

## THE TRANSFORMATIVE POWER OF THE EU-UKRAINE DCFTA: EVIDENCE FROM THE ONGOING DEREGULATION REFORM IN UKRAINE

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**Abstract:** *The lack of genuine transformative power in the region was repeatedly distinguished as a major weakness of the Eastern Partnership (EaP) in Ukraine. However, the intensity and comprehensiveness of ongoing reform processes cause the need to revise the transformative power of the initiative in general and specific incentives in particular. Thus, the paper aims to assess the transformative power of the EU-Ukraine DCFTA, based on the evidence from the deregulation reform that represents an important prerequisite for the intensification of the EU-Ukraine economic relations. The study focuses on the general economic aspects of deregulation and combines 'black letter law' approach with an empirical insight into the reform's implementation. The results of the study show that the EU-Ukraine DCFTA holds significant transformative power with regard to the deregulation of Ukraine's economy and invite for further reconsideration of the EaP incentives' impact in target states.*

**Keywords:** Eastern Partnership; DCFTA; EU-Ukraine Association Agenda; deregulation reform

**JEL Classification:** K0

### Introduction

The EU's international role and its ability to influence the domestic context in third states have gained significant scholarly attention since the successful Europeanisation of Central and Eastern European (CEE) states<sup>1</sup>. Determining the successful incentives and strategies of transforming domestic legislation and institutions in third states is crucial to improve the EU ongoing structural foreign policy initiatives and shape the new ones.

Studying the EU's transformative power at the current stage of the Eastern Partnership (EaP) is of special interest for a number of reasons. Firstly, already in two years since its introduction the EaP started to be marked as an initiative that has only limited opportunities to exert significant impact on the Eastern neighbours. Such view is primarily associated with the fact that, unlike the CEE 'Europeanisation' project, the EaP does not include a membership perspective for the Eastern neighbours. Boonstra and Shapovalova (2010, pp.10-13) distinguished 'vagueness' of the EaP incentives, thus, pointing out to the EU's inability to deal with the dilemma between 'joint ownership'

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<sup>1</sup> On the analysis of the EU role in the transformation of the CEE states, see, for example: Lavenex (2004); Dimitrova (2002); Schimmelfennig and Sedelmeier (2005).



and conditionality principles. Korosteleva (2012) and Youngs and Pishchikova (2013) viewed the inconsistency of the EU differentiation efforts in terms of the EaP and the significance of Russia's leverage in the region (especially, in Ukraine) as further factors, leading to the failure of the EaP. While the signing of the Association Agreements (AAs), including Deep and Comprehensive Free Trade Areas (DCFTAs) with three EaP countries in 2014 and the liberalization of visa regime with Moldova evidently marked the new step in the EaP development, the extent to which these events influenced the EaP's transformative power remains to be determined.

Second, despite the fact that free trade and visa liberalization are major external incentives of the EaP, there is an evident lack of studies, featuring their impact on the progress within specific reform fields in target states<sup>2</sup>. In turn, ease and transparency of doing business that are to be ensured with the help of the deregulation reform constitute the important prerequisites for the intensification of the EU-Ukraine economic relations. Nevertheless, the ongoing deregulation reform in Ukraine is also reflected in a highly limited number of studies.

Third, considering the nature and scope of the EaP-related transformation creates favourable conditions for revisiting multiple concepts, associated with the EU foreign policies' impact on target states. Apart from 'transformative power', such concepts as 'civilian power', 'normative power' and 'structural power' are to be considered to create a framework for assessing the EU foreign policies' ability to facilitate transformation in the EaP states.

The above considerations determine the following structure of the argument. Foremost, the scope of the notion of 'transformative power' is explained, based on comparing and contrasting 'transformative', 'civilian', 'normative' and 'ethical' power Europe. The next step includes a brief legal analysis of the EU-Ukraine DCFTA and the major dimensions of its implementation. Then, the case of the EU's facilitation of the deregulation reform (in light of the DCFTA implementation) is addressed in three major contexts. First, the intent for launching the deregulation reform is addressed. Secondly, the means the EU uses to facilitate the reform and their implications for its implementation are discussed. Finally, the actual impact of the reform is assessed, based on the available progress reports and analytics. An overall assessment of the DCFTA in relation to the deregulation reform is provided.

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<sup>2</sup> For general impact assessments of the DCFTAs with EaP states, see: Muravska and Berlin (2016); Van der Loo (2016).

