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The EU-Ukrainian Summit, the Association Agreement and New Practical Instrument: implications for Ukraine: January 2009

Objectives:

The objectives of this paper are as follows:

- to review briefly the results of the EU-Ukraine summit
- to analyse the emerging content and structure of the Association Agreement, including the deep free trade area agreement
- to consider the possible innovations in the New Practical Instrument under negotiation between the parties
- to consider the implications of the Association agreement and the New Practical Instrument for Sida activities in Ukraine

Background

Relations between the European Union and Ukraine have developed rapidly over the last six months. The EU-Ukraine summit, which is held annually, took place in early September 2008, under the French presidency of the European Union. This marked an acceleration in the development of these relations but also appeared to put a limit on their scope. The negotiation of the Association Agreement, including a deep and comprehensive free trade agreement, has continued. The conflict in Georgia concentrated the minds of West European politicians and citizens on the problems and conflicts in Eastern Europe. In response the European Commission made its proposal on an Eastern Partnership already in December 2008. This new policy may also give new impulses to integration. The gas dispute with Russia has certainly not improved the climate of relations between Ukraine and the EU, but it is most unlikely that it, alone, will affect the key negotiations taking place at present.

Beginning with the decisions made at the EU-Ukraine summit, this paper analyses the terms of the legally binding Association Agreement as well as the non-legally binding ENP action plans and their successors.

The EU-Ukraine summit, September 2008

The summit, although full of friendly words and positive statements, brought only one significant advance in relations. After many months of hesitation, the EU side agreed that the new agreement with Ukraine would be an Association Agreement, 'which will be as ambitious as possible'. Until the summit, it had simply been referred to as the 'new enhanced agreement'.

This is more than simply a change of name. It implies that the legal base of the new agreement will be Article 310 (EC). Association brings with it an upgrading of the quality of joint institutions within the agreement, with decisions taken by the Association Council being legally binding. Politically in Central and Eastern Europe, association has generally been linked to preparation for accession to the EU, but in reality many states, which have no aspiration and no hope of joining the EU, have association agreements. So while this is a step in the right direction, it cannot be interpreted as any concession by the Union to Ukraine's central demand on future accession to the Union.

Indeed the summit hardly brought any concession from the Union on this central Ukrainian demand. While the Joint Declaration mentions that the presidents 'recognized that Ukraine as a European country shares a common history and common values with the countries of the European Union', the only mention of accession is extremely oblique: 'the EU acknowledges the European aspirations of Ukraine and welcomes its European choice'. Indeed, this mention was already included in the 1999 EU Common Strategy on Ukraine.¹

Nevertheless, in other practical areas the Summit declaration underlines the positive tone by talking about 'political association' rather than 'political dialogue' and 'economic integration' rather than 'economic cooperation', by agreeing that a 'new practical instrument' should be drawn up 'with a view to preparing the implementation of the Association Agreement' and that this should replace the Action Plan by March 2009, and by launching a new visa dialogue to discuss the '*long-term perspective* of establishing a visa free regime between the EU and Ukraine'. The 'long term perspective' demonstrates however that very little in practice was moved on by the summit, other than the extremely important declaration of the association agreement.

¹ See point 6, European Council Common Strategy on Ukraine (1999/877/CFSP), 11 December 1999; OJ 1999 L331/1 (<http://www.consilium.europa.eu/uedocs/cmsUpload/ukEN.pdf>)

The Association Agreement

1. Background:

The Association Agreement between the EU and Ukraine will form the legal basis of the relationship between the two for the medium-term future and is therefore extremely important for both sides.

This Association Agreement is innovative for two reasons. It is the first such agreement with a country in Eastern Europe, and secondly it is the first of a new generation of 'deep and comprehensive free trade agreements'.

The Eastern Partnership, if approved by the EU Council, promises to all the countries of Eastern Europe (Armenia, Azerbaijan, Belarus, Georgia, and Moldova) the possibility of negotiating an 'Association' with the Union. However Ukraine is the only country which at present is negotiating such an association.

