

POLITICAL CONDITIONALITY IN EU

EXTERNAL AGREEMENTS:

TOWARDS A MORE SOPHISTICATED APPROACH

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OUTLINE

- The multiple faces of conditionality
- Political conditionality in the new generation of Association Agreements
- Political conditionality and the process of visa liberalisation

THE MULTIPLE FACES OF CONDITIONALITY

	Ex-ante	Ex-post
Positive	Conditions need to be fulfilled as a <i>prerequisite</i> to the granting of <i>benefits</i>	Granting of <i>additional benefits</i> conditioned on performance <i>during the course of a relationship</i>
Negative	<i>Reducing or suspending</i> benefits <i>before entering into</i> beneficial cooperation or agreements	<i>Reducing, suspending or terminating</i> benefits <i>during the course of a relationship</i>

Source: S. Koch, "A typology of Political Conditionality Beyond Aid: Conceptual Horizons Based on Lessons from the European Union, *World Development* (2015), 97-108

Political conditionality
(democracy, rule of law, human rights)



Acquis conditionality
(primary and secondary EU legislation)

HOW TO CLOSE THE GAP ?

- ***The role of external actors***
 - Rule of law checklist of the CoE Venice Commission
 - OSCE/ODIHR election observation
 - UN committee on the elimination of racial discrimination

- ***The introduction of new instruments***
 - Soft law mechanisms
 - Action Plans, monitoring reports, etc.
 - Safeguard clauses
 - Bilateral agreements and unilateral instruments

THE ASSOCIATION AGREEMENTS

ARTICLE 2 AA

*“Respect for democratic principles, human rights and fundamental freedoms, as defined in particular in the Helsinki Final Act of 1975 of the CSCE and the Charter of Paris for a new Europe of 1990, and other relevant human rights instruments, among them the UN Universal Declaration of Human Rights and the ECHR, and respect for the principle of the rule of law shall form the basis of the domestic and external policies of the Parties and constitute **essential elements** of this Agreement. [...]*”

Article 478

Appropriate measures in case of non-fulfilment of obligations

1. A Party may take appropriate measures, if the matter at issue is not resolved within three months of the date of notification of a formal request for dispute settlement according to Article 477 of this Agreement and if the complaining Party continues to consider that the other Party has failed to fulfil an obligation under this Agreement. The requirement for a three-month consultation period shall not apply to exceptional cases as set out in paragraph 3 of this Article.

2. In the selection of appropriate measures, priority shall be given to those which least disturb the functioning of this Agreement. Except in cases described in paragraph 3 of this Article, such measures may not include the suspension of any rights or obligations provided for under provisions of this Agreement, mentioned in Title IV (Trade and Trade-related Matters) of this Agreement. These measures shall be notified immediately to the Association Council and shall be the subject of consultations in accordance with paragraph 2 of Article 476 of this Agreement, and of dispute settlement in accordance with paragraph 3 of Article 476 and Article 477 of this Agreement.

3. The exceptions referred to in paragraphs 1 and 2 above shall concern:
 - (a) denunciation of the Agreement not sanctioned by the general rules of international law, or
 - (b) violation by the other Party of any of the essential elements of this Agreement, referred to in Article 2 of this Agreement.

POLITICAL DIALOGUE

- Article 4, 2 (e) AA
 - “to strengthen respect for democratic principles, human rights and fundamental freedoms, including the rights of persons belonging to national minorities, non-discrimination of persons belonging to minorities and respect for diversity, and to contribute to consolidating domestic political reforms”

Article 6

Dialogue and cooperation on domestic reform

The Parties shall cooperate in order to ensure that their internal policies are based on principles common to the Parties, in particular stability and effectiveness of democratic institutions and the rule of law, and on respect for human rights and fundamental freedoms, in particular as referred to in Article 14 of this Agreement.

