

**EXPLANATORY MEMORANDUM ON THE ASSOCIATION AGREEMENT
BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY
COMMUNITY AND THEIR MEMBER STATES, OF THE ONE PART, AND
UKRAINE, OF THE OTHER PART**

Command Paper Number: 8939

TITLE OF TREATY

**Association Agreement between the European Union and the European Atomic Energy
Community and their Member States, of the one part, and Ukraine, of the other part**

SUBJECT MATTER

1. The Association Agreement ('the Agreement') presented in this Command Paper represents the outcome of the negotiations undertaken by the European Commission (acting on behalf of the European Union [EU] and their Member States and the European Atomic Energy Community (Euratom) and its Member States) with Ukraine.
2. In 2007 the European Commission opened negotiations with Ukraine with a view to concluding an Association Agreement. In 2008, following Ukraine's accession to the World Trade Organisation, negotiations were widened to include a Deep and Comprehensive Free Trade Area (DCFTA). Negotiations concluded in 2011 and the Agreement was initialled in 2012. In December 2012 the Foreign Affairs Council agreed Conclusions expressing the EU and Member States commitment to signing the Agreement when Ukraine demonstrated progress in three key areas. The Conclusion indicated that if the conditions were met, signature might be possible at the Eastern Partnership Vilnius Summit in late November 2013. In November 2013, then President Viktor Yanukovich took the decision, under Russian pressure, not to proceed with signature. This decision resulted in protests, which evolved into wider protests against the Ukrainian Government. Then President Yanukovich fled Ukraine in February 2014 and an acting President was appointed by the Ukrainian Parliament, Petro Poroshenko. The political Titles of the Agreement were signed at the European Council on 21 March 2014. Petro Poroshenko won Presidential elections which were held in Ukraine on 25 May 2014. The remaining parts of the Agreement were signed at the European Council on 27 June 2014 by all 28 EU Member States, President Poroshenko, the European Commission President José Manuel Barroso and the European Council President Herman Van Rompuy. Similar Association Agreements were signed between the EU and Georgia and Moldova.
3. Ukraine ratified the Agreement on 16 September 2014 and the European Parliament gave its consent to the conclusion of the Agreement on the same day. As it is a mixed agreement, it must be ratified by all Member States and approved by the European Union itself. Certain provisions on Common Foreign and Security Policy (CFSP), Justice and

Home Affairs (JHA), Energy, Transport, Environment, Transport, Financial Services, Agriculture, Fisheries and Maritime, Consumer Protection, Health, Employment, Civil Society and Financial Assistance will be applied on a provisional basis before the Agreement comes into force by the EU and Ukraine, following completion of the relevant internal legal procedures by those Parties.

4. On 12 September, after discussions with Ukraine and Russia, the European Commission proposed demonstrating flexibility by delaying provisional application of the DCFTA until 31 December 2015 whilst continuing autonomous trade measures to the benefit of Ukraine over the same period.
5. Signature and conclusion of those matters in the Agreement falling under Euratom Community competence (which are subject to a separate procedure) is recorded in a Council Decision of 12 November 2013. Provisional application does not apply to those matters in the Agreement falling under Euratom Community competence.
6. The Agreement contains eight areas: General Principles; Political Dialogue and Reform, Political Association, Cooperation and Convergence in the field of Foreign and Security Policy; Justice, Freedom and Security; Trade and Trade-Related Matters; Economic and Sector Cooperation; Financial Cooperation, with anti-fraud provisions; Institutional, General and Final Provisions.

NATURE OF THE AGREEMENT

7. The Agreement with Ukraine is the first of a new generation of Association Agreements with Eastern Partnership countries seeking to deepen political and economic relations. It establishes an enhanced framework for cooperation between the EU, its Member States (and in this case Euratom and its Member States) and Ukraine and is based on political association, embedding democratic principles, such as fundamental freedoms and human rights, and the rule of law. It goes further than previous agreements and is comprehensive in its breadth (number of areas covered) and depth (detail of commitments and timelines). Core reforms in a number of key areas from public governance, justice to economic recovery and growth, as well as enhanced cooperation in some 28 key sector policy areas including energy, transport and environmental protection, will support Ukraine in becoming a stable and prosperous democracy through gradual approximation with the EU acquis and where relevant, international norms and standards.