Deep and comprehensive free trade signifies that the agreement will not only contain a traditional free trade agreement, but will also aim to establish EU economic regulation in areas such as competition policy, state aids, establishment and the movement of capital and labour (this is the area that the Germans call 'Ordnungspolitik' – a convenient term which does not exist in English. At a time when tariff barriers have been reduced to very low levels, traditional free trade agreements have little effect, especially for a country like Ukraine whose exports are mainly in low value-added products (although agriculture would clearly benefit from lower levels of protection in the EU – but this is very unlikely to happen). Comprehensive free trade area entails that trade liberalisation will cover not only goods but also services. Deep free trade will allow the reduction in non-tariff barriers and the eventual integration of Ukraine's economy with the internal market of the European Union. This integration promises major gains for Ukraine in the medium term.

In Central and Eastern Europe, Association Agreements have been linked, albeit in somewhat ambiguous terms, to the ultimate accession of countries to the European Union. Poland, Hungary and the other new member states all negotiated Association Agreements in the early 1990s and it was under these agreements that the countries reformed to the point where they were invited to negotiate for membership. However, an Association Agreement clearly does not imply for the EU any obligation with respect to accession to the Union; suffice it to point out that Egypt and Chile have Association Agreements with the EU. Indeed, the reference to the membership prospect of the associated state in an association agreement - as in the Stabilisation and Association Agreement with Croatia - does not in itself entail an automatic right to accede to the Union. Such accession remains governed by the provisions of Article 49 TEU, and ultimately subject to the ratification of a specific accession treaty by each Member State and by the third country.

Nevertheless, an Association Agreement which contains deep free trade will in practice provide the necessary framework to allow a third country to prepare for its integration with the internal market of the Union and therefore for ultimate accession.

2. Key elements of the Association Agreement

While there are two parties negotiating the Association Agreement, it is clear that the draft is prepared by EU side. The draft is basically path-dependent, based on the texts of previous agreements. Crucially however, the draft is submitted to the EU Council, which draws up the negotiating directives, which guide the EU negotiators when they decide which proposals by the other party can be accepted and which not.

The negotiating directives therefore give us a good idea of how the Association Agreement will look, though frequently the final negotiated version will deviate somewhat from them. A detailed listing of these directives is given in annex 1.

The essential chapters of the agreement are likely to be as follows:

- political association (dialogue)
- deep free trade area, potentially leading in the very long term to a degree of integration into the European internal market similar to that of the European Economic Area
- cooperation in many political, social and economic areas
- personal mobility
- institutions

Political association: political association, normally referred to as political dialogue, is important to third countries, because it gives them privileged access to leaders from the member states and the European institutions. This not only allows governments in associated countries to gain information about future developments in EU policies, but also to attempt to influence EU governments' thinking on issues, which affect the third countries.

However, in the past enhanced political dialogue has been disappointing to third countries. Time pressures on the agendas of Council of Ministers' meetings have frequently led to ministerial meetings being reduced to a short formality rather than an in-depth discussion of current issues. For Ukraine, the most important existing piece of political dialogue is the annual EU-Ukraine summit, which, with a considerable amount of preparation on both sides, can lead to some important advances in relations, as the 2008 EU-Ukraine summit illustrates. The annual summit is a privilege, which is not shared with many other third countries.

Political dialogue of course also takes place in the Association Councils, which meet at least once a year and which, in theory, ministers from both sides attend. Other regular meetings take place at Political Director level, or that of the Political and Security Committee. A host of other possible areas of political cooperation will certainly be named in the agreement.

Perhaps the most important element of political dialogue, is that it brings ministers, parliamentarians, and senior officials as well as ordinary civil servants from the two parties together, and allows them to solve problems or potential problems outside the structures established by the Agreements.

Deep free trade: all agree that traditional trade agreements, based on mutual reductions in tariff levels, are of limited importance today in a world of low tariffs, hence the interest in negotiating 'deep and comprehensive free trade area' agreements. Such agreements aim to eliminate the majority of non-tariff barriers to trade through persuading third parties to adopt and implement EU regulation necessary for the creation and management of the Union's internal market. As this regulation is progressively adopted and implemented, the EU can take steps to facilitate access by third-party enterprises to the internal market of the Union.

The EU points out that in the longer term this process could lead to Ukraine being perfectly integrated into the internal market in a similar way that the members of the European Economic Area are integrated. This would mean that Ukrainian producers could sell their products or services on the EU market on an equal footing with EU companies. This is a useful indication of the EU's openness to economic integration, in spite of its apparent current opposition to accession.

