concessions: unilaterally granting autonomous trade measures 'to enhance the economic and political reforms undertaken by Ukraine' in 2017 (Regulation, 2017), or raising tariff rate quotas on poultry as a limited technical amendment of the AA to close a loophole affecting the European poultry market by amending the agreement (Van der Loo and Akhvediani, 2020, p.13). Similarly, as envisaged under Article 29.4 of the Agreement, it agreed to open negotiations to expand the elimination of customs duties (EU-Ukraine Summit, 2021). It has not shown similar openness, however, in matters affecting the integrity of the EU *acquis* and the single market.²

Instead, politicization in the EU – through the unexpected consultative referendum in the Netherlands – and geo-politicization of the agreement by Russia, created on the one hand, deadlock in ratification and on the other, increased the cost of non-agreement for Ukraine and for the EU. Should the EU be seen as not able to make the agreement work in terms of ratification and implementation, the EU's ability to project its power in its neighbourhood through its chosen instruments would be questioned and the European Neighbourhood policy severely compromised.

As Russia resorted to undermining Ukraine's statehood in the spring of 2014, the EU found itself supporting Ukraine through a military conflict as well as helping it absorb the consequences of severe trade penalties and energy restrictions applied by Moscow. The EU's response was multi-faceted and involved innovations at different levels, namely: constitutional level (treaty rescue to secure the AA's ratification in the Netherlands); institutional level (creation of a new organizational unit to coordinate support for Ukraine), and policy level (opening trilateral trade talks and sanctions). In the trade and foreign policy domain the EU's initial response can be classified as a failed attempt at adaptation that illustrates the search for solutions in the face of unprecedented geopolitical challenge.

The Constitutional Level: Overcoming Deadlock

As discussed above, a consultative referendum was held in the Netherlands in April 2016, representing an important case of politicization and making the agreement – although not

² It is notable, for example, that while Ukraine called for extensive revisions aiming at securing an improved access to the EU's public procurement and services (Verkhovna Rada, 2021), this was not taken up at the following EU-Ukraine Summit in October 2021. Instead, the Joint Statement following it drew attention to the need for greater progress in reform.

necessarily its content and provisions – salient in domestic political debates. Based on the relevant Dutch law, the referendum would be valid only if a threshold of 30 per cent turnout was reached. This provision and the political uncertainty as to the lines along which the Agreement was challenged by the initiators, led the Dutch government to adopt a strategy of minimal campaigning, hoping to see turnout below the validity threshold. In the end, the referendum had a turnout of 32 per cent of the voters, 61 per cent of which voted against ratification of the agreement. Despite the consultative character of the referendum, the government could not ignore the result (Dimitrova and Steunenberg, 2017).

A period of great uncertainty followed, during which a way forward for ratification was sought in Brussels and the Hague. The motivation of the negative vote was heterogeneous and difficult to reduce to a specific issue. While some of the initiators had declared they ultimately wanted to challenge the Dutch EU membership, there was also voting motivated as a response to globalization. Corruption in Ukraine was also highlighted by some as a motivation for the ‘no’ vote, along with the possibility that the agreement would open the door to Ukraine’s EU membership (Jacobs et al., 2016). The Dutch government – and Prime Minister Rutte – decided to focus on the latter issue as a way to address voter concerns.

Existing blueprints for resolving the situation were limited. One was excluding the Netherlands from the contracting parties of the Agreement, another – a UK-style opt-out from some parts of the Agreement. Both solutions were ridden with legal and political uncertainty (Van der Loo, 2016). Ultimately, the answer was found through a Decision of the Heads of state or Government of the 28 member states (European Council, 2016b), representing in effect an international agreement between them.

The Decision did not modify the AA itself. It restated what was or was not in the AA, combining political symbolism with legal bindingness between the EU member states (Wessel, 2016). The Decision opened the door for the Dutch government to bring the ratification of the Association agreement before the Dutch parliament and, ultimately, its entry into force in September 2017.

