

European Neighbourhood Policy

Introduction

This introduction provides a contextual introduction to European Neighbourhood Policy, with focus on Ukraine. It is divided into two principal sections. The first section provides a contextual introduction to European Neighbourhood Policy (ENP), focusing initially on the origins of European Neighbourhood Policy, its characteristics, and the crucial question of its sustainability. Secondly, it casts its spotlight on the Orange Revolution during the Ukrainian Presidential Election of 2004, an event which radically changed the relationship between the European Union and Ukraine.

I. The Context of European Neighbourhood Policy (ENP)

Origins

The relations between the European Union and its neighbours have developed in the last fifteen years in a relatively uncoordinated manner. Bilateral relations with all neighbouring countries have naturally led to a variety of different arrangements. However, on a multi-lateral basis, the Union has developed relations separately with four regions in its direct neighbourhood.¹

For the countries of central Europe, the negotiation of 'Europe Agreements' in the early 1990s and the decisions taken at the Copenhagen European Council in 1993 put these priority neighbours on the road to full membership of the Union. This was achieved for eight of them in May 2004 (where they were joined by Malta and Cyprus), and for Romania and Bulgaria accession appears to be on track for 2007.

The countries of the western Balkans have been more or less assimilated into the central European group. They have been promised full membership of the Union once they have met the basic conditions. Stabilisation and Association Agreements (SAA), very similar to the Europe Agreements but with additional conditionality, have been offered and are in force already with Macedonia and Croatia. These two countries have applied for full membership of the Union and Croatia will begin accession negotiations in March 2005, subject to a favourable opinion from ICTY.

Partly as a response to the political emphasis placed on relations with the new democracies of central Europe in the early 1990s, the Union decided to revamp its relations with its southern neighbours. As a result, the Barcelona Process (Euro-Mediterranean Partnership) was created in 1995, tying in 10 Mediterranean countries (excluding Malta and Cyprus) more closely to the Union. One of these countries, Turkey, has enjoyed a very special relationship with the Union and will begin negotiations for accession to the Union in Autumn 2005. The others have all signed new Euro-Mediterranean Association Agreements with the Union, which promise, amongst other things, the creation of free trade after a transition period and closer political relations.² However in contrast to the western Balkan countries, it has been

¹ North Africa, the Middle East, Eastern Europe, and the Caucasus. This ignores the rich west European states, such as Switzerland and Norway, which could join the Union but have chosen not to.

² The agreement with Syria has been initialled but not yet signed (January 2005).

made clear that these Association Agreements do not lead to any perspective of accession to the Union.

The countries of Eastern Europe, Russia, Belarus, Ukraine and Moldova, were all offered Partnership and Cooperation Agreements (PCAs) after the break-up of the Soviet Union. These agreements are far less binding than the Europe Agreements with the countries of central Europe and certainly did not open any prospect of accession to the Union.³ Relations with these countries proved particularly difficult and were relatively neglected as the Union concentrated on the accession negotiations with the central European countries. Russia, as a major power, could not be treated on an equal footing with the other countries in the region. It was also wooed by certain leaders in individual Member States, which hoped to benefit from a 'special relationship' with Russia. Belarus and Moldova posed particularly acute political problems, while Ukraine did not always present itself as the most reliable partner.

As a result relations with these countries developed in a far less coordinated manner than those with the other regions mentioned here. The PCA with Belarus was put into abeyance by the Union as a result of differences on the fundamental values of the Union – democracy, human rights and the rule of law. Common Strategies were agreed for Russia and Ukraine by the Council of the Union, but these never produced any significant results and were never accepted thoroughly by the Commission, which considered that they breached fundamental institutional rules in the Union. Common Union positions on relations with Russia were continually undermined by individual Member States.

The origins of the new European Neighbourhood Policy are contained in this rather chaotic pattern of relations with the Union's neighbours but also, and above all, in the fundamental changes which enlargement to the countries of central Europe caused in European political and economic relations.