However there are of course a very large number of practical problems in this approach, although the proposal itself is a very positive sign to the Ukrainian economy. The technical problems will be immense and can only be solved over the course of decades rather than years. Not only will large numbers of European Union laws and policies need to be implemented, but new institutions including inspectorates and regulators will have to be developed and existing institutions changed and in some cases scrapped. The judiciary will also need to be retrained to deal with this complete change in the legal landscape of Ukraine. There is, of course, a democratic dilemma in this approach as well in that Ukraine would be obliged to implement a whole raft of existing and new legislation with no input into the making of these new regulations and directives – as is the case presently with, for example, Norway. However, Norway remains outside of the Union of its own volition. Ukraine does not. Without a membership perspective at any stage, this may be harder for Ukrainian politicians and the Ukrainian public to accept.

The negotiation of deep free trade is clearly extremely complicated (annex-2 contains a brief list of the likely chapters of the free trade agreement). The pure trade articles concerning standstill for industrial goods, tariff reductions and even exceptions for certain sensitive goods may not be too difficult. However the whole problem of aligning rules of origin, as well as the negotiation of the agriculture chapter may be rather complex.

Adjustment to the narrow internal market acquis, specifically the areas of accreditation, conformity assessment and the questions of standards have been negotiated in an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). However the terms of this agreement still have to be implemented and this will clearly be rather difficult. Above all it involves the creation or reform of institutions such as standardisation bodies, accreditation bodies, conformity assessment bodies, metrology organisations and market surveillance authorities. Reforming what is essentially a continuation of the system which existed during the period of central planning is difficult.

If we look at just one area like state aids, it is clear that adjustment to the EU rules on state aid will require a complete rethinking of policy by government. The EU definition of state aid is cast very widely to include areas such as special tax regimes, government guarantees given to individual companies or sectors, as well as the more easily understandable question of subsidies given to firms. Adjustment in this area will require legal and institutional changes as well as a complete change of practice in key government ministries and in the large enterprises, often owned by oligarchs, who have considerable political power in the current Ukrainian system.

Rules on public procurement have been a hotly contested area in Ukraine for many years, and the changes which were undertaken recently did not create a system less open to corruption. This is another area where it may be simpler to negotiate an agreement than it is subsequently to implement it (see below).

The **cooperation articles** in this agreement will be different from those in the earlier Association Agreements with central and eastern European states. In the latter the cooperation chapters were intended simply to mention key areas where the parties could co-operate but without any obligation to do so. In the Ukrainian agreement the cooperation chapters will also include annexes in which specific elements of EU regulation will be listed. As these articles include areas such as environment policy, transport, taxation, and agriculture and rural development, all of which are major regulatory areas in the acquis, the cooperation articles will take on an importance which they did not have in previous association agreements, except perhaps in Stabilisation and Association agreements with the Western Balkans, which expressly aim at preparing accession of these countries to the Union.

It is here, rather than in the free trade agreement, that the scope of the legal harmonisation envisaged by the EU will be revealed. Naturally the wording of these articles will be crucial. If the wording suggests that the harmonisation is a requirement of the agreement, this is obviously very different from wording which requires simply best endeavours. However with both draftings, there will be a political obligation on Ukraine to implement the regulation which is listed in the annexes, even if there is no legal obligation.

Personal mobility is a crucial area for Ukrainian negotiators. There is a strong domestic demand for an easing of visa rules and a return to the visa-free-movement of persons which existed with the western neighbours before they became members of the European Union. It is however extremely unlikely that the European Union will agree within the Association Agreement to any fundamental relaxation of current rules. It has already been agreed that there should be a visa dialogue between the parties, but the EU has always insisted that the possibility of visa-free travel should be considered as a *long term objective*.

In the related areas of establishment and the mobility of workers, the EU is likely to propose similar arrangements to those which existed in some of the Association Agreements with central and eastern Europe; that is to say it is likely to be liberal on establishment and offer national treatment to Ukrainian workers who are legally employed in the EU, and possibly grant certain rights to their family, for instance the spouse's right to access the labour market of the host Member State, and the right of children to access education. By contrast, the agreement will be very strict on the question of key personnel/self-employed workers entering the EU on the basis of the establishment rules and will almost certainly not liberalise any of the other rules relating to the movement of workers.

