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The Eastern Partnership

Executive summary

The Eastern Partnership is a new EU policy which has the objective of accelerating the integration of Eastern European countries (Ukraine, Belarus, Moldova, Georgia, Armenia and Azerbaijan) with the EU. The policy was proposed by Sweden and Poland, following the creation of the Union for the Mediterranean in summer 2008.

The original proposal was made by the two member states to the European Council meeting in June 2008. They followed this with a more detailed paper in October. Following the conflict in Georgia in August 2008, the Council asked the Commission to come forward quickly with its own proposals for an Eastern Partnership. The Commission made its proposal in early December 2008.

The legal basis for relations between the EU and the six countries remains at present the Partnership and Cooperation Agreements, negotiated after the dissolution of the Soviet Union. The Eastern Partnership and ENP are both political rather than legal bases for policy. The Commission clearly sees the Eastern Partnership as an integral part of European Neighbourhood Policy (ENP). However with the creation of both the Union for the Mediterranean and the Eastern Partnership, the question must be whether there is anything left for ENP.

The Eastern Partnership has four elements: bilateral relations, multilateral relations, governance structures and financial assistance.

The proposal on bilateral relations in the Eastern Partnership is fundamentally to extend the offer which has already been made to Ukraine to the other five countries of the region. This means that, when they are ready, the other five countries will be offered the chance to negotiate an Association Agreement with the European Union. This implies that Ukraine is considered by the European Union to be the leading country in Eastern Europe, in much the same way that Croatia is leading in the Western Balkans.

The fundamental bilateral offer is therefore, as originally stated in ENP, a share in the internal market of the European Union as the countries adopt EU internal market regulation.

The key elements of the Association Agreement are:

- Improved political association
- deep and comprehensive free trade leading eventually to a degree of integration into the European internal market similar to that of the European Economic Area
- enhanced personal mobility
- cooperation in many political (including Common Foreign and Security Policy, as well as in Defence Policy), social and economic areas (particularly energy)
- new institutions which can take legally binding decisions.

While it is clear that for the East European countries it is their bilateral relations with the EU which are important, the real novelty of the Eastern Partnership lies in its proposals for multilateral action.

There are four main elements to the Commission's proposal, though a further two might be included:

- the establishment of common positions in various policy fields between the countries of Eastern Europe and the EU
- the creation of a 'structured approximation process' to foster the adoption and implementation of EU regulation in Eastern Europe
- the establishment of four thematic platforms
- and the implementation of 'flagship initiatives', which are similar to the projects proposed in the Swedish-Polish paper.

The Commission also proposes to support economic and social development, essentially through the transfer of EU know-how in regional policy through the implementation of concrete projects.

Finally, the proposal foresees the involvement of the Committee of the Regions and the European Economic and Social Committee in the work of the Eastern Partnership, notably in the areas of democracy, good governance, stability and contacts between people. It also proposes that a civil society forum should be established to promote contacts between NGOs.

The proposal for a structured approximation process is interesting and important because it resembles the sort of screening of the *acquis* which was used in the early stages of the integration of the new member states in central and Eastern Europe.

Of the four thematic platforms, on democracy, economic integration, energy security and contacts between people, the most interesting is that on economic integration which could lead to the creation of a 'Neighbourhood Economic Community'. It is proposed that the ultimate state of this economic community could be similar to that of the European Economic Area (EEA). This indicates that the Union is at least considering a full integration of these countries into the internal market of the Union, although of course this might take many years. The technical problems involved in creating not only a regional free trade area but also harmonising economic regulation will be enormous, and will have important financial implications.

The proposed flagship initiatives will of course depend on the availability of financing. However the idea is obviously to deepen regional integration through the initiation of common projects in areas such as infra-structure, energy cooperation or business creation and business networking. The paper suggests that these projects should not only be conceived at national level but should also be seen as a way of getting regions in the different countries to work together.

Financing the Eastern Partnership is likely to be a point of dispute between the EU's member states. The original proposal in the draft Commission proposal was already severely reduced when the paper came to the Commission table. It is likely to be further reduced by discussion in the Council of Ministers. The real battle however may well be in the preparation of the next financial framework 2014-20, in which period very high levels of expenditure will be needed if the potential of the Eastern Partnership is to be realised.

The paper finishes with a consideration of what the value-added of the Eastern Partnership proposal really is. It comes to the conclusion that, in spite of the fact that many of the proposals are not really new, it potentially creates new dynamism in the relationship between the EU and Eastern Europe.

Eastern Partnership – Implications for SIDA

The Eastern Partnership opens up new opportunities for Sweden on a political level and also for its assistance program to help Ukraine and the region.

Politically, and thanks to the efforts of Sweden and Poland, the Eastern Partnership keeps relations with Eastern Europe on a high political level within the European Union. Discussions in the Council demonstrate that several member states are not interested in relations with Eastern Europe or even oppose the development of these relations. Nevertheless, the Eastern Partnership ensures that, at least for the medium term, these relations will remain a concern of the Union.

Sweden will need to work hard with its allies in the European Union to ensure that the Eastern Partnership and bilateral relations with Eastern European countries remain high on the agenda of the Union. The areas of personal mobility and financial resources are liable to be the most conflictual.

At the political level too, the development of this policy reinforces the role of Ukraine as the leader in terms of integration with the Union in the region and should allow Ukraine to develop this leadership role. Today the attitude across the region to integration with the European Union is very variable.¹ However, as Ukraine progressively integrates with the Union, the incentive for the other five countries of the region to do the same will increase.

Sweden, Swedish diplomacy and SIDA could well play a significant role in helping Ukraine to develop this position. This could consist of helping Ukraine to sponsor regional meetings or sub regional meetings, and to finance certain regional or sub regional facilities centred on Kyiv.

While the Eastern Partnership policy will almost certainly be launched at an EU summit under the Czech Presidency, the Swedish Presidency of the European Union, beginning in July 2009, will also be an opportunity for Sweden to demonstrate its strong support for this new policy. Consideration of how this could be done is no doubt already

¹ Although Belarus has recently shown a few encouraging signs, it is too early to determine whether this marks a fundamental change in its approach to democracy and fundamental rights. Moldova has been cooperating very well with the European Union and is expected to follow Ukraine in the negotiation of a new Association Agreement. The three countries in the Caucasus, Georgia, Armenia and Azerbaijan, are all rather small both in area and population. They are also very different. Azerbaijan has prolific oil and gas reserves as well as other mineral resources. Its population is largely Muslim, although the state is secular. Armenia on the other hand is smaller, has few natural resources and is largely Christian. All three countries have shown interest in some form of integration with the European Union. Georgia has probably been the most pro-integration country, and since the war in August 2008 it has redoubled its efforts to get closer to the European Union. Of course Moldova, Armenia, Azerbaijan and Georgia include most of the unresolved conflicts in Europe, any of which could turn into military conflict as happened in Georgia.

advanced in the Ministry of Foreign Affairs and in SIDA in Stockholm. At the political level the scope for organising multilateral conferences under the Eastern Partnership is obviously considerable. However there is also scope for SIDA to launch its own ideas on regional projects.

The most important implications of the Eastern Partnership for SIDA are likely to be in the proposed flagship projects, in funding person-to-person contacts, including civil society organisations and working to develop improved democratic practice in the region.

Given that the identification of multilateral flagship initiatives is in its relatively early stages there is ample opportunity for SIDA to propose projects itself. Here it will be most important to ensure good coordination with European Union funds and those of other member states. It is not clear to the authors how SIDA will arrange its assistance to the region under the Eastern Partnership. However the chosen sectors for SIDA assistance to Ukraine, energy efficiency and governance, also create major opportunities for regional projects.

How the Eastern Partnership projects will be dealt with at the Commission level will no doubt become clearer later this year, in discussions in which SIDA should play a leading role.