## 1. Conceptualizing Transformative power Europe

Since the EU has become actively involved into international affairs via its Common Foreign and Security Policy (CFSP), there has been a debate whether the multifaceted activities, conducted by the Union under the CFSP umbrella, can be viewed as a foreign policy<sup>3</sup>. The rationale for such debate deals with the fact that “the EU is neither a state, nor a non-state actor, neither a conventional international organization nor an international regime” (Ginsberg, 1999, p. 432). Given the move to an increased consistency of the EU external action, introduced by the Treaty of Lisbon<sup>4</sup>, it is generally accepted that the Union has its own foreign policy, different from those of its Member States (MS). In turn, a question remains concerning the kind of power the EU has in international affairs.

One of the oldest concepts, created to address the peculiarities of the European Communities’ role in the international arena, was the one of ‘civilian power’, introduced by Duchene (1973). Discussing the power of European Communities, Duchene (1973) emphasized that its MS are “long on economic power and relatively short on armed force” (pp. 19-20). Smith (2005) mentioned that civilian powers rely mostly on ‘economic, diplomatic and cultural policy instruments’ (p. 1). Underlining the dichotomy between military and non-military foreign policy means, Keukeleire and Delreux (2014) interpret the EU as a ‘relevant foreign policy actor’ that promotes universal values, is highly active in development assistance and acts as an active proponent of multilateral solutions (p. 75). According to Maull (1990), the major traits of a ‘civilian power’ include the “acceptance of the need to cooperate with others in order to achieve international objectives”; the concentration on non-military, primarily economic means to secure the international goals, as well as ‘a willingness to develop supranational structures to address critical issues of international management’ (Maull, 1990, pp. 92-93).

Along with civilian means, civilian ends and democratic control are viewed by Smith (2005) as an essential feature of a ‘civilian power’. Initially introduced by J. Nye in the end of the 1980s, the terms ‘soft power’ was further extended by the author to mean ‘the ability to affect others through the co-optive means of framing the agenda, persuading, and eliciting positive attraction in order to obtain preferred outcomes’ (Nye, 2011, pp. 20-21). The major considered sources of soft power

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<sup>3</sup> For an overview of the debate related to the nature and scope of the CFSP as a ‘fully-fledged foreign policy’ see, Keukeleire and Delreux (2014), pp. 49-50.

<sup>4</sup> The Treaty of Lisbon brought a number of changes into the EU foreign policy domain. Firstly, the Treaty provided the EU with express legal personality, having formally merged the European Communities and European Union. Secondly, the Lisbon treaty introduced shared principles, governing different areas of the EU external action, ranging from CFSP to trade and development issues. Thirdly, the Treaty created a unified system of the EU external representation, including the introduction of the European External Action Service and the position of the High Representative of the Union for Foreign Affairs and Security Policy.

include a state's culture, its political values and institutions, as well as the legitimacy of its foreign policy (Nye, 2011, pp. 20-21).

Empirical studies by Azpiroz (2015) and Nielsen and Vilson (2014) distinguish four EU-specific sources of soft power. First, the EU positions itself as a model for regional integration. The EU's motto 'united in diversity' is coined to show how shared goals (peace and prosperity) brought Europeans together and allowed them to rely on multiple synergetic effects. Secondly, the Union is praised for its adherence to universal values, such as democracy, human rights and the rule of law. Moreover, elaborate institutional balance and decision-making procedures in the EU contribute to the Union's being perceived as a reliable and accountable actor. Finally, the value-based approach to foreign policy<sup>5</sup> and increased consistency of the EU external action following the adoption of the Lisbon Treaty contribute to the EU's legitimacy as an external actor.

'Normative power Europe' (NPE), a debatable concept, aimed to address the EU's 'ability to define what passes as 'normal' in world politics' was coined by I. Manners (2002, p. 232). According to Niemann and Wekker (2010), the EU has a "special claim to constitute a normative power" due to positioning itself as a 'Community based on the rule of law' (p. 4). While the NPE is predominantly civilian, it still differs from the concept of 'civilian power' by emphasizing ideational, rather than economic sources of influence. Similar to 'soft power', the NPE rejects the idea of coercion in international relations, relying on the universal nature of promoted norms, free from self-interest-based agenda. Operationalizing the concept, Niemann and Wekker (2010) distinguish between three levels of analysis, such as normative *intent* (genuineness of the normative commitment); normative *process* (inclusiveness and reflexivity) and normative *impact* (the evolution of norms in third countries).

While the NPE concentrates on the EU's ability to exert impact on norms via its foreign policy, the concept of structural foreign policy deals with the Union's ability to 'influence long-term processes and shape political, legal, socio-economic and other structures in third countries, in other regions in the world and at the global level' (Keukeleire and Delreux, 2014, p. 3). The framework for analysis includes policy objectives, policy outputs (instruments and budget), actual implementation of the policy, as well as its outcomes (Keukeleire and Delreux, 2014, p. 5).

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<sup>5</sup> According to the Art.21 of the Treaty on the European Union, 'the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the European Union'.