It appears that the **institutions** of the agreement have already been substantially agreed. The declaration at the EU-Ukraine summit, that the agreement would be an Association Agreement indicates that the institutions which are established by the agreement will be similar to those which existed in the Association Agreements with the new member states. On this basis the Association Council will take decisions legally binding on both parties. Moreover, given the large-scale regulatory approximation foreseen by the new agreement, it is likely that the institutional framework will also play a particularly important role in the monitoring of the implementation, and in compliance control.

3. Transposition and implementation:

The Ukrainian negotiators will be working without adequate knowledge of the impact of European Union regulation on Ukraine's economy. The lack of adequate regulatory impact analysis of EU regulation and inadequate consultation with business and other interested parties in Ukraine means that there are likely to be many surprises for Ukrainian business as the Association Agreement enters into force. Some of these changes are likely to occur sooner than many are expecting, because, when they concern community competence, an interim agreement will in principle enter into force very quickly after the signing of the agreement and will not need to wait for ratification by all EU members and Ukraine. This is likely to make the politics of transposition and implementation of the *acquis* particularly complicated in Ukraine.

A key concern is the ability of Ukraine to transpose and to implement the EU *acquis*. 'Ability' requires both a willingness to adopt EU regulation and secondly the capacity to pass the necessary laws and technical regulations, as well as setting out the adequate institutional and judicial frameworks to guarantee implementation and compliance.

By willingness is meant a determination by the government to introduce EU regulation to Ukraine. This is obviously a function of the government's perception of the costs and benefits of introducing EU regulation, including the political costs and benefits, and of its perception of the strength and importance of the external anchor; that is to say what is promised by the EU in return for legal harmonisation and what is the cost of not harmonising.

The government's capacity to harmonise Ukrainian law with that of the European Union is a function of its own legal drafting capacity and of its success in passing the legislation through the Verkhovna Rada. Both of these areas are difficult. Until recently the lack of coordination of European integration policy in the government has meant that it has been impossible to achieve the planned rate of legal harmonisation. Even the measures which have been harmonised need of course to be checked with the EU authorities to establish that they correspond to the EU legislation in question.

The Verkhovna Rada in itself poses a significant challenge to ambitious legal harmonisation. There is a considerable knowledge about the European Union and even about Ukraine's European integration policy in the Rada. The instability of parties and of majorities in the Rada makes it extremely difficult to predict whether it will pass necessary measures or not. The drama of WTO accession is still fresh in the mind. However it does demonstrate that if the Rada is given appropriate information about the laws it is being asked to vote on, a degree of discipline is possible to achieve.

Implementation will of course be infinitely more complex than transposition. In the EU member states there is a high degree of scepticism about Ukraine's capacity and willingness to implement laws. Many are questioning whether the Association Agreement will be properly implemented or whether it will remain essentially a piece of paper containing good intentions.

The new member states in Central and Eastern Europe also met considerable difficulties in ensuring the implementation of the *acquis* and some of them still find certain areas of the *acquis* difficult to manage. In Ukraine it is vital for its future relations with the European Union that a good level of implementation of the terms of the agreement is achieved. It is clear that the European Union will make the opening of its internal market dependent not on the transposition of Union regulation but on its implementation.

This implies relatively strong central control by government and excellent coordination in government. This is why the creation of the Coordination Bureau for European and Euro- Atlantic Integration is potentially such an important step.

The quality of implementation is frequently an institutional question. The key to solutions in this area lies in the development of competent, efficient and knowledgeable institutions. In many cases current institutions are inappropriate both to ensure the adoption of the *acquis* and certainly to monitor and guarantee its implementation. We know from the new member states in Central and Eastern Europe that institutional problems are some of the most difficult to solve in the integration process. The problems in the countries of Eastern Europe are certainly as complex and normally more complex than those found in these new member states at the early phase of their integration into the European Union.

The answer contained in the Commission paper on the Eastern Partnership is to create a 'Comprehensive Institution-Building Programme' financed through ENPI. This programme will aim at improving administrative capacity in areas related to European integration. This new program will be additional to the existing availability from the TAIEX facility and from Twinning. In addition, many of the member state bilateral programs will provide institution and administrative capacity building facilities.

The availability of assistance is unlikely to be a major hurdle, but the quality of that assistance may be extremely variable. The coordination of assistance provision and the nature of the assistance offered are likely to be more serious problems. Frequently technical assistance is provided in a way which these countries' administrations are unlikely to be able to absorb. The effectiveness of very large programmes which have been provided by the European Commission in the past has frequently not been optimal.