It is interesting that the Commission barely touched on the relationship between enlargement and neighbouring third countries in its 1997 *Agenda 2000* documentation. Two paragraphs suggest that this question would need looking at, and even the problem of Kaliningrad is mentioned, but this is all the attention that is given to Eastern Europe and the Mediterranean. There was also a proposal for a 'European Conference' which, once a year, would bring together all European countries to debate crucial issues. The Conference was, however, quietly forgotten, after a row about the participation of Turkey.

It was not really until the accession negotiations with the central Europeans were almost completed in 2002 that serious discussion in the Council about the impact of enlargement on neighbouring countries began⁴. The Commission began to worry about future relations with the east and south from around 2000 and the issue is

³ Christophe Hillion, *Institutional Aspects of the Partnership Between the European Union and the Newly Independent States of the Former Soviet Union: Case Studies of Russia and Ukraine* (2000) *Common Market Law Review* p. 1211.

⁴ The European Commission produced its first communication on the impact of enlargement on Kaliningrad in January 2001: *The EU and Kaliningrad*, Brussels, 17.1.2001, COM(2001) 26 final

mentioned in the Regular Reports appearing annually for each of the accession countries and in the Strategy Papers which accompanied them. Council attention was also generated partly by the claims of Russia for compensation for the economic losses to be incurred through the accession of some of its major trading partners and partly through the difficult negotiations about Kaliningrad.

While this lack of attention to an obvious impact of enlargement might be criticised, it should also be remembered that the Union was reluctant to allow Russia to have a serious influence on the enlargement process. Early and serious discussion with Russia on enlargement would have obviously opened up the possibility that Russia would intervene decisively in the internal affairs of the Union.

With enlargement essentially completed in December 2002, the Commission produced its first communication on 'Wider Europe' in March 2003.⁵

The characteristics of European Neighbourhood Policy

While the March 2003 Communication from the Commission outlined that Institution's first thoughts, it is the May 2004 Strategy Paper which laid the basis for the new policy.⁶ The area of ENP was extended in this paper to include the southern Caucasus, Armenia, Azerbaijan and Georgia. The main elements of the Commission's paper were confirmed by the Council in June 2004.

ENP is an attempt to create a framework within which all relations with the Union's neighbours, with the exception of Russia and Turkey, can be developed.⁷ ENP is supposed to be a differentiated multi-lateral instrument; multi-lateral in that similar overarching principles will apply to all associated countries; bilateral in that the specificities of individual countries will be respected. It builds on existing instruments rather than replacing them. It uses the existing institutional arrangements of PCAs and Euro-Mediterranean Agreements. While it mentions a new generation of agreements, these are not specified in any detail. It promises more money to finance cooperation through a New Neighbourhood Instrument, although this will only be forthcoming if the 25 Member States agree in the Financial Framework for 2007-13 and would only be available from 2007. In the meantime, a more rational use of existing financial instruments is promised. Crucially ENP, while not excluding accession to the Union in certain circumstances, clearly states that it is totally separate from the question of membership of the Union. The very tough statements from some Commissioners, including the last Commission President, excluding accession for these countries underlined that they should not waste their time dreaming of accession.

The geographical limits of ENP were determined by the decision to include the southern Caucasus and to start negotiations for full membership with Turkey. Russia made it clear from the beginning that it was not interested in being part of the EU's 'neighbourhood' but that it regarded the EU as a 'strategic partner'. In the light of

⁵ European Commission, Wider Europe – Neighbourhood: a new framework for relations with our eastern and southern neighbours, March 2003, COM (2003) 104

⁶ European Commission, European Neighbourhood Policy: Strategy Paper, COM(2004) 373, May 2004

⁷ see the contributions of Marise Cremona and Christophe Hillion later in this book.

this 'special relationship' the Cooperation Council in the PCA has been upgraded to a Permanent Partnership Council, while work has been concentrated on four 'common spaces': economic, justice and home affairs, research and development, and security. However, it is clear that Russia will exert a considerable influence on the development of ENP.

That differentiation must be a significant part of ENP is clear. There is little that Algeria and Ukraine have in common, except a desire to improve relations and cooperation with the Union. Given the vastly different economic problems of each, it is obvious that their priorities in cooperation with the Union will be very different. Some countries also have a right to apply for membership of the Union under article 49 of the Treaty – in spite of the views of some Member States - others do not.