The above brief outlook of the concepts related to the EU power at the global stage testifies the fact that, despite ambiguities and criticism<sup>6</sup>, they can be clearly defined and operationalized. On the contrary, the concept of transformative power, frequently used to address the EU achievements in the CEE and EaP states, lacks definition and a framework for assessment (Grabbe, 2014; Börzel and Risse, 2009). To define *transformative power*, one needs to start with the notion of ‘transformation’ in relation to the post-Soviet states. According to Mungiu-Pippidi (2008), a ‘transformation’ is “a complex process of a shift from command to market economy, and from the monopolistic political system to the democratic pluralism and the rule of law” (p. 4). Elster, Offe and Preuss (1998) emphasize the role of institutions for a successful transformation. Furthermore, according to Almond (1974), the genuine transformation policy includes a range of dimensions, such as:

1. Limiting the scope and supporting the reconsideration of functions in the government;
2. Creating the rule of law;
3. Creating single political community and identity;
4. Ensuring participation and a functioning accountability systems;
5. Accumulating capital for economic development and achieving economic stability following the restructuring.

Taking into account the above approaches to ‘transformation’ and the EU power, elaborating the working definition of the EU ‘transformative power’ becomes possible.

For the purposes of this paper, ‘*transformative power*’ means an extent to which the EU is able to influence a shift from command to market economy and the creation of genuine democracy and the rule of law in a target country, emphasizing structures and using solely non-coercive means. Operationalizing the ‘transformative power’, one can follow the above patterns of normative and structural powers.

First, the Union shall assist a target state to undergo a transformation. Second, this intent shall find its reflection in specific legal and implementing instruments. Finally, the EU efforts are to lead to a tangible impact in a target state.

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<sup>6</sup> The major claims of the opponents of the civilian and Normative Power Europe (NPE) concern the EU self-interests it is alleged to promote in the wider world. For example, M. Merlingen (2007), a neo-realist critic of the NPE, addresses the EU foreign policy as ‘self-styled mission for humanity’, characterized by ‘epistemic violence, the technologisation of politics and administrative arbitrariness’.

## **2. The EU-Ukraine DCFTA. Overview of the Agreement and Major Dimensions of its Implementation**

The DCFTA between the EU and Ukraine represents a part to a broader EU-Ukraine AA, as well as one of the crucial external incentives for the transformation of an economic system in Ukraine.

Importantly, the DCFTA is meant to go far beyond a traditional agreement, providing for a mutual reduction of tariffs. Apart from the elimination of tariff barriers to trade, the EU-Ukraine DCFTA provides for the compliance of technical regulations, sanitary and phytosanitary measures and public procurement legislation. The Agreement also contains chapters related to the cooperation regarding intellectual property, trade-related energy-issues, competition policy etc.

The entry into force of the DCFTA on 1<sup>st</sup> January 2016 is viewed by the EU as providing Ukraine with a novel opportunity to “stabilise, diversify and develop its economy to the benefit of all its citizens” (Delegation to the European Union to Ukraine, 2016). According to the estimations, announced by the European Commission, the application of the DCFTA is expected to increase the GDP of Ukraine by ca.6 percent in medium term and 12 percent in terms of ‘increased welfare for Ukrainians’ (Delegation to the European Union to Ukraine, 2016).

The implementation of the DCFTA includes several important dimensions:

- Both parties’ adopting major DCFTA commitments (e.g., the reversion of tariffs, application, administration of tariff quotas and administration of new rules of origin);
- Legal approximation across a significant body of economics- and trade-related legislation, as well as an adoption of specific parts of *acquis communautaire* into the national legislation of Ukraine;
- Institutional and administrative reforms (e.g., the reform of competition legislation, the deregulation reform);
- EU support for the above changes, realized through multiple financial and technical assistance projects (mainly, private sector support) (DAI Europe, 2014, p. ii).

Serving as one of the envisaged ends of the DCFTA implementation, the improvement of the regulatory environment for business in Ukraine simultaneously represents an essential prerequisite for the intensification of the EU-Ukraine economic and trade relations. However, the rationale for the EU’s support for the reform of deregulation is not limited to the intensification of the EU-Ukraine economic ties *per se*. The interplay of issues, conditioning the Union’s commitment to supporting the deregulation in Ukraine as a prerequisite and also a goal of the DCFTA implementation is considered in the following chapter.

### **3. The analysis of the EU transformative power in light of the deregulation**

#### ***a) EU's intent. Why the reform of deregulation in Ukraine?***

According to the context analysis, contained in the Commission Implementing Decision on the Special Measure 2015 for Private Sector Development, economic performance of Ukraine has been below its potential since its independence in 1991.