While appropriate technical assistance will be required by the Ukrainian administration to ensure that the implementation of the *acquis* is carried out correctly, a proposal from the new Commission paper on the Eastern Partnership to establish a sort of ‘screening-light’ could be extremely useful in ensuring a high quality of legal drafting.

4. The timetable

There is no set timetable for concluding the negotiation of the Association Agreement. The ‘Joint declaration on the EU–Ukraine Association Agreement’, which resulted from the EU–Ukraine Summit, does not mention anything in this respect. Given the complexity of the negotiations this is not surprising. It seems now most likely that the negotiations will run over into 2010, although no doubt both the Ukrainian President and Prime Minister might be tempted to aim for a faster conclusion in order to claim credit for the agreement in the coming presidential election. In this unlikely event no doubt the next EU–Ukraine summit in Autumn 2009 under Swedish Presidency would be a crucial moment. Domestic EU developments, particularly as regards the ratification of the Reform Treaty, may equally affect the timetable.

If we assume that the agreement might be signed in spring 2010, an interim agreement covering those areas of community competence would enter into force a few weeks after the signing, but the ratification of the full agreement could not be imagined before 2011.

The New Practical Instrument

The main practical tool of European Neighbourhood Policy is the Action Plan. The ENP action plan is a programme of reform agreed between the EU and the ENP country, and resembles to some extent the accession partnerships used in the new member states prior to their accession.

The Ukraine action plan was agreed soon after the ‘Orange Revolution’ in February 2005. Ukraine wanted an action plan for no more than three years in the hope that the Partnership and Cooperation Agreement would be replaced during that period. In March 2008, the action plan had therefore to be rolled over for another year.

The EU–Ukraine summit in September 2008 concluded that ‘taking into account the substantial progress in the negotiating process, the presidents underlined the importance of developing a ‘New Practical Instrument’ (NPI) to replace the action plan in March 2009 with a view to preparing the implementation of the Association Agreement’.

The negotiation of the NPI is therefore well advanced. It is of course highly likely that the NPI will not differ substantially from the old action plan. Many parts of the action

plan have not yet been carried out by Ukraine, and therefore one would expect that there would be some repetition in the NPI. However in the light of the progress which has been made over the last three years and of the declaration of the presidents of the two parties that the NPI should prepare 'the implementation of the Association Agreement', one could expect substantial differences between the two documents.

The European Commission has produced a non-paper on the successor documents to current ENP action plans.² This does not add very much to what is already known, however it is interesting to note the following points concerning the successor documents made in the non-paper:

- They should include detailed measures relating to the implementation of specific commitments in the Association Agreement and where deep and comprehensive free trade agreements exist, they will need to take these into account when identifying revised objectives.
- They can make reference to relevant *acquis communautaire* in order to achieve greater precision
- They should build on the partner's own reform plans
- They should have 'broadly uniform structure', which should 'not preclude country-specific differentiation of the content'
- They should aim at a time horizon of 4-5 years
- 'Objectives should be jointly formulated upon a thorough discussion of the expected results and include a more explicit definition of EU obligations'
- Civil society should be consulted by the partner country and indeed 'the (European) Commission will also hold consultations with civil society in the ENP partner country prior to the start of negotiations'

The timing of the NPI for Ukraine means that it should be an extremely flexible document, both because the political and economic situation is extremely fluid, but also because neither the Association Agreement nor the free trade component of it have been negotiated yet. It is likely that the NPI will undergo a major overhaul when the Association Agreement is finalised: indeed the NPI should be replaced by a successor document once the Association Agreement is ratified. Therefore having a time horizon of 4 to 5 years in the case of Ukraine looks unrealistic. The NPI should probably be limited by the date of the entry into force of the Association Agreement.

² European Commission, None-paper on successor documents to current ENP action plans, Brussels December 2008.

The timing of the NPI with Ukraine will also complicate both the deep consultation between the two parties and also communication with civil society. If the NPI is to be ready by March 2009 both of these will be neglected, simply because there is insufficient time. It will then be difficult to claim joint ownership and that a wide consultation was undertaken. This is a further argument for making the NPI an extremely flexible document.