TITLE III

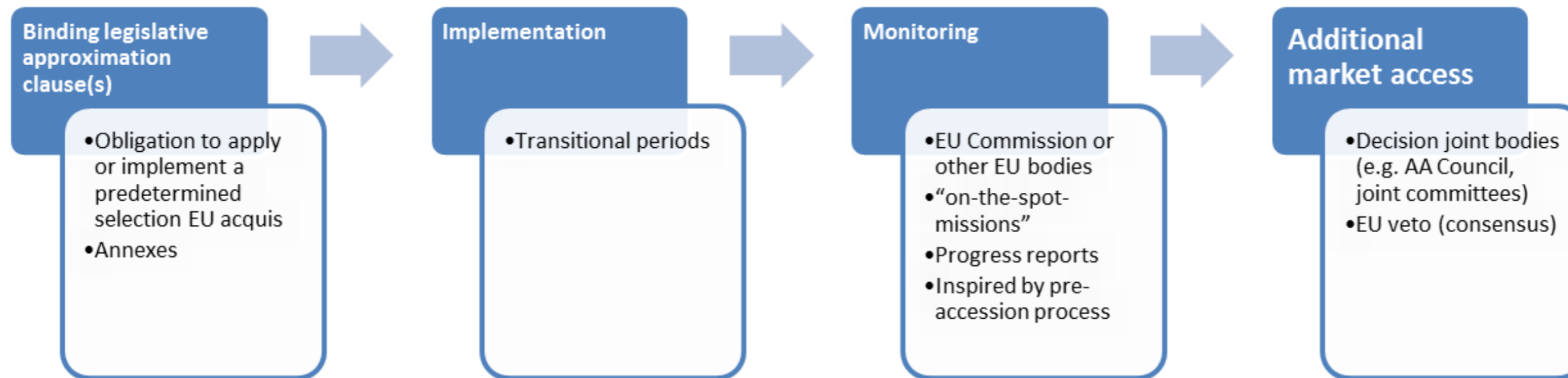
JUSTICE, FREEDOM AND SECURITY

Article 14

The rule of law and respect for human rights and fundamental freedoms

In their cooperation on justice, freedom and security, the Parties shall attach particular importance to the consolidation of the rule of law and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation will, in particular, aim at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption. Respect for human rights and fundamental freedoms will guide all cooperation on justice, freedom and security.

ACQUIS CONDITIONALITY – DCFTA PART



See: G. Van der Loo, *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Association. A New Legal Instrument for EU Integration without Membership*, Brill, 2016.

THE PROCESS OF VISA LIBERALISATION

Article 19

Movement of persons

1. The Parties shall ensure the full implementation of:
 - (a) the Agreement between the European Community and Ukraine on the Readmission of Persons of 18 June 2007, (through the joint readmission committee set up by its Article 15);
 - (b) the Agreement between the European Community and Ukraine on the Facilitation of the Issuance of Visas of 18 June 2007, (through the joint committee for management of the agreement set up by its Article 12).
2. The Parties shall also endeavour to enhance the mobility of citizens and to make further progress on the visa dialogue.
3. The Parties shall take gradual steps towards a visa-free regime in due course, provided that the conditions for well-managed and secure mobility, set out in the two-phase Action Plan on Visa Liberalization presented at the EU-Ukraine Summit of 22 November 2010, are in place.

EX-ANTE CONDITIONALITY

- Visa Liberalisation Action Plans (VLAPs) - 4 blocks of benchmarks and 2 stages:
 - Document security, including biometrics
 - Irregular migration, including readmission
 - Public order and security
 - External relations and fundamental rights
- Commission monitoring

EX-POST CONDITIONALITY

- Suspension mechanism in Council Regulation 539/2001 (strengthened since 1 March 2017)
 - Commission monitoring up to 7 years after entry into force of visa liberalisation
 - First report issued on 20 December 2017
 - Member States may notify Commission in case of substantial increase of irregular migration, asylum applications, decrease in cooperation on readmission or an increased risk or threat to public security

CONCLUSIONS

- The gap between political and *acquis* conditionality as a key challenge for the EU
- The crucial role of external actors and political dialogue
- A holistic approach to conditionality
- Lessons learnt
 - The role of benchmarks and implementation monitoring

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