

WHAT IS THE AGREEMENT ON PARTNERSHIP AND CO-OPERATION?

A brief guide to the Agreement signed in
Luxembourg on 16 June 1994 between
the European Union and Ukraine

- *This guide describes the Agreement on Partnership and Co-operation in a commonly understood way. It is meant to allow you to become familiar with the content of its political, economic and co-operation chapters and to serve as a reference guide before you consult the official text of the Agreement, without claiming any authority in interpreting the agreement. For this purpose,*
- *references to the articles of the Agreement are given in the margin ;*
- *an index of keywords is included ;*

©February 1998 Commission of the European Communities
Published by the Delegation of the European Commission in Ukraine
10, Vul. Kruhlouniversytetska - Kiev
Reproduction is authorised, except for commercial purposes, provided the source is acknowledged.

<p>This guide is for information only. It does not claim to be complete and has no legal or interpretative value.</p>

I. THE EUROPEAN UNION

The European Union consists of fifteen countries : Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

The European Union draws its existence from four treaties which have as their underlying aim the safeguarding of peace and stability in post-war Europe and the joint development of the member countries through economic integration. The first treaty, the Treaty on the European Coal and Steel Community (ECSC), was concluded in 1951 to bring the coal and steel production of the countries that had been at war only a few years earlier under one supranational authority. Its fundamental aim was to restore Europe's industrial capacity without giving any country the possibility to build up an offensive army again.

The success of the ECSC brought the member states to conclude a similar Treaty on the European Atomic Energy Community (Euratom), and a much wider Treaty on the European Economic Community (EEC), both in 1957. The treaty on EEC, commonly known as the 'Treaty of Rome', was special in that it was an active, dynamic treaty : it provided a programme for closer economic integration which started with a free trade area, evolved into a customs union and since 1993 - into a single European market with common rules and legislation in many areas of economic life.

In the 1980s, the EEC also developed European Political Co-operation, enshrined in the 1992 Treaty on European Union (TEU), also known as the 'Maastricht Treaty'. The Maastricht Treaty takes economic integration a step further by creating an economic and monetary union, and introducing a single European currency, the euro, in 1999. The TEU also reinforces political integration by instituting EU-wide co-operation in the areas of justice and home affairs, and by transforming the loose European Political Co-operation into a more elaborate Common Foreign and Security Policy (CFSP). In 1997, the European Union drew up a new treaty for Europe, the Treaty of Amsterdam. Its four main objectives are: employment and citizen's rights; the freedom of movement; to give Europe a stronger voice in world affairs; and to make the Union's institutional structures more efficient with a view to enlarging the Union, with new member states joining.

II. WHY THE AGREEMENT ON PARTNERSHIP AND CO-OPERATION?

The Agreement on Partnership and Co-operation was signed on 16 June 1994 in Luxembourg by the President of Ukraine, the President of the European Commission and the representatives of the European Union member states. The Agreement with Ukraine was the first such agreement to be signed with a country of the former Soviet Union. Many parts of it are identical with the "Europe Agreements" the EU has with Central and Eastern European Countries (CEECs).

The Agreement on Partnership and Co-operation results from the desire to establish close relations between the European Union and Ukraine, based on their existing historical links, and the common values they share. It marks an important step forward, superseding the Agreement on Trade and Commercial and Economic Co-operation which the European Community and the Soviet Union signed in 1989. There have been fundamental political and economic changes since the signing of the 1989 Agreement. In 1991, the European Community recognised Ukraine as an independent state, and since that time Ukraine has set-up an Embassy to the European Union in Brussels, and thirteen EU member states as well as the European Commission have established Embassies in Kiev.

The main aims of the PCA are :

- to develop close political relations by starting a regular dialogue on political issues;
- to foster trade and investment and harmonious economic relations;
- to provide the groundwork for mutually beneficial economic, social, financial, scientific, technological and cultural co-operation;
- to support Ukrainian efforts to consolidate its democracy and to complete the transition to a market economy.