The Eastern Partnership – Implications for Ukraine

The proposed Eastern Partnership policy has many implications for Ukraine, which the Government of Ukraine will need to consider.

Perhaps the first conclusion for Ukraine has to be that the Eastern Partnership, although not the ideal vehicle which Ukraine would like to see, has many positive elements and therefore should be welcomed. The proposal keeps relations between the EU and Eastern Europe on a high political level and at the forefront of the minds of some of the leaders of the member states.

A second advantage for Ukraine is that the Eastern Partnership is likely to effectively neutralise European Neighbourhood Policy, which was always disliked by the Ukrainian administration.

While the Eastern Partnership proposal of the Commission does not add anything for Ukraine at the bilateral level, the fact that it mentions the European Economic Area Agreement as an objective of the deep and comprehensive free trade area agreement is very positive. Obviously Ukraine would apply for full membership of the Union long before reaching the EEA stage, but it is important that the EU declares that complete integration into the internal market of the Union as in the EEA is also the objective of relations with Ukraine

The Eastern Partnership may be effective as a catalyst for the improvement of Ukrainian relations with its neighbours Belarus and Moldova. For Ukraine, relations with Belarus are particularly important for political, economic and social reasons. The full impact of the Eastern Partnership will of course only be achieved if there is a continuation of the current slight improvement in relations between Belarus and the European Union. But Ukraine could play an important role in moving Belarus towards democracy, and in this the Eastern Partnership may well be of assistance. Relations with Moldova are also important because of the continuing problems in Transdnistria.

These reasons alone suggest that Ukraine would want to welcome the new policy.

Amongst the most important implications of the new policy is the fact that the Union regards Ukraine as its key partner in the region. This appears to be an obvious fact. However it is important that in the Commission paper it is explicitly indicated that what is being offered to Ukraine as a bilateral set of agreements will also be offered to the other States of the region, once they meet the conditions for closer integration.

Ukraine can capitalise on this role by organising consultations, information sessions and other regular meetings between the six countries, thus confirming its role in the region. While this will not bring very much to Ukraine in economic terms, in political terms it raises Ukraine's profile throughout Europe.

The proposals of the Commission to create a sort of multilateral 'screening-light' should also be an important utility for Ukraine. While the Union will certainly not call this facility 'screening', it should be remarked that such a multi-lateral facility was only offered to the new member states in Central Europe once the negotiations for membership had started. Probably the Commission does not envisage anything like the intensity of advice which was being given to those new member states in the case of the Eastern Partnership. Nevertheless a significant problem for Ukraine will be ensuring that the legal approximation it undertakes leads to a proper implementation of the acquis, in legal, administrative and judicial terms. This proposed facility might help to solve this problem.

The policy on mobility and visas in the Commission paper also holds out the possibility of a more liberal policy on the movement of persons from Ukraine. Both the elimination of visa fees and the promise of a dialogue on the question of visa-free travel should be particularly welcome to Ukraine. Unfortunately part of this proposal may not survive the attacks in the Council of Ministers from countries which are less liberal in mobility issues.

Another positive element of the Eastern Partnership is that it may also involve new money to support Ukraine's actions to fulfil the new initiative's objectives. However the money proposed by the Commission remains modest in view of the far-reaching reforms promoted by the EU. The EU financial support proposed by the Commission might indeed be reduced at the Council in spring when deciding on the Eastern Partnership. It will be important for Ukraine in the months ahead to remind the EU of the high costs of the proposed reforms, and underline that appropriate financial support is key to the success of the Eastern Partnership.

Ukraine should make the best use possible of the flagship initiatives and of the regional policy facility which is proposed by the Commission. Indeed looking at the Commission document, it is fairly clear that it has only vague ideas about appropriate projects. This makes it possible, and probably highly welcome from the Commission's point of view, for Ukraine to make its own proposals for projects of sub-regional or regional dimension. The Ukrainian regional policy authorities have already been in touch with the Commission on the completion of a Memorandum of Understanding and it would be quite natural for the same authorities to come forward with proposals for regional policy projects. But other ministries and agencies should also be considering proposals of their own.

From the EU point of view, cross-border projects and those aiming at the stabilisation of frontier regions will probably be especially welcome. Such projects could help Ukraine both to stabilise the political situation along its borders but also to encourage limited economic development there too.

There are several other positive though not surprising elements to the Commission's proposal, including cooperation in the energy field and the creation of a comprehensive institution-building programme, which should be welcome to Ukraine.

Potentially there could of course also be dangers in the Eastern Partnership.

One worry is that in an effort to maintain equality across the region, relations with the EU will progress at the rate of the slowest reform state in the region. This seems an unlikely outcome. The Commission proposal underlines that the principle of differentiation will apply: i.e. the integration of each Eastern European state with the European Union will proceed at a speed which suits each particular state. Nevertheless, it will be important for Ukraine to ensure that there is no delay to its progress in integrating with the internal market on account of slow progress elsewhere. Naturally it is possible to imagine scenarios in which it could be convenient for certain member states to attempt to slow Ukraine's progress, but these scenarios would appear today to be most unlikely.

A second danger is that because EU foreign ministers are extremely short of time, multilateral political dialogue may be used to restrict bilateral political dialogue. In the case of Ukraine, this also seems to be unlikely as the EU-Ukraine summit already has a firm place in the annual calendar.

The operational structure for the multilateral part of the Eastern Partnership proposed by the Commission appears rather weak. The bi-annual meeting of Heads of States and Governments are infrequent and they could be held on the margins of other meetings. The annual spring meeting of Ministers of Foreign Affairs may also be a rather short affair, though making a success of the meetings will depend to some extent on Ukraine's enthusiasm for multilateral political dialogue. While the Polish-Swedish paper proposed that there should be a special coordinator for the Eastern Partnership with an office and staff in the Commission, staffing has been left rather vague in the Commission proposal. However it is clearly the intention of the Commission to dedicate a handful of staff to the Eastern Partnership.

Finally there is the phrase 'the Eastern Partnership will be pursued in parallel with the EU's strategic partnership with Russia'. For one or two Russophile member states of the Union, which habitually support Russia even to the detriment of other member states, this phrase undoubtedly means that they will be prepared to ensure that the Union does not have any dispute with Russia over Russia's relations with Ukraine. The paper would be infinitely improved if this sentence had been edited out. The Eastern Partnership cannot be against Russia, but it should also not develop under the risk of a Russian veto.

The Eastern Partnership

Objective

This paper analyses the proposal to create an Eastern Partnership between the European Union and the six countries of Eastern Europe-Ukraine, Belarus, Moldova, Armenia, Georgia and Azerbaijan. It starts with a critical review of the measures proposed in the Eastern Partnership and then aims to answer the question of whether, in substantive terms, this proposal adds anything significant to the instruments and policies which the EU has already deployed towards Eastern Europe. If it does, there is the obvious question of the financing of this new policy. The Eastern Partnership is also deeply related to European Neighbourhood Policy and the question arises whether ENP as a single policy can survive the creation of both the Union for the Mediterranean and the Eastern Partnership. Finally the Commission paper on the Eastern Partnership states that "the Eastern Partnership will be pursued in parallel with the EU's strategic partnership with Russia"; this raises the question of the extent to which the Eastern Partnership is to be determined by the EU's relationship with Russia.²

Background

The proposal for an Eastern Partnership came originally from the Polish and Swedish Governments, which submitted a paper to the June 2008 European Council. The two governments later developed this idea in a far more detailed paper produced in early October 2008.³

The reasoning behind this proposal goes back at least to the impact of the fifth enlargement of the European Union to the countries of Central and Eastern Europe in 2004. The European Union began to consider the impact of this enlargement on the neighbouring countries of Eastern Europe only just before the conclusion of the enlargement process.⁴ Proposals were made by some member state governments, notably the UK and Sweden, as well as candidate countries, to develop a policy specifically related to those neighbouring countries most affected by the enlargement.⁵ However the 'Mediterranean' member states insisted that any new policy should apply also to the neighbouring countries in the South. The result was the development of

² European Commission, Communication from the Commission to the European Parliament and the Council on the Eastern Partnership (COM(2008)823), Brussels, 3.12.2008

³ Polish and Swedish Governments, the Eastern Partnership, a proposal to the European Council, June 2008.

