

A ROCKY ROAD TOWARDS EUROPE

THE PROSPECTS FOR THE EU'S EASTERN
PARTNERSHIP ASSOCIATION AGREEMENTS

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FIIA BRIEFING PAPER 110 • 19 June 2012



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FIIA Briefing Paper 110
19 June 2012

- The EU has a strategic goal to build political association and economic integration with the six countries included in its Eastern Partnership policy. To reach this goal, it has invented a new model of association agreement that includes deep and comprehensive free trade. At best, three out of six Eastern partners are likely to sign the agreements within the next couple of years.
- The low level of democracy and the rule of law in the neighbourhood may eventually block the new agreements with most partners or, if the EU loosens the political criteria, undermine the credibility of the Union. The deadlock of the EU-Ukraine agreement because of 'selective justice' sets a strong precedent for the other neighbours and tests the leverage of the Eastern Partnership.
- The new model of association agreement is too little for some Eastern neighbours and too much for others. The EU needs to differentiate clearly between an ambitious "European Agreement" for reform-oriented partners and more limited cooperation agreements for others. The EU will have to re-consider its (so far negative) position on the membership perspective for the most advanced partners in late 2013, when Moldova and Georgia may be close to concluding the new agreement.
- The EU has limited tools to ensure the implementation of the new agreements. In order to increase the effectiveness of the association agendas, the EU needs to encourage domestic civil society to monitor their implementation.
- Russia is stepping up efforts to establish a Eurasian Economic Union as a regional integration project that competes with the EU. In spite of the EU's weakened attractiveness, an association agreement with the EU is still likely to offer more sustainable economic development and a larger degree of political self-determination for its Eastern partners.

The European Union research programme
The Finnish Institute of International Affairs



Europe Day celebrations in Yerevan, 12 May 2012. Photo: EPA ©EU/Neighbourhood Info Centre

One of the key priorities of the EU's Eastern Partnership policy is to conclude new, ambitious association agreements, including deep and comprehensive free trade (DCFTA), with the six partner countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine). The EU has concluded negotiations on the first such agreement with Ukraine and is currently negotiating with Moldova, Georgia, Armenia and Azerbaijan. According to the Eastern Partnership roadmap issued by the European Commission and High Representative in May 2012, negotiations with all four countries "should be well advanced, if not finalized" by late 2013.

However, even according to an optimistic scenario, only Moldova, Georgia and, on the condition of a political turnabout, Ukraine can be expected to sign the new agreements within the next couple of years. For Armenia, the process is bound to take longer and is more uncertain, Azerbaijan is disinterested although it has started negotiations, and Belarus is excluded under the current political conditions in the country.

By suspending the signature of the agreement with Ukraine, the EU has set an important precedent and a high standard of political preconditions for other similar agreements. This is commendable in light of the EU's pledges to place democracy and the rule of law at the heart of its neighbourhood policy. However, Ukraine's response to the suspension suggests that the agreement is not a strong incentive for political change in the neighbourhood. The EU faces

a classic dilemma of interests versus values: it has a strong strategic interest to build deeper contractual relations with all Eastern partners, but it has made the conclusion of new agreements conditional upon political criteria that most of the partners do not meet.

This paper examines the prospects for the new association agreements to move towards the goal of political association and economic integration between the EU and its Eastern neighbours. It will first outline the key features of the agreements and highlight the difficulty in ensuring their implementation. Secondly, it will discuss the different dynamics of the partner countries, acknowledging Moldova as the new frontrunner, but warning of the decline in EU enthusiasm in the country; and questioning why the EU is negotiating an association agreement with Azerbaijan that has no prospects for either political association or economic integration with the EU. Thirdly, it will look at the interplay of the Eastern Partnership with Russia's ambition to develop a competing integration project in the CIS region and note that the EU is still the preferred option for most of its Eastern partners.

To conclude, the paper argues that the new model of association agreement is too little for some of the EU's Eastern neighbours and too much for others. The EU's current approach contradicts the idea of "more for more", and also fails to take the principle of differentiation that it underlines on paper seriously. The EU needs to differentiate clearly between an ambitious "European Agreement" for those countries that meet

its political criteria, and a more limited cooperation agreement to be negotiated on a tailor-made basis with others. In order to make the more demanding model attractive and effective, it needs to be coupled with extensive assistance, close monitoring of implementation and a promise that further reforms will steer the partner countries closer to EU membership.