The PCA will remain in effect for a period of ten years, after which it will be automatically renewed unless either Ukraine or the European Union wish to terminate it. This does not mean that the Agreement will not change in the meantime. It does not have a rigid framework and can therefore evolve in any direction the European Union and Ukraine want it to, depending on developments in the EU and Ukraine, particularly regarding Ukraine's progress on the road to a market economy. The Agreement will be reviewed after three years or once Ukraine joins the World Trade Organisation (WTO), whichever is sooner. In 1998, the European Union and Ukraine may examine the possibility of establishing a free trade area, to further economic co-operation.

The Agreement on Partnership and Co-operation demonstrates the spirit of mutual commitment to democracy and a market economy in which both parties can strengthen political, commercial and cultural links, pave the way for further economic integration, and set the agenda for future negotiations on a free trade area. In all of those areas it is much wider ranging than the 1989 Agreement and provides the appropriate framework for Ukraine's closer integration with Europe. At the same time, it respects the existing and traditional close links between Ukraine and its immediate neighbours, which the parties consider essential for future prosperity and stability.

The PCA entered into force on 1 March 1998.

III. POLITICAL DIALOGUE

The PCA foresees the development of a strong political dialogue between Ukraine and the European Union. This is done by providing an institutional framework for regular contact; the institutional provisions establish a number of forums between the Governments and Parliaments of the European Union and Ukraine (see details on p. 13). In addition, consultations will take place at the highest political level, i.e. between Presidents or with the European Union Troika, which consists of representatives of the present, preceding, and following EU Presidencies.

The aim is to strengthen the political links between Ukraine and the European Union, which goes hand in hand with establishing closer economic ties. Those are:

- to support the political and economic changes currently under way in Ukraine.
This dialogue will be guided by the conviction of both sides of the foremost importance of the rule of law, the respect for human rights, particularly those of minorities, the establishment of a multi-party system with free and democratic elections and economic liberalisation aimed at further developing towards a market economy.
- to increase security and stability by helping to harmonise views on international issues of mutual concern.

This dialogue will reflect the commitment of both sides to promote international peace and security, and to observe the principles and provisions of the OSCE (Organisation on Security and Co-operation in Europe). In this context, the European Union recognises that support of the independence, sovereignty and territorial integrity of Ukraine will contribute to the safeguarding of peace and stability in Central and Eastern Europe as well as on the European continent as a whole.

IV. ECONOMIC PARTNERSHIP

1. Market Access for Goods

The European Union is one of Ukraine's main trading partners (see box on Trade). The PCA grants Ukraine and the European Union better access to each other's markets, principally by not discriminating against each other's goods, i.e. by treating each other on an equal footing with other trading partners and by ensuring free and fair competition between imported and domestic goods. Details on the competition rules are given in a separate section on p. 9. The Agreement also contains rules on trade-related payments (see p. 11).

a. Most-favoured-nation status

The European Union and Ukraine anticipated Ukraine's accession to the World Trade Organisation (WTO) by already applying a wide range of WTO principles to their mutual trade. This has been important for Ukraine, because it takes several years before a country can accede to the WTO.

The European Union and Ukraine have agreed to grant each other most-favoured-nation status for trade in goods. This means that each party cannot apply higher customs duties and levies than those which are applied to any other country. Neither can they apply worse conditions for trade-related payments or more cumbersome customs procedures than to other countries.

In this context, the European Union is treated as one country, and Ukraine does not yet enjoy the duty-free trade regime which European Union member states grant each other. However, the possibility to include Ukraine may now be examined. Equally, the European Union will not benefit from advantages granted by Ukraine to countries of the former Soviet Union with regard to tariffs or customs procedures until Ukraine joins the WTO, or until the end of 1998 at the latest. In any case, neither Ukraine nor the European Union will benefit from advantages granted to third countries with the express aim of creating a free-trade area or a customs union. An example are the relations between the European Union and a number of Central European countries that will eventually become full members of the European Union. In accordance with WTO rules, the parties further do not benefit from advantages granted to neighbouring countries in order to facilitate trade in border regions.

In fact, Ukraine will pay even lower duties on the export of certain products to the European Union, namely those products which come under the Generalised Scheme of Preferences (GSP), the benefits of which were granted to Ukraine in 1993 (see box on GSP).

(for relevant competition rules, see p. 9)

b. No quantitative restrictions

The PCA forbids the use of quotas (quantitative restrictions) on imports.