Polish and Swedish Governments, elaboration of the Eastern Partnership, 3 October 2008.

⁴ See the Conclusions of the General Affairs Council of 15 April 2002, which contains a section on Wider Europe : "Relations between the future enlarged EU and its eastern neighbours"; 7705/02 (Presse 91); as well as the Joint Patten-Solana Letter on Wider Europe (7 August 2002):

http://ec.europa.eu/world/enp/pdf/_0130163334_001_en.pdf

⁵ See in this regard the 'Non-paper with Polish proposals concerning policy towards the new Eastern neighbours after EU enlargement' available on the Polish MFA website: <<http://www.msz.gov.pl/Non-paper,with,Polish,proposals,concerning,policy,towards,the,new,Eastern,neighbours,after,EU,enlargement,2041.html>>

European Neighbourhood Policy (ENP), designed to enhance the Union's relations with all neighbouring countries.⁶ ENP is dealt with in more detail in section 7.

In 2007, the French President proposed the establishment of a 'Mediterranean Union', which would cement the relationship between the EU's southern Member States and the neighbours to the south. Faced with considerable opposition from within the Union, the President changed the nature of his proposal in 2008. Finally the 'Union for the Mediterranean', with a membership of all EU Member States and most of the southern neighbouring states was launched during the French Presidency of the Union in July 2008.

The Sarkozy move towards the south allowed and encouraged other Member States to think of creating a similar policy with Eastern Europe. The paper prepared by the Polish and Swedish Governments for the European Council in June 2008 suggested the creation of an 'Eastern Partnership', which would aim to deepen integration between the Union and the six countries of Eastern Europe. The proposal received the backing of the European Council which invited the Commission to come forward with proposals at its Spring 2009 meeting. The conflict in Georgia in August 2008 pushed the Union into asking the Commission to report much earlier. This led to the presentation of the Commission's proposals for the Eastern Partnership at the beginning of December 2008.

The Commission proposals, which naturally are not totally different from those made by the Swedes and the Poles, were submitted to the European Council in December 2008. The ensuing Conclusions of the Presidency note that:

the Eastern Partnership will bring about a significant strengthening of EU policy with regard to the Eastern partners of the European Neighbourhood Policy in a bilateral and multilateral framework, to complement the other forms of cooperation already existing in the Union's neighbourhood, such as the Black Sea Synergy, which will have to be taken into account. The Eastern Partnership should help the partner countries to make progress in their reform processes, thereby contributing to their stability and helping to bring them closer to the EU. The European Council welcomes the proposals put forward by the Commission in its communication of 3 December 2008 and instructs the Council to study them and to report back with a view to this ambitious initiative being approved at its meeting in March 2009 and the Eastern Partnership being launched at a summit meeting with the partner countries organised by the incoming Czech Presidency.⁷

2. An analysis of the basic offer proposed by the Eastern Partnership

2.1 the aim of the Eastern Partnership

⁶ Russia is not part of ENP, having expressly excluded itself.

⁷ Presidency Conclusions, European Council Conclusions, 11-12 December 2008; pt. 29.

The Polish-Swedish and the Commission proposals on the Eastern Partnership both aim high. The former states that 'the Eastern Partnership should be the EU strategic concept for the six Eastern neighbours' and it should be viewed as 'a long-term and enhanced EU policy and engagement in the region of eastern Europe'. The Commission's paper says that 'the Eastern Partnership should bring a lasting political message of EU solidarity'. The paper also stipulates that 'the EU and its partners may reflect on a broader regional trade approach establishing a Neighbourhood Economic Community, taking inspiration from the European Economic Area where appropriate'. The clear aim of both proposals is to pursue actively the political and economic integration of Eastern Europe with the European Union, with the ambition of reaching more or less complete integration into the internal market of the Union.

Naturally the ambitious aims of these papers must be adopted by the EU's Council of Ministers. It is certain that some member states are less enthusiastic about this proposal than the Swedes, Poles and the Commission. Even some of the enthusiastic member states may object to the proposed financing in these papers. The southern member states will certainly be less enthusiastic and will continually be alert to any attempt to equalise EU assistance to Eastern Europe and that to the southern neighbours, which today attracts about two thirds of total ENPI financing. While there may be changes made to the Commission proposal, it is however most unlikely that the Council would either throw out the proposal or undertake major revisions.

2.2. the administrative and legal bases of the Eastern Partnership and ENP

For the Commission, there is no doubt that the Eastern Partnership represents 'a specific eastern dimension within the European Neighbourhood Policy'. Indeed, the European Council in June 2008 asked the Commission for a proposal which respects 'the character of the ENP as a single and coherent policy framework'. In the same vein, the December European Council conclusions cited above emphasise that the 'Eastern Partnership will bring about a significant strengthening of EU policy with regard to the Eastern partners of the European Neighbourhood Policy'.

However there is a strong argument which suggests that the creation of the Eastern Partnership, following that of the Union for the Mediterranean, essentially eliminates the need for ENP. While there is no doubt that ENP will survive, it is highly probable that in practice it will be an empty shell, emphasising more generally the difficulty of eliminating redundant policies in the Union.

Most of the Mediterranean neighbours have Association Agreements with the European Union. Bilateral relations, a major part of total relations with the region, are discussed and decided in the Association Councils created by these agreements. At present relations with Eastern Europe are dealt with in the Cooperation Councils of the

Partnership and Cooperation Agreements (PCA). The ultimate legal foundation for bilateral relations is therefore the Association Agreements and the PCAs.

The specific contribution of ENP was to establish a uniform offer of deepening relations for the whole neighbourhood, and a common toolbox to achieve this objective and neighbourhood-wide cooperation. In each of these areas we now have two sets of multilateral measures, one for the Union for the Mediterranean and one for the Eastern Partnership.

While the offer of deepening relations may remain common for the whole ENP area, it is likely that this offer will be progressively differentiated between the two areas. The majority of countries in the Mediterranean neighbourhood already have Association Agreements, and while the latter expressly envisage the establishment of an FTA, there is little sign that these countries will make rapid strides towards *deep* free trade integration, involving far-reaching alignment to EU norms. In Eastern Europe on the other hand, the Association Agreements which are on offer will all include such deep free trade agreements, which under ideal conditions could lead to full integration into the internal market of the Union.

The toolbox for integration will also begin to vary between the two regions. This will reflect the different objectives of their constituent countries. It is likely that regulatory approximation will be more enthusiastically undertaken by countries in Eastern Europe than by those in the Mediterranean. This is partly a result of the need of the East European countries to complete their transition from a centrally planned economy to a market economy, but it also stems, for some of them, from their integration objective. An indicator of this differentiation can be seen in the Commission's Eastern Partnership proposal to initiate a 'structured approximation process' supported by a 'comprehensive institution-building programme'. Finally the multilateral measures to be adopted, and especially the proposed projects discussed below, will be *region specific* rather than covering the whole of the ENP.

2.3 the structure of the Eastern Partnership

Both the second Polish-Swedish paper and the December proposals from the Commission can be considered to have four related parts:

- bilateral relations
- multilateral relations
- governance structures
- financial assistance

Bilateral relations: the core of bilateral relations will be the negotiation and implementation of Association Agreements with the countries of Eastern Europe. These

agreements will include enhanced political dialogue, deep free trade including market economy regulation in areas such as competition policy, state aids, intellectual property protection, public procurement, enhanced cooperation in wide areas of policy, and articles on the institutions to be created by the agreement.