While decisions of the Heads of State or Government have been used previously to resolve problematic situations (European Council, 2016a), their use to secure the AA ratification is novel. In a crisis-driven negotiation that came with an imperfect solution to a problem brought about by politicization, the EU applied a constitutional-level solution to the ratification process of a treaty with a third party. And while some observers argue that the precedent contains potential risks (Wessel, 2016), its future utility should not be ruled out.

Institutional Level Innovation: Responding to Capacity and Coordination Challenges

As discussed above, the AA/DCFTA agreement created more complex interdependences than the parties, especially Ukraine, could handle at the moment of signing. Ukraine’s access to the EU’s single market, a central DCFTA element, is conditional on legislative harmonization requiring comprehensive reforms and upgrade of Ukraine’s administrative and regulatory capacity. However, it was evident for EU policy makers that there were multiple weaknesses in Ukraine’s state and administrative capacity in 2014, affecting its ability to operate the agreement (De Groot et al., 2019). In terms of policy, the EU

added state building and institution building to its key goals in Ukraine and started funding reforms under these headings (Wolczuk, 2019).

On the EU's side there have been a number of institutional actors involved in the different stages of a trade agreement, from the formulation of a negotiation mandate to the actual negotiations and ratification: from the Commission (DGs Trade, NEAR) to the Council of Ministers and, post Lisbon, the Parliament. Nowadays, DG Trade within the Commission and the European External Action Service (EEAS) both play a role in preparing a negotiation mandate (Schade, 2019, p. 56). The member states' role is crucial in ratification, even if the mixed character of association agreements involves some deliberate ambiguity with regards to which parts of agreements fall under which competences (Van der Loo, 2017, pp. 338–42).

A lack of alignment between the objectives and preferences of different institutional actors within the EU has led, in the past, to problems in negotiations with third countries, especially in Latin America (Schade, 2019, p. 213). In addition, when policy challenges arise that have horizontal implications, the Commission can be negatively affected by sectoral fragmentation. When activities and policy priorities have required horizontal coordination for a longer period of time or have had higher political priority, the Commission has created special arrangements, such as the negotiation teams managing enlargement negotiations in Eastern enlargement in 1996–2007.

Linked to these capacity and coordination challenges, we identify a key case of reverse influence at the institutional level. The Support Group for Ukraine (SGUA) was established by a decision of the Commission President in April 2014, 'as a task force to support Ukraine in the implementation of the Association agreement with the EU'. The SGUA is part of the European Commission, with operational staff drawn from a wide range of Commission services and directorates, national administrations and contracted staff. It consists of thematic teams corresponding to the essential reform priorities set out in the EU–Ukraine Association Agreement. The SGUA represents an organizational route to innovation taken to address the problem of coordination of assistance, information and input from the Commission's different DGs, the EAAS and other key stakeholders such as the IMF and the EBRD. The SGUA, however, became much more than a coordination unit, mobilizing political support, donor efforts and coming up with innovative solutions for reform.

A look at organizational precedents points to the Task Force for Greece (TFG) (2011–15) as the unit that most resembles the SGUA in its origin and role. The TFG was created to support Greece in the eurozone crisis, in reforms needed to improve state capacity and public administration, but was hindered by weaknesses. As the Court of Auditors noted, the TFG was unable to act proactively and lacked coordination capacity of funding and planning. Even though the TFG's recommendations on public administration reforms were relevant and helpful, Greek authorities did not follow them (European Court of Auditors, 2015).³ However, the greater power asymmetry in relation to Ukraine as compared to Greece, a member states and an eurozone member, created more favourable conditions for the SGUA to make an impact. Furthermore, the approach of bringing together expertise from different parts of the Commission and the EEAS can

³It is important to note that the SGUA was created in 2014, before the European Court of Auditors had finalized its TFG evaluation report.

be seen as part of the general trend of more joined-up approach in foreign policy set out in the Global Strategy (European Union, 2016).