The study of the key EU documents<sup>7</sup> related to the EU-Ukraine economic cooperation and economic situation in Ukraine, issued between 2011 and 2015, allows singling out the following tightly interrelated factors that determine an unsatisfactory economic performance of Ukraine:

- - Absence of long-term strategies and institutional weaknesses;
- - Structural weaknesses (concentration on commodity-derived exports), as well as the lack of diversification and innovation in private sector;
- - Widespread corruption and the lack of transparency (especially, in the areas of taxation and customs);
- - Unsatisfactory state of investment and entrepreneurial climate.

An important practical implication of the above issues is that Ukraine tends to be rated low in international ratings, such as 'Doing Business'<sup>8</sup> and the 'Index of Economic Freedom'<sup>9</sup>. According to the World Bank (2016), major regulation challenges in Ukraine deal with obtaining construction permits, paying taxes, protecting minority investors, as well as trading across borders and resolving insolvency.

Analysing the regulatory issues in conjunction with the implementation of the EU-Ukraine DCFTA, experts distinguish the following problems that prevent an effective use of the DCFTA potential:

- 'Clientelistic' state-business relations;

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<sup>7</sup> The considered documents include ENP Progress Reports 2012-2015; Council decision of 14 April 2014 providing macro-financial assistance to Ukraine (EUR 1 billion) and Commission's implementing decision of 23 April 2015 on the Special Measure 2015 for private sector development and approximation in favour of Ukraine to be financed from the general budget of the European Union.

<sup>8</sup> The 'Doing Business' rating is annually compiled by the World Bank group to assess an extent to which the conditions are favourable for doing business in different countries of the world. The dimensions of assessment include the registration of enterprises, getting authorizations for construction, acquiring the right to use electricity systems, registration of ownership rights, getting loans, the protection of minority investors, taxation, international trade, ensuring the contracts' enforcement and dealing with bankruptcy issues.

<sup>9</sup> The Index of Economic Freedom is annually represented by the Heritage Foundation. It includes four basic pillars of economic freedom, such as the rule of law; limited government (e.g., government spending); regulatory efficiency (business freedom; labour freedom) and open markets (trade freedom; investment freedom).

- Inconsistent harmonization of Ukraine's business legislation to *acquis communautaire*;
- The lack of credits for the development of production plants (Langbein, 2012, pp.3-4).

Aiming to both boost the EU-Ukraine economic relations and improve economic situation in Ukraine (especially, in relation to investment climate and conditions for doing business), the EU takes steps to counter the factors, leading to Ukraine's economic underperformance. According to the European Commission (2015), a key action shall deal with "urgent and far-reaching reforms of doing business in Ukraine" and the promotion of diversification and innovation by small-and medium-sized enterprises (SMEs) (p.8).

Along with multiple required changes (e.g., creation of anti-corruption institutions, revision of anti-trust legislation etc), removing additional regulatory barriers is an essential step for improved investment climate and the development of SMEs. (ICPR, 2015, pp.5-6)

To sum up, the EU's support for the reform of deregulation in Ukraine represents a crucial aspect of the EU's strategy, aimed to improve an economic situation in Ukraine and promote the implementation of the free trade area.

### ***b) Implementation of the reform***

The EU influences the implementation of the deregulation reform in Ukraine in a number of ways.

Foremost, the EU-Ukraine bilateral agreements (namely, the EU-Ukraine AA and the EU-Ukraine Association Agenda) contain Ukraine's obligation to conduct internal reforms, including the reform of deregulation. The Ukraine commitments under the EU-Ukraine Association Agenda include the reduction of excessive regulations for business (especially, SMEs); conducting SME policy, based on the Small Business Act for Europe and the EU 'best practices' and the establishment of the bilateral dialogue with SME representatives (EU-Ukraine Association Council, 2015). Moreover, the Association Agenda obliges Ukraine to harmonize its legislation with the EU norms in a range of business-related fields, such as company law, corporate governance and the protection of minority shareholders, accounting and auditing (EU-Ukraine Association Council, 2015).

The EU-Ukraine bilateral documents also serve as a basis for the elaboration of domestic framework legislation on deregulation. Rather general formulations of numerous steps to be undertaken to improve business conditions are contained in the Decree of the President of Ukraine 'On the Strategy of Sustainable Development 'Ukraine-2020' of 12 January 2015.



In turn, the Agenda on deregulating business activities provides for 131 specific tasks that are to be completed by various ministries and state regulatory bodies over the period from 2015 to 2017. Among the advantages of the Agenda experts single out clear and specific formulations, as well as addressing pressing issues in crucial business sectors (agriculture, food, electric energy, construction, information technologies and telecommunications) (ICPR, p.8).

