

Date: 14 March 2008

REF: SIPU/JMWEN ASS. 03-rev1

Authors: Alan Mayhew and Christophe Hillion

*An Overview of the Enhanced Agreement and the FTA+: possible implications for SIDA assistance*

(it should be noted that certain of the authors of this note are advising the Ukrainian Government on the New Enhanced Agreement, and are not able to reveal the detail of these negotiations. However the detail is irrelevant for the purposes of this note)

The Partnership and Cooperation Agreement between Ukraine and the European Union came into force in 1998. It was agreed that it should run for 10 years and could then be rolled over on an annual basis by common consent. In 2004 European Neighbourhood Policy was established with a strategy paper published by the European Commission. In this paper the possibility for neighbourhood countries to integrate more deeply with the internal market of the European Union was outlined. This led to the agreement on an Action Plan for Ukraine in early 2005, which was designed for three years. The end of the first period of the PCA coincides in 2008 with the end of the first Ukrainian Action Plan. It was therefore considered appropriate that a 'New Enhanced Agreement' should be negotiated this year to replace the PCA.

It has been made clear by the European Union that the new enhanced agreement will be 'comprehensive, binding and evolutionary'.<sup>1</sup>

'Comprehensive' is interpreted as meaning that the new agreement will go well beyond the PCA and open the way for 'deep integration' with the European Union. The EU has emphasised that it wishes to negotiate a free trade area plus agreement (FTA+) with Ukraine, which will go well beyond the limits of traditional trade agreements. The policy on new-style trade agreements was outlined in a Communication from the Commission to the Council entitled 'Global Europe: competing in the world' in October 2006.<sup>2</sup> The Ukrainian agreement will be the first example of such a new FTA+ agreement.

'Binding' implies that, unlike in the ENP Action Plan, this agreement will be binding on the parties. This factor is extremely important for the future

---

<sup>1</sup> See the note by Christophe Hillion 'The new relationship between the European Union and its ENP Partners – lessons for the future EU-Ukraine agreement' published by demosEuropa, Warsaw and attached to this note.

<sup>2</sup> COM(2006) 567 final/4.10.2006

relationship between the EU and Ukraine. One of the main reasons that the PCAs were ineffective was that the terms of that agreement were only of a programmatic/non-committal nature, combined with the absence of a decision-making body within the agreement. In the new agreement, decisions to be adopted by the institutions (the Agreement Council) should by contrast be legally binding on both parties, thus strengthening the parties mutual commitments. The binding nature of the agreement provides a legal anchor which should help the Ukrainian authorities to maintain a reform agenda for the country.

The new agreement should be 'evolutionary' in the sense that it should be a dynamic agreement, negotiated for a long or indeterminate period, but through which new impulses will be given to the integration process, notably through the decision-making power of the Agreement's Council.

### **The negotiation process**

On the EU side the negotiations were preceded by a decision of the EU Council on a negotiating mandate. The negotiating mandate made clear that this agreement would involve deep integration and would be a new type of EU agreement with a neighbouring country.

The negotiation of a new agreement started in 2007 and there have been several negotiating sessions since, the latest one taking place on March 12-13, 2008. Negotiations on the new FTA+ part of the agreement had to wait for Ukraine's membership of the WTO to be confirmed. These negotiations were officially inaugurated in February and are being launched in March this year.

The outlook for the negotiations is that they could take many months and go on well into 2009. The reason for this is that the Union is keen to link concessions in the agreement to the implementation of parts of the Community acquis. The EU may also want the Reform Treaty to enter into force before signing the agreement for it provides a specific legal basis for the Union's relations with its neighbours (Article 7 new TEU). Much of this negotiation is complex and will require the Ukrainian side to analyse the impact of adopting the acquis on its economy and society.

In a non-paper, the future French Presidency of the Union (second half of 2008) has stated that its aim is to achieve a political agreement on a new treaty in time for the EU-Ukraine summit on September 8, 2008. It has been suggested to the Ukrainian side that this political agreement could form a separate agreement which could be signed and sent off ratification before the end of the year. Such a treaty would simply include articles on political dialogue, regional cooperation, general cooperation and possibly elements of justice and home affairs but would not include any elements dealing with trade or the internal market.

While such a political agreement would appeal to the short-termism of politicians on both sides, it has been firmly rejected as a possibility by the European Commission. For Ukraine, such a treaty might be a significant

political indicator, but in terms of providing an anchor for thorough economic reforms, it would be useless. It would also create the problem that interest in the core of the agreement, which would be left to be negotiated, would tend to dissipate. This second part of the agreement might also have to be ratified by all member states, if it were to be a 'mixed agreement', as is extremely likely.

The best guess therefore is that there will be some sort of high profile political statement at the September 2008 summit, but this will fall short of a formal agreement. The document would instead contain indications about the name of the future agreement, its founding principles and objectives, indications of its content, and the nature of its institutional framework. The negotiation of the new agreement will then last into 2009, formerly entering into force in 2010 or the beginning of 2011. This implies that the PCA will remain in force until then and a new action plan or a 'rolled over' action plan will be required.