Nonetheless, Ukraine may temporarily impose quantitative restrictions in two cases:

- to protect infant industries, i.e. those industries that have not yet sufficiently developed to be able to compete with imports from abroad without being swept from the market;
- to protect certain industries facing serious difficulties, particularly where these difficulties produce significant social problems.

There are a number of conditions Ukraine needs to respect when it imposes import quotas :

- Ukraine must inform the European Union of any new quotas before they are introduced and hold consultations on them;
- the amount of imports hit by such quotas must not make up more than 15% of total imports from the European Union;

- any quota restrictions must be applied to all of Ukraine's trading partners and not only to the European Union, i.e. the restrictions must be non-discriminatory;
- also, Ukraine can only make use of these exceptions until it accedes to the WTO or until the end of 1998 at the latest. It should be added that, when Ukraine accedes to the WTO, it will be able to invoke similar exceptions foreseen in the WTO.

The European Union may also apply quotas on the import of textiles and steel products, which are two industries facing difficulties in the European Union. These quotas are contained in special sectoral agreements. These agreements have been in operation since 1 January 1993 for textiles and since 1 January 1995 for steel products. In addition, discussions have taken place on a separate agreement on trade in nuclear materials.

(for relevant competition rules, see p. 9)

c. Transit is free

The Parties grant each other the freedom of transit over their territories of goods which are destined for third countries. In this context, the provisions of the WTO apply: among other rules, goods in transit must not be subjected to customs duties or be unnecessarily delayed. Also, Ukraine and the European Union treat the transit of each other's goods no less favourably than the transit of goods from third countries.

Equally, goods which are admitted temporarily into Ukraine or the European Union, i.e. which are imported to be re-exported afterwards, are not subject to import charges and duties.

Here again, the European Union does not benefit from advantages granted by Ukraine to countries of the former Soviet Union until Ukraine joins the WTO or until the end of 1998 at the latest.

2. Business and Investment

The PCA contains important provisions which encompass the will to create a favourable and stable climate for investment as well as for the provision of services. In particular, it aims to improve the conditions for the establishment and the operating conditions of Ukrainian companies and subsidiaries in the European Union and vice versa. The Agreement also contains related provisions on payments and the movement of investment capital (see p. 11), on competition (see p. 9) and on conditions for employees and business people.

In addition, Ukraine and the individual member states of the European Union have concluded or will conclude further agreements governing:

- investment protection and promotion.

In this context, they may regularly exchange information on laws, regulations and administrative practises in the investment field, and publicise investment opportunities through trade fairs, exhibitions, trade weeks and other events.

- the avoidance of double taxation.

It should be noted that advantages granted in such separate bilateral tax agreements do not apply to other countries; they are an exception to the most-favoured-nation principle.

a. Establishing and running companies (including joint ventures)

Ukrainian companies in the European Union

The European Union grants most-favoured-nation treatment for the establishment of Ukrainian companies on its territory; it is as easy for an Ukrainian company to establish itself in the European Union as it is for a company from most other countries.

Once a Ukrainian company has established itself, it is granted national treatment for its operation; it is subject to the same operating regulations as European Union companies. Nevertheless, national treatment for operations is not always granted in certain sectors such as mining, fishing,

real estate, audio-visual services, telecommunications, certain professional services, agriculture and news agencies. In these sectors specific restrictions exist in some parts of the European Union, but the operating regulations for Ukrainian companies are never more restrictive than for any other foreign company. National treatment is not granted to branches of Ukrainian companies which have no legal personality. Most-favoured-nation treatment is applied to them.

(for sectoral exceptions, see p. 9; for rules on competition, see p. 9; for rules on the movement of capital, see p. 11)

European Union companies in Ukraine

Ukraine applies somewhat different rules with respect to European Union companies. When these companies wish to establish a business in Ukraine they may choose between national treatment (the rules applied to Ukrainian companies) or most-favoured-nation treatment (the best rules applied to foreign companies), depending on which regime is the most favourable. In a number of sectors, however, this choice does not exist and the regime applied to other foreign companies is automatically applied to European Union companies. These sectors are: banking, insurance, real estate, natural resources, fishing, hunting, agriculture, lease of state property, telecommunications, mass media, certain professions and operations affecting historical monuments.