For the NPI to be credible in the eyes of Ukrainian citizens, it should contain obligations on the EU as well as on Ukraine itself. The refusal of the EU to make any, even vague, promises about an accession perspective for Ukraine, means that the external anchor really required for the successful implementation of the Association Agreement and the NPI is extremely weak. If the NPI simply imposes obligations on Ukraine, this will weaken further any pressure which the EU can bring for reform. Indeed, in this respect, the non-paper specifically calls for jointly formulated objectives, and 'more explicit definition of EU obligations'.

Other agreements between the EU and Ukraine

Although the Association Agreement will be the most important bilateral agreement between the two parties, Ukraine has a series of other agreements with the European Union. Certain of these are legally binding, others are of the 'best intention' type.

The memorandum of understanding on cooperation in the field of energy between the European Union and Ukraine was signed in December 2005. This is a document of political intent but is not legally binding. On the other hand Ukraine is an observer at the Energy Community (Treaty) and is negotiating to join. This is a legally binding international treaty which obliges the participants to introduce the *acquis communautaire* on energy, the environment, competition and 'the generally applicable standards of the European Community'.

Several other agreements exist between partners on the running of nuclear power stations, on nuclear safety and on nuclear cooperation.

Moreover, various agreements still exist on limiting trade in the areas of textiles and steel, although these have essentially negative impact on relations between the two parties, and may have to be reviewed in view of WTO law.

There is also an EU-Ukraine plan on freedom, security and justice. This again only expresses political ambitions and is not legally binding. But of course political agreements can be considered politically binding in the sense that where they are not implemented, future relations can suffer. A visa facilitation agreement and a readmission agreement were signed with Ukraine in June 2007 and an agreement enabling limited border crossing in frontier regions is also in force.

Ukraine's compliance with these agreements is likely to determine how far the EU will liberalise movement of persons (between Ukraine and the EU).

Finally an EU-Ukraine agreement on aviation was signed at the end of 2005, and EU-Ukraine negotiations on a Common Aviation Area were launched in December 2007.

Implications for SIDA

The Association Agreement will be, for several years, the heart of the legal and political relationship between the EU and Ukraine. The NPI will be the instrument through which the EU will judge progress in reform in Ukraine. On the EU side one of the main drivers for further integration with Ukraine will be the degree and quality of Ukrainian implementation of the agreement and of the terms of the NPI. If the Commission in its annual report on Ukraine judges implementation to be poor, this will have a negative impact on any deepening of the relationship.

For SIDA this means *inter alia* two things:

- Ukraine will need assistance in implementing the agreement in specific sectors such as environment, energy or transport, assistance could also be targeted at furthering political, administrative and judicial reforms, in line with SIDA ambitions in the field of democratic governance
- Ukraine must improve the coordination of EU policy, as relations become ever deeper and more complex, as well as improving performance in sectoral ministries. Procedures and practices also need to be made more efficient in the Verkhovna Rada

As SIDA concentrates its assistance on the two sectors democratic governance and human rights as well natural resources and environment, the Association Agreement opens up a vast field for SIDA activity.

In the area of natural resources and environment, including reduction of greenhouse gas emissions and increasing energy efficiency, Sweden can clearly mobilise a considerable amount of specialised technical assistance and in certain specific areas it is a world leader. As a first step, however, SIDA should concentrate on improving policy coordination in energy and environment policy and on helping Ukraine construct a new system of policy-making where energy efficiency and environmental concerns are automatically taken into account across the whole field of state activity. As the agreement will specify long transition periods for major parts of the environment acquis, SIDA assistance can be planned over a medium-term horizon.

In the governance area, a key new element is the creation of the Coordination Bureau for European and Euro-Atlantic Integration. Poor coordination of policy has been a characteristic of Ukraine over several years. Yet successful integration with the

European Union will require a high level of coordination of European integration policy. The Coordination Bureau will require support in the form of technical assistance, but also political support as far as this can be provided by an outside agent.

Beyond the bureau, the scope for assisting both in the general improvement of the quality of public administration as well as helping line ministries to understand and deal efficiently with European integration is immense. The training of the judiciary could also be supported by SIDA

In future, foreign assistance needs to be co-ordinated far more efficiently than in the past, both on the side of the donors and on the side of the Ukrainian administration. Swedish assistance should be co-ordinated with assistance being provided by the European Union through the European Commission, but also with that provided by other EU member states and third countries like the USA and Canada. It is only when assistance is well coordinated that it is really effective.