The creation of the SGUA as an organizational unit and an exceptional task force is a rather unique response to the challenges of AA implementation. Similar Association Agreements, such as the ones concluded with Georgia and Moldova, have not resulted in the creation of a dedicated support group. This innovative approach can, in our view, best be explained with the interaction between coordination and capacity needs and politicization and geo-politicization. The combination of economic crisis with geopolitical pressures created additional incentives for the EU and Ukraine to make the SGUA as functional and effective as possible. Geopolitical processes, as described above, increased the stakes for the EU considerably and linked stabilization of Ukraine with the success of the agreement.

The Policy Level: Responding to Geo-Politicization of the AA

The EU became aware of Russia's grievances against the AA in the spring and summer of 2013. It offered clarifications and reassurances in response, yet maintained that the EU–Ukraine agreement is a bilateral issue to be discussed by the EU and Ukraine (Wiegand and Schulz 2015). The issue was raised again at the EU–Russia summit in January 2014. As Russia's trade penalties and its military advances destabilized Ukraine's economy even further, the EU found itself treading a fine line between supporting Ukraine and saving the AA, and pacifying Russia. The EU's response was multifaceted.

Firstly, as Ukraine's new government declared the desire to proceed with the signature of the AA, the EU opted for a two-phase process: signing the political part of the AA in March 2014, while leaving the more controversial DCFTA to follow Ukraine's presidential elections. This approach was a departure from EU's position in 2012–early 2013 when, in the face of deteriorating democratic standards and selective justice concerns, it delayed signing the AA in its entirety, rather than proceeding only with its economic part. The two-phase signature was justified with issues of domestic legitimacy, but also gave the opportunity to consult with Russia to 'overcome different interpretations and misunderstandings' (Euractiv, 2014). While legally unproblematic, this step was met with disapproval by Ukraine, given the continued uncertainty regarding the fate of the agreement.

Secondly, the EU decided to introduce a set of unilateral autonomous trade measures (ATM) 'in view of the unprecedented security, political and economic challenges faced' (Regulation, 2014). This measure allowed the temporary implementation of the DCFTA tariff preferences in an effort to help Kyiv deal with the economic pressures applied by Moscow. As stated by the European Parliament Rapporteur: 'as Putin closes Russian markets for Ukrainian exports, we are opening them' (European Parliament, 2014). While the introduction of ATMs is not unique in EU's practice, their adoption in Ukraine's case proved vital, given the delays in provisional application.

Thirdly, in the summer of 2014 the EU took the unprecedented step of setting up a tri-lateral process to discuss Russia's concerns. While the aim was to discuss the effects of the implementation of the Association Agreement, it was a clear departure from EU's previous stance. The talks gave Russia the opportunity to elaborate on its position but also make far-reaching demands as to the contents and coverage of the agreement: for example, Russia proposed to exclude 20 per cent of tariff lines from the EU–Ukraine free trade

regime (Dragneva and Wolczuk, 2014). In addition to setting up the trilateral forum, in September 2014 the EU agreed to postpone the start of the provisional implementation of the AAs. While this decision was framed as a ‘business as usual’, it risked giving credence to Russia’s narrative as well as setting a problematic precedent in relations with other partners.

As the talks struggled on, the EU rejected the pressure to revise the DCFTA, in favour of looking for solutions to Russia’s concerns ‘within the framework of the DCFTA’s flexibility’. Yet, it became clear that the EU’s approach, focused on technocratic problem-solving was at odds with Russia’s geopolitical understanding of relations (Dragneva and Wolczuk, 2014).

Ultimately, this unprecedented trilateral formula failed to produce a solution. The delay of the provisional application came to an end on 1 January 2016, with Russia ramping up trade restrictions in response. The brief – and largely unknown to the public – talks can be classified as a failed adaptive mechanism on the side of the EU, aiming to alleviate Russian concerns. In terms of our analysis, they were an unsuccessful innovation that did not take root.