Multilateral relations: it is far easier of course to design multilateral policy and programs for the countries of Eastern Europe than it was for all of the neighbours included in ENP. The implementation of multilateral policy will however not be straightforward, given the major political, economic and social differences between the constituent countries. The most obvious multilateral actions lie in the common projects in areas such as energy policy or infrastructure, but these will require considerable financing from the Union, as discussed further below under Section 5. The aim of the Commission is clearly also to increase the level of regional policy co-operation and to encourage multilateral dialogue on crucial areas, including preparation for integration into the internal market of the Union.

Governance structures: governance in the area of bilateral relations will normally be exercised by the Association Councils and Committees, together with working groups emanating from the Association Agreements, including monitoring committees. At the multilateral level new governance structures will be required (see point 6 below). However in contrast to the governance structures of the Union for the Mediterranean, none of the Eastern Partnership proposals so far suggest the creation of joint institutions.

Financial assistance: the Eastern Partnership proposal clearly requires financing from the European Union, if its ambitious goals are to be met. Here it is likely that there will be considerable discussion in the Council about the required levels of finance.

3. Bilateral relations in the Eastern Partnership

Ukraine is the most advanced country in Eastern Europe in terms of its integration with the European Union. On the bilateral level, the most valuable part of the Eastern Partnership initiative is to suggest that the offer which the European Union has made to Ukraine should also be made to the other five countries of the region, when they are ready. In this way, Ukraine appears potentially to play the same role in Eastern Europe that Croatia has played in the Western Balkans: that is to say that it will act as an example, positive or negative, to the other East European states of what can be achieved through deeper integration with the European Union and what problems and risks such integration poses.

Bilateral relations with the EU will remain the key interest of the East European states, because it is through bilateral relations that these countries will gain the most in political

and economic terms. Although they have geography, previous inclusion in the Soviet Union, and, for certain of them, cultural elements and religious affinity in common, they are all very different. The Commission Communication acknowledges this disparity and emphasise that bilateral agreements will be differentiated according to the partners' objectives and capacity. This means that the multilateral dimension represents a less obvious advantage than concrete bilateral concessions.

A detailed description and critique of the proposed Association Agreement with Ukraine is contained in a separate paper by the authors.⁸ Here we raise only general questions affecting the bilateral relationship.

The key elements of the Association Agreement are:

- political association
- deep and comprehensive free trade leading eventually to a degree of integration into the European internal market similar to that of the European Economic Area
- personal mobility
- cooperation in many political (including Common Foreign and Security Policy, as well as in Defence Policy), social and economic areas (particularly energy)
- institutions.

Political association: echoing the Joint Declaration of the 2008 EU-Ukraine Summit,⁹ and Ukraine's lasting aspirations, the Commission proposal includes the notion of 'political association',¹⁰ which could suggest that the new agreement entails stronger links than a classical dialogue. 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. The notion of 'association' in the EC context traditionally entails 'special, privileged links with a non-member country which must, at least to a certain extent, take part in the Community system'.¹¹ In view of this definition, 'political association' could involve, beyond dialogue,

⁸ Hillion and Mayhew, the EU-Ukrainian Summit, the Association Agreement and New Practical Instrument: implications for Ukraine, Sida/JMWEN paper number 12.

⁹ Joint Declaration, EU-Ukraine Summit, Paris, 9 September 2008, 12812/08 (Presse 247) <http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/er/102633.pdf >; at p.3.

¹⁰ COM(1008) 823, p. 3.

¹¹ This definition of the notion of 'association', envisaged in Article 310 of the EC Treaty was given by the European Court of Justice, in a judgment concerning the 1963 EC association agreement with Turkey: Case 12/86 *Demirel* [1987] ECR 3719.

a degree of participation of the Eastern European states in the EU system, for instance in the field of CFSP.

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.

There are a very large number of practical problems in this approach, although the proposal itself is a very positive sign to the East European economies. These problems concern in general:

- the ability of these governments to adopt and implement the acquis and notably their administrative and judicial capacities
- the relationship between the adoption of the acquis by Ukraine and the opening of the internal market by the EU
- the capacity of their economies to undertake the necessary structural reforms involved in adopting EU regulation
- the financial cost of implementing EU integration, especially in the light of the current financial and real economy problems
- the political and social acceptability of these changes
- the practical and political feasibility of creating a neighbourhood economic community as proposed by the Commission (see below).

Personal mobility: the freedom for the citizens of these countries to travel easily to the member states of the European Union is one of the key and highly symbolic concessions which the EU can make. Mobility is a strongly-held desire on the part of the population of these countries. The Commission proposes in its Eastern Partnership paper to offer its partners 'mobility and security pacts'. These would essentially be agreements where the European Union improves access to its territory in return for the East European countries improving the security of their frontiers and the capacity of their police forces and law courts to deal with corruption and organised crime.

Visa policy is at the centre of increasing personal mobility. The core of visa policy is the Visa Facilitation Agreements, which have been negotiated with several third countries, including Ukraine, in Eastern Europe. These agreements facilitate access to visas for certain groups in society which need to travel. They are accompanied by readmission

agreements, which oblige the third countries to accept returned illegal immigrants to the Union, who entered via these countries. Readmission agreements are potentially extremely difficult for the third countries and can involve considerable expense.

Such agreements would be negotiated with those countries included in the Eastern Partnership, which do not yet have them. The Commission then suggests that visa facilitation could be extended to wider groups in society and the visa fee could be waived. The ultimate aim of visa free travel would be discussed in specific visa dialogues which would be created with all the countries of Eastern Europe.

While free movement is one of the tests which the citizens of Eastern Europe will use to judge the value and importance of integration with the European Union, enthusiasm for rapid progress towards free movement is not evident in most EU member states. The declaration from the 2008 EU-Ukraine summit speaks about 'a dialogue on a mutual visa-free travel regime as a *long term perspective*'.¹²

The Commission's Eastern Partnership paper also mentions the possibility for the EU to pursue 'a targeted opening of the EU labour market'. While this would also be appreciated in the Eastern European states, the current situation on European Union labour markets suggests that little progress will be made before the current economic downturn is overcome. Indeed, Member States' labour markets are still to be fully opened for some of the new Member States' workers.

Sectoral Cooperation: the Association Agreements will include a series of chapters on 'cooperation', covering the whole range of EU policies. Cooperation articles are always present in these Agreements, but what is special this time, is that some of these articles will now contain lists of EU acquis, which the partner country is expected to adopt and implement. The exact wording of these articles is not yet fixed, but even if the articles are phrased in a non-binding way, politically they will be used as a test of a country's willingness to integrate with the European Union.

Questions can be raised about the feasibility of the implementation of some parts of the acquis in Eastern Europe. Feasibility concerns, amongst other things, financing, economic costs and benefits of adoption and implementation of EU acquis, and administrative and judicial capacity. The negotiation of these cooperation articles therefore needs to be taken extremely seriously by both sides. Undue pressure from the EU may force countries in the Eastern Partnership to agree to adopt measures which they realistically cannot implement.

Institutions: the extremely important articles on the institutions to be created by the Association Agreements appear likely now to follow the example of other such

¹² Joint Declaration, EU-Ukraine Summit, Paris, 9 September 2008, 12812/08 (Presse 247)
<http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/er/102633.pdf>; at p. 3.

agreements: Association Council, Association Committee, joint Parliamentary Committee, and the possibility to create working groups. The decisions of the Association Council will be binding on both parties. At the same time, the key importance of implementation monitoring will require innovative institutional arrangements, possibly along the lines of the EEA.

