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Informal compliance mechanisms in the EU 'development' and 'integration without membership' association agreements: a quest for capacity and ownership?

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ABSTRACT

Association Agreements between the EU and third countries lie at the heart of the EU's foreign policy. The Association Agreements the EU concluded with Eastern Neighbours and the Caribbean Forum and Central American countries are marked with partner countries' ambitious obligations, and the multi-instrument toolbox the EU applies to ensure partner countries' compliance, including official consultations and dispute settlement. Nevertheless, the EU has demonstrated to prefer informal compliance instruments, such as statements or informal meetings in both the 'integration without membership' and 'development' contexts. The article focuses on the rationale behind the EU's preference for 'soft' compliance instruments. It isdemonstrates that the European Commission and Delegations may in many cases prioritize partners' commitment to and ownership of change over a particular result (compliance), despite being able to make use of the asymmetries of its power relations with partner countries. The confluence of the EU's or Member States' strong interest in a partner country's compliance with a specific obligation and the persistence of non-compliance will, nonetheless, lead to the recourse to formalized compliance mechanisms. The focus on the management perspective of compliance in isolation from formal enforcement mechanisms is presented as hardly possible, notwithstanding the EU's quest for ownership.

KEYWORDS

Compliance; association agreements; Integration-Without-Membership; ownership; capacity

Introduction

Association Agreements (AAs) between the EU and third countries lie at the heart of the EU's foreign policy. The legal basis for the AA's conclusion is constituted by Art. 8 of the Treaty on European Union (TEU) and Art. 217 of the Treaty on the Functioning of the European Union (TFEU), granting the Union the right to conclude AAs with third countries. In practice, however, the AAs tend to be concluded as mixed agreements (i.e. involving not only the EU but its Member States). Classified from a teleological perspective, the AAs offer, *inter alia*, a framework for third countries' 'integration without membership' (e.g. EU's AAs with Eastern Neighbours, namely Ukraine, Moldova and Georgia) and the EU-third countries cooperation in the sustainable development domain (e.g. the EU Economic Partnership Agreement (EPA) with the Caribbean Forum (CARIFORUM) and the EU AA with Central America) (Petrov Van der Loo and Van Elsuwege 2015, 1; Van Elsuwege and Chamon 2019, 22). Hereby it shall be noted that, the European Council granted Ukraine and Moldova

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membership perspective on 23 June 2022 amid the geostrategic pressures, stemming from Russia's war against Ukraine (European Council 2022;). As the study was conducted prior to the outbreak of the war and the change of the political context of the EU-Ukraine and EU–Moldova relations, it will continue using the term 'integration without membership' in relation to the pre-war data.

Both the 'integration without membership' and the 'development' AAs envisage numerous partner countries' obligations and, subsequently, entail several compliance mechanisms, such as 'essential element' clauses, consultations and dispute settlement. The EU may make considerable use of these mechanisms due to the asymmetries of its power relations with partner countries, i.e. high bargaining power it has as the world's largest Single Market and a provider of financial assistance to partner countries. In practice, however, the EU Party often prefers addressing compliance challenges in partner countries through informal compliance mechanisms (ICMs), rather than take recourse to formalized mechanisms, envisaged by the AAs. This statement can be supported by the rare nature of cases when partner countries' non-compliance with their AA commitments has led to the EU's launch of public consultations or the initiation of the dispute settlement procedure. For instance, though the EU-Ukraine AA envisages Ukraine's extensive legislative approximation obligations to get closer to the EU market (and Ukraine's compliance rates significantly vary across sectors (Cabinet of Ministers of Ukraine 2022), the EU so far only once used formal dispute settlement mechanism to address Ukraine's non-compliance with its commitments as to woods' export (European Commission 2020). Similarly, a number of non-compliance cases, whereby the EU invoked 'essential element' clauses or requested formalized consultations in response to non-compliance in other country contexts is very low (e.g. Hachez 2015). The ICMs being instead may take the form of informal consultations at the technocratic level, facilitated by relevant EU Delegations; discussions within the association bodies; letters to decision-makers forwarded by the Heads of EU Delegations to the decision-making bodies of a partner country or the Head's of the Delegation presence at particular hearings (Interviews 1–6).

This paper thus seeks to explain the phenomenon of the EU's preference for using ICMs with respect to partner countries' non-compliance with their obligations under the AAs through the prism of the management theory of compliance. It does not, however, explore the effectiveness of ICMs vis-à-vis formal compliance mechanisms. It is hypothesized that, given the development-oriented nature and ambitiousness of partner countries' AA-based obligations in both contexts under study, the European Commission and EU Delegations may in many cases prioritize partner countries' commitment to and ownership of change, rather than a particular result (compliance with a specific obligation), even though it has a significant bargaining power to do so. Such a priority does not mean the EU Party 'drops' a compliance issue and is not interested in solving it anymore; it rather chooses not to apply extensive pressure and address the issue with the help of a problem-solving, rather than a bargaining approach (Elgström and Jönsson 2000). While, in general, the EU is inclined to cooperate with partner countries within the AAs' framework and manage compliance issues through ICMs, it may take a recourse to formalized compliance mechanisms under the confluence of two factors: (i) the EU's or Member States' strong interest in a particular result (compliance) and (ii) persistence of an issue. To explore the above arguments, the article offers a comparative analysis of compliance mechanisms' legal design in the 'integration without membership' (EU AAs with Ukraine, Moldova and Georgia) and 'development association' contexts (EU AAs with the Caribbean Forum and Central America), combined with a qualitative study of these AAs' implementation practices (EU-Ukraine 2014; EU-Moldova 2014; EU-Georgia 2014; EU-CARIFORUM 2008; EU-Central; America 2012). The choice of these cases is determined by their representativeness of the two categories of the AAs in question, as the EU's AAs with Ukraine, Moldova and Georgia mark the most recent example of the 'integration without membership', and the EU's AA with CARIFORUM and Central America explicitly pursue development objectives. The empirical part of the study is based on 16 semi-structured interviews, with the EU Commission's representatives, employees at the relevant EU Delegations, conducted over the period from March to December 2021. The study demonstrates that the management, reform ownership-oriented perspective dominates the EU's approach to partner