However for the Union some criteria governing the degree of integration to be offered are common to all. This applies, for instance, to certain fundamental values such as democracy, human rights and the rule of law, which must be shared by countries wishing to integrate more deeply with the Union.⁸ It also applies to the approximation of laws necessary for these countries to 'have a share in the internal market of the Union'. A willingness to cooperate across the breadth of the Union's justice and home affairs acquis is also a requirement. Therefore for the Union there is a certain logic and even perhaps an economy in having a horizontal ENP applying to all these diverse countries.

The Union's objective in promoting ENP is summarised in the Commission's papers, which talk about the creation of a 'ring of friends' around the Union's borders. Close relations with the Union's neighbours, based on the fundamental values of the Union, promises a more friendly security environment, better possibilities of controlling migration, increasing cooperation in fighting international crime and terrorism. The Union envisages the promotion of regional cooperation between itself and regional groupings of neighbours as a further guarantee of stability. The advantage to the neighbours lies in the creation of a free trade area, which is achieved gradually and in an asymmetric manner, in the possibility of deeper integration in the EU's internal market as the internal market acquis is applied and in the possible simplification of visa and other controls on persons. Increased financial assistance is a further potential benefit.

The main instrument of ENP will be the action plans, the first of which have completed their approval on the Union side.^{9,10} The Action Plans are jointly agreed programmes of reform, similar to the 'Accession Partnerships' which form part of the strong conditionality associated with accession to the Union. While the Accession Partnerships were unilaterally decided programmes of reform imposed as conditions on the would-be Member States, the Action Plans will be approved by both sides in the appropriate institutions of the bilateral agreements in force (PCA or Euro-Mediterranean Agreements). In fact the Action Plans represent the detailed requirements of the Union side for deeper integration with its partners. They have been drawn up in the Commission and are clearly based on a decade of experience of

⁸ See Marise Cremona's contribution to this book.

⁹ European Commission, Commission proposals for Action Plans under the ENP, COM(2005) 795, December 2004.

¹⁰ See the contribution of Christophe Hillion in this book.

preparing third countries for accession. While it is true that both sides will need to mark their agreement, it is perfectly clear that the dominant partner is the Union.

Another element of monitoring, which resembles the preparation for accession, is that the Commission will present annual reports on progress in reform for each of the ENP neighbouring states. The first reports were produced in May 2004.

A fundamental dilemma of ENP is therefore the question of whether following closely the accession route in terms of procedures, conditionality and monitoring is not in fundamental conflict with an apparent determination not to offer these countries a perspective of accession.

The Commission has already proposed a European Neighbourhood and Partnership Instrument (ENPI).¹¹ It has also asked for the financing of this instrument in its proposal for the Financial Framework of the Union, 2007-2013, at present under discussion in the Council. This instrument would finance the development of ENP but would also cover programmes and projects with Russia. ENPI would be innovative in bringing projects involving a Member State's and a neighbouring third country's frontier zones under one regulation, that of ENPI. This would greatly simplify the preparation of programmes and projects. ENPI will cover purely national programmes in the countries involved in ENP as well as financing cross-border projects between participating countries. The Commission has proposed that roughly €14 billion should be made available over the seven year period, 2007-13. This compares with a current annual budget of around €500 million for eastern Europe, the Caucasus and the central Asian Republics, and €1 billion annually for the Middle East and the Mediterranean. Although ENPI is not identical with these two areas of funding, it is obvious that the Commission's proposal would mean a significant increase in funding.

Is ENP a sustainable policy?

There are three main questions which require answers if ENP is to be a sustainable policy.

First, is it sustainable to follow what is essentially the accession path with neighbouring countries without offering the perspective of accession?

Second, is it reasonable to design a single policy applying to countries as different as Ukraine and Tunisia, even admitting that there will be differentiation in the detail?

Third, the first 'Action Plans', while being decided on by both sides, clearly demonstrate that the EU has succeeded in controlling the content to a very large degree. Can the ENP be made into a real partnership, especially if there is no perspective of accession?