Pitfalls of the new agreements

The EU came up with a new model of contractual relationship with outsiders in 2007, when it started negotiations with Ukraine on an “enhanced agreement” (as it was originally called), including deep and comprehensive free trade. The agreement was envisaged as an ambitious and innovative tool for extending EU norms beyond its borders and bringing neighbouring countries as close as possible while stopping short of membership. What makes this model truly ambitious and controversial at the same time is that the DCFTA part implies extensive adoption of EU common market legislation by the partner countries. (The EU plans to extend the DCFTAs to the Southern neighbourhood as well, and aims to launch negotiations with Jordan, Morocco and Tunisia by the end of 2012.)

The closest precedents to the new association agreements are the Stabilisation and Association Agreements (SAA) with the Western Balkan countries, a key difference being that the SAAs confirm the status of the partner countries as “potential candidates for European Union membership”, whereas the Eastern Partnership agreements are not (so far) foreseen to make similar commitments. The DCFTA part can also be compared to the European Economic Area, negotiated in 1989–1993 between the EC and EFTA countries.¹ Out of the seven EFTA states that originally signed the EEA in 1992, three soon became EU members (for example, Finland applied for EU membership in 1992 while the EEA talks were ongoing). There is a compelling logic for the partner countries to pursue full membership once they have committed themselves to implementing EU legislation in any case, so as to avoid being governed by externally decided rules.

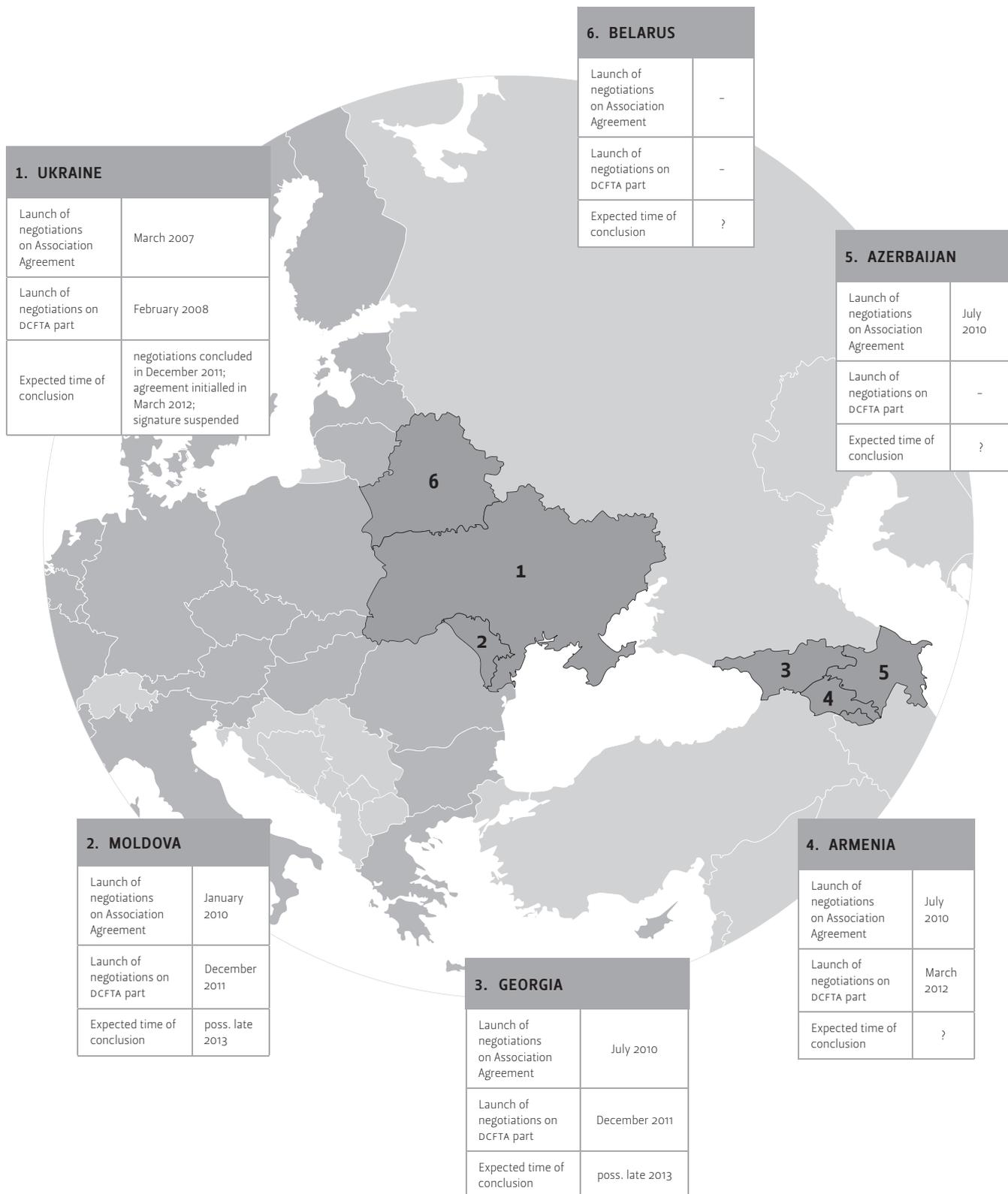
1 PER MAGNUS WIJKMAN, “Fostering Deep and Comprehensive Free Trade Agreements for the Eastern Partners”, *Eastern Partnership Review* No. 8, December 2011.