Second, the deregulation reform is tightly interconnected with the approximation of Ukraine's legislation to *acquis communautaire*. The Agenda on the implementation of the EU-Ukraine Association Agreement concentrates on achieving convergence of the EU and Ukraine's regulatory environments. The steps to be taken include *inter alia* the approximation of technical regulations, standards and assessing compliance; improvement of product marking requirements; the approximation of Ukraine's legislation to *acquis communautaire* in the field of sanitary and phytosanitary measures etc. Special emphasis is made of the promotion of trade through the simplification of customs rules and their approximation to the EU standards (Cabinet of Ministers of Ukraine, 2014).

Moreover, the EU supports the approximation of Ukraine's legislation to *acquis communautaire* through a broad range of projects (including Twinning initiatives)<sup>10</sup>.

Third, it is worth mentioning that the EU-Ukraine AA is characterized with enhanced conditionality that has historically been a key strategic tool of the ENP. As opposed to the vast majority of the association agreements with third states, the EU includes the 'dialogue and cooperation on domestic reform and 'cooperation on justice, security and freedom' as essential elements of the agreement for the purposes of the conditionality clause (Van der Loo, Van Elsuwege and Petrov, 2014, p. 12).

Thus, the government's failure to implement domestic reforms, envisaged by the AA and the EU-Ukraine Association Agenda may lead to a suspension of the AA, if a conditionality clause is invoked. Along with the 'common values' conditionality, the AA also provides for a so-called 'market access' conditionality, directly linked to the process of legislative approximation<sup>11</sup>.

In turn, the extent of Ukraine's access to the Single Market is conditional upon the stage of the approximation process. Thus, strong conditionality clauses and an inclusion of elaborate monitoring

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<sup>10</sup> The major projects, touching upon deregulation, implemented by the EU in Ukraine over the period from 2010 to 2015 concentrated on (1) promoting mutual trade by removing technical barriers to trade between Ukraine and the EU; (2) harmonization of Public Procurement system in Ukraine with EU standards; (3) supporting Ukraine in approximating its phytosanitary legislation with the EU standards etc.

<sup>11</sup> For an in-detail legal analysis of the phenomenon of 'market access' conditionality and the examples of conditionality clauses (related to the legislative approximation process), see: Van der Loo, Van Elsuwege and Petrov (2014).

procedures<sup>12</sup> help to ensure quality and timeliness of the Ukrainian government's fulfilling obligations that stem from the AA.

Fourth, the EU promotes the involvement of multiple stakeholders into conceptualizing the reform by welcoming such involvement through diplomatic means and granting financial support to reform-oriented NGOs<sup>13</sup>. Thus, an important feature of the deregulation reform's implementation deals with the fact that the reform team includes the representatives of civil society and business community, and involves at least two independent coordination mechanisms.

In particular, the concept of the reform, elaborated by the Ministry for Economic Development and Trade of Ukraine provides for the creation of the Better Regulation Delivery Office (BRDO).

The BRDO is an independent project that is financed by international donors (including the EU and the Government of Canada). Focusing on the areas of regulation, most sensitive for SMEs (e.g., construction, food and agriculture retail), the BRDO office realizes a range of own projects and coordinates the activities of different members to the deregulation team, such as state agencies, business community and civil society representatives (BRDO, 2016). The coordination function is also exercised by the National Reform Council.

The civil society's and business community's representatives participate in the development and realization of the deregulation initiatives via several avenues, such as:

- Common working groups, facilitated by the Deregulation Office, established by the Ministry for Economic Development and Trade (Ministry for Economic Development and Trade, 2015);
- Thematic forums, organized by civil society and international donors;
- Participation in discussing draft laws in terms of parliamentary committees.

Given the emergence of the modes of the work of the reform-oriented NGOs and the volume and scope of the EU's civil society support, the ongoing reform process can be viewed as an important forum of NGOs empowerment.

Along with empowering civil society actors to contribute to the design of the deregulation reform and the monitoring of its implementation, the EU links the creation of favourable conditions for business with empowering SMEs.

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<sup>12</sup> Apart from the Ukrainian government's obligation to provide reports to the EU in accordance with the respective deadlines, envisaged by the EU-Ukraine AA, Art. 475(3) of the AA envisages the creation of "on-the-spot missions" to monitor the approximation process. These missions can include the representatives of the EU institutions, agencies and bodies, as well as NGOs, supervisory bodies and independent experts.

<sup>13</sup> For instance, on June, 1<sup>st</sup> 2016, the European Commission launched a new stage of supporting the 'Reanimation Package of Reform', a platform that brings together 59 key reform-oriented NGOs in Ukraine. The amount of support constitutes 965 thousand euro that are to be spent over the period of the next two years.