### **The FTA+**

The new FTA+ part of the enhanced agreement will form the core of the EU promise to ENP countries of 'a share in the internal market of the Union'. The aim of the European Union is to extend EU values and regulation throughout the neighbourhood. This will be achieved by linking commercial concessions to the adoption of parts of the *acquis communautaire*.

This approach holds out promise for Ukraine but at the same time is a major challenge.

The promise is that as Ukraine successfully implements the parts of the *acquis* contained in the FTA+, it will not only benefit from trade concessions but will also gradually be able to benefit from the opening of the internal market of the union. At the same time the implementation of EU regulation will contribute to the modernisation of Ukraine's economy.

The challenge for Ukraine's administration is to determine, before the negotiation is completed, what are the implications for Ukraine's economy of adopting a large number of Union directives. It is well known from the recent accession of central and east European countries that the adoption of certain parts of the EU's regulatory framework is extremely expensive and a major burden on the budget of the country.

In order to meet this challenge Ukraine will need advice in all the areas touched on by the agreement with respect to which parts of the Community *acquis* to agree to and which to reject or to accept conditionally. The list includes obvious areas like energy, the environment, and health and safety at work, as well as the classic internal market *acquis*, together with competition policy, intellectual property, public procurement, establishment and company law.

### **The Ukrainian dilemma**

It is to be assumed that the majority of political forces in Ukraine support the eventual accession to the European Union. Certainly this is the view of the current Government and the President of Ukraine.

At present however the EU has clearly said that the new enhanced agreement in no way affects the question of Ukraine's accession to the Union. For the EU these are two completely separate questions. Indeed for many EU states, European Neighbourhood Policy is a way of ensuring that the integration of countries in the eastern and southern neighbourhood does not imply accession to the Union and therefore a new round of EU institutional reform.

On the Ukrainian side there has been a strong push in the negotiations to ensure that the new agreement contains the perspective for Ukraine's eventual accession to the Union. This has led to long and fruitless discussions. It would appear that Ukraine's best chance to achieve eventual accession to the Union is to conclude the negotiations, implement smoothly and effectively what has been agreed in the treaty and maintain Ukraine's demand for accession in effective and quiet diplomacy. If all goes well in a few years time it is then likely that the Union will be more prepared to see Ukraine as a full member.

The dilemma then for Ukraine in the negotiations is to sign up for a sufficient proportion of the *acquis* proposed by the Union side in order to emphasise its intention to integrate fully with the Union, while at the same time remaining sceptical about those parts of the *acquis* proposed by the EU which would however pose too great a financial burden on the budget.

### **Implementation of the New Enhanced Agreement**

Once the agreement has been signed, the main challenge to Ukraine's administration will be to ensure that the terms of the agreement are being met on the Ukrainian side. This will require a new quality of coordination of EU policy in the administration, a question which the Vice-Prime Minister is already tackling.

Implementation of the terms of the agreement will be an immense challenge for Ukraine. It will require passing significant amounts of legislation through the Parliament as well as considerable institutional change. This challenge can be met by introducing new systems into the Government machinery to ensure a regular monitoring of treaty implementation as well as ensuring a steady upgrading of human capital in the administration.

Acceptance of change in the population is a problem for all governments in all countries. It will be vital that Ukraine's citizens are convinced that progressive integration into the European Union is of benefit to them. In order to achieve this, the Government will need to invest far more in information and consultation of citizens.

### ***Implications for Swedish assistance to Ukraine***

The new treaty has several implications for foreign assistance and specifically for SIDA as a major bilateral donor.

The requirements for successful completion and implementation of a new enhanced agreement include:

- Improved coordination of EU policy in the Ukrainian administration (there is already a project being supported by the British Government on this subject, but which, unless prolonged, ends in May 2008)
- large-scale studies of the impact of the new agreement on Ukraine's economy and society (the EUPLAC project under the TACIS programme has completed one very detailed impact assessment on one directive but a less detailed and far wider investigation is necessary given the wide scope of the new agreement)
- Ukraine's Parliament will need a great amount of assistance to enable it to undertake the work which will be required of it in the implementation of the agreement
- a practical study of the institutional changes which will be required by the agreement needs to be made. Institutional change is always extremely difficult and is often a very long process. The government therefore needs an early assessment of changes which might be required.
- A considerable amount of specific in-service training for civil servants and judges is still required in Ukraine. Various domestic think tanks and training institutions as well some foreign donors (including SIDA) have been involved in such activities but the surface has still hardly been scratched
- It will be important to support Ukraine on a more long-term basis in training more graduates to work in the public and private sectors on EU related issues, notably through the allocation of grants/scholarships to allow Ukrainian students to study but also by encouraging Ukraine to include EU studies courses in university curricula, and by the establishment of joint university programmes in Ukraine.
- information and advice for the business sector and for other sectors of society will be vital to help them prepare for the changes which will come through the implementation of a new agreement. SIDA, with its considerable experience in working with social partners in Ukraine could contribute in a major way in these areas