The EU has limited tools to ensure the implementation of the new agreements. Interestingly, only the DCFTA part of the agreements has a legally binding character. The partner countries can only benefit from the new business opportunities created by the DCFTA if they do actually implement the common market standards regarding competition policy, sanitary and phyto-sanitary rules, public procurement, intellectual property rights, and so forth. The political and sectoral parts of the agreements (the latter including the areas of migration, energy, transport, environment et al.) list a lot of commitments and goals, but these are not legally binding. Their implementation hinges on the goodwill of the parties, and non-compliance is not likely to have severe consequences or high costs. The agreements do include the so-called human rights clause, like all the EU’s external agreements concluded since the 1990s, meaning that an infringement of democratic principles and human rights may cause unilateral suspension of the agreement, but the EU has rarely activated this clause.

In order to support the implementation of the agreements, another new policy tool was launched by the EU and Ukraine in 2009: an Association Agenda that outlines jointly agreed reform priorities, derived from the Association Agreement. For Ukraine, the Agenda had above all a symbolic value as a sign of advancement to a new level in the EU relationship, since it replaced the earlier ENP Action Plan. The latter continues to be the key document in the EU’s relations with most other ENP countries. The practical value of the Agenda seems to be limited: Ukraine has made disappointingly slow progress on the reforms set out therein and, in any case, the same measures could have been taken without negotiating a separate document. The time and administrative effort that were expended in negotiating the Agenda could have been put to better use on actual work on the reforms. A positive aspect of the Agenda is that, being a public document, it provides the domestic civil society and media with an instrument to monitor and put pressure on the government.

The other strongly EU-oriented Eastern partners, Moldova and Georgia, have been asking for their own association agendas not least because they cannot accept receiving less from the EU than Ukraine. In light of the Ukraine experience of much bureaucratic work and few results, the EU was initially hesitant. However, the fresh Eastern Partnership

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roadmap says the EU should agree on association agendas with not only Moldova and Georgia, but also with Armenia and Azerbaijan in 2013. Hence, in spite of its weak effectiveness, the agenda is set to become an instrument that is automatically coupled with association agreement talks. This can be seen as an expression of a horizontal spill-over effect, supported by competition among the EaP countries. In order to increase the effectiveness of the agendas, the EU needs to involve civil society in their preparation and encourage domestic pressure groups to monitor their implementation.

Partners moving in different directions

The democracy and rule of law setback in Ukraine since 2010 coincided with the final stage of negotiations on the EU-Ukraine association agreement. The conclusion of the Ukraine agreement thus posed a critical test for the EU's claim that the deepening of the relationship depended on Ukraine's commitment to democracy, human rights and the rule of law. The EU's decision to suspend the signature of the agreement due to Ukraine's failure to satisfy the political criteria did not come easily. There were strong doubts about the effectiveness of such a move among experts, as there was the risk of Ukraine turning away from the EU as a result. The Ukrainian opposition appealed to the EU to conclude the agreement. However, especially in the aftermath of the Arab Spring and the EU's pledges to place democratisation at the heart of the ENP, conclusion of the agreement would have dealt a serious blow to the EU's credibility. There is also the cynical aspect that those member states not keen about Ukraine's European aspirations were happily making use of a good excuse to put the process of Ukraine's integration on hold.