countries' compliance with AA obligations in both the 'integration without membership' and 'development association' contexts, though the EU is perceived as more likely to apply formal compliance mechanism in the former context. The EU's inclination to use formal compliance mechanisms in its relations with Ukraine and Moldova may increase, if countries comply with political conditions, set by the relevant Commission Opinions in connection with these countries' candidate status and they move forward to enlargement negotiations (European Commission 2022a, 2022b).

Overall, the focus on the management perspective to compliance in isolation from formal enforcement mechanisms is found to be hardly possible, given the presence of clear 'connecting dotes' between management and enforcement, as manifested in the EU logic of promoting compliance under the AAs.

Theorizing partner countries' compliance with obligations under the AAs

States' compliance with international agreements can be understood 'as the extent to which agents act in accordance with and in the fulfillment of the conditions prescribed in international treaties' (Checkel 2000).

Though this definition may seem simplistic or excessively legalistic, the research on compliance, in general, and the studies of partner countries' compliance with EU treaties address numerous complex challenges, requiring the application of interdisciplinary research approaches. To exemplify this statement, one can refer to the ongoing debate as to the best way the EU shall choose to facilitate partner countries' compliance with their obligations under the trade and sustainable development (TSD) chapters (e.g. Hradilová and Sboboda 2018). While some scholars criticize the TSD chapters and, in particular, civil society participation mechanisms they embed as 'toothless' and advocate for stronger enforcement tools (Lowe 2019; Bronckers and Gruni 2019), others emphasize the pivotal role of capacity- and trust-building in ensuring partner countries' genuine cooperation and compliance (e.g. Prévost and Alexovičova 2019; Durán 2020). Such a controversy exemplifies the common picture of an antagonistic relationship between the enforcement and management compliance schools this research is founded on.

To avoid such a juxtaposition, several theoretical remarks shall be made concerning the present study. First, the departure point for this study provides for recognizing the numerousness of factors that may underlie (non-) compliance in each specific case and be attributable to various compliance schools and extensively influenced by power relations between the Parties. As exemplified by Buzogány (2013), compliance within a particular sector may simultaneously be influenced by the domestic constellations of veto-players, external capacity-building, and sector-specific conditionality. The very possibility of applying conditionality and its effectiveness, however, depends on the ratio of the Parties' bargaining power, influenced, *inter alia*, by the size of their economies, (in)dependence of development assistance and strategic considerations linked to specific international agreements (e.g. Tussie and Saguier 2011; Rabinovych 2020). Furthermore, it shall be emphasized that neither of the above factors may pre-suppose compliance in full isolation from others. We, therefore, put a considerable value on integrated approaches to compliance, such as Tallberg's 'management-enforcement ladder', emphasizing the complementarity of the whole spectrum of compliance measures, used by the EU. An emphasis on integrating different approaches to compliance to compensate for the lack of the EU's sanctioning capacity also becomes more salient in the literature on ensuring partner countries' compliance with TSD chapters, despite the enforcement-management controversy, highlighted above (Marin Durán 2020). The study will thus illustrate not only the rationale behind the EU's preference addressing managing compliance challenges through ICMs but the 'connecting dots' between the management and enforcement of compliance under the AAs with an account of the peculiarities of their power relations.

The external enforcement school, power relations, and post-agreement bargaining

The external enforcement school regards states as 'rational actors that weigh the costs and benefits of alternative decisions, when making compliance decisions in cooperative situations' (Tallberg 2002, 611). It understands non-compliance as a consequence of a state's deliberate decision not to comply, taken based on a cost-benefit analysis, and emphasizes international agreements' incentives' and sanctions' structure as central to facilitating compliance (e.g. Guzman 2005). From the cost-benefit perspective, the more significant the benefits a partner country gets as a result of compliance, the more likely it will comply. On the other hand, a decision to comply may be also reinforced by tough sanctions a country may experience in case of non-compliance.

The focus on incentive structure is salient in the studies of the EU enlargement and neighbourhood policies (e.g. Sjursen and Smith 2018; Buzogány 2013). Nowadays, however, persisting rule of law and state capture challenges both in the enlargement and neighbourhood contexts offer a fruitful ground to challenge the decisive role of a membership perspective and incentives, more broadly, for partner countries' compliance (Kmezić 2019; Buscaneanu and Stefes 2020). At the same time, the EU's promotional approach to facilitating partner countries' compliance with TSD chapters (e.g. Hradilová and Sboboda 2018; Garcia 2022) is extensively challenged by the proponents of stronger enforcement measures, such as sanctions and strict monitoring mechanisms (e.g. Weiß and Furculita 2020). From the clear external enforcement perspective, however, the 'depth' of transformation, sought by the EU in a partner country, the tightness of aspired integration links and high domestic costs positively correlate with both more significant incentives and stricter punishments.