Regarding the operating regulations for European Union companies in Ukraine once they have established themselves, they may choose between national treatment and most-favoured-nation treatment.

(for sectoral exceptions, see p. 9; for rules on competition, see p. 9; for rules on the movement of capital, see p. 11)

Future development of business conditions

Although Ukraine and the European Union grant each other favourable business conditions, some restrictions still exist. The PCA commits Ukraine and the European Union to 'use their best endeavours' so as not to take measures which make the establishment or operation of each other's companies more difficult than they are at present. This means that new restrictions are in principle not allowed from the date of the signing of the Agreement - 23 March 1994 - but may be accepted in certain exceptional cases. In particular, it is agreed that:

- If Ukraine intends to pass legislation which makes business conditions less favourable for European Union companies, Ukraine must make its intentions known. The European Union may request to receive drafts of such legislation and enter into consultations with Ukraine.
- If new restrictions are introduced, they will not apply for a period of three years to those European Union companies which are at that moment already established in Ukraine.

Many of the existing restrictions are in the services sector, even though Ukraine and the European Union undertake, as a principle, to allow on their territories the supply of services by each other's companies. In this area, business conditions will gradually be improved and liberalised. The European Union and Ukraine will consult each other on how this can be done so that a market-oriented services sector continues to develop in Ukraine. The maximum degree of liberalisation to be achieved will be the rules foreseen in the General Agreement on Trade in Services that was concluded in the framework of the WTO.

Approximation of legislation

Ukraine and the European Union recognise that approximation of economic law and related social, environmental and standards law is an important condition for closer economic links. Ukraine will endeavour to gradually make its legislation compatible with that of the European Union, which will make it much easier for companies from the European Union and Ukraine to invest and operate on each other's territory. The European Union, for its part, has started to help Ukraine achieve this by providing assistance.

Special sectoral rules: Transport and Financial services

- The provisions governing the establishment and operation of companies do not apply to transport by air, inland waterways or sea. Those should be covered by bilateral agreements between Ukraine and the individual member states of the European Union. However, the PCA does specify that, for international transport operations entirely or partly involving transport by sea, Ukrainian and European Union companies offering shipping agency services are entitled to either national treatment or most-favoured-nation treatment (whichever is more favourable), for both their establishment and operations . All administrative and technical obstacles to free and fair competition between maritime transport companies must be removed. The European Union and Ukraine grant ships that fly each other's flag national treatment in their ports. This will also apply to ships that fly the flag of a third country but are owned by nationals or companies from the European Union or Ukraine. The PCA explicitly forbids cargo sharing arrangements, even if they are provided for in earlier agreements between a European Union member state and the former Soviet Union.
- European Union banks, related financial services and insurance companies will not enjoy national treatment when they set up a subsidiary in Ukraine; they will be subject to the existing restrictions on foreign banks and financial institutions. However, these restrictions must not be toughened and Ukraine is committed to abolishing them before 1 March 2003. The European Union and Ukraine may take measures in the financial sector which run counter to the above principles, but only to protect the integrity of the financial system if investors, depositors, or other persons holding financial assets are at risk and not in order to protect national financial companies from foreign competition.

b. Foreign personnel

Ukrainian companies have the right to send key personnel, such as managers or highly specialised experts, to their branches in the European Union and vice versa, provided they only work for the company that sends them and provided they have been employed by this company for at least one year.

The personnel that Ukrainian companies employ in the European Union and vice versa will, as far as possible, enjoy the same rights as local workers regarding working conditions and rules on remuneration and dismissal. Further separate agreements might be concluded between Ukraine and the individual member states of the European Union to ensure that they will also be able to accumulate pension rights and other social security benefits, and transfer them to their home country when they return provided they have paid social security contributions during their work period.

The Agreement should not be read as giving the right to any person from the European Union or Ukraine, other than those categories named in the first paragraph of this section, to enter and stay in Ukraine or the European Union respectively; the Agreement does not change immigration rules, and both parties commit themselves to joint efforts to control illegal immigration. At the same time, the European Union and Ukraine will examine how they can improve conditions for Ukrainian business people travelling to the European Union and vice versa.