As an interim step, the EU and Ukraine initialled the agreement in March 2012, signalling that it is technically ready to be signed and both sides are committed not to re-open the text. It is not quite clear what the EU's conditions for signature are exactly, and there are different views inside the EU on this question. According to Commissioner Stefan Füle, "...Ukraine needs to show that it lives in the spirit of this political association. We expect Ukraine to address the issues of politically motivated trials,

independence of judiciary and selective use of law".² The ENP country progress report of May 2012 points more specifically to selective justice as the obstacle to the signature and ratification of the agreement. As long as several opposition figures are on trial and are not ensured fair legal process, the parliamentary elections that are to take place in October 2012 cannot be free and fair, which goes against another key demand of the EU. The EU has little choice but to stick to its principled position and put pressure on the leadership, while enhancing ties with the Ukrainian population and civil society, where there is increasing discontent with the country's political leaders.

The EU's decision to block the signature of the agreement with Ukraine sets a strong precedent for the other neighbours and tests the leverage of the Eastern Partnership and the attractiveness of the association agreement. The fact that the Ukrainian leadership did not embark on a quick solution to the Tymoshenko affair as soon as it became a blockage to the association agreement is a defeat for the EU and suggests that the agreement might be not very attractive after all. The EU's position in the Ukrainian case might pave the way for similar confrontations with some other Eastern partners. There is a danger that the low level of democracy and the rule of law will either block the conclusion of the agreements with most partners or, if the EU loosens the political criteria, dilute the idea of the agreements and ridicule the 'more for more' principle of the ENP. On the other hand, smaller and strongly EU-oriented partners, such as Moldova and Georgia, are more receptive to EU influence and less likely to endanger their EU relations for the sake of short-term domestic political gains. Ukraine has had a tendency to think of itself as too big and geo-strategically important to be abandoned by the EU, which also partly explains its lax attitude towards the implementation of reforms.

While Ukraine has been sliding towards authoritarianism, Moldova has become the new front-runner with the strongest European-oriented reforms in the Eastern neighbourhood. It also has the highest democracy scores in the CIS region, according to international watchdogs such as Freedom House

2 Remarks by Commissioner Füle following the fifteenth EU-Ukraine Cooperation Council, Brussels, 15 May 2012.

and the Economist Intelligence Unit. It has been one of the main beneficiaries of the EU's 'more for more' approach, attracting additional funds thanks to real reform efforts (annual bilateral assistance increased from 57 million EUR in 2009 to 79 million in 2011, and is set to further increase to 100 million by 2013). Moldova has performed well in negotiations on the association agreement and is the strongest candidate for concluding the talks by the end of 2013. It has to be kept in mind, however, that Moldova is motivated by the ultimate goal of EU membership, even if it accepts that this is not on the agenda right now. If the membership perspective question remains a taboo for the EU over the coming years, Moldova's enthusiasm is likely to wane. EU support has decreased among the Moldovan population over the past couple of years, as many people feel that the strong emphasis on European integration by the government has not yielded tangible results.³

Georgia has also proceeded well in the negotiations and has the potential to conclude the agreement by late 2013. Thanks to its very liberal economy, it has a more resistant and selective approach to legal approximation to the common market. At the same time, it has a strong (geo)political motivation to deepen its relationship with the EU. On account of Georgia's strong Western orientation, the EU has been relatively soft in its criticism towards the low level of political rights, political pluralism and media freedom in the country. However, given Georgia's strong interest in a swift conclusion of the association agreement, the EU can use the agreement as a tool to push the country to improve its performance in these areas. The upcoming parliamentary and presidential elections in Georgia (in 2012 and 2013 respectively) will be a key test of the country's respect for democratic principles.

One of the major challenges for Moldova is to tie in the separatist region of Transnistria to the implementation of the DCFTA. It is very important that Transnistrian observers have been allowed to attend Moldova's DCFTA negotiations. Transnistrian companies, most of which are already registered in Chisinau, have a pragmatic interest in the potential trade opportunities that the agreement opens up. They need the EU's help with the implementation

of EU standards, just as all Moldovan businesses do. The DCFTA has a great potential to contribute to the re-integration of the country in a pragmatic manner, in the spirit of European integration history. The same cannot be said of the separatist areas of Georgia, where the political atmosphere is much more polarised and there is little hope for the registration of local companies in Tbilisi, which would be a starting point for their involvement in the DCFTA.

Armenia is clearly lagging behind Moldova, Georgia and Ukraine in terms of its EU approximation, in particular when it comes to the level of democracy, human rights and the rule of law. It is currently far from meeting the political criteria for signing the association agreement, a recent example being the failure of the parliamentary elections of May 2012 to meet democratic standards. However, it is making some efforts to improve these areas and has been taking the negotiations increasingly seriously. There is potential for positive EU influence on Armenia, but quick progress is unlikely.