The answers to these questions are complex and linked. The Southern Mediterranean countries normally have no perspective of accession and are not covered by article 49

¹¹ European Commission, Proposal for a Regulation of the European Parliament and of the Council, laying down general provisions establishing a European Neighbourhood and Partnership Instrument, COM (2004) 628, 29.9.2004.

of the Treaty.¹² The countries of eastern Europe, however, can obviously apply for accession under that same article and, if they meet the conditions, can expect full membership of the Union. A priori, therefore, it might seem that the eastern European countries have more to gain from faithfully implementing the Action Plans than the southern countries. The question is then whether what the Union is offering to these latter states in the context of ENP is sufficient to make it worthwhile implementing the Action Plans in full.

ENP at present is rather vague on the advantages it will offer the participating states. The Mediterranean countries already have agreement on a free trade area for goods and ENP does not promise anything in the area of agricultural trade, except help to meet Community phyto-sanitary controls. Agreements on conformity assessment and other essentials of deeper integration with the internal market of the Union are also in progress through the Barcelona Process. ENP therefore offers the Euro-Med countries perhaps a little more financial help, closer political dialogue and the opportunity to harmonise their legislation to that of the Union. The crucial question will be whether advantages in the form of more FDI or better access to European markets are considered worth the cost and perhaps political pain of adjusting to the Community *acquis*.

For the east European countries (at present only Ukraine and Moldova), the idea of going through a decade of legal harmonisation with the *acquis* and major shifts in policy with no possibility of full accession will not be an attractive proposition. Many of the measures in the Action Plans should be undertaken simply to make these countries more attractive investment locations. However for public opinion it will be actual accession which is expected. They must therefore take the gamble that after a few years of adjustment under the ENP and its Action Plans, the Union will be forced to change its position on accession. Ukraine already has a powerful backer in Poland, while Germany and the United Kingdom could have reasons to support its accession. But this would be a gamble.

On the Union side, there is no real alternative proven strategy than the accession strategy. ENP has therefore been conceived as pre-accession without the final step – Prodi clearly admitted that this was the objective. The risks of failure are therefore considerable. In eastern Europe, given the underlying tense political situation in several of the countries concerned and the interest of Russia, failure could have acutely dangerous results.

The differing objectives of the Mediterranean countries on the one hand and some of the eastern European countries on the other make it difficult to consider ENP as a consistent sustainable policy across both regions. What could hold it all together is the unique set of values which the Union requires and the ENPI which provides a considerable level of finance across all participating countries.

It is unlikely that the Action Plans can be radically altered in their basic shape and concept, simply because they are instruments designed for accession. This makes it

¹² The opening of negotiations with Turkey may however encourage some of these countries to apply for EU membership.

all the more important for the participating third countries to thoroughly cost the measures, both politically and economically, and to draw up their own priority plans.

ENP and Eastern Europe

This series of articles concentrates on ENP in the context of the Union's relations with Eastern Europe and notably on EU-Ukraine relations.

Eastern Europe is affected far more directly by the recent enlargement of the Union to the countries of central Europe. The problems of Kaliningrad, the introduction of visas for travel to Poland, Hungary, Lithuania or any other new Member State, the changes in trade relations, both contractual and tariffs, are all direct consequences of enlargement. Although there is no clear evidence that the overall impact of enlargement on these neighbours is negative, certain elements in the Accession Treaty, notably the imposition of visas, has fundamentally changed the free movement of persons and in some cases of goods and services in this part of Europe, raising the spectre of another line of division across the Continent.

However, the application of ENP to this region meets some obvious barriers. Russia does not want to be part of the policy, as mentioned above, even though it is crucial to the success of the policy. At present, Belarus does not meet the basic conditions of shared values with the Union and relations are therefore restricted to the level of civil society. Moldova is one of the countries for which the Commission has prepared Action Plans but it has severe internal security problems. These problems are one of the priorities of the Union which wishes to see a unified and peaceful Moldova, making economic progress and guaranteeing stability.