Trade

8. The main effects of the DCFTA will be to modernise Ukraine's economy to stimulate its economic growth, creating future business opportunities for all Parties. The provisions establish conditions for enhanced economic and trade relations between the EU and Ukraine, leading towards Ukraine's gradual integration with the EU Internal Market. A 2012 Oxford Economics study carried out for the Government suggested that Ukraine's

economy would benefit from a 0.3% increase in GDP in the short term, and a 4.3% increase in the long terms following implementation of a DCFTA.

Tariffs

9. The Agreement will eliminate tariffs for the vast majority of customs duties as soon as the Agreement enters into force. For some goods, a transition period will apply to ease integration. For agricultural goods, duty-free tariff rate quotas have been made to take into account specific local sensitivities.

Technical barriers to trade

10. The Agreement addresses technical and procedural obstacles, with a commitment under the WTO Agreement on Technical Barriers to Trade (TBT) to agree to cooperate on TBT issues to simplify and avoid unnecessary divergence of technical requirements.
11. Ukraine will progressively adapt its technical regulations and standards to those of the EU. Future negotiation of an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) will provide that in specific sectors covered by it trade between the Parties will take place under the same conditions as between EU Member States. Provisions on labelling seek to keep it to a minimum to make it non-discriminatory. Harmonisation and/or mutual recognition of technical standards should cut existing non-tariff barriers in the agri-food sector by half and 35% in other sectors compared to 2004.
12. The Agreement goes beyond WTO sanitary and phytosanitary (SPS) requirements in key areas such as the regionalisation of animal diseases and pests, and the transparency of SPS import requirements and procedures. It includes other useful trade facilitation tools such as the listing of eligible exporting establishments. Improvements in the field of animal welfare have been agreed, which will help strengthen capacity and facilitate market access in Ukraine.
13. The Agreement contains improved market access commitments in government procurement, services and investment, compared to commitments under the WTO Agreements.

Common rules to level the playing field

14. The Agreement includes a chapter on the effective protection of intellectual, industrial and commercial property rights and other rights covered by the WTO Agreement on trade-related aspects of intellectual property rights (TRIPS). In many cases EU rights holders will thus benefit from improved procedures to defend their rights more effectively in case of infringements.

15. The Agreement will help to guarantee a fair competition environment by encouraging Parties to ban all types of anticompetitive practices, including restrictive agreements, cartels and abuse of dominance.
16. The DCFTA includes an efficient and streamlined dispute settlement mechanism which is based on the model of the WTO Dispute Settlement Understanding, but with faster procedures. Time-limits of the arbitration procedure are reduced in urgent cases, with further reductions for urgent energy disputes.

Trade and cooperation in energy

17. Ukraine sees the energy trade and energy cooperation provisions as being particularly important parts of the Agreement. It takes into account Ukraine's existing membership of the Energy Community Treaty (EnCT), which imposes an obligation to implement the most relevant EU energy acquis on electricity and gas. It covers electricity, crude oil and natural gas, its provisions being subject to dispute settlement procedure.
18. The DCFTA also prohibits the EU and Ukraine from imposing prices for exporting energy products which are higher than domestic prices, with obligations laid down in Article V GATT and Article 7 of the Energy Charter Treaty regarding transport and transit of energy goods.
19. There are also provisions prohibiting duties and quantitative restrictions on energy imports and exports; on infrastructure cooperation; on the need for independent regulation of electricity and gas markets and for transparency in hydrocarbons activities; and on cooperation to prevent energy crises. The energy cooperation chapter includes a separate article covering cooperation in the civil nuclear sector.

MINISTERIAL RESPONSIBILITY

20. The Secretary of State for Foreign and Commonwealth Affairs is the Minister with overall responsibility for UK policy on the EU's Common Foreign and Security Policy. Given the broad content of the Association Agreement, the Secretaries of State at the Department for Business, Innovation and Skills, the Home Office, the Department for Energy and Climate Change, the Department for Environment, Food and Rural Affairs, HM Treasury, the Ministry of Justice, and the Departments of Transport, Health, and Work and Pensions have an interest.

POLICY CONSIDERATIONS:

21. Ukraine matters: its resource base, pre-eminently in energy and agriculture, has the potential to contribute powerfully to the development of a European region resilient to 21st century threats to its stability, prosperity and competitiveness. The Government judges that a closer relationship with the EU is the best way to encourage an independent

and successful Ukraine. The Association Agreement, including the DCFTA, is an essential milestone on this path. The reforms supported by the Agreement, if implemented, offer the best chance for Ukraine to address corruption and become a free-market economy underpinned by democracy and rule of law.