Azerbaijan, the fourth country that is negotiating about an association agreement with the EU, is the most puzzling and embarrassing case for the Union. Azerbaijan is not much different from Belarus regarding its state of democracy and human rights, but only Belarus is excluded from the association agreement process because of its political situation. Azerbaijan dislikes the emphasis the agreement places on democratic principles and has advanced slowly in the negotiations. It cannot start negotiations on a DCFTA because it does not satisfy the precondition of being a WTO member, and it is in no hurry to join the WTO. Thanks to its abundant energy resources, it is not worried about the relatively low level of EU assistance that it is receiving. The principle of "more for more and less for less" simply has little scope to increase the EU's leverage on Azerbaijan. Amazingly, the Eastern Partnership documents consistently group Azerbaijan together with Moldova, Georgia and Armenia when referring to negotiations on the association agreements. There is no reason to expect Azerbaijan to move quickly towards either one of the two major goals of the Eastern Partnership—political association or economic integration. As argued in more detail below, the EU should acknowledge this and differentiate clearly between those partners that are serious about democratic values and EU approximation and those that are not.

3 Institute for Public Policy, Barometer of Public Opinion, <http://ipp.md>



President of the European Council Herman Van Rompuy, Ukrainian President Viktor Yanukovich and President of the European Commission José Manuel Barroso at the EU-Ukraine Summit in Kiev, 19 December 2011. Photo: The Council of the European Union

Still more attractive than Russia

There is a mismatch between the prioritisation of political and security concerns by the Eastern neighbours and the emphasis on legal harmonisation and economic integration by the EU.⁴ The very birth of the Eastern Partnership was provoked by geopolitics, notably the 2008 war in Georgia that alerted the EU to the aggressive policy of Russia in the common neighbourhood. The neighbours see their relations with the EU as a counterbalance to Russian efforts to regain a dominant role in the region. They also seek the EU's support in managing their conflicts with Russia, above all when it comes to the separatist regions of Georgia and Moldova, as well as their conflicts among each other, such as the one between Armenia and Azerbaijan over Nagorno-Karabakh. As the Eastern partners tend to look at the association agreements with the EU primarily through geopolitical lenses, as a safeguard against Russian dominance, they do not take their implementation too seriously.

Paradoxically, the neighbours seek to strengthen their sovereignty vis-à-vis Russia through deepening their relationship with the EU, although European integration is all about sharing sovereignty and

the DCFTAs imply ceding parts of national control to the EU. The Eastern Partnership reflects the general tendency of the EU to play down issues of hard security and geopolitics and advance economic integration as an instrument for enhancing stability and peace.

At the same time, Russia is stepping up efforts to re-integrate the CIS region, which is identified as a key priority in President Putin's recent decree "On Measures to Implement the Russian Federation Foreign Policy", signed on 7 May 2012. All CIS members apart from Azerbaijan, Uzbekistan and Turkmenistan signed a free trade agreement in October 2011, which is yet to be ratified and implemented. This agreement foresees duty-free trade in accordance with WTO rules and is compatible with the DCFTAs of the EU. However, Moscow has a further ambition to develop an integration project that competes with the EU, while drawing to some extent on the European integration model. It has already created a Customs Union that is not compatible with the DCFTAs and so far has only Russia, Belarus and Kazakhstan as members. As a next step, Russia aims to establish a Eurasian Economic Union by the beginning of 2013.

Ukraine, Moldova and Armenia have so far taken a reserved position on this project and prioritise economic integration with the EU, resisting Russian pressure to join the Customs Union. Their preference for the EU is partly explained by the political and security concerns related to Russian dominance.

4 KATARYNA WOLZCUK, "Perceptions of, and Attitudes towards, the Eastern Partnership amongst the Partner Countries' Political Elites", *Eastern Partnership Review* No. 5, December 2011.

However, for Armenia, Russia is an ally and a provider of security guarantees against Azerbaijan. Yet in spite of the security ties, even Armenia is increasingly orienting towards the EU as the only considerable source of support for its economic modernisation.⁵ Ukraine also expects larger economic benefits from the DCFTA and has not turned to the Customs Union⁶, although its relations with the EU have soured and the DCFTA signature is frozen. Azerbaijan has little interest in joining either the Customs Union or the DCFTA.