Though the external enforcement school convincingly applies the rational choice perspective to explain compliance, it entails an array of limitations that prevent a researcher from understanding compliance in a more complex way. Firstly, it does not take an in-depth perspective on power relations between the Parties, in general, and their bargaining powers post-agreement negotiations that may, *inter alia*, concern the interpretation of specific obligations or an update of the agreement (Spector 2003, 72–73). Explained from the Foucaldian perspective, power relations reflect different patterns of domination (that shall not be viewed as oppression) and resistance, whereby power represents a strategy, rather than possession. In his words: 'Power must be analyzed as something that circulates, or as something that only functions in the form of a chain … Individuals are the vehicles of power, not its points of application' (Foucault 1980, 98). Speaking of the implementation of association agreements and, particularly, their trade part, much depends on the Parties' bargaining powers' ratio at a specific point of time and with respect to specific issues (Tussie and Saguier 2011). It may seem that the EU may be always able to make enlargement and ENP countries comply due to its market size, the provision of assistance to partner countries and partner countries' willingness to integrate with the EU. As shown below, the reality is more complex, and the EU's choice whether to make use of formalized avenues to ensure compliance and apply sanctions for non-compliance would to a high extent depend on the substance of each specific obligation at stake, the dynamics of bilateral links and cross-dimensional networks between the EU and a partner country and, possibly, the leverage of third actors in partner countries. Though the subsequent analysis will consider power relations between the Parties, it also demonstrates that, amid the confluence of the abovementioned factors, it may be not always compliance *stricto sensu* the EU seeks to achieve but fruitful dialogue, cooperation and the other party's ownership of change. The latter is of specific relevance for complex reforms that require intense post-agreement consultations with the EU and the engagement of domestic actors, such as businesses and non-government actors. In this vein, another limitation of the external enforcement approach is that it sees states are seen as homogenous entities, and the attitudes of domestic interest groups are not considered. Furthermore, this school of thought does not explore the substance of specific norms (and an extent of change their implementation requires in a partner country) and the way they are perceived within a partner country's society. While the latter limitation can be attributed the legitimacy approach to compliance, exploring the substance of respective norms and change their implementation requires

in light of the EU's potential preference to use the ICMs instead of formalized compliance mechanisms requires the application of a management perspective.

The management school, resilience, and 'the local'

In contrast to the external enforcement school, the proponents of the management theory think that states violate their international treaty commitments unintentionally, rather than deliberately (Tallberg 2002, 613). The management school distinguishes three key reasons for non-compliance. First, non-compliance can arise due to the 'ambiguity and indeterminacy of treaty language' that leads to the need for the Parties' further treaty interpretation and clarifications efforts (Chayes and Chayes 1993, 188). Secondly, a state's failure to comply with an agreement can be caused by an overambitious nature of an agreement and, subsequently, various constraints it faces (*Ibid*, p.189). Such constraints may pertain to the peculiarities of domestic institutional structure (e.g. an overly role of one branch of power compared to others), strong veto-players' powers, as well as the lack of administrative and technical capacity (Börzel, et al. 2010, 1369; Sedelmeier 2008, 809–810).

Third, the management perspective deals with uneasy question as to when the Parties shall assess whether an obligation was complied with. While the external enforcement perspective would rely on the formal deadline for compliance (if present), the adherents to the management approach point to considerable time needed for a behavioural change to occur (Chayes and Chayes 1993, 195; Böhmelt and Freyburg 2013, 261). The 'temporal dimension' is of special relevance in case compliance requires a massive transformation of the 'rules of the game' in highly relevant and complex domains (Chayes and Chayes 1993, 195–197).

The management school thus emphasizes clear and precise treaty norms' formulations and capacity-building measures as essential for fostering capacity. The latter measures may range from ideational support (e.g. in the form of education or training) to long-term complex sector-specific capacity-building interventions (Wolczuk 2019). In this vein, an increasingly salient role is attributed to the concepts of 'resilience' and 'local ownership', both of which are inextricably linked to 'commitment' and being eventually able to exercise self-help (Juncos 2017, 4–6; Korosteleva and Flockhart 2020, 162). As noted by Korosteleva and Flockhart (2020), the ideas of resilience as 'a quality and as an analytic of governance' and local ownership are tightly interconnected against the background of the rising emphasis on ''the local' that cannot be externally engineered' in international relations (p.153). Though recent research points to significant path dependence in the EU policies in both the ENP and development contexts, the concerns about 'the local' and stronger ownership for change on the ground become inextricable for the EU's relations with third states (Petrova and Delcour 2020; Korosteleva 2020).

We argue that an ability to *manage* 'integration without membership' and 'development' AAs' implementation lies at the heart of the EU's association policy, which emphasizes bilateral cooperation in terms of treaty implementation and the local ownership-oriented capacity-building. As illustrated below, though both the 'integration without membership' and 'development' AAs contain various formalized compliance mechanisms, compliance issues tend to be managed by the EU in terms of informal channels and networks. It is, however, shown that the EU's application of ICMs takes places not entirely in isolation from the existence and (potential) application of formalized compliance mechanisms amid the advantages in bargaining power.

Methodology

As noted in the introduction, the research combines the 'black-letter-law' legal analysis with qualitative interviews with the European Commission's officials, EU Delegations' representatives in partner countries, as well government officials and experts. Thematically, the interviews focused on the instruments the EU uses to ensure compliance with the AAs in respective country contexts and

the rationale behind the EU's logic. All interviews were conducted via Zoom over the period from March to December 2021. Interview notes were coded with the help of the Nvivo software tool.