In multilateral terms, Ukrainian small and medium-sized enterprises (SMEs) can benefit from the EaP SME Flagship Initiative and DCFTA Facility for SMEs. As opposed to the latter, the former does not only provide funding for SMEs, but promotes the development of SME-friendly policies and support of external institutions and intermediaries (e.g., local banks). While acting at the level of SMEs, both initiatives aim to improve businesses' access to finance and markets, as well as enable them to comply with the EU technical regulations.

In bilateral terms, the EU supports Ukraine's private sector through the programme EU Support to Ukraine to Relaunch the Economy that was started in terms of 2015 Special Measure for Private Sector Development and Approximation. Acting in synergy with the above instruments, EU SURE aims to support a range of stakeholders to elaborate effective economic development policies, including the promotion of SMEs. Special emphasis is put on building regional capacity and developing citizens' entrepreneurial skills.

Finally, by supporting the work of the BRDO, the EU promotes the following innovative methodologies:

- Systemic analysis<sup>14</sup> of existing acts (via the creation of the 'regulatory trees') and prioritization of acts for their further assessment;
- Systemic assessment of legal acts ('rolling review'), based on specific criteria, including a potential to generate corruption; comfort for business; costs of the application; effectiveness and the compliance with the requirements of the EU-Ukraine DCFTA;
- Creating the packages for change in different sectors;
- Modernized indexes to assess the regulatory effects of newly adopted regulations (with a special account on the needs of SMEs), as well as the work of state regulatory agencies (Better Regulation Delivery Office, 2016).

The above analysis testifies to the fact that the EU's application of various legal and implementing instruments to support the implementation of the EU-Ukraine AA conditions important features of the current deregulation reform. These instruments and their features are summarized below.

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<sup>14</sup> It is important to underline that the current wave of deregulation is the first one that includes the systemic analysis and assessment of all the body of legislation, providing for the design of the regulatory environment. While previous waves of deregulation (1994, 2004, 2010) provided for the selective reconsideration of existing legislation (ISPR, 2015), the mission of the BRDO provides for analyzing existing regulatory environment as a whole. Both BRDO and 'Easy Business' focus not only on the general economic aspects of deregulation, but specific sectors (e.g., transport, construction, energy and agriculture).

**Table 1 - EU's influence on the reform of deregulation in Ukraine**

<b>EU instruments</b>	<b>Effects and reforms' features</b>
Including the reform of deregulation as Ukraine's obligation into the EU-Ukraine Association Agenda	- External incentives (e.g., aid) and external monitoring as triggers for quality and timely implementation of the reform
Including highly specific approximation clauses into the scope of the DCFTA	The reform's strong link to the approximation process, leading to a more 'technocratic' design of the reform <sup>15</sup>
Enhanced conditionality, directly linked to the implementation of reforms and approximation process, supported by strengthened monitoring procedures	Promotion of timely and quality fulfillment of Ukraine's obligations under the AA Orientation on specific results, 'technocratization' of the reform
Civil society support and welcoming the cooperation of different groups by diplomatic means	- The reform as a forum for the empowerment of reform-oriented NGOs - Inclusion of civil society, business representatives and independent coordinating bodies into the design and implementation of the reform - Critical view, the use of innovative methodologies and progress measurement strategies - Comprehensiveness of the reform - Extensive media and social media coverage
Support for SMEs' development	- Simultaneous promotion of favourable conditions for SMEs and SMEs' empowerment

Source: Author's representation

**c) Impact**

The joint efforts of a range of state institutions, civil society organizations and business community activists led to the improvements in several domains of the general economic aspects of deregulation, notwithstanding the successes in specific sectors (e.g., the deregulation of the pharmaceutical market). The major dimensions of change concern:

- Public services;
- Reduction of the number of permits, authorizations and checks;
- Protection of business' interests.

*Public services* June 2015 marked that the launch of a new unified web-portal of public services [igov.org.ua](http://igov.org.ua) started to work. By the end of 2015 citizens were able to obtain 72 public services online in areas related to the functioning of the Ministry for Interior, construction, immovable assets, land and taxes. 47 services were made available for business (related to construction, immovable assets,

<sup>15</sup> For the discussion of the EU 'technocratic' governance in the EaP states, see: Korosteleva, E. (2015), The EU and Belarus: democracy promotion by technocratic means? *Democratization*, pp.1-23.

land, protection of the environment, trade and outer economic activities, as well as culture, art and religion). It is planned that by the end of 2016 five hundred public services will be delivered via the portal that will constitute one fifth of the general number of public services in a state (Ministerial Office of the Secretary of the Cabinet of Ministers, 2015, p.44).

A number of e-services also became available from the official website of the Ministry for Justice. They concern state registration of business, the registration of ownership and related rights, the activities of insolvency officers and conducting online sales of arrested ownership.