The Russian efforts to press ahead with its regional integration project expose fundamental differences between the political and economic models of the EU and Russia and force the CIS countries to choose one or the other. The EU's attractiveness and soft power are widely reported as being on the wane, but for the countries sandwiched between the EU and Russia, the EU is still the option that is likely to offer more sustainable economic development and a stronger degree of political self-determination. At the same time, the EU orientation of the Eastern partners is uncertain for a number of reasons, including the domestic political (above all for the more authoritarian leaders) and economic costs of EU approximation and the unclear endpoint of the process.

The EU needs to take differentiation seriously

The Eastern Partnership has the ambitious goal to bring the whole region closer to the EU. However, it also highlights differentiation and promises more support and more benefits to countries that are most engaged in reforms and committed to democratic principles. The latest ENP report ("Delivering on a new European Neighbourhood Policy", issued on 15 May 2012) even claims that "only those partners

willing to embark on political reforms and to respect the shared universal values of human rights, democracy and the rule of law have been offered the most rewarding aspects of the EU policy" such as DCFTAs and mobility of people. This claim does not hold true: in the Eastern neighbourhood, the EU is willing to offer a DCFTA to all partners except Belarus, and is advancing mobility of people with all six countries. The advancement of trade and people-to-people links is actually likely to support the transformation of these countries better than exclusion would do.

The EU's current approach to the new agreements with its Eastern neighbours contradicts the idea of "more for more", and it also fails to take the principle of differentiation seriously. Against the backdrop of considerable differences between the Eastern partners, above all their commitment to democracy and interest in European integration, the current model of association agreement offers too little for some countries and too much for others. The EU should aim at an ambitious "European Agreement" with those countries that meet the political criteria and are engaged in European-oriented reforms. The agreement that has been negotiated with Ukraine has a high level of ambition, but it should not be seen as the maximum that the Eastern partners can attain. The key political question where more advanced countries should be able to achieve more continues to be the prospect of membership. Overwhelmed by the euro crisis and internal tensions, the EU is understandably not in the mood right now to address this issue. However, it needs to be prepared to re-consider its position in autumn 2013 when the next Eastern Partnership summit will take place and when Moldova and Georgia might have reached the final stage in their association agreement talks.

Another issue that needs reinforced political commitment on the EU side is the prospect of a visa-free regime. This should be seen as an essentially technical issue: the partner countries should have certainty that once they implement the EU requirements for safe visa-free travel, the Union will not impose additional hurdles. A visa-free regime should not be seen as a reward for political leaders, but a gesture of goodwill towards the populations.

What, then, about those countries that do not qualify for a more ambitious new agreement, such as Azerbaijan? The EU should not dilute its core

5 LAURE DELCOUR and KATARYNA WOLZCUK, "What Kind of Actor? Perceptions of the ENP and EaP amongst the Eastern Neighbours", presentation at the conference "EU in International Affairs", Brussels, 4 May 2012.

6 OLGA SHUMYLO-TAPIOLA, "Ukraine at the Crossroads: Between the EU DCFTA & Customs Union", Ifri Russia/NIS Center, *Russie.Nei.Reports No. 11*, April 2012; ELENA GNEDINA and EVGHENIA SLEPTSOVA, "Eschewing Choice: Ukraine's Strategy on Russia and the EU", *CEPS Working Document No. 360*, January 2012.



The EU should apply the same political criteria to all Eastern partners if it wishes to retain its credibility and moral integrity. Photo: Rosipaw (flickr)

values by entering into a close political association with a country that violates these values. For the sake of its credibility and moral integrity, it should consistently apply the same political criteria to all Eastern partners. However, the EU has important energy and security interests in Azerbaijan and in the South Caucasus region that it does not intend to put aside as long as the regime is authoritarian. It is not in the EU's interests to leave Azerbaijan with the out-dated Partnership and Cooperation Agreement that was signed in the mid-1990s. It should consider negotiating a more limited cooperation agreement, while making it clear that political association is out of the question as long as the democracy and human rights situation in the country does not improve.

The current gap between the rhetoric and practice of the Eastern Partnership shows that the EU is struggling with translating the “more for more” principle into meaningful practice. By making it explicit that it foresees different kinds of contractual relationships with its neighbours, and accordingly a different level of support for their implementation,

depending on the political conditions in each country, the EU could add credibility to the ENP and motivate the more reform-oriented neighbours to be more ambitious.

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ISBN 978-951-769-349-3
ISSN 1795-8059

Cover photo: Nationaal Archief of the Netherlands
Language editing: Lynn Nikkanen

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