Ukraine is the country in Eastern Europe with which the Union has developed the greatest degree of cooperation. Strategically it is of considerable importance to the Union and this importance has been enhanced by the recent enlargement of the Union. It has borders with six of the new Member States (including Romania) as well as Russia and Moldova. This would make it an important EU partner, just for the security implications of such a vast common border. But Ukraine is also a very significant transit country for pipeline supplies of oil and gas to central and western Europe, a significant world producer of agricultural products and a transition economy with considerable growth potential, given rational economic policies. Above all it is an essential element of core-Europe, historically, culturally and economically, as indeed is Russia.

Ukraine is also in a way the heart of European Neighbourhood Policy. Without eastern Europe, ENP melts down to the Barcelona Process. In eastern Europe, with the loss of Russia and given the current problems with Belarus, ENP relates essentially to Ukraine and Moldova and in the future also to the three Caucasus Republics.

II. Ukraine, the 2004 Presidential Election and ENP

Ukraine was originally chosen as the focus of this book for two reasons: its geographical position between Russia and the European Union, and its size. Ukraine has a much larger surface area than any Member State of the European Union and a

population greater than Poland, the largest of the new Member States. The Union's capacity to absorb Ukraine into the Single Market and its community of values will be a test of strength and willpower on par with any one of its great projects: the Euro, or perhaps the Single Market itself. A third reason for the study of Ukraine as an object of the ENP is the 'Orange Revolution' of November and December 2004. The significance of these events and their influence on the future development of Ukraine is such that a brief overview and analysis of the European dimension to what has happened is essential.¹³

What has come to be known as Ukraine's Orange Revolution began on 22 November 2004, with an attempt by the incumbent Government and the outgoing president, to falsify the election results. Ukraine's new president, Viktor Yushchenko, called upon his supporters to rally in Independence Square in central Kyiv. Hundreds of thousands of protestors took to the streets and remained there until the Supreme Court had given the green light for a re-run of the presidential election, and the Ukrainian parliament, the *Verkhovna Rada*, had made certain changes to the Ukrainian constitution and electoral law. It was this manifestation of people power that made the Orange Revolution possible, and that has altered the way the European Union views Ukraine, for four main reasons:

First, Ukraine has now made a definitive 'European choice'. Previously, the Commission and Council argued that eventual Ukrainian membership of the EU was out of the question, since Ukraine had not made a definitive choice in favour of the European integration. Ukraine has long had a clear majority of about 56% in favour of European integration, with 16% against.¹⁴ The election results that have brought the pro-European Viktor Yushchenko to the presidency only serve to underline this.

Second, the strength of Ukrainian civil society on both sides of the political fence and Ukrainian institutions have been strongly evident since the election. Prior to the election, commentators from states favourable to Ukrainian integration with the Union, such as Poland, were adamant that the principal obstacle to Ukrainian integration with the Union was the absence of civil society, precluding the effective functioning of democracy. The peaceful mass demonstrations across western and central Ukraine are testament to how far Ukraine has developed since independence in 1991. When Leonid Kravchuk, first president of the post-1991 Ukrainian state, proclaimed the autonomy of the Ukrainian Soviet Socialist Republic, around 20,000 people came out on the streets of Kyiv. Around 200,000 people gathered to protest against the rigging of the 2004 presidential election.

Third, at the outset of the crisis, there were worries that the Union had an unstable state with a reasonable risk of civil conflict on its eastern doorstep. It was always extremely improbable that the Ukraine would have descended into full-scale civil war on the scale that followed the break-up of the former Yugoslavia. However, should the opposition protestors have been crushed by forces loyal to the President and the Prime Minister, it is very probable that refugees would have flooded across the border into the three Member States bordering Ukraine: Poland, Hungary and Slovakia.

¹³ For a more detailed briefing on the election see Nathaniel Copsey's contribution to this book.

¹⁴ See: Joanna Konieczna, *Polska-Ukraina Wzajemny Wizerunek*, Instytut Spraw Publicznych, Warsaw, 2001, p. 71.

Fortunately, none of this happened, but the crisis served to put Ukraine on the political map.