The study involved two European Commission's officials from the Directorates-General (DG) for European Neighbourhood and Enlargement Negotiations and for International Partnerships, respectively, since the tasks of these DGs involve monitoring progress under the AAs and assisting partner countries with reaching the goals of the association. Specific respondents were recommended to the author following a detailed enquiry with the description of the research aims and design, made with the help of the DGs' contact forms, located on their websites. The respondents from both DGs reported having been immediately involved in negotiating on compliance matters with partner countries (Interviews 1–2). The choice of EU Delegations' representatives as informants is determined by the fact that EU Delegations in associated countries tend to be involved in the stocktaking of all the relevant political and legal developments and serve as a medium between EU institutions and partner countries' governments, when it comes to the AAs' implementation and compliance (if the issues cannot be tackled in terms of the administrative networks). Similar to the Commission case, interview partners were recruited based on the author's detailed enquiry, sent to respective EU Delegations (Interviews 3–8). Government officials and experts from partner countries were recruited differently. During our interviews with the EU Commission and EU Delegations' representatives, we asked them to recommend their closest interlocutors in partner countries, with whom they have negotiated compliance issues. While several respondents disagreed to provide such contacts, others recommended their counterparts from Ukraine, Moldova, Georgia, Panama, Guatemala, the Dominican Republic, Jamaica and Trinidad and Tobago (Interviews 9–16). The added value of interviewing immediate interlocutors lies in checking whether they share perceptions about the EU's approaches to fostering compliance.

Overall, the combination of the 'black-letter-law' legal analysis with qualitative interviews is helpful to check on the parties' implementation practices based on specific legal frameworks or evolving beyond them.

Formalized compliance mechanisms in the EU 'integration without membership' and 'development' AAs

Both the EU 'integration without membership' and 'development' AAs contain an array of formalized mechanisms that can be used to address non-compliance. While some mechanisms are present across the whole spectrum of the AAs under study, others are only characteristic a particular category of the AAs (e.g. in connection with market access provisions under the EU-Ukraine AA). Furthermore, while the spirit of formalized compliance mechanisms may seem to resonate with the external enforcement school and the use of advantages in power relations, they can be also utilized for the purposes of treaty interpretation or update, as emphasized by the management school. Keeping these insights in mind, we will proceed with a comparative analysis of the legal design of formalized compliance mechanisms under the AAs.

Firstly, both the AA categories under study share the so-called 'common values' conditionality, comprised of a substantive clause that stipulates common values ('essential elements' of the agreement) and a suspension clause. The very fact of the common values being recognized as 'essential elements' under the AA enables each Party to terminate or suspend the agreement in case the other Party violates 'a provision essential to the accomplishment of the object or purpose of the treaty', as stipulated by Art. 60 of the Vienna Convention on the Law of the Treaties (VCLT) (United Nations 1969). As it provides for treaty suspension or termination as a punishment, 'common values' conditionality speaks to the logic of the external enforcement school. Yet, amid the selective nature of the 'essential element' clauses' application, 'common values' conditionality may be also conceptualized as a gateway for the EU to launch negotiations on values-related challenges (Hachez 2015; Rabinovych 2020). The scope of 'common values' conditionality differs across the AAs under study, dependent on their nature and objectives. For instance, while the conditionality clause under EU-

CARIFORUM EPA stresses sustainable development, 'essential elements' under the AAs with Eastern Neighbours include security-related elements, such as countering the proliferation of weapons of mass destruction, related materials and their means of delivery" are distinguished as 'essential elements' (EU-CARIFORUM 2008, Art. 2; EU-ACP 2000, Art. 9; EU-Moldova 2014, Art. 2).

In contrast to the 'development' AAs and the AAs with Moldova and Georgia, the EU-Ukraine AA contains not only the 'common values' but also the 'market access' conditionality (e.g. EU-Ukraine 2014, Art. 475(2)). Linking the stages of the EU's market opening to Ukraine's regulatory approximation progress, market access conditionality is entirely based on the logic of the external enforcement school. Thereby the EU's decision to switch to each new stage of market liberalization can be seen as an incentive to comply with obligations, while the EU's refusal to further liberalize market or a postponement of such a decision shall be perceived as a punishment.

The operation of market access conditionality under the EU-Ukraine AA is being supported by detailed monitoring provisions (EU-Ukraine 2014, Art. 475(4)).

Though not containing market access conditionality, other EU AAs in question also contain provisions on monitoring. Some monitoring provisions are formulated in general terms and are applicable to the AAs as a whole, i.e. "to ensure that the objectives of the Agreement are realized, the Agreement is properly implemented [. . .] (EU-CARIFORUM 2008, Art. 5). In turn, the presence of chapter-specific monitoring clauses is characteristic, *inter alia*, for the chapters on justice, freedom and security, trade in goods, and trade facilitation and rules of origin, independent on whether the AA belongs to the 'integration without membership' or a 'development' category. Moreover, both categories of the AAs share the design of the TSD chapters and – to some extent – the institutional and monitoring mechanism aimed to support their implementation. This mechanism includes setting the Trade and Sustainable Development Committee (or the Board on Trade and Sustainable Development in line with Art. 294(2) of the EU-Central America EPA), responsible for the oversight of the TSD chapters' implementation (EU-Central America 2012, Art. 294(2)). Furthermore, the Parties' compliance with the AAs is ensured by each Party's obligation to designate a contact point on TSD matters ((e.g. EU-Central America 2012, Art. 294) and the engagement of experts and civil society, represented by the Advisory Groups and Civil Society Forum, respectively (e.g. EU-Central America 2012, Art.294(5)). Importantly, while the TSD chapters involve numerous actors in the monitoring of implementation and compliance, they do not provide a Party with powers to ensure the other Party's compliance by terminating or suspending the Agreement as a whole or its part(s) or using sanctions (Hradilova and Svoboda 2018, 1020). On the benefits side, the EU uses financial and technical assistance tools to incentivize partner countries' compliance with the TSD norms.