22. Ukraine has now ratified the Agreement, a strong signal of continued commitment despite Russian pressure. The Government believes ratification of the Agreement would be a strong signal of the UK's continuing support for Ukraine's decision to seek closer political and economic ties with the EU, particularly given the political and security challenges Ukraine has faced, and continues to face, in 2014.

JUSTICE AND HOME AFFAIRS

23. The EU commitments on temporary movement of personnel (Mode 4) include provision for the admission of key personnel, graduate trainees and business service sellers. The Government's position is that Mode 4 provisions on the temporary movement of skilled personnel (which concerns the admission of third country nationals onto the territory of the United Kingdom), and the readmission provisions which commit the Parties to ensure the full implementation of the existing readmission agreement, fall within the scope of the UK's Title V opt-in. As the UK already participates in the existing re-admission agreement between the EU and Ukraine, and the Mode 4 commitments are consistent with those the EU has previously offered in WTO negotiations, the Government decided it was also appropriate to opt in to these provisions. In June 2014 the Minister for Europe informed Parliament that we had done so.

FINANCIAL IMPLICATIONS

24. None.

RESERVATIONS AND DECLARATIONS

25. None.

IMPLEMENTATION

26. The Agreement must be ratified by all 28 Member States, the EU and Ukraine in order to enter fully into force. The Agreement may not enter into force for Euratom until the European Commission has been notified by the Member States that such agreement has become applicable in accordance with the provisions of their respective national laws. Those provisions agreed for provisional application by the EU and Ukraine will likely be applied before the Agreement comes into force. Member States that have ratified the Agreement so far are Bulgaria, Latvia, Lithuania, Malta and Romania.

27. Before the UK can complete the ratification process for the Agreement, an order must be made under section 1(3) of the European Communities Act 1972 (the "Act") specifying the Agreement as an EU Treaty for the purposes of that Act. The Government is still assessing whether any additional implementation measures are required and will not complete the ratification process for the Agreement until any issues arising are resolved.

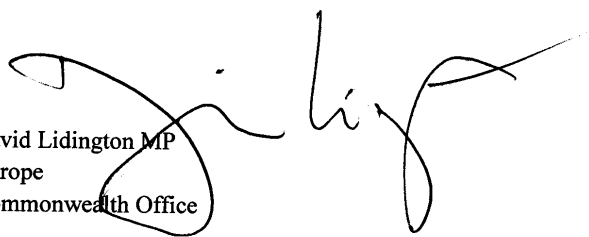
CONSULTATIONS

28. The two Council Decisions on signature and provisional application and the two Council Decisions on conclusion of the Agreement first cleared scrutiny in the Lords on 15 October 2013 and, following debate in European Committee B, in the Commons on 12 November 2013.
29. On 17 March 2014, following the fall of President Yanukovych, I wrote to inform the Committees of the planned adoption of a new Council Decision authorising signature of the Association Agreement's political chapters. The Agreement itself remained identical to that which cleared scrutiny in 2013.
30. On 12 June 2014, I wrote further to inform the Committees of a new Council Decision authorising signature of the Association Agreement's remaining chapters and to request that the Committees exempt this Council Decision from scrutiny. The Committees granted a scrutiny waiver, enabling the Council Decision to be adopted at the June Foreign Affairs Council.
31. On 25 September 2014, following the new Council Decisions relating to the postponement of the provisional application of the DCFTA, I wrote to inform the Committees of my decision to override scrutiny in this instance in order to allow the Council Decision to be agreed in the timeframe necessary.
32. Throughout the process of negotiation and signature of the Agreement, the Foreign and Commonwealth Office has actively engaged and consulted across Government.

OTHER OBSERVATIONS

33. On entry into force of the Agreement, the Partnership and Cooperation Agreement (PCA), between the European Communities and their Member States, on the one hand, and Ukraine, on the other hand, signed on 14 June 1994, will be repealed. During the period of provisional application, in so far as the provisions of the PCA are not covered by the provisional application of the Agreement, they continue to apply.

The Rt Hon David Lidington MP
Minister for Europe
Foreign and Commonwealth Office

A handwritten signature in black ink, appearing to read 'Lidington', written over the printed name.