*Reduction of the number of permits, authorizations and checks*

Transferring to the next point, it is worth mentioning significant progress related to the implementation of the Agenda on deregulating business activities in Ukraine. According to the information, provided by the State Regulatory Service of Ukraine, 91 out of 131 planned changes have been executed by the 18<sup>th</sup> March 2016 (State Regulatory Service of Ukraine, 2015).

First of all, the procedures were simplified and the timelines of obtaining special licenses and certificates were shortened in three key areas, such as agriculture, food and drinks and energy. It is expected that the novelties will prevent delays of grains' supplies and, subsequently, promote the simplification and cheapening of the grains' supply chains in Ukraine.

Second, special attention was paid to amending the Law of Ukraine 'On licensing different types of business activities' no 222-VIII. The most important changes include:

- Reducing the number of licensed types of business activities from 57 to 30;
- Including an option of obtaining a license distantly, also in an electronic form;
- Providing for termless licenses;
- Creating a unified electronic database to include the data regarding licensing;
- Transferring the function of licensing specific types of business to the local level (Ministerial Office of the Secretary of the Cabinet of Ministers, 2015, pp.46-47).

Third, the deregulation efforts resulted in the adoption of the Law 'On amending some legal acts of Ukraine as regards simplifying the conditions of running a business (deregulation)' no 191-VIII. This Law provided for the abolition of sixteen permits and certificates, as well as significantly shortened the procedure of registering a new business (from five days to two).

Fourth, the number of state institutions, authorized to issue licenses and certificates was considerably shortened.

Furthermore, the government reformed the existing system of quarantine and phytosanitary control to reduce the terms of control and make the issuance of permits more transparent.

Reduced terms were also introduced by the Ministry for Justice to register the ownership and related rights.

Considerable changes and amendments also concerned the banking system of Ukraine, whereby the international export of services was significantly simplified, and international systems of Internet payments (e.g., PayPal, ApplePay) received a chance to get officially registered in Ukraine.

As a result of the above changes Ukraine improved its position in the annual ‘Doing Business’ rating, moving from the 96<sup>th</sup> position in 2014 to the 83<sup>rd</sup> in 2015 (The World Bank, 2016). Overall, it is planned that Ukraine will join thirty countries with best conditions for doing business by 2020 (The Ministry for Economic Development and Trade of Ukraine, 2015).

#### *The protection of business’ interests*

Apart from improving the availability of public services for the different categories of stakeholders, the government also made several steps to grant additional protection to the interests of business. Thus, since May 2015 the Council of Business Ombudsman started its functioning in Ukraine. Any physical person, who conducts business activities, as well as a legal entity, can file a claim at the website of the Council if his/her/its rights were infringed by the actions of a state institution or its executives. The Council is authorized to launch its own investigation if it gains information about the infringements indirectly, even from media sources.

Having signed formal Memoranda on Partnership and Cooperation with the Ministry for Justice and the State Regulatory Office, the Council shall issue recommendations regarding the improvement of conditions for business activities and reducing corruption risks as a result of its investigations. In 2015 the Council received 585 complaints from the representatives of the business, successfully completed the consideration of 151 cases and issued 123 recommendations for various government agencies (Business Ombudsman Council, 2015, p.19). Over sixty percent of the Council’s recommendations have already been practically implemented (Business Ombudsman Council, 2015). A position of the Commissioner for Entrepreneurship was also launched at the State Fiscal Agency of Ukraine to facilitate the dialogue between business and the Agency. Now individual complaints, systemic issues regarding tax administration and business’ legislative proposals can be forwarded to the Commissioner.

Another long expected novelty is the adoption of the Law, improving the system of protecting investors in Ukraine. The Law provides for supplementary means of redress by minority investors,

introduces the institute of independent directors (independent members of Supervisory Board), and diversifying the methods of paying dividends.

### *Challenges*

Despite a number of evident successes of the ongoing deregulation reform, there are still a lot of tasks to be accomplished to conduct a systemic transformation of Ukrainian business environment.

While the tax reform was planned to be conducted before June 2016, there is no active expert discussion of the planned changes. A single concept of the proposed tax reform is currently available from the website of the Cabinet of Ministers of Ukraine. The major envisaged transformation deals with reducing the number of taxes by unifying some of them (e.g., ecological tax and a duty for the special use of forest resources) and abolishing others (e.g, a duty for conducting specific types of entrepreneurship activities). At least three approaches are suggested by the concept to optimize the structure of increase the revenue from land taxes salary taxes and a unified social tax. In 2015 the government conducted the first stage of the fiscal decentralization reform, and continuing to adjust tax system to the new budget authorities of local councils remains a priority for 2016 (Cabinet of Ministers of Ukraine, 2015b).