The AA provisions on consultations may be marked by either a chapter-specific or the agreement-wide nature. The former design of consultations provisions is characteristic for TSD chapters that enable 'a Party [to] request consultations with the other Party regarding any matter of mutual interest' (e.g.EU-Central America 2012, Art. 296(1); EU-Moldova (2014), Art. 376(5). As well as in the TSD chapters, the avenues for consultations are envisaged by the majority of trade-related titles under both the 'integration without membership' and 'development' AAs (e.g. EU-Ukraine 2014, Art.50bis; EU-Central America 2012, Art. 91, Art. 120). Beyond the issue-specific domains, all the AAs in question refer to consultations as a means to avoid or resolve disputes concerning the interpretation or application of the AA provisions (EU-Ukraine 2014, Art. 305(1); EU-Central America 2012, Art. 310; EU-CARIFORUM (2008), Art. 204). If consultations do not allow the Parties to reach the solution, they may take recourse to the mediation procedure (*Ibid*, Art. 205). With this, the consultation and mediation mechanisms can be seen as speaking to both the management and external enforcement logics. On the external enforcement side of the coin, the very fact of a Party's launching the consultations procedure may be perceived by the other Party as an attempt to enforce compliance and a preparatory step for arbitration. From the management perspective, the consultation and mediation mechanisms can be, however, regarded as a forum to counter differences in the Parties' interpretation of the AA provisions and manage compliance challenges in good faith.

If the Parties do not manage to address the issue though consultations, they can take recourse to the dispute settlement (arbitration) mechanisms, provided for by both AA categories. Similar to consultations, some AA chapters may provide for issue-specific dispute settlement mechanisms (EU-Ukraine 2014, Art. 297–301). AAs bind the Parties to comply with the arbitration panel ruling and stipulate the reasonable time for compliance (e.g. EU-CARIFORUM 2008, Art. 210–211). Following the external enforcement logic, both categories of the AAs in question envisage several reviews of measures taken by the Party complained against to achieve compliance and punitive measures to be applied in case of non-compliance (i.e. compensation and/or the suspension of the AA norms' application) (e.g. EU-CARIFORUM 2008, Art. 211–214; EU-Moldova 2014, Art. 390–395). Moreover, the EU's ability to address partner countries' non-compliance under trade agreements has recently strengthened due to the revision of the Trade Enforcement Regulation, which enables the EU to adopt countermeasures in case it has a favourable ruling of the arbitration panel but the other Party fails to comply with trade rules, affecting EU trade interests (Schueren et al. 2021). Moreover, the scope of the revised Regulation encompasses not only trade in goods but also services and intellectual property (IP) rights in line with the 'deepening' of the EU 's trade relations with third countries (Ibid).

Ultimately, it can be argued that the EU possesses a rich toolbox that enables it to deal with partner countries' non-compliance with their obligations under the AAs. While some of the respective tools rely on the external enforcement logic (e.g, arbitration procedure, Trade Enforcement Regulation), others may speak to the spirit of the either approach ('essential element' clauses, consultations). Nonetheless, despite the numerousness and divergent logics of the tools the EU can apply to address non-compliance, both openly available documents and empirical evidence testifies to the EU's preference for using ICMs to address partner countries' non-compliance with the AA provisions in both the 'integration-without-membership' and 'development' contexts. Why does the EU prefer the ICMs and which issues may make it opt for a formalized compliance pathway? These questions will be addressed in the following section of the article.

Explaining EU's preference for ICMs and relevant exceptions

Based on these empirical data, gathered over the period from March to December 2021 (please see the 'Methodology' section above for more details), we distinguish several key reasons why the EU opts for using ICMs to address compliance issues. Such reasons are found to be shared for both the 'integration without membership' and 'development' AAs, yet their relevance varies dependent on the context and, as illustrated below, the 'depth' of third country's envisaged Single Market integration. The reasons for the EU's preference for ICMs include (i) the broad scope of the AAs going far beyond trade and resulting need for flexible policy solutions; (ii) the nature of cooperation and the peculiarities of the cooperation routine and networks being formed outside the institutional structure of the AA; (iii) inflexibility of the AAs' institutional structure and challenges concerning the recourse to formalized compliance mechanisms and (iv) the focus on ownership, rather than a specific result, which may be achieved through pressure and making use of asymmetries in power relations between the EU and partner countries. As emphasized in the introduction, the very choice of ICMs by the EU Party does not mean its decision to 'drop' the compliance issue but rather consider it through the problem-solving lens, as suggested by the management school of compliance (Elgström and Jönsson 2000). Nevertheless, the EU may be motivated to make use of formalized compliance mechanisms, based on the external enforcement logic under the confluence of two factors, namely the EU's or specific Member States' strong interest in a particular result (partner country's fulfillment of a particular commitment and the issue's persistence and the lack of solutions within informal bureaucratic networks.

Broad scope of the AAs going far beyond trade, capacity constraints, and the need for flexible responses

The broad scope of the AAs, as well as the multiplicity, and peculiar nature of obligations they shall fulfill to achieve compliance in each specific sector are underlined by the EU Party representatives in both the 'integration-without-membership' and 'development association' contexts (Interviews 1, 4, 6,7) as drivers for the EU's application of ICMs. This immediately corresponds to the management approach to compliance, whereby it is not regarded as deliberate and stemming from the cost–benefit considerations of a partner country. In both contexts, both the EU Party and partner countries' representatives stressed long-standing capacity issues, experienced by partner countries as a key driver of non-compliance or delays in the fulfillment of their commitments, stressing that it is not pressure that may help (Interviews 1,2,6, 8). Given the ambitiousness of commitments under the AAs with Eastern Neighbours amid the capacity challenges, the EU-deployed experts even speak about the EU-driven 'capacity replacement', rather than capacity-building, to facilitate compliance (Interview 15). Capacity constraints are also reported to be salient in the context of the EU-CARIFORUM EPA implementation, despite the EU's extensive capacity-building efforts, especially during the first decade of the Agreement's implementation (Interview 16; European Commission 2018). Similar to the situation back in 2015, when the first review of the EU-CARIFORUM EPA's operation was implemented, differences in partner countries' capacity and a variation in tariff liberalization schedules were stressed by the EU and CARIFORUM officials as major challenges to compliance (Interviews 11, 12; European Commission, 2014a). Alongside the AA's ambitiousness and capacity constraints, the respondents stressed differences in legal systems as an obstacle to achieving compliance (Interviews 6,7, 10).