The fact that much EU assistance is now given as budget support, should allow SIDA technical assistance to be deployed to ensure that the budget support is as effective as possible.

Finally SIDA should play a role, politically and through assistance, in improving the quality of aid coordination in the Ukrainian government. This is a complex and highly politicised area. At one extreme it touches on the possible need for a national development strategy through which foreign assistance can be made more effective, at the other on the quality of the individuals charged with coordination by the government.

ANNEX 1

The negotiating directives agreed by the Council of Ministers include the following elements:

- the agreement will be based on respect for democratic principles, human rights and fundamental freedoms. The parties also commit themselves to the principles of a free market economy
- political dialogue will be reinforced as will cooperation on strengthening the institutions guaranteeing democracy, the rule of law and the fight against corruption
- economic co-operation should focus on the principles of sound macroeconomic and fiscal policies, improvements in the management of public finances and financial control, the gradual approximation of national tax legislation with the principles of the EU acquis and the adoption of statistical methods compatible with EU standards
- on trade the normal elements of an Association Agreement will be negotiated-standstill clauses, the dismantling of import duties with certain exceptions for sensitive products and the elimination of export tariffs and quantitative restrictions
- on technical regulations, standards and conformity assessment, the agreement will aim to bring Ukrainian legislation in line with community technical regulations, standards and conformity assessment procedures
- on sanitary and phyto-sanitary measures, the agreement will aim at the gradual approximation of legislation in priority areas leading to the liberalisation of trade. This could lead eventually to a veterinary and phyto-sanitary agreement which would do much to facilitate trade
- on trade in services, freedom of establishment and investment, the Agreement aims to go beyond the PCA and indeed beyond Ukraine's WTO commitments. The complete liberalisation of the establishment rules will be the objective, although certain limitations might be considered. The cross-border supply of services will be encouraged. The aim here will be the gradual approximation of Ukraine's laws to those of the EU
- on competition policy the directives are extremely strong and state that 'the Agreement will contain far reaching commitments on competition policy, including on state aid, both in the industrial and in the services sectors
- binding provisions covering further approximation to EU legislation on intellectual, industrial and commercial property
- under the interesting title 'regulatory cooperation', the Council aimed at ensuring that Ukraine will have the necessary expertise in order to implement the regulatory approximation envisaged in the areas of the free movement of goods, sanitary and phyto sanitary measures, trade facilitation and customs, trade in services, intellectual property rights and public procurement
- regulatory approximation and cooperation in the energy sector will obviously be an important part of the Agreement

- justice and home affairs (now referred to as justice, freedom and security) will figure in a significant way in the new Agreement, especially concerning migration, asylum and border management. Cooperation to fight organised crime and drug smuggling will also be significant
- the more general cooperation chapters will cover a vast field of activity including transport, environment, the business environment, agriculture and rural development, space, health, education and civil society
- finally there will be the extremely important institutional articles outlining the institutions of the Agreement and their powers.

ANNEX 2

The deep and comprehensive free trade area part of the Association agreement will almost certainly include the following articles:

- Traditional trade concessions
 - Standstill
 - Elimination of tariffs and quasi-tariffs across at least 95% of trade (conforming to WTO standards)
 - But some sensitive goods exceptions
- As this is a preferential agreement, rules of origin in annex, the diagonal cumulation of origin has also to be considered
- Progressive introduction of internal market acquis
 - Agreement on Conformity Assessment and Acceptance of Industrial Products
 - SPS: leading to a comprehensive SPS agreement
- Trade in Services:
 - Freedom to supply services but with destination principle for legal framework
 - Establishment – freedom of establishment general rule
 - Temporary movement of key personnel but little else on movement of workers
 - Regulatory convergence
- Movement of capital – full liberalisation of current payments and capital movements with standstill (but with the financial crisis this will be extremely complicated. It remains unlikely that the EU or individual Member States will introduce restrictions on the movement of capital, but Ukraine's economic weakness means that a total lifting of restrictions on the movement of capital might need to be reconsidered)
- Public procurement rules – this is one of most contested areas since it concerns political patronage
- EC competition policy and control of state aids according to EC rules
- Intellectual property
- Customs and trade facilitation
- Trade and sustainable development
- Regulatory harmonisation

- Energy: largely dealt with in other agreements – MoU and accession to Energy Community Treaty
- BUT also - Safeguards and commercial policy instruments