While the 2014 geopolitical escalation and its aftermath cannot be attributed solely to the AA and its effects, Russia’s grievances towards it were a politicized domestic response to the continued re-orientation of Ukraine in trade and foreign policy. The EU, in a response to the annexation of the Crimea, evolved a more traditional foreign policy, sanction-based response.

Starting in March 2014, the EU imposed restrictions on individuals, officials and entities held responsible for violations of the territorial integrity of Ukraine, including travel bans and asset freezes (Council Regulation, 2014), followed by a range of sectoral measures and restrictions on economic cooperation. The package evolved to include more individuals and corporate entities across sectors and companies (investing or working in the Crimea), and has been renewed with decisions taken by unanimity every six months between 2014 and 2022.

While sanctions have been a well-used part of the EU’s toolbox since the Treaty of Maastricht, the sanctions agreed with relation to the Crimea annexation and later after the start of the Russian invasion have been unprecedented in scope and speed. Recent analyses recognize that the EU’s use of sanctions is increasingly fine-grained, more precise and targeted than in the 1990s (Giumelli et al., 2021, p. 18). Responding to Russia’s aggression with fast decisions and new measures suggests that the EU evolves as a more geopolitically aware power.

In a further demonstration of this approach, in May 2022 the EU agreed to the temporary suspension of tariffs and quotas levied on Ukrainian exports, including sensitive goods. This step was described as ‘the fundamental, first step in view of a potential “Marshall Plan” the EU wants to put in place for the future recovery of Ukrainian partners’ (Euractiv, 2022).

Conclusions

In this paper, we have argued that Ukraine, as a third country, has so far exercised no reverse influence on the EU *acquis* through the negotiations or framework of the AA/DCFTA. Instead, reverse influence can be observed in innovations at the constitutional,

institutional and policy levels that the Union has to put in place to secure its legal and practical completion. We show that even before the watershed moment of the Russian–Ukrainian war of 2022, there has been considerable innovation in EU’s policies in securing the completion of the EU–Ukraine agreement. Broadly, we can say that most important feature of the EU’s adaptation is that it has been driven by the need to make the agreement with Ukraine work in terms of its successful application and implementation in Ukraine.

Three sets of factors have led to these innovative adaptations in the EU, related to the asymmetry and complexity of the agreement in conjunction with the lack of state and administrative capacity in Ukraine; domestic politicization of the agreement in the EU and Ukraine; and geo-politicization in the region. The effects of these factors have been intertwined and have varied over time, with asymmetry defining the features of the association agreement, while politicization and geo-politicization determined the dynamics of EU response after signing the agreement.

Initially, the asymmetry between the EU and Ukraine ensured Ukraine’s limited regulatory or legal influence over the EU during the negotiations: the EU was able to download its legal template and impose strict conditionality for the protection of the integrity of the internal market. Over time, however, the cost of non-agreement has increased in the face of politicization and geo-politicization. A failure of the agreement came to represent a threat for EU policies, values and reputation, not to mention the risk of losing statehood and democracy in Ukraine.

Following the Russian invasion of Ukraine in 2022, this trend has reached an unprecedented acceleration. While Russia’s war in Ukraine cannot be attributed to the effects of the Association Agreement, and even official Russian rhetoric was not targeting it, the conflict has forced the Union to take new steps and reinvent its response. The most recent and unprecedented step was the European Council agreement, in June 2022, to grant Ukraine the status of a candidate state.

These developments, historical as they are, are building on institutional and policy developments in EU security and defense policy, starting from the EU’s Global Strategy (European Union, 2016) and including the upgrade in financial support for EU operations that was envisaged with the creation of the European Peace Facility. Multiple institutional and organizational developments and a new assessment of threats and the instruments needed to respond to them are reflected in the EU’s Strategic Compass introduced in March 2022. It remains to be seen whether these strategic developments and policy tools will equip the EU to respond to the unprecedented challenges it and its associated partner Ukraine are currently facing.

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