The Association Agreements are vital instruments for future integration with the European Union. They are however bilateral instruments, which in the case of Ukraine were agreed before the Eastern Partnership was proposed. The merit of the proposals to create an Eastern Partnership, is that they promise the six countries that, when they are ready, they can all negotiate Association Agreements with the Union. It therefore creates a sort of roadmap for these countries to integrate progressively with the Union over the coming decades.

4. The multilateral dimension of the Eastern Partnership

The multinational dimension of the proposals for the Eastern Partnership reflects the established European Union concern to promote regional cooperation in its neighbourhood, following the relatively successful examples of CEFTA, the Western Balkans and the highly successful model of the EU itself. The creation of multilateral fora incorporating the EU and the six East European states is expected to encourage the sharing of experience of transition and reform and to stimulate mutual solidarity.

The proposals made in the Polish-Swedish paper and the Commission proposal for the multilateral dimension have much in common, however whereas the former appears to put more emphasis on joint projects, the latter appears to treat policy dialogue as a priority. There are four main elements to the Commission's proposal, though a further two might be included:

- the establishment of common positions in various policy fields between the countries of Eastern Europe and the EU
- the creation of a 'structured approximation process' to foster the adoption and implementation of EU regulation in Eastern Europe
- the establishment of four thematic platforms
- and the implementation of 'flagship initiatives', which are similar to the projects proposed in the Swedish-Polish paper.

The Commission also proposes to support economic and social development, essentially through the transfer of EU know-how in regional policy through the implementation of concrete projects.

Finally, the proposal foresees the involvement of the Committee of the Regions and the European Economic and Social Committee in the work of the Eastern Partnership, notably in the areas of democracy, good governance, stability and contacts between people. It also proposes that a civil society forum should be established to promote contacts between NGOs.

Consultation in establishing *common positions* is easier to manage when a formal multilateral relationship exists between the countries. Such common positions between partners may be arrived at in formal meetings or in an ad hoc manner once a close relationship exists.

The creation of a *structured approximation process* supported by a new facility called a 'comprehensive institution-building programme' is a welcome sign that the Commission would like to accelerate and to improve the quality of Eastern Europe's transposition and implementation of the *acquis communautaire*. This light 'screening' of the *acquis* is reminiscent of the first stages of the accession process for the new Member States in Central and Eastern Europe. The problem with the proposal will be of course that, with accession not formally on offer, the incentive for the East European countries to closely follow the indications coming from this multilateral screening is reduced.

The Commission paper suggests creating *four thematic platforms*:

- democracy, and good governance and stability
- economic integration and convergence with EU policies
- energy security
- contacts between people

The aim of the thematic platforms is to advance integration through regular meetings between officials from the policy areas concerned. Each platform would create its own work programme aimed at achieving specific objectives and would regularly review progress. The results of the work in each area would be reported to an annual meeting of Foreign Ministers. The work of the thematic platforms could be supported by panels on specific areas of each platform. The Commission proposes that it ensures the management of the platforms, prepares the agendas of meetings and provides the Chair and secretariat.

The subjects dealt with by the thematic platforms are quite predictable and are similar to those contained in the ENP action plans which have been agreed at the bilateral level. There is therefore a danger of overlap or redundancy between these two tools. The action plans, (and the instruments following the action plans after the entry into force of Association Agreements) will presumably be regularly updated in line with the agreed

objectives of individual Agreements.¹³ Progress in each of the states in the region will be judged essentially on progress in implementing these action plans. The thematic platforms will be somewhat limited in their scope by the emphasis which will be placed on the bilateral instruments. They should therefore concentrate on the truly multilateral elements of policy which bring added value to the results of the implementation of the action plans.

- a. In the area of '*democracy and good governance and stability*' regional cooperation in security and the resolution of complex conflict situations is obviously an area where discussion on cooperation between the participating countries could bring valuable results, although on this particular subject the absence of Russia, which is involved in most of the 'frozen conflicts', will be a problem.
- b. In the area of '*economic integration and convergence with EU policies*' the key proposal from the Commission is the creation of a 'Neighbourhood Economic Community'. This idea could only be realised in the very long term but its importance is to be seen perhaps in the way in which it is related in the Commission's proposal to the European Economic Area; that is to say the Commission is looking forward in the longer term to the very deep integration of these states' economies with that of the Union.

Creating a simple regional free trade area would itself be very complicated and would not bring the serious economic stimulus which these countries require. The aim would be therefore to create regional free trade through the network of free trade agreements between the Union and individual states in the region. The first requirement would be the negotiation of deep and comprehensive free trade agreements between the six countries and the EU. The detail of these agreements would have to be very similar to avoid trade distortions. Common rules of origin would need to be agreed in order to allow the cumulation of origin which would be of particular importance to the small economies in the region. These negotiations would be extremely complex and long.

However the distance between the completion of a network of free trade agreements including the European Union and the establishment of a neighbourhood economic community similar to the EEA would still be long because it requires the harmonisation of legislation essential to the functioning of the internal market, including in areas like competition policy and state aids.

The thorough implementation of all these agreements which would be required before reaching EEA status would be an enormous challenge, which could be

¹³ See the Non-Paper on successor documents to the ENP Action Plans (December 2008): http://ec.europa.eu/world/enp/pdf/non_paper_041208_en.pdf

achieved only over the long term. However, establishing the objective of creating an EEA-similar trade arrangement will allow the development of longer term strategic plans of integration, with clearly defined steps. Interestingly, the Commission in its paper uses the wording of one of the Copenhagen conditions for accession to the Union in the context of this integration process. It writes 'it would require the partners to develop the capacity of their economies to be able to fully withstand the competitive pressures of the single market'.

Other areas of economic cooperation will frequently be linked to major projects in areas such as transport infrastructure, regional communications or environmental quality.

- c. The thematic platform on *energy security* obviously has high political relevance at a time when the European Union and the countries of Eastern Europe are all concerned about the reliability of energy-supply-countries to meet their contractual obligations free of political influence. The EU will be interested in the harmonisation of energy related legislation throughout the region, possibly through the neighbours' accession to the Energy Community Treaty, and in the contribution which Eastern Europe can make to the diversification of energy supplies. The countries of Eastern Europe will be interested in promoting regional energy security systems and improving energy infrastructure. Here there is clearly likely to be overlap with many other public and private fora on energy security.
- d. The fourth platform on *contacts between people* deals with a subject which is of fundamental importance to the relationship between the EU and Eastern Europe. It will be dealt with in the bilateral agreements with these countries but there will certainly be region-wide topics of importance to develop.
- e. The *flagship initiatives*, the final multilateral element proposed by the Commission, will aim both to improve infrastructure and other elements contributing to integration with the Union and to demonstrate to citizens in the region the practical value of that integration.

Geography however poses a difficult problem for regional projects in the infrastructure field. While Belarus, Ukraine and Moldova form a contiguous area in the west and Georgia, Armenia and Azerbaijan in the east, these two sub regions are divided by a large tongue of Russia which comes down to the Black Sea. It is indeed only through the Black Sea that these two parts of Eastern Europe are joined; hence the importance of synergies between the Black Sea Synergy and the Eastern Partnership. Both Turkey and Russia are important powers in the region and, where appropriate, could be invited to join infrastructure initiatives.

It is no doubt for this reason that the concrete proposals for Eastern Partnership projects made by the staff paper accompanying the Commission's communication concentrate on providing facilities which can be called on by any of the six countries but which do not have a real pan-regional character.

The Commission suggests that initiatives could be taken in integrated border management, improved facilities for SMEs, the interconnection of regional electricity markets, the development of a southern energy corridor and cooperation in natural disaster management. Of these only the southern energy corridor could be considered as a pan-regional project.