According to the opinion of experts of the NGO ‘Easy Business’ and Bendukidze Free Market Centre, another key challenge for the development of Ukraine’s economy is the moratorium on the sale of agricultural land that has been functioning in Ukraine since 2002 (Erashov, 2016; Fedorin, 2016). Given the controversial nature of the law ‘On the market of land’, whose adoption is a key condition for lifting the above moratorium, it is expected that the ban will preserve, preventing citizens from fully exercising their land ownership rights.

One of the key components of the ‘Doing Business’ assessment is the enforcement of contracts. That is why several teams of experts currently work on the draft legislation that will improve the system of court decisions’ enforcement. Apart from the introduction of private law enforcement agencies, debated changes include optimization of enforcement timelines, strengthening of the debtor’s responsibility in enforcement proceedings, as well as the formation of an open registry of debtors.

Improving the efficiency of bankruptcy procedures represents another segment of the deregulation reform, essential to enhance Ukraine’s position in the ‘Doing Business’ rating. For the time being, suggested changes include broadening the scope of creditors’ rights, providing a debtor with an access to external funding, as well as ensuring the independence of the arbitration manager.

Trading across borders also remains a challenging aspect of attracting foreign investments to Ukraine due to the foreign exchange restrictions<sup>16</sup>. Unresolved issues remain in the domains of ensuring the accessibility of construction permits and electricity. While the above section provided an only limited overview of the major directions for change, required to make Ukraine more attractive for investors and ensure the fruitful functioning of the EU-Ukraine DCFTA, diversity of existing issues testifies to the amount of work to be accomplished.

## **Conclusion**

The aim of the above analysis was to consider the ongoing deregulation reform in Ukraine from the standpoint of the DCFTA between the EU and Ukraine and its transformative power. The major units of analysis included the parties' intent, the process of the reform's implementation, its impact and associated challenges.

The intent for the EU support of the deregulation reform is determined by the need to ensure an effective application of the EU-Ukraine DCFTA that is beneficial for both the Union and Ukraine. Given the importance of Ukraine for the EU in both security and economic stability terms, the Union pays significant attention to countering current economic crisis in this country.

The implementation of the reform is found to be significantly influenced by the European aspirations of Ukraine, in particular the EU-Ukraine DCFTA. First, the fact that conducting deregulation reform represents an international obligation of Ukraine in terms of the AA and the EU-Ukraine Association Agenda represents an important external incentive for the reform's implementation. Second, the link between the approximation of Ukraine's legislation to *acquis communautaire* and ongoing reforms (including the reform of deregulation) provides for the orientation on results and a technocratisation of the reform. The above effects are strengthened by the Union's application of enhanced conditionality and elaborate monitoring procedures in terms of the AA.

The EU's strong support for the reform-oriented NGOs led to multiple advantages for the reform's implementation, such as the inclusiveness of this process, critical perspectives and the application of innovative methodologies. Moreover, the work of specific bodies, solely dedicated to

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<sup>16</sup> The foreign exchange restrictions for legal persons include compulsory selling of seventy five percent of revenue, generated in foreign currency, no later than 90 days following the generation of the revenue; a ban to buy foreign currency in case an enterprise has deposits in foreign currency of not less than 10 thousand U.S. dollars; a ban to buy foreign currency for the purposes of paying dividends to foreign investors or buying corporate rights from them (in case they do not take the form of shares). Specific restrictions concern the amount of foreign currency that can be withdrawn from an account and bought in cash.



the deregulation ensured the reform's comprehensiveness and its extensive media and social media coverage. Last, but not least, the EU assistance and the opportunities for cooperation between the government, NGOs and business community in terms of the reform served as crucial means of empowering the reform-oriented NGOs.

Another critical feature of the deregulation reform that became possible due to the EU DCFTA-related support is simultaneous creation of the favourable conditions for business and the empowerment of SMEs.

A year of the reform's implementation resulted in a range of achievements in three basic spheres, such as the mode of public services' delivery, reduction of the number of required permits, authorizations and checks, as well as the protection of business' interests. However, there are still a number of systemic challenges, preventing Ukraine from successful transformation of its regulatory environment (varying from lengthy enforcement of court decisions to extensive foreign exchange restrictions).

Despite challenges, the formation of a progressive deregulation reform team, comprehensive nature of the reform, application of modern progress and compliance measurement tools and the orientation on international business ratings represent the trends, testifying to significant transformative power of the Ukraine's European aspirations in general and the EU-Ukraine DCFTA in particular.

The directions for future research include the impact of the EU's SME support programs on SME policy in Ukraine, the influence on the launching of the EU-Ukraine DCFTA on Ukraine's attractiveness for investment, as well as the EU normative power at the current stage of its relations with Ukraine.

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