3. Free and Fair Competition

The PCA contains a whole series of provisions which serve to advance free and fair competition in the European Union's and in Ukraine's market between companies and between goods.

a. Free and fair competition between companies

The European Union and Ukraine are committed to removing restrictions placed on competition between enterprises. This has three important aspects:

- As regards company's relations with each other : both the European Union and Ukraine must have adopted and implement laws that force companies to be competitive. Companies must not try to hinder competition, for example by refusing to buy from or sell to a particular company or by agreeing on a fixed selling price with one or two other companies, etc. The European Union is ready to help Ukraine develop such legislation and to discuss with Ukraine possible cases of reduced competition either in the European Union or in Ukraine;
- As regards companies' relations with the state : the state must refrain from reducing competition by granting subsidies to its companies if such subsidies can distort mutual trade, for example export subsidies or subsidies to production which would cause goods to be sold significantly cheaper than imported goods. Subsidies are allowed, however, for the production of primary products (unprocessed agricultural and mineral products). The European Union and Ukraine have the right to ask for information from each other on the subsidies they grant;
- The above rules also apply to state monopolies and to companies, either state-owned or not, who are given exclusive rights by the state to perform certain economic activities. If such monopolies in the European Union or in Ukraine discriminate against companies or nationals from the other party as regards purchases from them or sales to them, then such discrimination needs to be phased out over a four-year period. After four years, the activities of such monopolies must no longer distort trade.

b. Free and fair competition between goods

There must be free and fair competition between domestic goods and imported goods. This applies when imported goods cross the border and when they circulate on the territory, but also as regards their price and the quantity in which they are sold :

- As regards the import of goods, a number of WTO rules are applied for customs valuation, customs fees and formalities, marks of origin, and the publication and administration of trade regulation. For example, the customs services of the European Union and Ukraine must determine the actual, market value of imported goods and not administratively fix a higher or lower value; the administrative formalities for goods to enter a country must be reduced to a minimum; fees charged by the customs service and other organisations for services rendered to importers, including those connected with quotas, licensing and exchange control, must reflect the approximate cost of the services and not have the effect of a hidden tax on imports, etc.
- As regards the treatment of goods once they are imported : Ukraine and the European Union grant each other national treatment for goods. This means that, once goods are imported, they are subjected to the same (or possibly even more favourable) treatment as domestically produced goods. In other words, all kinds of taxes and levies (for example excise duties) applied to the goods must not be higher than those for domestic goods, and all regulations affecting the transportation, distribution, purchase, sale or use of the goods must not be less favourable than for domestic goods.
- Regarding the price at which imported goods are sold : both parties must use market-related prices for their exports. If goods are sold at below-market prices, the importing party has the possibility to impose :
 - * anti-dumping measures, if goods are proven to be sold at prices below their market value, or
 - * anti-subsidy duties, if goods are sold at low prices because their production or export is subsidised.

Anti-dumping and anti-subsidy procedures and measures must conform to the rules of the WTO. For example, the anti-dumping or anti-subsidy duties imposed must not be higher than the amount needed to reach the market price. In any case, before a party imposes anti-dumping

measures it must consult with the other party to try to find a constructive solution to the problem.

- Regarding the quantity of imported goods: when a product is imported in such quantities and under such conditions as to cause or to threaten to cause substantial injury to domestic producers of competing products, the importing country may take 'safeguard measures' to protect its national producers. This means that the importing country imposes temporary quotas on imports of this product. Ukraine and the European Union, however, must first consult each other and try to reach a negotiated settlement before such measures are imposed.

c. Protection of intellectual, industrial and commercial property

Both sides must prevent the illegal importation or sale of intellectual, industrial and commercial property. To this end, Ukraine must improve its protection of intellectual, industrial and commercial property rights, in order to prevent the unauthorised use of designs, trade marks, patents, software, artistic works, etc.

The PCA refers to the obligations arising from multilateral conventions in this field and states that Ukraine should have acceded to an agreed list of these conventions before 1 March 2003. Until then, European Union companies and nationals must be treated at least as well as any other third country and their nationals, except for the countries of the former Soviet Union or those countries which offer more advantageous conditions on a truly reciprocal basis.

4. Payments and Capital Movements

Ukraine and the European Union must allow their companies and nationals to make payments to each other, if these payments are in a convertible currency and if they are connected with trade in goods, the provision of services or the movement of people.