This consideration does not reduce the importance of flagship and other projects in the Eastern Partnership. Integrated border management is important for all of the countries in the region. The development of small business in countries transitioning from central planning to the market economy is also vital and the diffusion of experience within the EU can be of great value.

However it is worth looking at the development of projects which link the three countries of each sub-region in the Eastern Partnership, including cross-border projects in which the Union has great experience. Certain transport and other infrastructure projects are suggested in the work of the Commission on spreading the Trans-European-networks to neighbouring countries.¹⁴

Projects should also be considered at the regional level in the Eastern Partnership and not simply at the national level. Experience in the EU has shown that cooperation at the regional level can be a very powerful instrument to promote both regional integration and efficiency in managing projects in local and regional authorities.

The Commission proposes to set aside a not inconsiderable sum of money (see below in section 5) for the promotion of regional policy and regional development in the region and this could also be mobilised to promote deeper regional integration at the sub-national level.

The Polish-Swedish proposal also puts considerable emphasis on the importance of these regional projects. One element of that proposal which should be considered more seriously is using the flagship projects of the Eastern Partnership to develop deeper relations between Belarus and its neighbours and

¹⁴ Communication from the Commission to the Council and the European Parliament - Extension of the major trans-European transport axes to the neighbouring countries - Guidelines for transport in Europe and neighbouring regions {SEC(2007) 98} {SEC(2007) 99}

the EU. It is vital to help Belarus develop towards a European democracy, even if this seems to be a very long drawn out process.

The crucial element for the flagship projects is of course likely to be the availability of finance.

5. Financing the Eastern Partnership

While the Polish-Swedish paper is not specific about the financing of the Eastern Partnership, the Commission makes concrete proposals, which were hotly contested within the Commission and may well be changed by the Council.

According to the proposal, the current level of ENPI support for Eastern Europe would be raised from €450 million per year to reach €785 million in 2013. This represents €350 million of additional funds for the period 2010 to 2013. An additional €250 million would be made available to the Eastern Partnership through reprogramming within the ENPI envelope; this means an additional €600 million available for the policy over the period 2010 to 2013, of which around 60% is new money.

The Commission further proposes that the new funds should be used to finance the multilateral elements of the Eastern Partnership. The largest part of the money would be spent on the comprehensive institution building programme, which will of course also benefit purely bilateral elements of the policy. It is proposed that additional finance should be made available starting in 2010, rising to over €60 million in both 2012 and 2013. The remaining funds of around €150 million should be divided roughly equally between the economic and social development objective and the multilateral dimension, the latter presumably covering work within the thematic platforms and certain of the flagship projects.

Available funding was reduced to this level during negotiations within the Commission itself. It is extremely likely that in the Council the proposed level of finance will be reduced further, given the difficult situation in national government accounts and the worsening real economy. However the Commission proposal has the advantage of not requiring major inter-institutional renegotiation of the EU budget, as it can be financed from the margin of heading 4 of the current financial framework.¹⁵

Obviously this level of finance is insufficient on its own to fund major flagship projects, which the Polish-Swedish paper highlighted as highly desirable. It may well be considered by some Member States that the additional funds should be redistributed towards multilateral projects rather than the institution building programme. Institution

¹⁵ An argument here however might be that there will be a need for higher funding for assistance to Palestine after current hostilities cease, leading to a requirement for greater flexibility than is normally allowed for by the inter-institutional agreement.

building has to be a priority in the whole region, where many of the problems are created by the inadequacy or nonexistence of key institutions, including the judiciary. However institution building is being funded under the national programmes for each of the six East European states and it may well be thought that bilateral assistance in this field is likely to be more efficient than funding at the multilateral level. The countries themselves might also prefer to see the available finance going into concrete projects rather than into technical assistance provided by EU consultants.

Apart from such reallocation of funds, it will be essential for the realisation of the multilateral dimension of the Eastern Partnership to involve the main international financial institutions, the World Bank, the EIB, the EBRD and indeed private capital. The grant finance from ENPI can frequently be used as a way of attracting these major lenders to support the flagship projects.

However the implementation of all the elements of the Eastern Partnership, bilateral and multilateral, will require external funding of a quite different magnitude. At the bilateral level, the implementation of deep free trade Association Agreements will require major financing even if the implementation is spread over one or two decades.¹⁶ External funding, loans, grants and equity participations, running to several billion Euros annually will be necessary to complement domestic budgetary resources, which themselves will have to be reorientated towards the aim of reaching European Union standards and achieving European integration.

The investment and maintenance cost of meeting the EU's environmental acquis alone for Ukraine will probably run to €3-€5 billion annually for two decades. If the ultimate aim is really the full integration of Eastern Europe into the internal market of the European Union, then this level of finance will be required, even with long transition periods for most expensive directives to be implemented. EU producers will probably insist that competitors in Eastern Europe should have to meet similar environmental standards that they have to meet within the Union, therefore accepting much reduced standards over a long period in Eastern Europe may well not be acceptable to Union producers. Apart from the environmental field, there will be major expenditure in many other areas from border security, standardisation, health and safety at work through to major infrastructure improvements.

In terms of the European budget, it is necessary to look towards the financial perspective 2014-2020, something which is not touched upon by the Commission paper on the Eastern Partnership. It is unrealistic to expect the overall financial allocation in the next financial perspective to be higher than that of the current financial period which ends in 2013. Given the difficult financial situation of most of the member states, which

¹⁶ Alan Mayhew, 'Ukraine and the European Union: financing accelerating integration', UKIE Warsaw, December 2008.

will certainly last until the first draft of the next financial perspective, one should not expect agreement on a level of expenditure above 1% of GNI.

If strong growth can be re-established in the European economy however, even this level represents an increase in available funds. In addition there may well be transfers from existing lines which require lower funding (for instance CAP), which will enable the Union to fund new areas of activity.

Realistically there is also an absorption limit on the funding which can usefully be offered for the integration of the East European countries into the Union. Slow absorption has been typical even of the new member states in Central and Eastern Europe. The reasons have been usually institutional in nature. In the receiving countries there are frequently institutional and human capital problems involved in the spending of foreign assistance, while at the EU level, administrative and bureaucratic hurdles are frequently put in the way of the officials in charge of dispensing the assistance.

Both the supply and demand constraints suggest that the level of financing which might be achievable for the next financial perspective could be between 1% and 2% of the annual EU budget i.e. between €1.5 and €3 billion in 2013 prices. This compares to roughly €1.5 billion allotted to both IPA (the Pre-Accession Fund) and ENPI in 2008. However, it is almost certain that such a level will be opposed by several member states. The Mediterranean member states are most unlikely to agree to a significant increase in financing for Eastern Europe, without a similar increase in support for the Mediterranean region. Member states which are less keen on the integration of further European countries with the Union will also probably resist an increase in funding. Indeed, some of the new Member States might be reluctant to increase EU financial commitment to the East, if it is perceived to mean less financial support for them, for instance in the field of agriculture. Finally of course those member states which would oppose any significant increase in EU budget will also be extremely prudent.

However if the EU wants to make the Eastern Partnership a reality both at the bilateral and multilateral levels, and to realise a transformation of the relationship with these countries, a considerable increase in funding will be required. It is also worth recalling that some Member States may decide to co-finance Eastern Partnership projects through national assistance programmes.

6. Institutionalising the Eastern Partnership

The Polish-Swedish proposal envisaged meetings of the Foreign Ministers of the Union and the six East European countries, together with ministerial meetings on specific elements of the Partnership. The Commission proposals are more specific:

- a meeting of heads of state and government from the EU and the six countries every two years
- an annual meeting of Ministers of Foreign Affairs on the margins of the General Affairs and External Relations Council
- regular meetings organised by the Commission for the four thematic platforms
- panels to support the work of these four platforms

Human resources will be required to make the institutional elements of the Eastern Partnership a success. Although no one wants to create a grand new bureaucracy for this policy, some institutionalisation will be required. In this area there were slight differences between the Polish-Swedish proposal and that which the European Commission has made.