Even when it comes to the 'capacity replacement' scale, the EU's compliance-oriented capacity-building efforts in partner countries are implemented in the context of multilevel political and policy dialogue. Particularly the dialogue between various actors, involved in the AA implementation, was stressed by the EU Party's representatives as the most common and flexible means to address non-compliance or delays in partner countries' fulfillment of their commitments with almost no regard to specific sectors or the nature of commitments (Interviews 1–4). Two cases were, however, 'flagged' as exceptions to the 'soft' dialogue approach. Firstly, the majority of interview partners opined that formalized compliance mechanisms shall be triggered as early as possible in case there is an issue that prevents the Parties from trading in goods and services in an effective manner (Interviews 1–4). While the arbitration over Ukraine's wood export ban has so far been the only case of the EU's application of formalized compliance mechanisms in the 'integration without membership' context (European Commission 2020), both EU experts and Ukrainian government officials use this case to illustrate the EU's commitment to using formalized compliance mechanisms as a measure of last resort (Interviews 9, 15).

Comparing the EU's response to non-compliance in the domains of wood export and, for instance, transport or environment, experts stress pragmatic factors as driving the Commission's choice between the ICMs and formalized compliance mechanisms (Interviews 9, 11 15). Interestingly, unless market access is granted and backsliding takes place, the very prospect of Single Market integration, included in the EU's AAs with Eastern Neighbours is not seen by respondents as increasing the likelihood of the EU's application of formalized compliance mechanisms (Interviews 1–2). In contrast to crucial trade-related matters across contexts, the breaches of fundamental values, committed by partner countries, are seen by respondents from different contexts as a less probable ground for triggering formalized compliance mechanisms than trade challenges (Interviews 1–2, 6–8). Though confirming the pivotal role 'essential element' clauses play in using trade agreements as levers to uphold values, the respondents argue that their effectiveness in challenged by the selective and politicized application stemming from the lack of specific criteria to assess the scale of fundamental values' violation (Interview 1). Overall, the 'essential element' clause case strongly exemplifies the focus on dialogue in the EU's association relations:

'the very presence of an essential element clause in the Agreement's text is a strong argument for a partner country's government to refrain from the violations of fundamental values. If such a violation still happens, referring to the «essential element' clause is a good start for the Commission to start political dialogue on human rights, the rule of law or democracy. Overall, policy dialogue is the key means we use to collaborate on fundamental values with third countries. [. . .] With all these technologies, diplomatic channels work rapidly nowadays and we quickly react to any violations in partner countries in cooperation with our Delegations" (Interview 1)

Alongside the broad scope of the AA and related capacity sentiment, the respondents stressed two further crucial reasons for an emphasis on dialogue and flexible responses. Firstly, a certain degree of flexibility is required to implement the AAs under tough geopolitical circumstances or utilize the AAs to address such circumstances. In this light, several respondents referred to the EU's experience of dealing with the Ukraine crisis in 2014, including the launch of the Support Group for Ukraine (SGUA) that was set as a Task Force to support Ukraine's AA implementation and support state-building (Interviews 1, 3; Wolczuk 2019). Back in 2014, the Commission also granted Ukraine unilateral trade preferences before the AA including the Deep and Comprehensive Free Trade Agreement (DCFTA) entered into force (European Commission, 2014b). On top of this, both the EU and partner countries' representatives point to the importance of continuity, achieved through constant political and policy dialogue, rather than issue-specific consultations (Interviews 3, 7, 9). In other words, given the AAs' broad scope and ambitious objectives, not each compliance issue can be effectively resolved in terms of consultations within a limited timeframe. Therefore, the Parties may choose to address the issue, alongside others in terms of the regular policy dialogue, rather than launch the issue-specific consultations under the AA. Moreover, the decision to make use of the regular diplomatic channels with the support of routinely operating administrative networks rather than formalized compliance avenues can be also determined by the EU Party willing to act in a cooperative and promotional, rather than enforcement- and sanctions-oriented manner. This corresponds to our earlier assumption that the EU Party may not always be keen to use disparities in power relations with a partner country to achieve compliance with a specific norm, prioritizing dialogue and ownership- and capacity-building.

In sum, the EU's preference for ICMs over formalized compliance mechanisms in both contexts in question can, *inter alia*, be attributed to the broad scope of the AAs, capacity constraints, experienced by partner countries and the EU Party's awareness about them, and the need for flexibility and continuity in addressing compliance challenges. Compliance challenges that constitute obstacles to trade in goods and services do, however, have stronger chances for being addressed through formalized compliance mechanisms, especially as compared to change in capacity-demanding sectors in partner countries, such as environment or transport.