Moreover, the transfer of capital in connection with the establishment and operation of businesses as described in the above sections (direct investment) is also allowed. Profits stemming from such investments may be freely repatriated and investments may be withdrawn.

The PCA does not lay down rules for payments connected with liquid capital movements such as investments in securities, but Ukraine and the European Union will consult each other on how to facilitate such payments .

The rules and conditions for payments (except liquid capital movements) may be made more favourable but they may in no case be made more restrictive. There are only two exceptions to this 'standstill'. If Ukraine grants or receives short or medium-term loans it may impose exchange restrictions in connection with such a loan, but only if such restrictions are a condition for the loan and if they are permitted by the IMF. Such exchange restrictions must apply to all of Ukraine's trading partners and not only to the European Union. As a second exception, the European Union and Ukraine may restrict capital movements if existing capital movements threaten to cause serious difficulties for exchange rate and monetary policy, but only if such restrictions are strictly necessary and on condition that they are not applied for longer than six months.

V. ECONOMIC CO-OPERATION

The PCA specifies a wide range of areas for co-operation between the European Union and Ukraine. The overall aim is to contribute to the process of economic reform and to the recovery and sustainable development of Ukraine's economy, taking into account the need to address social and environmental problems. For this purpose, the PCA identifies twenty-eight areas in which the European Union and Ukraine wish to increase and expand their co-operation :

- industrial co-operation
- investment promotion and protection
- public procurement
- standards and conformity assessment (certification)
- mining and raw materials
- science and technology
- education and training
- agriculture
- energy
- the civil nuclear sector
- the environment
- transport
- the space industry
- postal services and telecommunications
- financial services
- the fight against money laundering
- monetary policy
- regional development, incl. contacts at regional level
- social co-operation : health and safety, employment and social protection
- tourism
- small and medium-sized enterprises
- information and communication
- consumer protection
- customs
- statistics
- economics
- the fight against drugs
- culture

Co-operation is already underway. In the economy, for example, European experts work with Ukrainian colleagues to transfer know-how in the field of company management and industrial and agricultural technology. In science and education, exchanges of scientists, teachers and students are being organised and joint projects are set up. Administrative co-operation is developing in areas such as customs and the fight against crime, and documentation is exchanged between administrations in technical areas such as standards and statistics. Large amounts of grant finance are devoted to improving nuclear safety and dealing with the consequences of the Chernobyl accident.

Much more can still be done, and the Co-operation Council shall make recommendations as to how co-operation can be further developed in all areas. The European Union and Ukraine agree that special attention will be paid to those measures which also foster co-operation with the neighbouring states of Ukraine.

The main instrument of the European Union to finance economic co-operation is the Tacis technical assistance programme (see box on Tacis).

VI. INSTITUTIONS

The PCA requires, as a means of ensuring that its provisions are observed and implemented, that three monitoring committees are set up - the Co-operation Council, the Co-operation Committee and a Parliamentary Co-operation Committee.

1. Co-operation Council

The Co-operation Council meets once a year. It consists of members of the Government of Ukraine on the one hand, and of the members of the Council of the European Union and members of the European Commission on the other.

The Co-operation Council supervises the implementation of the PCA. The Agreement assigns the Co-operation Council a number of specific tasks, but it has the right to discuss any subject of mutual interest and make recommendations.

The explicit tasks include studying immigration control measures, conditions of employment for each other's nationals, conditions for social security transfers, conditions for business people, making recommendations on the opening of the services market, making recommendations concerning the protection of intellectual, industrial and commercial property, making recommendations on sectoral co-operation and on technical assistance, discussing disputes over the Agreement and referring them if necessary to conciliators who can make non-binding recommendations.

The Co-operation Council must be informed about any new foreign exchange restrictions, competition law, existing or planned subsidies, and any existing or planned quantitative restrictions in trade.

2. Co-operation Committee

The Co-operation Committee meets at senior civil servant level. It must prepare the meetings of the Co-operation Council and ensure continuity between its meetings.

The Presidency of both the Council and the Committee is chaired alternately by Ukraine and the European Union.