The Polish-Swedish proposal was to appoint a 'Special Coordinator for the Eastern Partnership' within the Commission and with a small staff in the 'Special Coordinators Office'. The Commission does not take up the idea of a special coordinator but nevertheless proposes to create a small team within the Commission headquarters staff and to add contract staff to the delegations located in the region. Apart from the title, there is little difference in terms of the additional resources required.

The bilateral elements of the Eastern Partnership will presumably be managed through the Association Agreement or PCA mechanisms and therefore will remain with the country desks concerned in the Commission. Additional staff outside the country desks will be required to manage the institutions and projects at the multilateral level. Of course additional resources will also be required in the administrations of the six Eastern Partnership countries.

7. The added value of the Eastern Partnership

The European Union has introduced in recent years a large number of policies, programs, roadmaps and other foreign policy instruments which deal with the relationship with Eastern Europe. Given this plethora of policy elements, it is important to ask what the added value of yet another policy, in this case the Eastern Partnership, really is.

Prima facie, the development of an 'Eastern Partnership' in many ways sends positive signals, notably to the EU's East-European neighbours that are part of the ENP.

However beyond signals, the practical significance of this new initiative will be judged on its ability to address various criticisms that were notably formulated in relation to the ENP, and generally to bring added-value to an already well-furnished policy towards East-European countries.

7.1 ENP and the Eastern Partnership

ENP's principal offer to the neighbours is that they will have a share in the internal market of the Union as they progressively adopt EU regulation. This reflects the fact, as mentioned above, that traditional trade concessions no longer have the same impact when tariffs have reached the extremely low-level prevailing today. Far more important is a reduction in the level of non-tariff barriers. A share in the internal market of the European Union effectively means a reduction in NTBs. For the European Union, spreading its regulation throughout its neighbourhood brings obvious advantages both in economic terms but also from the point of view of anchoring democracy, the market economy and stability in the region.

ENP also offers closer co-operation in many policy areas, improved political dialogue, and a limited rise in financial assistance from the Union. Furthermore, it contains the promise of an upgraded bilateral relationship if conditions are met, without however specifying what sort of bilateral agreements the ENP countries can expect, and without making any mention of their future membership of the Union.

Although ENP was the subject of a 'hard-sell' by the European Union, it has not been universally welcomed by the Union's neighbours. A major criticism has been that applying the same policy to an extremely heterogeneous group of countries cannot possibly be satisfactory to all or perhaps any of them. The transition economies of Eastern Europe have little in common with the countries of North Africa. The high level of heterogeneity between the ENP states, as well as their wide geographical spread meant that there was little in the way of joint projects or policies which were likely to be of value to all the neighbours. Indeed, ENP had in reality little to offer at the truly multilateral level.

Despite its regional objectives, ENP was not designed to weaken bilateral relations between individual states in the neighbourhood and the Union. Instead, it appeared to strengthen the bilateral dimension of the EU relations with its neighbours, at the expense of existing regional structures, particularly for the south. It became clear to all that the development of bilateral relations would be far more important to individual neighbouring states than the apparent multilateral offer of ENP. Indeed, while at the operational level, ENP introduced 'action plans' for all cooperating countries as reform

programmes based on the adoption of EU regulation and EU basic values, such action plans were nevertheless negotiated bilaterally and thus tailor-made for each country. Thus, while the ENP action plans did bring some general progress across the neighbourhood they should rather be seen as elements of bilateral relationships with the individual countries than of the multilateral essence of ENP.

A further complication within ENP was that the contractual basis between the Union and the ENP states varied considerably. Whereas many of the Southern states have Association Agreements, the countries of Eastern Europe generally operate with Partnership and Cooperation Agreements. The quality of these agreements varies considerably both in their content and in their institutional arrangements. As a further complication the PCA with Belarus is in abeyance as a result of the regime's unwillingness to adopt fundamental EU values, and there is still no contractual basis for relations with Libya, although negotiations have just recently started.

ENP may well have somewhat confused the bilateral relationship between the EU and individual countries in the neighbourhood. In the case of a country like Ukraine for instance, which has, as a longer term aim, full accession to the European Union, the impact of ENP was quite unsatisfactory. It mixed countries to which article 49 of the EU Treaty applies and others to which it doesn't, and it seemed to eliminate any discussion of eventual accession. ENP was therefore regarded as an unhelpful innovation. Indeed, without the prospect of accession and with only rather vague promises about future integration, there was little that the Union could do in the case of non-implementation of commitments made notably on the basis of the ENP action plans. As a result, the latter suffered from the very limited leverage the EU has on the ENP states to undertake the reforms which they have signed up to.¹⁷

The development of ENP has continuously faced problems caused by disagreements between EU member states. The Southern member states were suspicious that its aim was to transfer attention and finance from the South to the East; the member states which are opposed to any discussion relating to further enlargement continually analysed statements on ENP to make sure that it was not opening any doors to future enlargement; and the net contributors to the budget were suspicious that this was another potential financial burden on the EU budget.

The proposal to create a Union for the Mediterranean, to which all the Southern ENP states would belong, together with Turkey and Croatia, opened the door to the creation of an Eastern Partnership, effectively destroying the integrity of ENP and therefore of the policy itself. While ENP will survive, it appears in effect to be emptied of content. That indeed may be a reason why, given the scepticism evoked above, the Eastern

¹⁷ See Hillion, "Thou shalt love thy neighbour": the draft European Neighbourhood Policy Action Plan between the EU and Ukraine", JMWEN Paper (2005/1)

Partnership is generally positively regarded in the region concerned. It is seen as a way to dilute ENP, which had never met with great enthusiasm.

Indeed generally, the Eastern Partnership initiative sends positive signals:

First, the establishment of what may be looked at as a new conceptual framework specifically designed for Eastern Europe demonstrates that the EU's relationship with the countries concerned, remains high on the EU's external relations agenda, and that the fine-tuning of these relations is important for the Union, if not one of its priorities.

Second, the new initiative as well as the offer it contains suggests that the EU has, to some extent, been receptive to messages from East-European states concerned, particularly the suggestion that they should not be approached the same way as Southern Mediterranean states.

Third, the establishment of the Eastern Partnership, which is said to be based on the ENP, epitomises the adaptability and the dynamism of the ENP in general, and of the EU approach to Eastern Europe in particular. It also illustrates the flexibility of the ENP, in the sense of its capacity to host, through deliberate ambiguity, very different Member State interests and evolving positions regarding the EU relationship to different ENP partners.

Fourth, the Eastern Partnership demonstrates that enlargement of the Union has triggered new ideas, and a deepening of existing policies. Indeed, it is not by chance that the new policy has notably been promoted by a new Member State.

On the whole, therefore the Eastern Partnership is a promising initiative. Indeed, it appears to have been positively received by the East European states, and certainly by Ukraine, which has articulated its own views in a Non-Paper, on how best to use this new formula, and to influence policy making in Brussels accordingly.

Yet, the establishment of a European Partnership, as a new instrument of the EU's Eastern policy increases expectations. Unless the new initiative delivers tangible results, the risk is that it will lead to a widening of the gap between partners' expectations and EU deliverables. Hence, the new initiative will be positive in effect and not only in terms of signals, first if it fits in coherently with an already well-furnished, if not over-crowded EU policy towards East-European countries in general, and towards Ukraine in particular; and second, if the new initiative does bring about added value.