The nature of cooperation and networks being formed outside the AAs' institutional structure

Another reason why the EU Party may prefer the ICMs over regular compliance mechanisms is also attributable to the management side of compliance, rather than the cost-benefit or power relations considerations. It deals with the volume of everyday cooperation, required to implement the AAs, and the administrative networks between the EU Party and partner countries that naturally form in terms of such cooperation (Interviews 1–2, 9–11). Active communications and cooperation between the EU and partner countries' officials at the daily level and the density of networks between them is characteristic for the 'integration without membership' context (Interviews 15–16). Though the implementation of the EU's AAs with CARIFORUM and Central American partners is also marked by the presence of informal contacts between officials, the density of respective networks can be assessed as lower by comparison to the 'integration without membership' AAs (Interviews 1,6 and 8). Such a difference between the contexts in question can be explained by several interlinked factors, such as Neighbours' geographical proximity to the EU; the salience of the Single Market integration

dimension under the AAs with Neighbours, especially the EU-Ukraine AA and the EU's recourse to sectoral, rather than project-to-project support to reforms in the Neighbourhood (Wolczuk 2019). The peculiarities of the EU's reliance on daily cooperation and bilateral networks can be illustrated with the following quote from an interview with an official from Georgia:

'the Association Agreement is a crucial roadmap for Georgia to implement. It requires ambitious changes to be realized in tight cooperation between the legislature and the executive. However, even profound cooperation between these two branches of power may not be enough, since dealing with many issues requires particular technical expertise. That is why, delays and non-compliance is often determined by different interpretations of the Agreement or the fact that we just lack institutional or technical expertise to build an entirely new system. The EU officials are very much aware of this and we work together with the Delegation and various projects' representatives to move the reform agenda forward' (Interview 9).

In this vein, interviewees from the Eastern Neighbourhood emphasized the role of the EU technical assistance projects as the key facilitators of day-to-day work on the AAs' implementation and ensuring the new legislation's compliance with EU law (Interviews 1, 13, 15). Close cooperation between the ministries and the EU technical assistance projects' representatives amid the above-mentioned capacity challenge is this seen as a reason why information and communication flows between the EU and Neighbourhood countries are quite open (Interviews 13–14). The EU Party thus possesses up-to-date information about the reasons behind each specific delay and thus prefers a cooperative and problem solving-oriented mode, rather than exercising pressure (Interviewees 3, 13). Such an approach combines action on the ground, mainly though the technical assistance projects and the EU Delegation, with the political dialogue through bilateral association bodies, yet, unless there are major discontents, the latter are regarded by the Parties as *for a* to formalize achievements, rather than solve compliance issues (Interview 3). Though the intensity of the day-to-day cooperation with the EU is considerably lower in the Central American and CARIFORUM contexts, the EU representatives working in these contexts also underline their commitment to solving compliance challenges at the lowest possible level to avoid the politicization of an issue, whenever possible (Interviews 6, 8). As it follows from the logic of the EU Party representatives in both contexts, the factors pertaining to capacity constraints, the focus on administrative networks and day-to-day communication and, as demonstrated below, the EU Party's awareness about the 'temporal dimension' that behavioural change necessitates to occur and focus on ownership of change (Interviews 1–3, 6).

The focus on ownership amid the awareness about the 'temporal dimension' change may require

Another aspect of the EU's predominantly management approach to compliance, revealed during the interviews, was the EU Party's concern about the ownership of change and the sustainability of compliance or, as one of the respondents put it, 'compliance being resilient to backsliding' (Interview 1). As illustrated below, this factor once again speaks against the EU's emphasis on incentive structure or the use of bargaining power as to the majority of compliance issues, unless they persistently violate the EU's and/or Member States' interests.

Hereby it shall be noted that the [local] ownership stems from development studies field, signifying that it is the donor that shall implement local initiatives, rather than vice versa (Haselock 2010). development studies scholars distinguish multiple components that constitute local ownership, ranging from civil society engagement to donor initiatives and dialogue to local actors' accountability to constituents and responsibility for change (e.g. Hellmüller 2014). Petrova and Delcour 2020) note that the resilience-local ownership nexus in the 'integration without membership' context brightly manifests itself in three policy aspects that the EU seeks to make locally driven, namely economic integration and DCFTA implementation, mobility, and good governance and the rule of law. The interviewees engaged in the 'integration without membership' context argue that

such a focus on the interplay between resilience and local ownership is characteristic for the EU's support to the implementation of the AAs a whole, rather than the aforementioned aspects (Interviews 1–2). Both the Commission and the EU Delegations' representatives agree that the refusal from the 'bad policeman' role and purely enforcement logic is beneficial for ensuring the flexibility of approaches to change and the local actors' ownership (Interview 1; Interviews 4–5). Concerned about the unsustainability of change and reform backsliding, both the EU Party and domestic governments' representatives demonstrate awareness about the 'temporal dimension' of compliance, i.e. the need for time for behavioural change to occur (Interviews 2, 9). Nonetheless, as stressed by government officials from Moldova and Georgia, the prominence of referrals to capacity constraints and the 'temporal dimension' of compliance in the AA implementation context shall be reasonably limited, so that it does not become a justification for persistent non-compliance (Interviews 13–14).

Similar to the 'integration without membership' context, rising attention towards local ownership and ensuring the continuity of achieved change is noted by interview partners from Central America and CARIFORUM countries, though the lack of funds and positive incentives from the EU is reported as an obstacle to the timely implementation of their commitments under the 'development' AAs (Interview 12). It is noteworthy that the EU representatives, working in the abovementioned contexts, report a *sui generis* phenomenon of partners' 'local ownership fatigue'. This phenomenon seems to stem from the lengthy history of the West's development cooperation activities in the region and close monitoring of reforms' achievements (Interview 12). More detailed research is thus required to understand how EU rules are interpreted and adapted in the development context and what the alternatives for the current approach may be.