3. Parliamentary Co-operation Committee

The Parliamentary Co-operation Committee consists of members of the Ukrainian Parliament (Verkhovna Rada) and the European Parliament. It is the forum for political dialogue between parliamentarians from the European Union and Ukraine. The Parliamentary Committee exchanges information with the Co-operation Council and has the authority to make recommendations.

4. Global Exceptions and Dispute Settlement

a. Global exceptions

The provisions of the PCA are binding on the European Union and on Ukraine. There are only a few specified cases when the parties may take measures in the public interest that are not in line with the Agreement :

- measures meant to prevent the disclosure of essential state secrets;
- measures relating to the production and trade of weapons;
- special measures to maintain law and order and to safeguard peace.

In addition, the European Union or Ukraine retain the right to impose limitations on market access and business and investment in the following cases, as long as any prohibitions do not constitute a means of arbitrary discrimination or a disguised restriction on trade :

- to enable public policy and official activities relating to public policy, in order to protect public security, public health, public morality, etc.;
- to protect natural resources including gold and silver, art treasures, intellectual property, etc.

b. Dispute settlement

Between the European Union and Ukraine

In the event of a dispute over the application or implementation of the Agreement, the Co-operation Council will try to find a resolution by making a recommendation. If this fails, the Council, Ukraine, and the European Union may each appoint a conciliator. The latter will make a recommendation by majority vote which will, however, not be binding.

If either party considers that obligations are not being fulfilled, they can take appropriate action but only after notifying the Co-operation Council and giving it sufficient time to find a solution. However, if one of the parties repudiates the Agreement or violates the basic principles of democracy and human rights or those of a market economy, then the other party may immediately suspend the Agreement without prior consultations. In either case, retaliatory action should cause minimum disturbance to the functioning of the Agreement.

Between nationals and companies of the European Union and Ukraine

Individuals and companies from the European Union and Ukraine must have the possibility to effectively defend their rights arising from the Agreement and other agreements and legislation. For this purpose, the European Union and Ukraine guarantee each other's nationals and legal persons the same access to courts and administrative organs as their own nationals and legal persons are entitled to. In commercial disputes, the European Union and Ukraine will encourage the use of arbitration in accordance with international practice and on the basis of international law.

VII. INDEX

– A –

agreement
 on double taxation, 9
 on investment protection, 9
 on social security, 12
 on steel trade, 8
 on textile trade, 8
 on trade in nuclear materials, 8
 on transport by air, 11
 on transport by water, 11
 Agreement on Partnership and Co-operation
 aims, 4
 disputes, 19
 duration, 4
 review, 4
 Agreement on Trade and Commercial and
 Economic Co-operation with the Soviet Union,
 4
 agriculture
 co-operation, 16
 investment, 10
 anti-dumping measures, 14
 anti-subsidy duties, 14
 arbitration, 20
 arms, 19
 art treasures, 19
 assistance. *See* technical assistance
 audio-visual services, 10

– B –

banking, 10; 11; 12
 business people, 12; 18

– C –

cargo sharing, 11
 certification, 16
 Chernobyl, 17
 commercial property rights, 14
 Common Position, 3; 6
 competition, 12
 between companies, 12; 13
 between goods, 13
 in international maritime transport, 11
 information on competition law, 18
 consumer protection, 16
 co-operation, 16
 areas of co-operation, 16
 proposals for co-operation, 18
 Co-operation Committee, 18
 Co-operation Council, 18

courts, 20
 culture, 16
 customs
 co-operation, 16
 customs duties, 7; 8; 9
 customs fees, 13
 customs procedures, 7; 13
 customs valuation, 13
 tariff preferences, 7
 customs union, 7

– D –

democracy, 6; 19
 disputes, 19
 between companies, 20
 between individuals, 20
 between Ukraine and the European Union, 18;
 19
 conciliators, 18; 19
 drugs, 16
 duties. *See* customs

– E –

economic reform, 16
 economics, 16
 education, 16
 energy, 16
 environment, 16
 environmental problems, 16
 establishment of companies, 9; 10
 restrictions, 10
 European Union, 3
 exceptions
 to the Agreement, 19
 to the rules on business and investment, 11
 exchanges, 16
 excise duties, 13

– F –

financial services
 co-operation, 16
 investment, 10; 11; 12
 fishing, 10
 free-trade area, 4; 7