Fourth, the intervention of the Russian authorities and the Russian President himself proved to be an interesting indication to the Union of both Russian intentions and methods of achieving its objectives. It is not in the interests of the Union to strengthen Russia's position as it reverts to its authoritarian tendencies.

In line with its commitment to conditionality, the European Union has to move swiftly with regard to Ukraine, but before Brussels makes any concrete offers, Ukraine's incoming president has to tackle a series of severe domestic problems. Priorities for the Yushchenko administration will be as follows:

First, repair the splits in Ukrainian society. The repeat second round election gave a clear majority to Yushchenko, but Viktor Yanukovich still won almost half the total with 44.19% of the vote.¹⁵ The polarisation of society between east and west that has followed cannot be allowed to continue. Calls on 28 November 2004 for a referendum on the separation of the Donetsk and Luhansk regions from Ukraine reflect genuine concerns amongst ordinary people that their concerns will be ignored by the new administration. Yushchenko will have to court popularity or at the very least acceptance in Donetsk as well as Lviv.

Second, urgent macro-economic stabilisation measures need to be taken as Ukraine's present double-digit economic growth is not sustainable. Accelerating inflation has resulted from rising capacity utilisation in the economy in the face of rapid economic growth but also from the large pre-election increases in government spending. Public spending plans will therefore also have to be trimmed. Yushchenko's record as Prime Minister and previously governor of the Ukrainian Central Bank bodes well on all these counts. Nonetheless, it will be very hard to square a dose of economic austerity with popularity in the east. Much of Yanukovich's popularity in his home region of Donetsk stems from paying miners on time and subsidising loss-making, labour intensive industries – especially coal-mining - with public money.

Third, crack down on corruption. This is much easier said than done. Corruption tops the list of voter priorities in Ukraine, and is a serious disincentive to foreign [Western] direct investment. In fairness to the outgoing administration, some of the worst excesses of the 1990s have been already been dealt with. Ukraine's new president cannot afford to fail in the fight against corruption, since this will be the basis of his mandate.

Fourth, recast Ukrainian-Russian relations on a new footing. Russian meddling in Ukraine's election notwithstanding, the new president will have to rebuild bridges with Russia. Russia is the largest investor in Ukraine, its principal trading partner and the main supplier of its energy needs. President Yushchenko will have to convince President Putin that closer European integration need not necessarily leave Russia out in the cold. Part of the key to this may be the ethnic Russian business community in the Baltic states, particularly in Latvia. Their positive experiences of the business

¹⁵ Full election statistics are available from the Ukrainian Central Electoral Commission <http://www.cvk.gov.ua>

environment in the Union have already filtered through to Kyiv. It may be possible for Ukrainian business people to convince their Russian counterparts that the Single Market has much more to offer than the Single Economic Space.

Fifth, take advantage of the goodwill towards Ukraine on the part of the United States and the European Union to make serious headway with European integration. For the reasons spelled out above, the Union has shifted its thinking on Ukraine. The ten proposals made by Javier Solana and Commissioner Ferrero-Waldner are a useful addition to the Action Plan. Ukraine is also well-positioned to gain membership of NATO. Apart from the recent political changes, the presence of its troops in Iraq, and most importantly of all, its possession of military hardware (such as the heavy Antonov supply planes) would add considerably to NATO's collective might in a way that many new members do not. However, this is a much more controversial issue in Ukrainian society, and the incoming presidency would have to think very carefully before abandoning neutrality.

Sixth, complete the constitutional reform that signalled the end of the Ukrainian crisis on 8 December 2004. The transfer of considerable powers from the President to the Prime Minister and parliament is not only democratically good practice but will also send a clear signal to the world about the kind of state that Ukraine is on the road to becoming.

Despite the momentous events that have followed the Ukrainian elections, the incoming administration faces many challenges. It is up to President Yushchenko not to squander his mandate, to take advantage of international goodwill, and to cement democracy and the rule of law at the heart of the Ukrainian polity. The hundreds of thousands of Ukrainians that came out to defend democracy will not be forgiving of an administration that fails to live up to the hopes invested in it.