In a nutshell, amid the path dependence and 'local ownership fatigue' challenges in the 'integration without membership' and 'development' contexts, the focus on ownership, awareness about the 'temporal dimension' of change and backsliding concerns underpin the EU's preference for ICMs, rather than the focus on offering stronger incentives or developing new enforcement approaches.

Insufficient flexibility of AAs' institutional systems

Last but not the least, interview partners from both the 'integration without membership' and 'development' country contexts emphasizes the current design of formalized compliance prevents the Parties from using them as sole channels to address non-compliance (Interviews 3, 4, 6). This is, in particular, the case for Association Committee's and Subcommittees' meetings that are usually held only once or several times a year and are at some point even referred to as rather 'ceremonial' or 'protocol' events (Interviews 9, 12).

Rare meetings make it particularly challenging for the Parties to address persistent compliance issues, whereby consultations on rules' interpretation and progress tracing are required on a regular nature (Interviews 13–14). Nevertheless, as confirmed by the EU Party representatives in both contexts, the EU may choose to take resource to formalized compliance mechanisms or combine formalized mechanisms and the ICMS in case the issue significantly violates the EU's or Member States' interests (Interviews 4, 6 and 8). Hereby the officials from 'integration without membership' countries readily share the example of Ukrainian wood export ban, emphasizing both the importance of word import for the Union and the long story behind the issue (Interviews 13–14). When asked to comment on the EU's recourse to consultations and, later, dispute settlement over labour issues in South Korea, the respondents agreed that the EU may use formalized compliance mechanisms to create precedents and prevent similar cases of non-compliance in other country contexts (Interviews 9–10).

This demonstrates that the AA-based formalized compliance mechanisms, whose operation is backed by cost–benefit considerations, are essential to the AAs' operation. Yet, unless compliance challenges persistently violate the EU's and/or Member States' interests (e.g. impedes trade), their

inflexibility and the accessibility of ICMs lies behind the EU Party's and partner governments' preference for addressing compliance challenges through informal means.

Conclusion

The research revolves around an exciting paradox, namely the EU's preference for informal compliance mechanisms beyond the scope of the AAs to address compliance challenges in the EU 'integration without membership' and development foreign policy contexts, despite the richness of formalized compliance mechanisms under the AAs. Evidence from empirical research enabled us to distinguish several intertwined explanations for this phenomenon.

This is, firstly, the ambitiousness of partner countries' commitments under the AAs, the related capacity constraints and resulting need for flexible responses and solutions, recognized by both the EU and partner countries. The capacity issue is of particular salience for the 'integration without membership' context, where the EU's capacity-building efforts are claimed to reach the scale of 'capacity replacement'. Hereby the EU's extensive presence on the ground through EU Delegations and technical assistance projects can be seen as a prerequisite for the formation of informal bureaucratic networks beyond the AA institutional structure in the Eastern Neughbourhood and the prevalence of the problem-solving approach to compliance challenges. Despite its lesser scale, the EU's diplomatic presence, and the capacity-building and regional integration efforts in the CARIFORUM and Central American contexts has also been conducive to the day-to-day informal interactions between the Parties. Tightly intertwined to the previous two reasons, the EU's reluctance to apply formalized compliance mechanisms and make use of the asymmetry in power relations with partner countries is determined by the EU officials' awareness about the 'temporal dimension' of change and an emphasis on local ownership they make. Beyond the abovementioned factors, the EU's, as well as partner governments' preference for ICMs is linked to the inflexibility of the AA institutional system, especially the rarity of the association bodies' meetings. It is, however, demonstrated that, notwithstanding its general preference for the ICMs, the EU may take recourse to formalized compliance mechanisms to address the instances of partner countries' non-compliance that strongly violate the EU's or Member States' interests and/or are marked by persistence. Formalized compliance mechanisms may be also used to create reference cases to prevent non-compliance in other contexts.

With this, the contribution demonstrates how the capacity and ownership concerns, illustrative of management logic of compliance, dominates the EU's approach to fostering compliance under the AAs in both the 'integration without membership' and 'development' contexts. Such an approach cannot, however, exist in full isolation from formalized compliance mechanisms, though the latter are increasingly marginalized and reserved for the 'last resort' cases. As Ukraine and Moldova were recently granted a membership perspective, further research is needed to explore an extent to which the countries' candidate status will choose the EU's approach to compliance in its relations with them.

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List of interviews

(1) Interview 1 – EU Commission representative, March 2021, Zoom.
(2) Interview 2 – EU Commission representative, April 2021, Zoom.
(3) Interview 3– EU Delegation representative (Eastern Neighbourhood 1), April 2021, Zoom.
(4) Interview 4 – EU Delegation representative (Eastern Neighbourhood 2), April 2021, Zoom.
(5) Interview 5 – EU Delegation representative (Eastern Neighbourhood 3), May 2021, Zoom.
(6) Interview 6 – EU Delegation representative (Central America 1), May 2021, Zoom.
(7) Interview 7 – EU Delegation representative (Central America 2), June 2021, Zoom.
(8) Interview 8 – EU Delegation representative (CARIFORUM 1), June 2021, Zoom.
(9) Interview 9 – Government Official (Eastern Neighbourhood 1), August 2021
(10) Interview 10 – Government Official (Central America), September 2021
(11) Interview 11 – Government Official (CARIFORUM), November 2021
(12) Interview 12 – Expert (Central America and CARIFORUM), November 2021.
(13) Interview 13 – Government Official (Eastern Neighbourhood 2), November 2021.
(14) Interview 14 – Government Official (Eastern Neighbourhood 3), December 2021.
(15) Interview 15 – Expert (Eastern Neighbourhood 4), December 2021.
(16) Interview 16 – Government Official (CARIFORUM 2), December 2021.

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