– G –

GATT. *See* World Trade Organisation
 General Agreement on Tariffs and Trade. *See*
 World Trade Organisation
 Generalised Scheme of Preferences, 7

gold and silver, 19
 GSP. *See* Generalised Scheme of Preferences

– H –

historical monuments, 10
 human rights, 6; 19
 hunting, 10

– I –

immigration, 12
 illegal immigration, 12
 immigration control measures, 18
 independence, 4; 6
 industrial
 co-operation, 16
 property rights, 14
 infant industries, 8
 information
 exchange of information, 9; 13; 16
 obligations, 8; 10; 13
 obligations to the Co-operation Council, 18
 insurance, 10; 11; 12
 intellectual property, protection of rights, 14; 18;
 19
 investment, 9
 exchange of information, 9
 in securities, 15
 investment-related competition rules, 12
 limitations in the public interest, 19
 promotion and protection, 16
 repatriation of profits, 15
 transfer of capital, 15

– K –

know-how, 16

– L –

law and order, 19
 legislation, approximation of, 11
 licenses, 13

– M –

market access, 7
 limitations in the public interest, 19
 market economy, 4; 6; 19
 mass media, 10
 MFN. *See* most-favoured-nation status
 mining
 co-operation, 16
 investment, 10
 monetary policy, 16
 money laundering, 16
 monopolies, 13
 most-favoured-nation status
 for import quotas, 8

for investment, 9; 10
 for protection of intellectual property, 14
 for shipping agencies, 11
 for taxation, 9
 for trade, 7
 for transit, 9

– N –

national treatment
 for goods, 13
 for investment, 9; 10
 for shipping agencies, 11
 natural resources, exploitation of, 10; 19
 news agencies, 10
 non-discrimination,
 nuclear sector, 16

– O –

operation of companies, 9; 10
 restrictions, 10

– P –

Parliamentary Co-operation Committee, 18
 payments
 related to investment, 15
 related to liquid capital movements, 15
 trade-related, 7; 14
 peace, 6
 personnel
 in foreign subsidiaries, 12
 social security, 12; 18
 working conditions, 12; 18
 political dialogue, 6; 19
 aims, 6
 institutions, 6; 18
 postal services, 16
 prices
 market prices, 14
 prices, market-based, 14
 primary products, 13
 professional services, 10
 protection
 industries in difficulties, 8
 infant industries, 8
 public procurement
 competition, 13
 co-operation, 16

– Q –

quantitative restrictions. *See* quotas
 quotas, 8; 13; 14
 information on quotas, 18

– R –

real estate, 10

re-export, 9
 regional development, 16
 restrictions
 allowed in the public interest, 19
 information on exchange restrictions, 18
 on capital movements, 15
 on exchange operations, 15
 on financial services, 12
 on foreign banks and financial institutions, 11
 on the establishment of companies, 10
 on the operation of companies, 10
 retaliatory action, 19

– S –

safeguard measures, 14
 science and technology, 16
 secrets, 19
 security, international, 6
 services, 11; 18
 shipping agencies, 11
 small and medium-sized enterprises, 16
 social
 co-operation in the social sphere, 16
 social problems, 8; 16
 social security for foreign personnel, 12; 18
 sovereignty, 6
 Soviet Union, former, 4
 regional co-operation, 5; 17
 special advantages, 7; 9; 14
 space industry, 16
 standards, 16
 state property, lease of, 10
 statistics, 16
 steel products, 8
 subsidies, 13
 anti-subsidy duties, 14
 information on subsidies, 18

– T –

Tacis, 17
 taxes
 on goods, 13
 special advantages, 9
 technical assistance, 11; 17; 18
 telecommunications
 co-operation, 16
 investment, 10
 territorial integrity, 6
 textiles, 8
 tourism, 16
 trade
 distortions, 13
 trade-related competition rules, 12
 trade-related payments, 14
 trade promotion, 9
 trade regulation
 exchange of information on trade regulation, 13
 transit, 8
 transport
 by air, 11
 by inland waterways, 11
 co-operation, 16
 maritime, 11

– V –

value, market-based, 13

– W –

weapons, 19
 working conditions, 12
 World Trade Organisation, 4; 7; 8; 13; 14
 WTO. *See* World Trade Organisation