It is not the place to go back to each and every instrument. Suffice it to highlight the sheer number of those instruments: PCA, ENP, ENP Action Plans, various sectoral agreements such as visa facilitation, and readmission agreements. There have also

been various EU common positions (CP), common strategies (CS) in the 1990s, particularly in relation to Ukraine. Beyond the quantity, one could also note the diverse nature of these devices: some have a classically legal nature (e.g. PCA, sectoral agreements, the new Association Agreement), others have a political nature (CP, CS, ENP, Eastern Partnership), though leading to potential practical effects, thanks to operational (albeit political) instruments such as the action plans, and the New Practical Instrument (NPI).

While the regular setting up of new instruments indicates the EU's constant willingness to adapt its policy, the inflation of instruments may however also translate a degree of inability to work out viable policy instruments, able to encapsulate an EU common policy, and capable adequately to address the addressees' concerns and interests. The multiplicity of instruments also typifies the diversity of actors of the EU system of external relations, and as a corollary, the diversity of views on what to do in relation to the neighbours and the obvious strain on the overall coherence of the EU action vis-à-vis those countries.

In the light of the foregoing, it is important to examine the interactions between the different instruments underpinning the EU's relations with its East-European neighbours. Are these instruments consistent? Is the efficiency of the overall EU eastern policy guaranteed or perhaps improved by the Eastern Partnership? It is impossible to examine in detail each and every possible problem of coherence and added value potential of the new initiative here. Suffice to raise a few specific questions on the consistency between the Eastern Partnership and the ENP, and between the Eastern Partnership and the Association Agreement, currently being negotiated.

7.2 Consistency and added-value in relation to the ENP

The EU has frequently called for a strengthening of the ENP, including while the idea of the Eastern Partnership was being articulated.¹⁸ In other words, it is here to stay. The key question is therefore how the Eastern Partnership will relate to the ENP, and what novelty it introduces in the EU relations with the Eastern neighbours, compared to the ENP.

a) As mentioned earlier, the **objectives of** the Eastern Partnership include deep and comprehensive free trade, legal adaptation, deep cooperation in various areas, notably visa facilitation.¹⁹ Seen in the broader perspective of the EU policy

¹⁸ See e.g. conclusions on the ENP of External Relations Council, Brussels, 18 February 2008.

¹⁹ See the 'Non Paper: ENP — a Path towards further economic integration' which provides that 'The next step will be deep and comprehensive free trade agreements, which will liberalise substantially all trade and codify regulatory alignment through binding commitments and a dispute settlement mechanism.'

towards Eastern Europe, these objectives are not really new. In particular, they are important elements of the existing EU ENP toolkit. In the same vein, while the multilateral and regional dimension, and particularly the idea of creating a regional FTA, appears to be a novelty, it has also been envisaged in the context of the ENP.²⁰

b) The **methodology** underpinning the Eastern Partnership closely resembles that of the ENP, itself inspired by the pre-accession methodology. In particular, the Commission started to produce ENP progress reports, assessing the progress made in fulfilling the objectives set out in the Action Plans. In other words, the conditionality proposed in the Eastern Partnership is very much in place already - albeit with its flaws. In this case, the criticism that has been formulated towards the ENP conditionality would remain valid in relation to the Eastern Partnership.

Conversely, the Eastern Partnership may involve a new and/or strengthened conditionality, with possibly more specific targets, conditions and incentives for the partners. Equally, the monitoring of partners could be tailored to the Eastern Partnership political framework only. That means that the ENP monitoring as it exists could be substituted by an 'Eastern Partnership' specific monitoring. If ENP monitoring so disappears, the ENP will be emptied of one of its very significant components. It would then be difficult to maintain that the Eastern Partnership is part of, and does not replace the ENP. In fact, it either entails double work, or substitution.

c) **the financial** added value has been discussed above. Indeed some increase in funding is proposed, but it remains to be seen whether the Council agrees to this. The really significant funding required for serious integration with the internal market is not discussed in the Commission paper.

The foregoing points indicate that while there is no risk of inconsistency between the Eastern Partnership and the ENP, that is perhaps because the Eastern Partnership does not add much to the existing framework. This may affect the credibility of the new initiative, which lies in its ability effectively to build on the ENP. The Commission's proposal is modest, as indeed were the Polish-Swedish initiatives. Of course, there may be internal political reasons behind this modesty. Several member states are strongly against anything which suggests that the Union could enlarge beyond the current candidate and potential-candidate countries. This will certainly affect the negotiations on

This is an ambitious medium- to long-term goal for most partners, and will create the basis for deep economic integration between the EU and ENP partners on the one hand and among ENP partners on the other'; http://ec.europa.eu/world/enp/pdf/non-paper_economic-integration_en.pdf

²⁰ Ibid.

further visa facilitation or eventual visa-free travel, and of course any attempt to relate the Eastern Partnership to ultimate accession to the Union.

While the Eastern Partnership is formally an integral part of the ENP, it may in various respects make the latter redundant. Indeed, it appears that, to a large extent, what is at work behind the new initiative is rebranding rather than serious far-reaching adaptation of the ENP acquis, let alone re-orientation of its objectives. There is therefore a likelihood that certain of the same flaws exist with the Eastern Partnership as with ENP. These considerations may mean, as regards the question of its possible added value, that the Eastern Partnership brings nothing more than ENP to Eastern Europe other than clearly separating it from the south. However in itself, this exercise is far from being worthless, in that it may actually achieve the important goal of making the policy more palatable to the partners concerned, and thus engage them further in it.

On the whole, the Eastern Partnership might be a transitional arrangement within the ENP – which in our view is also a transitional arrangement – an accompanying policy towards the pre-accession track for the partners that are willing and able to meet the accession criteria.

7.3 Consistency and added value in relation to the Association Agreement with Ukraine

In terms of **objectives**, the Paris EU-Ukraine summit of 2008 already spelled out rather clearly the aims of the new Agreement. It may thus be asked whether the Eastern Partnership is going to be based on those objectives, or whether the Association Agreement objectives will be fine-tuned in the light of the Eastern Partnership's, as they will eventually be settled in Spring 2009?

As to the **content** of the Association Agreement, reciprocal commitments are already being negotiated. It is as if the Eastern Partnership is coming a bit too late to influence the EU approach in the negotiations.

The important element that the Eastern Partnership will bring to the Association Agreement is the attempt to integrate the region, through the multilateral political dialogue, regional projects and the establishment of the Deep Free Trade Area, covering the whole region, evoked earlier. The juxtaposition of the bilateral and regional dimensions may however engender the risk of more advanced countries in terms of adaptation being held back by the country least able or willing to integrate. Scrupulous observance of the principle of differentiation will thus be crucial for the smooth operation of the Eastern Partnership.

Another question arises of the connection between the Eastern Partnership, the Association Agreement and the ENP Action Plans – or, in the case of Ukraine, the New Practical Instrument. As it is foreseen that a new generation of ENP Action Plans/New Practical Instruments be established in spring 2009, while the negotiation of the Association Agreement may still be ongoing, and the Eastern Partnership yet to be approved by the Council, the connection between these instruments remains to be clarified.

8. Conclusion

In spite of this multitude of questions, it must be concluded that there is added value in the Eastern Partnership and that it is therefore to be welcomed:

- it is new and therefore maintains movement in the relationship between the EU and Eastern Europe
- at the bilateral level, it establishes a clear offer to each State in the region of 'association' with the European Union, on the condition that it shares the fundamental values of the European Union and is prepared in the longer term to align its regulation with that of the Union. This removes a degree of uncertainty for these countries about the Union's longer term intentions. It does not however resolve any uncertainty about future accession to the Union for the countries of Eastern Europe
- its new contribution is essentially at the multilateral level rather than the bilateral level. The intention to promote regional cooperation must be seen positively. Regional cooperation is certainly of limited economic significance; it is probably however of importance in the political and security fields
- through reinforced political dialogue with the European Union, it can be anticipated that the whole region may see increased stability and progress towards democracy, the rule of law and economic reform.